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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1777

[Docket No. RUS–21–WATER–0017]

RIN 0572–AC55

Section 306C Water and Waste Disposal (WWD) Loans and Grants

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule with request for comment.

SUMMARY: The Rural Utilities Service (RUS), an agency of the Rural Development mission area within the U.S. Department of Agriculture (USDA), hereinafter referred to as the Agency or RUS, is issuing a final rule with comment to revise the Section 306C WWD Loans and Grants program regulations to implement changes recommended by Government Accountability Office (GAO) Audit Report GAO 18–309, ''Drinking Water and Wastewater Infrastructure Opportunities Exist to Enhance Federal Agency Needs Assessment and Coordination on Tribal Projects'' (Audit Report) issued on May 15, 2018, and available at: *https://www.gao.gov/products/gao-18-309.* The Agency is also implementing other changes to clarify terminology and policies, update scoring criteria, and allow the program to run more efficiently.

DATES:

Effective date: This final rule is effective May 2, 2023.

Comment date: Comments are due April 3, 2023.

ADDRESSES: You may submit comments, identified by docket number RUS–21–Water–0017 and Regulatory Information Number (RIN) number 0572–AC55 through *https://www.regulations.gov.*

Instructions: All submissions received must include the Agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

ADDRESSES: Additional information about Rural Development and its programs is available on the internet at *https://www.rd.usda.gov/programs-services.* Information specific to this program may be found on the internet at: *https://www.rd.usda.gov/programs-services/water-environmental-programs*

FOR FURTHER INFORMATION CONTACT: Charles Stephens, Assistant Administrator, Water and Environmental Programs, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250; email: *charlesd.stephens@usda.gov;* telephone: (202) 619–8500.

SUPPLEMENTARY INFORMATION:

I. Executive Orders/Acts

Executive Orders 12866 and 13563 Classification

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 to maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number, also known as Assistance Listing number, assigned to the program is 10.770, Water and Waste Facility Loans and Grants to Alleviate Health Risks. The CFDA is available on the internet at *https://sam.gov/content/assistance-listings.* The Government Printing Office (GPO) prints and sells the CFDA to interested buyers. For information about purchasing the CFDA from GPO, call the Superintendent of Documents at 202–512–1800 or toll free at 866–512–1800, or access GPO's on-line bookstore at: U.S. Government Bookstore *https://bookstore.gpo.gov/.*

Executive Order 12372—Intergovernmental Consultation

This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. Rural Development will conduct intergovernmental consultation using RD Instruction 1970–I, ''Intergovernmental Review,'' available in any Agency office, or at *https://www.rd.usda.gov/sites/default/files/1970i.pdf* and in 2 CFR part 415, subpart C. Note that not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at: *https://www.whitehouse.gov/omb/office-federal-financial-management/.* Applications from Federally Recognized Indian Tribes are not subject to this requirement.

Paperwork Reduction Act

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0121 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (''Environmental Policies and Procedures''). The Agency has determined that (1) this action meets the criteria established in 7 CFR 1970.53(f); (2) no extraordinary circumstances exist; and (3) the action is not ''connected'' to other actions with potentially significant impacts, is not considered a ''cumulative action'' and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Regulatory Flexibility Act

RUS certifies that this proposed rule will not have a significant economic

impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS Water and Waste low-interest loan and grant programs provide funds to eligible entities with a focus on promoting public water and waste access at reasonable user costs throughout rural America. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Executive Order 12988—Civil Justice Reform

This rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Executive Order 13132—Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the States is not required.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on the Agency in the development of regulatory policies that have tribal implications or preempt tribal laws. The Agency has determined that the rule may have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is subject to the requirements of Executive Order 13175. GAO, during the preparation of their Audit Report described in the **SUMMARY** section of this notice, sought and received input from 22 Tribes. As part of the Agency's consultation process, the Agency hosted two listening sessions on November 30, 2021 and December 1, 2021. No substantive comments were received from Tribes during the listening sessions. If tribal leaders are interested in government-to-government consultation with the Agency on this rule, they are encouraged to contact RD's Tribal Coordinator at: *AIAN@usda.gov.* RD will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Civil Rights Impact Analysis

Rural Development has reviewed this rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, marital or familial status. Based on the review and analysis of the rule and all available data, issuance of this Final Rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status.

USDA Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov*.

II. Background

Rural Development is a mission area within USDA comprised of the RUS, Rural Housing Service, and Rural Business-Cooperative Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants and contracts through more than 40 programs aimed at creating and improving housing, business, and infrastructure throughout rural America.

The Water and Waste Facility Loans and Grants to Alleviate Health Risks program was established by Section 306C of the Consolidated Farm and Rural Development Act (ConAct). The ConAct established the program to provide loans and grants to low-income communities in eligible areas which face significant health risks, and lack access to safe, reliable drinking water and waste disposal facilities and services. For the purpose of this program, eligible projects include those that primarily benefit members of federally recognized Tribes, or are within areas recognized as a Colonia before October 1, 1989, that are located in a city, town, or unincorporated area with a population of no more than 10,000 residents.

A Government Accountability Office (GAO) Audit Report, GAO 18–309, ''Drinking Water and Wastewater Infrastructure Opportunities Exist to Enhance Federal Agency Needs Assessment and Coordination on Tribal Projects'' issued on May 15, 2018, and available at: *https://www.gao.gov/products/gao-18-309* recommended that the Agency implement scoring criteria for the Native American funding within the Section 306C WWD Loans and Grants program, similar to those that currently exist for the Colonias. The specific scoring criteria cited provide additional points for projects that increase access to clean drinking water and reduce health risks. In addition to those changes, the Agency is updating the regulation to include current policies and procedures, and clarify terminology, including the per capita income and unemployment criteria.

III. Discussion of the Rule

This section discusses the key changes to the regulation.

To conform to Section 306C of the ConAct, the Agency has updated the name of Part 1777 to Water and Waste Facility Loans and Grants to Alleviate Health Risks. Key terms have been updated for consistency with other regulations and directives. The structure of Part 1777 has been reworked to provide easier usability by customers and to differentiate the different requirements of loans and grants that are for public infrastructure versus those for individuals.

As Section 306C governs the implementation of multiple fund allocations, including Tribal and Colonias allocations, § 1777.1(d) was revised to clarify that funds specifically appropriated for Tribes through this part will only be awarded to Tribes and entities serving Tribal members.

Per statute, Tribal entities eligible for Section 306D, ''Water Systems for Rural Native Villages in Alaska Program'' are not eligible to receive grant funding under this program. That statutory restriction is included at § 1777.1(e) to ensure applicants are aware of all requirements and restrictions.

Section 1777.4, ''Definitions'' was modified to update and conform definitions now used in part 1777.

Section 1777.11 was revised to update the section name and to include regulatory cross references to the appropriate regulations that govern application/processing of loans and servicing of loans for public infrastructure projects.

Section 1777.12 was modified as follows:

(a) The title of the section was changed to ''Public Infrastructure—Eligibility''; and only provides information pertaining to loans and grants for facilities;

(b) The introductory text of paragraph (a) was re-worded to clarify which paragraphs apply only to Tribal funding under Section 306C and removes the reference to preapplications as the Agency no longer requires them. Additionally, ''. . . RUS Assistant Administrator for Water and Environmental Program . . .'' was added to indicate who may begin the process of using a source other than the current American Community Survey (ACS);

(c) Paragraph (a)(1) was revised by specifying ''United States Department of Commerce, United States Census Bureau.''

(d) Paragraph (a)(3) was added to clarify that if an applicant is not a Federally Recognized Tribe, the project may still be considered eligible if more than 50 percent of the users in the project area are members of a Federally Recognized Tribe. Also, for applicants that are not Tribes, but are proposing to serve a Tribal area, a resolution or letter of support from the tribe is now required.

Section 1777.13 now contains requirements for how funds for public infrastructure projects may be used. The project priority and scoring information previously located in this section is moved to § 1777.14 for public infrastructure projects and to § 1777.33 for projects benefitting individuals and scoring has been updated to reflect current practice. In order to address the recommendation of the GAO audit to make scoring consistent between Colonia and Tribal applicants, points for access and health risks are now applied consistently to all project applications in § 1777.14(c)(5) and § 1777.33(c)(8).

Section 1777.15 has been added to provide rates and terms for public infrastructure loans. This information was previously found at § 1777.31.

Sections 1777.30 through 1777.34 now cover individual loan and grant eligibility, use of funds, administration of funds and rates and terms. These sections have been updated to document current process and practices.

Section 1777.42 was reworded for clarity.

Section 1777.43, Exception Authority, was added to allow the Administrator of Rural Utilities Service to make an exception to any requirement or provision of this part that is not inconsistent with statute or other applicable laws and is in the best interest of the government.

List of Subjects for 7 CFR 1777

Community development, Community facilities, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply.

■ For the reasons discussed in the preamble, the Agency revises 7 CFR part 1777 to read as follows:

PART 1777—WATER AND WASTE FACILITY LOANS AND GRANTS TO ALLEVIATE HEALTH RISKS

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005

§ 1777.1 General.

(a) This part outlines Rural Utilities Service (RUS) policies and procedures for making Water and Waste Facility loans and grants authorized under Section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(c)), as amended.

(b) Agency officials will maintain liaison with officials of other federal, Tribal, state, regional, and local development agencies to coordinate related programs to achieve rural development objectives.

(c) Agency officials will cooperate with appropriate Tribal and state agencies in making loans and/or grants

that support Tribal and state strategies for rural area development.

(d) Funds specifically appropriated for Tribal members in accordance with this part will be considered for use by Federally Recognized Tribes regardless of whether State development strategies include Tribes and their reservations. Tribal members residing on such reservations must have an equal opportunity to participate in this program.

(e) Entities eligible for a grant under the 306D Water Systems for Rural and Native Villages in Alaska Program are not eligible to receive grant assistance under this regulation from funds appropriated for Tribal members as referenced in paragraph (d) of this section.

(f) Federal statutes provide for extending the Agency's financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts).

§ 1777.2 [Reserved]

§ 1777.3 Objective.

The objective of the Section 306C Water and Waste Facility Loans and Grants to Alleviate Health Risks program is to provide water and waste disposal facilities and services to low-income rural areas whose residents are experiencing a significant health risk due to the fact that a significant proportion of the community's residents do not have access to, or are not served by, adequate affordable water supply systems or waste disposal facilities.

§ 1777.4 Definitions.

The following definitions apply to this part:

Agency. The Rural Utilities Service or its successors.

Applicant. The entity that has applied for assistance under this part. The entity may be a public body such as municipality, county, district, authority or other political subdivisions of a state, an organization operated on a not-for-profit basis such as an association, cooperative or private corporation, or a Federally Recognized Tribe as defined in the Federally Recognized Indian Tribal List Act of 1994 (Pub. L. 103–454, 108 Stat. 4791–4792). An entity operated on a not-for-profit basis must be controlled by a local public body or bodies or have a broadly based ownership by or membership of people of the local community.

Colonia. Any identifiable community designated in writing by a state, county or Federally Recognized Tribe in which it is located; determined to be a Colonia on the basis of objective criteria including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing, inadequate roads and drainage; and existed and was generally recognized as a Colonia before October 1, 1989. Colonia's eligible areas include the entire county where more than half of the area of the county is within 150 miles of the United States and Mexico border. The county governing body, state, or Tribal government must designate the respective communities in the county as Colonia. The individual Colonia still must meet all other qualifications. If only some of the counties within the 150-mile area are designated and a county is later designated, written evidence of Colonia designation must be placed in the respective files.

Cooperative. A cooperative formed specifically for the purpose of the installation, expansion, improvement, or operation of water supply or waste disposal facilities or systems.

Individual. The recipient of financial assistance for improvements to a private dwelling to facilitate the use of the water or waste disposal system.

Median household income. The income data used in this part to determine median household income must be that which most accurately reflects the income of the service area. The median household income of the service area and the Statewide Nonmetropolitan Median Household Income will be determined by 5-year income data from the United States Department of Commerce, United States Census Bureau, American Community Survey (ACS) or, if needed, other Census Bureau data. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented and the applicant may furnish, or the Agency may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State, Tribal or Federal sources, or from a survey conducted by a reliable impartial source.

Rural areas. Includes any city, town, or unincorporated area with a population not in excess of 10,000 inhabitants in any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, according to the most recently implemented decennial census of the United States. If the applicable population figure cannot be obtained from the most recently implemented decennial census, the RUS Assistant Administrator for Water and Environmental Programs will determine the applicable population figure based on available population data.

Statewide Nonmetropolitan Median Household Income (SNMHI). Median household income of a state's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population. The SNMHI is set by the RUS Water and Environmental Program. The nonmetropolitan median household income of the State may only be updated on a national basis by the RUS National Office.

Tribe. Federally Recognized Tribes as defined in the Federally Recognized Indian Tribal List Act of 1994 (Pub. L. 103–454, 108 Stat. 4791–4792), as well as Tribal organizations, enterprises, authorities and utilities that are duly established pursuant to the Constitution and bylaws of such Tribe.

§§ 1777.5 through 1777.10 [Reserved]

§ 1777.11 Public infrastructure—Making, processing, and servicing loans and grants.

Unless specifically modified by this part, loans and grants will be made and processed in accordance with 7 CFR 1780, ''Water and Waste Loans and Grants'' and serviced in accordance with 7 CFR 1782, ''Servicing of Water and Waste Programs.''

§ 1777.12 Public infrastructure—Eligibility.

(a) The provisions of paragraphs (a)(1), (2), and (3) of this section apply to applications submitted by all eligible entities except for Colonias. The facility financed under this part must provide water and/or waste disposal services to rural areas where, on the date the application is received by the Agency, the:

(1) Per capita income of the residents is not more than 70 percent of the most recently USDA implemented national average per capita income, as determined by 5-year income data from the United States Department of Commerce, United States Census Bureau, ACS or, if needed, other Census Bureau data. If the RUS Assistant Administrator for Water and Environmental Program (WEP) has reason to believe that the ACS or other Census Bureau data does not accurately represent the per capita income of the residents, the reasons will be documented and the applicant may furnish, or the Agency may obtain,

additional information regarding such per capita income data. Information must consist of reliable data from local, regional, state, Tribal or Federal sources or from a survey conducted by a reliable impartial source, and,

(2) Unemployment rate of the residents is not less than 125 percent of the most recent national average unemployment rate, as determined by the Bureau of Labor Statistics.

(3) Projects for which the applicant is not a Federally Recognized Tribe, but which will benefit Tribal members, may be considered eligible for funds under this part if the applicant provides acceptable documentation and certifies that more than 50 percent of the users in the project service area are members of Tribes. In such cases, funds awarded under this part cannot exceed the applicable percentage of the total eligible project cost. If the applicant is not a Tribe, the applicant must solicit a resolution or letter of consent in support of the application from the benefiting Tribe.

(b) Residents of the rural area to be served must be experiencing a significant health risk due to the fact that a significant proportion of the community's residents do not have access to, or are not served by, adequate, affordable, water supply systems and/or waste disposal facilities. The Agency's records must clearly document and support this determination. The following requirements regarding the documentation must be followed:

(1) The originating documentation must come from an independent third-party source that has the experience in specifying the health or sanitary problem that currently exists.

(2) The documentation must state specifically the health or sanitary problems that exist. General statements of problems or support for the project are not acceptable.

(3) Current users of the facility, and not future or possible users, must be experiencing the current health or sanitary problem.

(4) If no facility exists, documentation must include specific health and sanitary problems associated with individual facilities that currently exist to warrant the health and sanitary determination.

(5) In instances where eligible applicants are proposing to finance water or waste disposal infrastructure improvements addressing health and sanitary problems and that will help alleviate overcrowding or lack of housing, the applicant must provide adequate plans that reasonably demonstrate that the new housing development will be fully financed and will be completed once the infrastructure is completed.

§ 1777.13 Public infrastructure—Use of funds.

(a) Funds may be used to:

(1) Develop, construct, repair, replace and/or enlarge new and/or existing wells, reservoirs, transmission lines, treatment plants, and/or other sources of potable water.

(2) Construct, extend, repair, replace and/or enlarge new and/or existing waterlines and other necessary system components.

(3) Develop, construct, repair, replace and/or enlarge new and/or existing waste disposal, treatment, and other associated facilities.

(4) Construct, extend, repair, replace and/or enlarge new and/or existing collection lines and/or other necessary system components.

(5) Any other cost associated with resolving a significant health risk by granting the community access to an adequate affordable water supply system and/or waste disposal facility.

(b) Grants can be made up to 100 percent of eligible project costs.

§ 1777.14 Public infrastructure—Application processing and scoring.

(a) *General.* RUS may retain funds at the National Office or may allocate funds to Rural Development (RD) State Offices. Funds allocated to RD State Offices that remain unobligated may be pooled at the National Office's discretion and made available to any RD State Offices with eligible applications on a case-by-case basis. The application and supporting information submitted with it will be used to determine applicant eligibility and scoring for available funds. Applicants that do not receive an award will be advised of their appeal rights in accordance with 7 CFR part 11. Paragraph (c) of this section indicates items and conditions which will be considered in selecting applications for funding. When ranking eligible applications for consideration of limited funds, Agency officials will consider the scoring criteria met by each application and the degree to which those criteria are met.

(b) *Agency review.* Applications should be submitted in accordance with 7 CFR 1780. For funds retained at RUS National Office, applications will be processed, scored, and reviewed for funding priority by the processing office and then submitted for consideration to the RUS National Office. It is preferred that applications be submitted electronically through RD Apply or its successor platforms. Where electronic application is not feasible, an application can be submitted physically to the local processing office. Information relating to the local processing office may be found at *www.rd.usda.gov.* For funds allocated to RD state offices, the respective office will process, score, and fund projects with the available allocation. Projects that cannot be fully funded within the allocation will be considered in accordance with funds retained at the RUS National Office on a project-by-project basis. The Agency reserves the right to make no award if: no funding is received, or all applications are ineligible, incomplete, or do not meet the established program objectives and priorities. The Agency may determine that the application is:

(1) Eligible and selected for funding,

(2) Eligible but offered less funds than requested,

(3) Eligible but not selected for funding due to ranking of all applications by score, or

(4) Ineligible for funding.

(c) *Scoring.* The criteria in paragraphs (c)(1) through (6) of this section will be used to rank applications and in selecting projects for funding.

(1) *Population.* The proposed project will primarily serve a rural area having a population:

(i) Not in excess of 1,000—25 points.

(ii) Between 1,001 and 2,500—15 points.

(iii) Between 2,501 and 5,500—5 points.

(2) *Income.* The median household income of population to be served by the proposed project is:

(i) Not in excess of 50 percent of the SNMHI—30 points.

(ii) More than 50 percent and not in excess of 60 percent of the SNMHI income—20 points.

(iii) More than 60 percent and not in excess of 70 percent of the SNMHI—15 points.

(3) *Joint financing.* The amount of funds, other than RUS funds, committed to the proposed project is:

(i) Fifty percent or more—15 points.

(ii) Twenty to forty-nine percent—10 points.

(iii) Five to nineteen percent—5 points.

(4) *Colonia.* (See definition in § 1777.4). The proposed project will provide water or waste disposal services to the residents of a recognized Colonia—25 points.

(5) *Access and health risks.* (i) A service area that lacks access to both water and waste disposal facilities, resulting in a significant health risk—50 points.

(ii) A service area that lacks access to either water or waste disposal facilities,

resulting in a significant health risk—40 points.

(iii) A service area that has access to water and waste disposal facilities but has a significant health risk—20 points.

(6) *Discretionary.* (i) State Director or designee with loan and grant approval authority in certain cases, and when a written justification is prepared, may assign up to 15 points for administrative and programmatic priorities for items including, but not limited to, natural disasters, priority coordination between RUS and other agencies, including leveraged funding or other initiatives identified by the administration, to assist those projects that are the most cost effective, or to projects located in areas experiencing high unemployment and poverty rates and severe health risks.

(ii) RUS Administrator may assign up to 15 additional points that will be considered in the total points for items including, but not limited to, the geographic distribution of funds nationally and within the state, and the severity of health risks.

§ 1777.15 Public infrastructure—Rates and terms.

Public infrastructure loans will bear interest at not more than the maximum rate of 5 percent per annum. The rates and terms will be in accordance with 7 CFR 1780 Water and Waste Loans and Grants.

§§ 1777.16 through 1777.29 [Reserved]

§ 1777.30 Individual loans and grants—Making, processing, and servicing loans and grants.

Funding appropriated, designated, or otherwise approved to be delivered in accordance with the individual provisions of this part may be awarded directly to the individual(s) by this Agency or another designated Agency, such as United States Department of Agriculture's Rural Housing Service (RHS), or to the public water supply system and/or waste disposal facility for administration, including Tribes and Tribal organizations. When loan or grant funding is transferred to RHS, funding will be administered in accordance with subpart C of 7 CFR 3550 and other applicable provisions.

§ 1777.31 Individual loan and grant eligibility.

(a) When loan awards are made by RUS to individuals, the individuals must meet the applicable requirements of paragraphs (a)(1) through (5) of this section:

(1) Must demonstrate adequate ability to repay the loan;

(2) Have an ownership interest in the dwelling to be improved or connected to the system, and the dwelling must be located in an eligible, rural area;

(3) At the time of loan approval, the household's 12-month adjusted income must not be more than the statewide nonmetro median household income for the state or territory in which the individual resides, according to the most recent decennial census. Adjusted income is used to determine program eligibility and the amount of payment subsidy for which the household qualifies. Adjusted income is annual income less any of the following deductions for which the household is eligible:

(i) For each household member, except the head of household or spouse, who is under 18 years of age, 18 years of age or older with a disability, or a full-time student, the amount determined pursuant to section 501(b)(5) of the Housing Act of 1949, as amended.

(ii) A deduction of reasonable expenses for the care of minor 12 years of age or under that:

(A) Enable a family member to work or to further a member's education;

(B) Are not reimbursed or paid by another source; and

(C) In the case of expenses to enable a family member to work do not exceed the amount of income earned by the family member enabled to work.

(iii) Expenses related to the care of household members with disabilities that:

(A) Enable a family member to work;

(B) Are not reimbursed from insurance or another source; and

(C) Are in excess of three percent of the household's annual income.

(iv) For any elderly family, a deduction in the amount determined pursuant to section 501(b)(5) of the Housing Act of 1949, as amended.

(v) For elderly households only, a deduction for household medical expenses that are not reimbursed from insurance or another source and which in combination with any expenses related to the care of household members with disabilities described in paragraph (a)(3)(iii) of this section, are in excess of three percent of the household's annual income;

(4) Must not be delinquent on any Federal debt; and,

(5) Are unable to pay for the costs of improvements without the loan.

(b) Grants may be made to individuals who meet all applicable requirements of paragraphs (b)(1) through (4) of this section:

(1) Have an ownership interest in the dwelling to be connected to the system or improved and located in an eligible, rural area;

(2) At the time of grant approval, meet the income requirements established within item (a)(3) of this part;

(3) Must not be delinquent on any Federal debt; and

(4) Are unable to pay for the costs of improvements without a grant.

§ 1777.32 Individual loans and grants—Use of funds.

(a) Prior to awarding funds to a public water supply and/or waste disposal system, the approval official must determine that this is a practical and economical method of connecting individuals to the community water and/or waste disposal system. Funds awarded pursuant to this section can only be used for loans to individuals, and awarded grant funds can only be used for grants to individuals.

(b) Funds may be used to:

(1) Extend service lines to residence.

(2) Connect service lines to residence's plumbing.

(3) Pay reasonable charges or fees for connecting to a community water and/or waste disposal system.

(4) Pay for necessary installation of plumbing and related fixtures within dwellings lacking such facilities.

(5) Construction and/or partitioning off a portion of dwelling for a bathroom only if such bathroom is modest in design and size as determined by the Agency.

(6) Pay reasonable costs for closing abandoned septic tanks and water wells when necessary to protect the health and safety of recipients of a grant in paragraphs (b)(1) or (b)(2) of this section and is required by Tribal, local or applicable law.

§ 1777.33 Individual loans and grants—Administration of funds.

(a) *General.* For applications submitted by water or waste disposal systems or other eligible entities to benefit individuals, the amount of loan and grant funds approved by the Agency will be based on the need documented in the executed loan and grant documents between the Agency and the entity. The loan and grant documents include but are not limited to items such as the purpose, how funds will be used, proposed application process for individuals, construction requirements, and the control and disbursement of funds. Construction requirements must meet applicable building codes, statutes and regulations.

(b) *Review.* The loan and grant documents executed between RUS and the entity will set forth the procedures and regulations for making and

servicing loans and grants made by the water or waste disposal systems, or other eligible entity, to individuals. The entity is responsible for:

(1) Understanding all provisions of the loan and grant documents; and

(2) Servicing loans and grants in the manner outlined in the executed loan and grant documents.

(c) *Scoring.* For applications submitted by water or waste disposal systems or other eligible entities to benefit individuals, the criteria in paragraphs (c)(1) through (9) of this section will be used to rank applications and in selecting projects for funding.

(1) *Lending experience.* Degree of expertise and successful experience in making and servicing loans to individuals. Up to 15 points.

(2) *Operational experience.* Degree of expertise and experience in operating and maintaining water or waste disposal system. Up to 15 points.

(3) *Work plan.* Extent to which the work plan demonstrates a well thought out, comprehensive approach to accomplishing the objectives of this part, clearly defines who will be served by the project, and appears likely to be sustainable. Up to 15 points.

(4) *Population.* The system after the proposed project will primarily serve a rural area having a population:

(i) Not in excess of 1,000—25 points.

(ii) Between 1,001 and 2,500—15 points.

(iii) Between 2,501 and 5,500—5 points.

(5) *Income.* The median household income of population to be served by the proposed project is:

(i) Not in excess of 50 percent of the SNMHI—30 points.

(ii) More than 50 percent and not in excess of 60 percent of the SNMHI income—20 points.

(iii) More than 60 percent and not in excess of 70 percent of the SNMHI—15 points.

(6) *Joint financing.* The amount of funds, other than RUS funds, committed to the proposed project is:

(i) Fifty percent or more—15 points.

(ii) Twenty to forty-nine percent—10 points.

(iii) Five to nineteen percent—5 points.

(7) *Colonia.* (See definition in § 1777.4). The proposed project will provide water or waste disposal services to the residents of a recognized Colonia—25 points.

(8) *Access and health risks.* (i) A service area that lacks access to both water and waste disposal facilities, resulting in a significant health risk—50 points.

(ii) A service area that lacks access to either water or waste disposal facilities, resulting in a significant health risk—40 points.

(iii) A service area that has access to water and waste disposal facilities but has a significant health risk—20 points.

(9) *Discretionary.* (i) State Director or designee with loan and grant approval authority in certain cases, and when a written justification is prepared, may assign up to 15 points for administrative and programmatic priorities for items including, but not limited to, natural disasters, funding or priority coordination between RUS and other agencies, including leveraged funding, for award to applicants under this program, to assist those projects that are the most cost effective, or to projects located in areas experiencing high unemployment and poverty rates and severe health risks.

(ii) RUS Administrator may assign up to 15 additional points that will be considered in the total points for items including, but not limited to, the geographic distribution of funds nationally and within the state, and the severity of health risks. Any funds transferred to RHS for individual assistance will be administered following the provisions established in their governing statutes, regulations or policy. However, funds cannot be used to make improvements to the residence, except for the improvements authorized by § 1777.32. Funds cannot be used to pay individuals for their own labor. RUS transferred funds to RHS that remain after providing individual loans and grants will be returned to RUS or its successors.

§ 1777.34 Individual loans—Rates and terms.

Individual loans will bear interest at not more than the maximum of 5 percent per annum, or the Federal Financing Bank or other Agency designated source, on loans of a similar term at the time such loans are made. The term will not exceed the estimated useful life of the eligible improvements financed or as determined by tribal or state law or statute, whichever is less.

§§ 1777.35 through 1777.41 [Reserved]

§ 1777.42 Delegation of authority.

The Administrator may delegate approval authority under this section, to the Assistant Administrator, WEP in accordance with 7 CFR 1780.

§ 1777.43 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this part which is not inconsistent with the authorizing statute or other applicable law and is determined to be in the Government's interest.

§ 1777.44 Availability of forms and regulations.

Information on forms and regulations are available online from the Agency website.

§§ 1777.45 through 1777.99 [Reserved]

§ 1777.100 OMB control number.

The reporting and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget and assigned OMB control number 0572–0121.

Andrew Berke,

Administrator, Rural Utilities Service.

[FR Doc. 2023–01126 Filed 1–31–23; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1295; Project Identifier MCAI–2021–01181–T; Amendment 39–22295; AD 2023–01–01]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This AD was prompted by a report of a nose landing gear (NLG) sliding tube rupture that led to a NLG collapse. This AD requires inspection of certain NLG and main landing gear (MLG) sliding tubes and applicable corrective actions and eventual replacement of all affected parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference (IBR). This AD also prohibits the installation of affected parts under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 8, 2023.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in this AD as of March 8, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1295; 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 EASA material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; website *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at regulations.gov under Docket No. FAA–2022–1295.

FOR FURTHER INFORMATION CONTACT: Hye Yoon Jang, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 817–222–5584; email: *hye.yoon.jang@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The NPRM published in the **Federal Register** on October 20, 2022 (87 FR 63715). The NPRM was prompted by AD 2021–0236, dated October 29, 2021, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2021–0236) (also referred to as the MCAI). The MCAI states that NLG sliding tube rupture, leading to NLG collapse during taxiing, occurred on a Model A320 airplane. Investigations identified overheat damage on that NLG, caused by incorrect accomplishment of a repair on the chromium-plated diameter of the sliding tube during the last NLG overhaul. Further investigations identified a batch of NLG and MLG sliding tubes that are possibly affected by a similar condition, which, if not detected and corrected, could lead to NLG or MLG structural failure and subsequent collapse of the gears, possibly resulting in damage to the airplane and injury to occupants.

In the NPRM, the FAA proposed to require inspection of certain NLG and MLG sliding tubes and applicable corrective actions and eventual replacement of all affected parts. The NPRM also proposed to prohibit the installation of affected parts under certain conditions. The FAA is issuing this AD to address NLGs and MLGs that may have been subject to the incorrect accomplishment of a repair, which, if not detected and corrected, could lead to NLG or MLG structural failure and subsequent collapse of the gears, possibly resulting in damage to the airplane and injury to occupants.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1295.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from the Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with 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, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, 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 EASA AD 2021–0236, which specifies procedures for a detailed inspection of the visible chrome surface of affected NLG and MLG sliding tubes for any discrepancies (cracks), a magnetic particle inspection (MPI) and Barkhausen noise inspection (BNI) of affected parts for any discrepancies (cracks), eventual replacement of affected parts, and corrective actions. Corrective actions include immediate replacement of the NLG or MLG sliding tube or shock absorber. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 1,825 airplanes of U.S. registry. Currently, there are no affected U.S.-registered airplanes that would need the required actions because the affected part is not installed on any U.S.-registered airplanes. U.S.-registered airplanes therefore would need to comply with only the parts prohibition specified in this AD.

If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with the required actions in this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost *	Cost per product
50 work-hours × $85 per hour = $4,250	$0	$4,250

* The FAA has received no definitive data on which to base the cost estimates for the replacement parts specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–01–01 Airbus SAS: Amendment 39–22295; Docket No. FAA–2022–1295; Project Identifier MCAI–2021–01181–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 8, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by a report of a nose landing gear (NLG) sliding tube rupture leading to an NLG collapse. The FAA is issuing this AD to address NLGs and main landing gears (MLGs) that may have been subject to the incorrect accomplishment of a repair, which, if not detected and corrected, could lead to NLG or MLG structural failure and subsequent collapse of the gears, possibly resulting in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0236, dated October 29, 2021 (EASA AD 2021–0236).

(h) Exceptions to EASA AD 2021–0236

(1) Where EASA AD 2021–0236 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2021–0236 specifies to do a detailed visual inspection, replace the text ''the instructions of the AOT'' with ''paragraphs 4.2.2.2 and 4.2.2.5 of the AOT.''

(3) Where paragraph (2) of EASA AD 2021–0236 specifies to do a magnetic particle inspection (MPI) and a Barkhausen noise inspection (BNI), replace the text ''the instructions of the AOT'' with ''paragraphs 4.2.2.3 and 4.2.2.6 of the AOT.''

(4) Where paragraph (3) of EASA AD 2021–0236 specifies that ''if discrepancies are detected on an affected part'' for this AD discrepancies include cracking and heat damage.

(5) Where the service information referenced in EASA AD 2021–0236 specifies to quarantine parts, this AD does not require that action.

(6) This AD does not adopt the ''Remarks'' section of EASA AD 2021–0236.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0236 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(k) Additional Information

For more information about this AD, contact Hye Yoon Jang, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 817–222–5584; email: *hye.yoon.jang@faa.gov*.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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) European Union Aviation Safety Agency (EASA) AD 2021–0236, dated October 29, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0236, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; website *easa.europa.eu*. You may find this EASA AD on the EASA website at *ad.easa.europa.eu*.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(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 January 4, 2023.

Gaetano A. Sciortino,

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

[FR Doc. 2023–02010 Filed 1–31–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0987; Project Identifier MCAI–2021–01416–R; Amendment 39–22298; AD 2023–01–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters. This AD was prompted by an occurrence reported where during an inspection of a tail rotor head (TRH) pitch change spider, excessive play and excessive wear were detected, due to an unwanted rotating motion. This AD requires for helicopters with certain part-numbered TRH spider pitch change units installed, inspecting for correct installation of the spider pitch change nut (nut); marking a 2 to 5 mm wide black paint index mark and repetitively inspecting the alignment of the marking; and additional inspections and corrective actions if necessary. This AD also allows an affected part to be installed on a helicopter if certain requirements of this AD are met. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 8, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 8, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2022–0987; 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 European Union Aviation Safety Agency (EASA) AD, 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 Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *airbus.com/helicopters/services/technical-support.html.*
- You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at regulations.gov under Docket No. FAA–2022–0987.

Other Related Service Information: Other related Airbus Helicopters service information identified in this final rule is available at the Airbus Helicopters and FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Stephanie Sunderbruch, Aerospace Engineer, Safety Risk Management Section, Systems Policy Branch, Policy & Innovation Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–4659; email *Stephanie.L.Sunderbruch@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters. The NPRM published in the **Federal Register** on August 2, 2022 (87 FR 47141). The NPRM was prompted by EASA AD 2021–0282, dated December 17, 2021 (EASA AD 2021–0282), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Airbus Helicopters, formerly Eurocopter and Aerospatiale, Model AS 350 B, AS 350 BA, AS 350 BB, AS 350 B1, AS 350 B2, AS 350 B3, AS 350 D, AS 355 E, AS 355 F, AS 355 F1, AS 355 F2, AS 355 N, and AS 355 NP helicopters, all serial numbers. EASA advises that an occurrence was reported where, during an inspection of a TRH pitch change spider, excessive play in the assembly and excessive wear on its parts were detected, which was due to an unwanted rotating motion. EASA advises that this condition, if not addressed, could result in loss of the TRH pitch change control and loss of control of the helicopter.

Accordingly, EASA AD 2021–0282 requires a one-time check (inspection) of the nut for correct installation, accomplishing a black paint index marking, 2 to 5 mm wide, on the rotating spider and on the bearing spacer of the TRH spider pitch change unit, repetitive checks (inspections) of the marking alignment, and depending on the findings, accomplishment of additional inspections and corrective actions. The additional inspections include inspecting the TRH spider pitch change unit for corrosion; inspecting for rotation and wear on the faces of the bushes; visually inspecting the rotating plate and the rotating plate threads for damage; and inspecting the TRH spider pitch change unit if the mark is misaligned. The corrective actions include removing parts with corrosion from service; replacing bushes that rotate or have wear; and replacing damaged rotating plates. EASA AD 2021–0282 also specifies certain procedures for installation of the affected TRH spider pitch change unit.

In the NPRM, the FAA proposed to require, for helicopters with certain part-numbered TRH spider pitch change units installed, inspecting for correct installation of the nut and depending on the results, inspecting the TRH spider pitch change unit for corrosion, inspecting for rotation and wear on the faces of the bushes, inspecting the rotating plate and the rotating plate threads for damage, and removing specified parts from service and replacing them with airworthy parts. In the NPRM, the FAA also proposed to require for helicopters with certain part-numbered TRH spider pitch change units installed, marking a 2 to 5 mm wide black paint index mark to identify the position of certain parts and after the initial marking, and thereafter at intervals not to exceed 10 hours time in service (TIS), visually inspecting the alignment of the marking; and additional inspections and corrective actions if necessary. Additionally, the NPRM proposed to allow an affected part to be installed on a helicopter if certain requirements of the NPRM are met.

You may examine EASA AD 2021–0282 in the AD docket at regulations.gov under Docket No. FAA–2022–0987.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from three commenters. The following presents the comments received on the NPRM and the FAA's response to each comment.

Comments Regarding the Repetitive Marking Alignment Inspections

All three individuals requested that the FAA revise the proposed AD to allow an owner/operator (pilot) to perform the 10 hour TIS repetitive inspection of the black index mark after the initial inspection and marking. Two of the individuals stated allowing a pilot with the correct training and accreditation to perform the repetitive 10 hour TIS visual inspection of the black index mark would be in line with the service information required by this AD.

The FAA disagrees. The inspection requires training, and the exception to the FAA's standard maintenance regulations for AD actions does not allow a pilot to accomplish actions, including inspections, that require training. Accordingly, those inspections must be accomplished by a mechanic that meets the requirements of 14 CFR part 65 subpart D.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, 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 Airbus Helicopters Alert Service Bulletin (ASB) No. AS350–05.01.03, for Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, and AS350D helicopters and Airbus Helicopters ASB No. AS355–05.00.86, for Model AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters, both Revision 0 and dated December 16, 2021, which include Figure 1 that identifies the position of the TRH pitch change unit and of the bearing spacer to be marked with a 2 to 5 mm wide black paint index mark. The service information also specifies procedures for inspecting the condition and installation of the nut; and inspecting the application and alignment of the black index mark on the TRH pitch change unit and the bearing spacer.

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 Airbus Helicopters Mechanical Repair Manual AS350 65–20–00–713, dated March 29, 2017, and Airbus Aircraft Maintenance Manual AS350 65–21–00, 4–9b, dated May 16, 2019, which specify disassembly and reassembly information for the TRH pitch change unit.

Differences Between This AD and the EASA AD

EASA AD 2021–0282 applies to Model AS350BB helicopters, whereas this AD does not because that model is not FAA-type certificated. EASA AD 2021–0282 requires accomplishing a certain inspection using a magnifying lens, whereas this AD requires using a 5X or higher power magnifying glass to inspect instead.

Costs of Compliance

The FAA estimates that this AD affects 976 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting the nut for correct installation takes about 0.25 work-hour for an estimated cost of $21 per helicopter and up to $20,307 for the U.S. fleet.

Inspecting the alignment of the marking takes about 0.10 work-hour for an estimated cost of $8.50 per helicopter per inspection and up to $8,219.50 for the U.S. fleet per inspection.

Marking the position of the TRH pitch change unit with black paint takes about 0.25 work-hour for an estimated cost of $21 per helicopter and $20,307 for the U.S. fleet.

If required, inspecting the TRH spider pitch change unit for corrosion, inspecting the faces of the bushes for rotation and wear, and inspecting the rotating plate and rotating plate threads for damage takes about 13 work-hours for an estimated cost of $1,105 per helicopter.

If required, replacing the bushes takes about 1 work-hour and parts cost about $5,918, for an estimated cost of $6,003 per replacement.

If required, replacing the rotating plate takes about 1 work-hour and parts cost about $27,375 for an estimated cost of $27,460 per replacement.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–01–04 Airbus Helicopters: Amendment 39–22298; Docket No. FAA–2022–0987; Project Identifier MCAI–2021–01416–R.

(a) Effective Date

This airworthiness directive (AD) is effective March 8, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6420, Tail Rotor Head.

(e) Unsafe Condition

This AD was prompted by an occurrence reported where, during an inspection of a tail rotor head (TRH) pitch change spider, excessive play and excessive wear were detected, due to an unwanted rotating motion. The FAA is issuing this AD to detect improper installation of the pitch change spider nut (nut) and improper alignment of a black index marking. The unsafe condition, if not addressed, could result in loss of the TRH pitch change control and loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) For helicopters with TRH spider pitch change unit, part number (P/N) 350A33–2030–00, 350A33–2167–00, or 350A33–2167–01 installed, within 50 hours time-in-service (TIS) after the effective date of this AD:

(i) Inspect the nut for correct installation. If the nut is missing or loose, before further flight, remove the bearing from the TRH spider pitch change unit and do the following:

(A) Inspect the TRH spider pitch change unit for corrosion. If there is any corrosion, before further flight, remove the affected part from service and replace with an airworthy part.

(B) Inspect for rotation and wear on the faces of the bushes. For the purposes of this AD, indications of rotation and wear include tearing, peening, metal pick-up, and hammering. If there is any rotation or any wear on the faces of the bushes, before further flight, remove the bushes from service and replace with airworthy bushes.

(C) Using a 5X or higher power magnifying glass visually inspect the rotating plate and the rotating plate threads for damage. For the purposes of this AD, indications of damage include wear, deformation, stripping, galling, and corrosion. If there is any damage on the rotating plate or the rotating plate threads, before further flight, remove the rotating plate from service and replace with an airworthy rotating plate.

Note 1 to paragraph (g)(1)(i): Airbus Helicopters Mechanical Repair Manual (MRM) AS350 65–20–00–713, dated March 29, 2017, also known as Work Card 65–20–00–713 MRM, and Airbus Aircraft Maintenance Manual (AMM) AS350 65–21–00, 4–9b, dated May 16, 2019, also known as Task 65–21–00, 4–9 AMM, specify disassembly and reassembly information for the TRH pitch change unit.

(ii) Identify the position of the TRH pitch change unit (item a) and of bearing spacer (item b) by marking a 2 to 5 mm wide black paint index mark (item C) with black paint as depicted in Figure 1 of Airbus Helicopters Alert Service Bulletin (ASB) No. AS350–05.01.03, Revision 0, dated December 16, 2021 (ASB AS350–05.01.03), or Airbus Helicopters ASB No. AS355–05.00.86, Revision 0, dated December 16, 2021 (ASB AS355–05.00.86), as applicable to your model helicopter.

(iii) Within 10 hours TIS after the initial marking required by paragraph (g)(1)(ii) of this AD, and thereafter at intervals not to exceed 10 hours TIS, visually inspect the alignment of the marking. An example of a properly aligned marking is depicted in Figure 1 of ASB AS350–05.01.03 and ASB AS355–05.00.86, as applicable to your model helicopter. If the black paint index mark (item C) is misaligned, before further flight, inspect the TRH spider pitch change unit by accomplishing the actions required by paragraphs (g)(1)(i) and (ii) of this AD.

(2) As of the effective date of this AD, do not install TRH spider pitch change unit P/N 350A33–2030–00, 350A33–2167–00, or 350A33–2167–01 on any helicopter, unless you do the actions required by paragraphs (g)(1)(i) and (ii) of this AD before further flight after installation, and thereafter do the actions required by paragraph (g)(1)(iii) of this AD at the times specified in paragraph (g)(1)(iii) of this AD.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(i) Additional Information

(1) For more information about this AD, contact Stephanie Sunderbruch, Aerospace Engineer, Safety Risk Management Section, Systems Policy Branch, Policy & Innovation Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–4659; email *Stephanie.L.Sunderbruch@faa.gov.*

(2) Airbus Helicopters Mechanical Repair Manual AS350 65–20–00–713, dated March 29, 2017, and Airbus Aircraft Maintenance Manual AS350 65–21–00, 4–9b, dated May 16, 2019, which are not incorporated by reference, contain additional information about the subject of this AD. This service information is available at the contact information specified in paragraphs (j)(3) and (4) of this AD.

(3) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2021–0282, dated December 17, 2021. You may view the EASA AD on the internet at regulations.gov in Docket No. FAA–2022–0987.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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) Airbus Helicopters Alert Service Bulletin (ASB) No. AS350–05.01.03, Revision 0, dated December 16, 2021.

(ii) Airbus Helicopters ASB No. AS355–05.00.86, Revision 0, dated December 16, 2021.

(3) For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *airbus.com/helicopters/services/technical-support.html.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(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 January 5, 2023.

Christina Underwood,

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

[FR Doc. 2023–01965 Filed 1–31–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 230126–0028]

RIN 0694–AJ08

Additions to the Entity List

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding seven entities to the Entity List. These seven entities, listed under the destination of Iran, have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States for contributing to Russia's military and defense industrial base. They are being added to the Entity List with application of the Russia/Belarus-Military End User Foreign Direct Product rule.

DATES: This rule is effective on January 31, 2023.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (supplement no. 4 to part 744 of the EAR (15 CFR parts 730–774)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States, pursuant to § 744.11(b). The EAR impose additional license requirements on, and limit the availability of, most license exceptions for exports, reexports, and transfers (in-country) when a listed entity is a party to the transaction. The license review policy for each listed entity is identified in the ''License Review Policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document that added the entity to the Entity List. The Bureau of Industry and Security (BIS) places entities on the Entity List pursuant to parts 744 (Control Policy: End-User and End-Use Based) and 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

Entity List Decisions

A. Additions to the Entity List

The ERC determined to add the following seven entities to the Entity List under the destination of Iran based on § 744.11 for activity contrary to U.S. national security and foreign policy interests under §§ 744.11 and 744.21 of the EAR: Design and Manufacturing of Aircraft Engines, Islamic Revolutionary Guard Corps Aerospace Force, Islamic Revolutionary Guard Corps Research and Self-Sufficiency Jihad Organization, Oje Parvaz Mado Nafar Company, Paravar Pars Company, Qods Aviation Industry, and Shahed Aviation Industries. These entities are designated by the Departments of State and/or the Treasury pursuant to Executive Order 13382 and other sanctions programs. They are also currently subject to restrictions set forth in part 744 of the EAR, such as those in §§ 744.8, 744.12, and 744.14. With this rule, these entities are added to the Entity List for contributing to Russia's military and defense industrial base through the production of Iranian unmanned aerial vehicles (UAVs), which are being transferred to Russia for use in Ukraine. This activity is contrary to U.S. national security and foreign policy interests under § 744.11(b) and these entities qualify as 'military end-users' under § 744.21(g) of the EAR. These entities will receive a footnote 3 designation because the ERC has determined that they are Russian or Belarusian 'military end users' in accordance with § 744.21. A footnote 3 designation subjects these entities to the Russia/Belarus-Military End User Foreign Direct Product (FDP) rule, detailed in § 734.9(g) of the EAR. These seven entities are added to the Entity List with a license requirement for all items subject to the EAR. BIS will review license applications for items for these entities under a policy of denial apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. No license exceptions are available for exports, reexports, or transfers (in-country) to these entities.

For the reasons described above, this final rule adds the following seven entities to the Entity List and includes, where appropriate, aliases:

Iran

- Design and Manufacturing of Aircraft Engines (DAMA);
- Islamic Revolutionary Guard Corps Aerospace Force;
- Islamic Revolutionary Guard Corps Research and Self-Sufficiency Jihad Organization;
- Oje Parvaz Mado Nafar Company;
- Paravar Pars Company;
- Qods Aviation Industry; *and*
- Shahed Aviation Industries.

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on January 31, 2023, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) before March 3, 2023. Any such items not actually exported, reexported or transferred (in-country) before midnight, on March 3, 2023, require a license in accordance with this final rule.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget

(OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and commodity classifications, and carries a burden estimate of 29.6 minutes for a manual or electronic submission for a total burden estimate of 33,133 hours. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2022, 87 FR 57569 (September 21, 2022); Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

■ 2. Supplement No. 4 to part 744 is amended under IRAN by adding, in alphabetical order, entries for ''Design and Manufacturing of Aircraft Engines,'' ''Islamic Revolutionary Guard Corps Aerospace Force,'' ''Islamic Revolutionary Guard Corps Research and Self-Sufficiency Jihad Organization,'' ''Oje Parvaz Mado Nafar Company,'' ''Paravar Pars Company,'' ''Qods Aviation Industry,'' and ''Shahed Aviation Industries'' to read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* *	*	* *	*
IRAN	*	* *	*	*
	Design and Manufacturing of Aircraft Engines (DAMA), a.k.a., the following four aliases: —DAMA; —Design and Manufacturing of Aero-Engine Company; —Iranian Turbine Manufacturing Industries; *and* —Turbine Engine Manufacturing Co. Shishesh Mina Street, Karaj Special Road, Tehran, Iran.	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b) and 746.8(a)(3) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER], 2/1/2023.
	*	* *	*	*
	Islamic Revolutionary Guard Corps Aerospace Force, a.k.a., the following ten aliases: —IRGC–ASF; —Aerospace Division of IRGC; —Aerospace Force of the Army of the Guardians of the Islamic Revolution; —AFAGIR; —Air Force, IRGC; —IRGC Aerospace Force; —IRGC Air Force; IRGCAF; —IRGCASF; Islamic Revolution Guards Corps Air Force; —Islamic Revolutionary Guards Corps Air Force; *and* —Sepah Pasdaran Air Force. Damavand Tehran Highway, Tehran Province, Iran	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b) and 746.8(a)(3) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER], 2/1/2023.

Country	Entity	License requirement	License review policy	Federal Register citation
	Islamic Revolutionary Guard Corps Research and Self-Sufficiency Jihad Organization, a.k.a., the following 13 aliases: —IRGC SSJO; —Islamic Revolutionary Guard Corps Self-Sufficiency Jehad Organization; —IRGC Research and Self Sufficiency Jehad Organization; —Self-Sufficiency Jihad Organization; —IRGC's Arms and Military Equipment Self-Sufficiency Program; —IRGC Jihad Self-Sufficiency Organization; —Jihad Self-Sufficiency Organization of Islamic Revolution Iranian Revolutionary Guards; —Self Sufficiency Jihad Organization; —IRGC's Self-Sufficiency and Industrial Research Center; —IRGC's Self-Sufficiency and Industrial Research Centre; —IRGC Missile Research Center; —IRGC Self-Sufficiency Organization; *and* —IRGC's Research and Self-Sufficiency Organization. Tehran and Isfahan, Iran	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b) and 746.8(a)(3) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER], 2/1/2023.
	* * * * *			
	Oje Parvaz Mado Nafar Company, a.k.a., the following three aliases: —Mado; —Owj Parvaz Mado Nafar Company LLC; *and* —Mado Company No. 1106, 11 Hemmat Corner, Hemmat Square, Hemmat Boulevard, Shokuhieh Industrial Town, Qom, Qom Province, 3718116354, Iran	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b) and 746.8(a)(3) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER], 2/1/2023.
	* * * * *			
	Paravar Pars Company, a.k.a., the following six aliases: —Paravar Pars Aerospace Research and Engineering Services; —Paravar Pars Aerospace Research Institute; —Paravar Pars Engineering and Services Aerospace Research Company; —Paravar Pars; —ParavarPars; *and* —Pravarpars Engineering Research and Design Company 13 km of Shahid Babaei Highway, after Imam Hossein University, next to Telo Road, Tehran, Iran	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b) and 746.8(a)(3) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER], 2/1/2023.
	* * * * *			
	Qods Aviation Industry, a.k.a., the following eight aliases: —Qods Aviation Industries; —Qoods Aviation Industries; —Qhods Aviation Industries; —Qods Aviation Industry; —Qods Air Industries; —Ghods Aviation Industries; —Qods Research Center; *and* —Qods Aeronautics Industries. Unit (or Suite) 207, Saleh Blvd, Tehran, Iran; *and* Unit 207, Tarajit Maydane Taymori (or Teimori) Square, Basiri Building, Tarasht, Tehran, Iran; *and* P.O. Box 15875–1834, Km 5 Karaj Special Road, Tehran, Iran	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b) and 746.8(a)(3) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER], 2/1/2023.
	* * * * *			

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Shahed Aviation Industries, a.k.a., the following five aliases: —Shahed Aviation Industries Research Center; —Shahed Aviation; —Shahed Aviation Industries Research; —Shahed Aviation Industries Research Centre; *and* —SAIRC. Shahid Lavi Street, Sajad Street, Isfahan, Iran	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b) and 746.8(a)(3) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER], 2/1/2023.
*	*	*	*	*	*	*

[3] For this entity, ''items subject to the EAR'' includes foreign-produced items that are subject to the EAR under § 734.9(g) of the EAR. See §§ 746.8 and 744.21 of the EAR for related license requirements, license review policy, and restrictions on license exceptions.

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2023–02130 Filed 1–31–23; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2014–N–0053]

RIN 0910–AI44

Requirements for Additional Traceability Records for Certain Foods

Correction

In rule document 2022–24417, appearing on pages 70910–71088, in the issue of Monday, November, 2022, make the following formatting correction:

On page 71077, in the second column, in lines 29–30, should appear as follows:

1.1320 When must I assign traceability lot codes to foods on the Food Traceability List?

Records of Critical Tracking Events

[FR Doc. C1–2022–24417 Filed 1–31–23; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 591

Publication of Venezuela Sanctions Regulations Web General License 5F and Subsequent Iterations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing five general licenses (GLs) issued in the Venezuela Sanctions program: GLs 5F, 5G, 5H, 5I, and 5J, each of which was previously made available on OFAC's website.

DATES: GL 5F was issued on December 23, 2020. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On December 23, 2020, OFAC issued GL 5F to further delay the effectiveness of the authorization that was previously contained in GL 5. GL 5F was the seventh iteration of GL 5 and superseded GL 5E (85 FR 76450). Subsequently, OFAC issued four further iterations of GL 5, each of which further delayed the effectiveness of the authorization that was previously contained in GL 5: on July 20, 2021, OFAC issued GL 5G, which superseded GL 5F; on September 10, 2021, OFAC issued GL 5H, which superseded GL 5G; on January 20, 2022, OFAC issued GL 5I, which superseded GL 5H; and on January 17, 2023, OFAC issued GL 5J, which superseded GL 5I. Each GL was made available on OFAC's website (*www.treas.gov/ofac*) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Venezuela Sanctions Regulations

31 CFR Part 591

GENERAL LICENSE NO. 5F

Authorizing Certain Transactions Related to the Petróleos de Venezuela, S.A. 2020 8.5 Percent Bond on or After July 21, 2021

(a) Except as provided in paragraph (b) of this general license, on or after July 21, 2021, all transactions related to, the provision of financing for, and other dealings in the Petróleos de Venezuela, S.A. 2020 8.5 Percent Bond that would be prohibited by Subsection l(a)(iii) of Executive Order (E.O.) 13835 of May 21, 2018, as amended by E.O. 13857 of January 25, 2019, and incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), are authorized.

(b) This general license does not authorize any transactions or activities otherwise prohibited by the VSR, or any other part of 31 CFR chapter V.

(c) Effective December 23, 2020, General License No. 5E, dated October 6, 2020, is replaced and superseded in its entirety by this General License No. 5F.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: December 23, 2020.

OFFICE OF FOREIGN ASSETS CONTROL

Venezuela Sanctions Regulations

31 CFR Part 591

GENERAL LICENSE NO. 5G

Authorizing Certain Transactions Related to the Petróleos de Venezuela, S.A. 2020 8.5 Percent Bond on or After October 21, 2021

(a) Except as provided in paragraph (b) of this general license, on or after October 21, 2021, all transactions related to, the provision of financing for, and other dealings in the Petróleos de Venezuela, S.A. 2020 8.5 Percent Bond that would be prohibited by Subsection l(a)(iii) of Executive Order (E.O.) 13835 of May 21, 2018, as amended by E.O. 13857 of January 25, 2019, and incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), are authorized.

(b) This general license does not authorize any transactions or activities otherwise prohibited by the VSR, or any other part of 31 CFR chapter V.

(c) Effective July 20, 2021, General License No. 5F, dated December 23, 2020, is replaced and superseded in its entirety by this General License No. 5G.

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

Dated: July 20, 2021.

OFFICE OF FOREIGN ASSETS CONTROL

Venezuela Sanctions Regulations

31 CFR Part 591

GENERAL LICENSE NO. 5H

Authorizing Certain Transactions Related to the Petróleos de Venezuela, S.A. 2020 8.5 Percent Bond on or After January 21, 2022

(a) Except as provided in paragraph (b) of this general license, on or after January 21, 2022, all transactions related to, the provision of financing for, and other dealings in the Petróleos de Venezuela, S.A. 2020 8.5 Percent Bond that would be prohibited by Subsection l(a)(iii) of Executive Order (E.O.) 13835 of May 21, 2018, as amended by E.O. 13857 of January 25, 2019, and incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), are authorized.

(b) This general license does not authorize any transactions or activities otherwise prohibited by the VSR, or any other part of 31 CFR chapter V.

(c) Effective September 10, 2021, General License No. 5G, dated July 20, 2021, is replaced and superseded in its entirety by this General License No. 5H.

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: September 10, 2021.

OFFICE OF FOREIGN ASSETS CONTROL

Venezuela Sanctions Regulations

31 CFR Part 591

GENERAL LICENSE NO. 5I

Authorizing Certain Transactions Related to the Petróleos de Venezuela, S.A. 2020 8.5 Percent Bond on or After January 20, 2023

(a) Except as provided in paragraph (b) of this general license, on or after January 20, 2023, all transactions related to, the provision of financing for, and other dealings in the Petróleos de Venezuela, S.A. 2020 8.5 Percent Bond that would be prohibited by subsection l(a)(iii) of Executive Order (E.O.) 13835 of May 21, 2018, as amended by E.O. 13857 of January 25, 2019, and incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), are authorized.

(b) This general license does not authorize any transactions or activities otherwise prohibited by the VSR, or any other part of 31 CFR chapter V.

(c) Effective January 20, 2022, General License No. 5H, dated September 10, 2021, is replaced and superseded in its entirety by this General License No. 5I.

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: January 20, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Venezuela Sanctions Regulations

31 CFR Part 591

GENERAL LICENSE NO. 5J

Authorizing Certain Transactions Related to the Petróleos de Venezuela, S.A. 2020 8.5 Percent Bond on or After April 20, 2023

(a) Except as provided in paragraph (b) of this general license, on or after April 20, 2023, all transactions related to, the provision of financing for, and other dealings in the Petróleos de Venezuela, S.A. 2020 8.5 Percent Bond that would be prohibited by subsection l(a)(iii) of Executive Order (E.O.) 13835 of May 21, 2018, as amended by E.O. 13857 of January 25, 2019, and incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), are authorized.

(b) This general license does not authorize any transactions or activities otherwise prohibited by the VSR, or any other part of 31 CFR chapter V.

(c) Effective January 17, 2023, General License No. 5I, dated January 20, 2022, is replaced and superseded in its entirety by this General License No. 5J.

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: January 17, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023–02047 Filed 1–31–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 591

Publication of Venezuela Sanctions Regulations Web General Licenses 6, 10, 11, and Subsequent Iterations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing five general licenses (GLs) issued in the Venezuela Sanctions program: GLs 6, 6A, 10, 10A, and 11, each of which was previously made available on OFAC's website.

DATES: GL 6 was issued on January 8, 2019. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On January 8, 2019, OFAC issued GL 6, and on January 28, 2019, OFAC issued GLs 10 and 11 to authorize certain transactions otherwise prohibited by Executive Order (E.O.) 13850 of November 1, 2018, ''Blocking Property of Additional Persons Contributing to the Situation in Venezuela'' (83 FR 55243, November 2, 2018). Subsequently, OFAC issued one further iteration of GL 6 and one of GL 10: on January 7, 2020, OFAC issued GL 6A, which superseded GL 6 and on August 5, 2019, OFAC issued GL 10A, which superseded GL 10 and authorized

certain transactions otherwise prohibited by E.O. 13884 of August 5, 2019, ''Blocking Property of the Government of Venezuela'' (84 FR 38843, August 7, 2019) and by E.O. 13850. GLs 6A and 11 have now expired. Each GL was made available on OFAC's website (*www.treas.gov/ofac*) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

GENERAL LICENSE NO. 6

Authorizing Certain Activities Necessary to the Maintenance or Wind Down of Operations or Existing Contracts With Globovision Tele C.A. or Globovision Tele CA, Corp.

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by subsection 1(a) of Executive Order 13850 of November 1, 2018 (''Blocking Property of Additional Persons Contributing to the Situation in Venezuela'') (E.O. 13850), that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving Globovision Tele C.A. or Globovision Tele CA, Corp., or any entity in which Globovision Tele C.A. or Globovision Tele CA, Corp. owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to January 8, 2019, are authorized through 12:01 a.m. eastern daylight time, January 8, 2020.

(b) Any payment to or for the direct or indirect benefit of a blocked person that is ordinarily incident and necessary to give effect to a transaction authorized in paragraph (a) of this general license must be made into a blocked, interest-bearing account located in the United States in accordance with 31 CFR part 591. Any such payment that is directly or indirectly to the account of a blocked U.S. person identified in paragraph (a) at a U.S. financial institution may be processed in accordance with the original wire transfer instructions, provided that those instructions are consistent with this general license.

(c) All funds in accounts of blocked U.S. persons identified in paragraph (a), including funds originating from authorized payments to such accounts received on or after January 8, 2019, may be used for maintenance or wind-down activities authorized by this general license.

(d) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons identified above;

(2) Any transactions or dealings otherwise prohibited by E.O. 13850, Executive Order 13835 of May 21, 2018, Executive Order 13827 of March 19, 2018, Executive Order 13808 of August 24, 2017, Executive Order 13692 of March 8, 2015, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons identified in paragraph (a) of this general license;

(3) The unblocking of any property blocked pursuant to E.O. 13850, Executive Order 13692 of March 8, 2015, or any part of 31 CFR chapter V, except as authorized by paragraphs (a), (b), or (c); or

(4) The exportation of goods from the United States.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: January 8, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

GENERAL LICENSE NO. 6A

Authorizing Certain Activities Necessary to the Wind Down of Operations or Existing Contracts With Globovision Tele C.A. or Globovision Tele CA, Corp.

(a) Except as provided in paragraph (d) of this general license, all transactions and activities prohibited by subsection 1(a) of Executive Order (E.O.) 13850, as amended by E.O. 13857 of January 25, 2019, that are ordinarily incident and necessary to the wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving Globovision Tele C.A. or Globovision Tele CA, Corp., or any entity in which Globovision Tele C.A. or Globovision Tele CA, Corp. owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to January 8, 2019, are authorized through 12:01 a.m. eastern standard time, January 21, 2020.

(b) Any payment to or for the direct or indirect benefit of a blocked person that is ordinarily incident and necessary to give effect to a transaction authorized in paragraph (a) of this general license must be made into a blocked, interest-bearing account located in the United States in accordance with 31 CFR part 591. Any such payment that is directly or indirectly to the account of a blocked U.S. person identified in paragraph (a) at a U.S. financial institution may be processed in accordance with the original wire transfer instructions, provided that those instructions are consistent with this general license.

(c) All funds in accounts of blocked U.S. persons identified in paragraph (a), including funds originating from authorized payments to such accounts received on or after January 8, 2019, may be used for wind-down activities authorized by this general license.

(d) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons identified above;

(2) Any transactions or dealings otherwise prohibited by E.O. 13884 of August 5, 2019, or E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons identified in paragraph (a) of this general license;

(3) The unblocking of any property blocked pursuant to E.O. 13884, or E.O. 13850 or E.O. 13692, each as amended by E.O. 13857, or any part of 31 CFR chapter V, except as authorized by paragraphs (a), (b), or (c); or

(4) The exportation of goods from the United States.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction,

including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) Effective January 7, 2020, General License No. 6, dated January 8, 2019, is replaced and superseded in its entirety by this General License No. 6A.

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: January 7, 2020.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

GENERAL LICENSE NO. 10

Authorizing the Purchase in Venezuela of Refined Petroleum Products From Petróleos de Venezuela, S.A. (PdVSA)

(a) Except as provided in paragraph (b) of this general license, U.S. persons in Venezuela are authorized to purchase refined petroleum products for personal, commercial, or humanitarian uses from PdVSA or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest.

(b) This general license does not authorize:

(1) Any commercial resale, transfer, exportation or reexportation of refined petroleum products; or

(2) Any transactions or dealings otherwise prohibited by Executive Order 13850 of November 1, 2018, Executive Order 13835 of May 21, 2018, Executive Order 13827 of March 19, 2018, Executive Order 13808 of August 24, 2017, Executive Order 13692 of March 8, 2015, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons identified in paragraph (a) of this general license.

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: January 28, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

Executive Order of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 10A

Authorizing the Purchase in Venezuela of Refined Petroleum Products From Petróleos de Venezuela, S.A. (PdVSA)

(a) Except as provided in paragraph (b) of this general license, U.S. persons in Venezuela are authorized to purchase refined petroleum products for personal, commercial, or humanitarian uses from PdVSA or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest.

(b) All transactions involving the Government of Venezuela that would otherwise be prohibited by Executive Order (E.O.) of August 5 that are necessary for the activities set forth in paragraph (a) of this general license are authorized, including payment of taxes, fees, and import duties to, and purchase or receipt of permits, licenses, or public utility services from, the Government of Venezuela.

(c) This general license does not authorize:

(1) Any commercial resale, transfer, exportation, or reexportation of refined petroleum products; or

(2) Any transactions or dealings otherwise prohibited by E.O. of August 5, 2019 or E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857 of January 25, 2019, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons identified in paragraph (a) or (b) of this general license.

(c) Effective August 5, 2019, General License No. 10, dated January 28, 2019, is replaced and superseded in its entirety by this General License No. 10A.

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: August 5, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

GENERAL LICENSE NO. 11

Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts With Petróleos De Venezuela, S.A. (PdVSA)

(a) Except as provided in paragraph (c) of this general license, U.S. person employees and contractors of non-U.S. entities located in a country other than the United States or Venezuela are authorized to engage in all transactions and activities prohibited by Executive Order 13850 that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements involving PdVSA or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, that were in effect prior to January 28, 2019. This authorization is valid through 12:01 a.m. eastern daylight time, March 29, 2019.

(b) Except as provided in paragraph (c) of this general license, U.S. financial institutions are authorized to reject funds transfers involving both (i) PdVSA or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, and (ii) non-U.S. entities located in a country other than the United States or Venezuela, provided that the funds transfers originate and terminate outside the United States and that neither the originator nor the beneficiary is a U.S. person and the funds are not destined for a blocked account on the books of a U.S. person. This authorization is valid through 12:01 a.m. eastern daylight time, March 29, 2019.

(c) This general license does not authorize:

(1) Any transactions or dealings with ALBA de Nicaragua (ALBANISA) or any entity in which ALBANISA owns, directly or indirectly, a 50 percent or greater interest;

(2) Any transactions or dealings otherwise prohibited by Executive Order 13850 of November 1, 2018, Executive Order 13835 of May 21, 2018, Executive Order 13827 of March 19, 2018, Executive Order 13808 of August 24, 2017, Executive Order 13692 of March 8, 2015, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons identified in

paragraphs (a) and (b) of this general license; or

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a) or (b).

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: January 28, 2019.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023–02045 Filed 1–31–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 591

Publication of Venezuela Sanctions Regulations Web General Licenses 14, 15, and Subsequent Iterations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing five general licenses (GLs) issued in the Venezuela Sanctions program: GLs 14, 15, 15A, 15B, and 15C, each of which was previously made available on OFAC's website.

DATES: GL 14 was issued on January 28, 2019. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On January 28, 2019, OFAC issued GL 14 to authorize certain transactions otherwise prohibited by Executive Order (E.O.) 13692 of March 8, 2015, ''Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela'' (80 FR 12747, March 11, 2015); E.O. 13808 of August 24, 2017, ''Imposing Additional Sanctions With Respect to the Situation in Venezuela'' (82 FR 41155, August 29, 2017); E.O. 13827 of March 19, 2018, ''Taking Additional Steps to Address the Situation in Venezuela'' (83 FR 12469, March 21, 2018); E.O. 13835 of May 21, 2018, ''Prohibiting Certain Additional Transactions With Respect to Venezuela'' (83 FR 24001, May 24, 2018); and E.O. 13850 of November 1, 2018, ''Blocking Property of Additional Persons Contributing to the Situation in Venezuela'' (83 FR 55243, November 2, 2018). On November 22, 2019, GL 14 was incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591.

On March 22, 2019, OFAC issued GL 15 to authorize certain transactions otherwise prohibited by E.O. 13850. Subsequently, OFAC issued three further iterations of GL 15: on April 17, 2019, OFAC issued GL 15A, which superseded GL 15; on August 5, 2019, OFAC issued GL 15B, which superseded GL 15A and authorized certain transactions otherwise prohibited by E.O. 13884 of August 5, 2019, ''Blocking Property of the Government of Venezuela'' (84 FR 38843, August 7, 2019) as well as those prohibited by E.O. 13850; and on March 12, 2020, OFAC issued GL 15C, which superseded GL 15B.

Each GL was made available on OFAC's website (*www.treas.gov/ofac*) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13692 of March 8, 2015

Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela

Executive Order 13808 of August 24, 2017

Imposing Additional Sanctions With Respect to the Situation in Venezuela

Executive Order 13827 of March 19, 2018

Taking Additional Steps To Address the Situation in Venezuela

Executive Order 13835 of May 21, 2018

Prohibiting Certain Additional Transactions With Respect to Venezuela

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

GENERAL LICENSE 14

Official Business of the United States Government

(a) Except as provided in paragraph (b) of this general license, all transactions that are for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof are authorized.

(b) This general license does not authorize any transaction that is prohibited by any part of 31 CFR chapter V other than part 591.

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: January 28, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

GENERAL LICENSE NO. 15

Authorizing Transactions Involving Certain Banks Prohibited by Executive Order 13850 for Certain Entities

(a) Except as provided in paragraph (b) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13850, as amended by E.O. 13857 of January 25, 2019 (''Taking Additional Steps to Address the National Emergency With Respect to Venezuela''), that are ordinarily incident and necessary to the activities of the following entities, and

their subsidiaries, which involve Banco de Venezuela, S.A. Banco Universal (Banco de Venezuela) or Banco Bicentenario del Pueblo, de la Clase Obrera, Mujer y Comunas, Banco Universal C.A. (Banco Bicentenario del Pueblo) are authorized through 12:01 a.m. eastern daylight time, March 22, 2020:

- MasterCard Incorporated
- Visa Inc.
- American Express Company
- Western Union Company
- MoneyGram International

(b) This general license does not authorize:

(1) Any transactions or dealings with Banco de Desarrollo Economico y Social de Venezuela (BANDES) or Banco Bandes Uruguay S.A. (Bandes Uruguay);

(2) The unblocking of any property blocked pursuant to E.O. 13850, as amended by E.O. 13857, or any part of 31 CFR chapter V, except as authorized by paragraph (a); or

(3) Any transaction that is otherwise prohibited under E.O. 13850 of November 1, 2018, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, E.O. 13692 of March 8, 2015, each as amended by E.O. 13857, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons described in paragraph (a) of this general license.

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

Dated: March 22, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

GENERAL LICENSE NO. 15A

Authorizing Transactions Involving Certain Banks Prohibited by Executive Order 13850 for Certain Entities

(a) Except as provided in paragraph (b) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13850, as amended by E.O. 13857 of January 25, 2019 (''Taking Additional Steps to Address the National Emergency With Respect to Venezuela'') (E.O. 13850), that are ordinarily incident and necessary to the activities of the following entities, and their subsidiaries, which involve Banco de Venezuela, S.A. Banco Universal (Banco de Venezuela), Banco Bicentenario del Pueblo, de la Clase Obrera, Mujer y Comunas, Banco Universal C.A. (Banco Bicentenario del Pueblo), or Banco Central de Venezuela are authorized through 12:01 a.m. eastern daylight time, March 22, 2020:

- MasterCard Incorporated
- Visa Inc.
- American Express Company
- Western Union Company
- MoneyGram International

(b) This general license does not authorize:

(1) Any transactions or dealings with Banco de Desarrollo Economico y Social de Venezuela (BANDES) or Banco Bandes Uruguay S.A. (Bandes Uruguay);

(2) The unblocking of any property blocked pursuant to E.O. 13850 or any part of 31 CFR chapter V, except as authorized by paragraph (a); or

(3) Any transaction that is otherwise prohibited under E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, E.O. 13692 of March 8, 2015, each as amended by E.O. 13857, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons described in paragraph (a) of this general license.

(c) Effective April 17, 2019, General License No. 15, dated March 22, 2019, is replaced and superseded in its entirety by this General License No. 15A.

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: April 17, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

Executive Order of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 15B

Authorizing Transactions Involving Certain Banks for Certain Entities

(a) Except as provided in paragraph (b) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13850, as amended by E.O. 13857 of January 25, 2019, or E.O. of August 5, 2019, that are ordinarily incident and necessary to the activities of the following entities, and their subsidiaries, which involve Banco de Venezuela, S.A. Banco Universal (Banco de Venezuela), Banco Bicentenario del Pueblo, de la Clase Obrera, Mujer y Comunas, Banco Universal C.A. (Banco Bicentenario del Pueblo), Banco del Tesoro, C.A. Banco Universal (Banco del Tesoro), or Banco Central de Venezuela are authorized through 12:01 a.m. eastern daylight time, March 22, 2020:

- MasterCard Incorporated
- Visa Inc.
- American Express Company
- Western Union Company
- MoneyGram International

(b) This general license does not authorize:

(1) Any transactions or dealings with Banco de Desarrollo Economico y Social de Venezuela (BANDES) or Banco Bandes Uruguay S.A. (Bandes Uruguay);

(2) The unblocking of any property blocked pursuant to E.O. of August 5, 2019, or E.O. 13850, as amended, or any part of 31 CFR chapter V, except as authorized by paragraph (a); or

(3) Any transaction that is otherwise prohibited by E.O. of August 5, 2019, or E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons identified in paragraph (a) of this general license.

(c) Effective August 5, 2019, General License No. 15A, dated April 17, 2019, is replaced and superseded in its entirety by this General License No. 15B.

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: August 5, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Venezuela Sanctions Regulations

31 CFR Part 591

GENERAL LICENSE NO. 15C

Authorizing Transactions Involving Certain Banks for Certain Entities

(a) Except as provided in paragraph (b) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13850 of November 1, 2018, as amended by E.O. 13857 of January 25, 2019, or by E.O. 13884 of August 5, 2019, each as incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), that are ordinarily incident and necessary to the activities of the following entities, and their subsidiaries, which involve Banco de Venezuela, S.A. Banco Universal (Banco de Venezuela), Banco Bicentenario del Pueblo, de la Clase Obrera, Mujer y Comunas, Banco Universal C.A. (Banco Bicentenario del Pueblo), Banco del

Tesoro, C.A. Banco Universal (Banco del Tesoro), or Banco Central de Venezuela are authorized:

- MasterCard Incorporated
- Visa Inc.
- American Express Company
- Western Union Company
- MoneyGram International

(b) This general license does not authorize:

(1) Any transactions or activities with Banco de Desarrollo Economico y Social de Venezuela (BANDES) or Banco Bandes Uruguay S.A. (Bandes Uruguay);

(2) The unblocking of any property blocked pursuant to the VSR, or any other part of 31 CFR chapter V, except as authorized by paragraph (a); or

(3) Any transactions or activities otherwise prohibited by the VSR, or any other part of 31 CFR chapter V, or any transactions or activities with any blocked person other than the blocked persons identified in paragraph (a) of this general license.

(c) Effective March 12, 2020, General License No. 15B, dated August 5, 2019, is replaced and superseded in its entirety by this General License No. 15C.

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: March 12, 2020.

Andrea M. Gacki,
Director, Office of Foreign Assets Control.

[FR Doc. 2023–02112 Filed 1–31–23; 8:45 am]

BILLING CODE 4810–AL–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 210

[Docket No. 2020–5]

Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Supplemental interim rule.

SUMMARY: The U.S. Copyright Office is issuing a supplemental interim rule relating to certain reporting and payment requirements of digital music providers and related duties of the mechanical licensing collective under the Music Modernization Act. The amendment extends a previously adopted transition period pending further rulemaking by the Office regarding reports of adjustment. Based on the imminent expiration of the existing transition period and recent public comments requesting further proceedings on the subject of adjustments, the Office has determined that there is a legitimate need to make this amendment, effective immediately.

DATES: Effective February 1, 2023.

FOR FURTHER INFORMATION CONTACT: Rhea Efthimiadis, Assistant to the General Counsel, by email at *meft@copyright.gov* or telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

The Orrin G. Hatch-Bob Goodlatte Music Modernization Act (the ''MMA'') substantially modified the compulsory ''mechanical'' license for reproducing and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115.[1] It did so by switching from a song-by-song licensing system to a blanket licensing regime that became available on January 1, 2021 (the ''license availability date''),[2] administered by a mechanical licensing collective (the ''MLC'') designated by the Copyright Office (the ''Office'').[3] Digital music providers (''DMPs'') are able to obtain this new mechanical blanket license (the ''blanket license'') to make digital phonorecord deliveries of nondramatic musical works, including in the form of permanent downloads, limited downloads, or interactive streams (referred to in the statute as ''covered activity'' where such activity qualifies for a blanket license), subject to various requirements, including reporting obligations.[4] DMPs also have the option to engage in these activities, in whole or in part, through voluntary licenses from copyright owners.

A. The Office's September 2020 and May 2022 Rules

On September 17, 2020, as a part of its work to implement the MMA, the Office issued an interim rule adopting regulations concerning reporting requirements under the blanket license (the ''September 2020 Rule'').[5] As relevant here, those interim regulations included requirements governing annual reporting and the ability to make adjustments to monthly and annual reports and related royalty payments, including to correct errors and replace estimated inputs with finally determined figures.[6]

After enactment of the September 2020 Rule, the Office received a request from the DLC to modify it, prompted by operational and compliance concerns. After carefully evaluating the DLC's request and the then-existing rulemaking record, the Office decided to make various amendments through a supplemental interim rule and request for comments issued on May 24, 2022 (the ''May 2022 Rule'').[7] The May 2022 Rule provided extensive background on requirements relating to monthly reports of usage, annual reports of usage (''AROUs''), and reports of adjustment (''ROAs''), including with respect to timing, invoices, and response files.[8] The Office assumes familiarity with both the September 2020 Rule and May 2022 Rule and their detailed explanations of these issues.[9]

In brief, and as relevant here, the May 2022 Rule established an invoice and response file process for ROAs (and by extension, AROUs that are combined with ROAs).[10] Under these regulations, if there is an underpayment of royalties, the DMP must pay the difference to the MLC either contemporaneously with delivery of the ROA or promptly after receiving an invoice from the MLC.[11] In those circumstances where the DMP will receive a response file from the MLC, the MLC must deliver the invoice to the DMP contemporaneously with the response file.[12] The MLC must otherwise deliver the invoice to the DMP in a reasonably timely manner.[13] If requested by the DMP, the MLC must deliver a response file no later than 45 days after receiving the ROA, unless the ROA is combined with an AROU, in which case the response file must be

[1] Public Law 115–264, 132 Stat. 3676 (2018).

[2] 17 U.S.C. 115(e)(15).

[3] As permitted under the MMA, the Office also designated a digital licensee coordinator (the ''DLC'') to represent licensees in proceedings before the Copyright Royalty Judges (the ''CRJs'') and the Office, to serve as a non-voting member of the MLC, and to carry out other functions. 84 FR 32274 (July 8, 2019).

[4] 17 U.S.C. 115(d).

[5] 85 FR 58114 (Sept. 17, 2020).

[6] 37 CFR 210.27(f), (g)(3) and (4), (k).

[7] 87 FR 31422, 31424–27 (May 24, 2022).

[8] *Id.* at 31422–23.

[9] To date, this proceeding has involved multiple rounds of public comments through a notification of inquiry, 84 FR 49966 (Sept. 24, 2019), a notice of proposed rulemaking, 85 FR 22518 (Apr. 22, 2020), and an *ex parte* communications process. In addition to the September 2020 Rule and May 2022 Rule, the Office has issued two other supplemental interim rules. 85 FR 84243 (Dec. 28, 2020); 86 FR 12822 (Mar. 5, 2021). Guidelines for *ex parte* communications, along with records of such communications, including those referenced herein, are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html*. All MMA rulemaking activity, including public comments, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization*.

[10] 87 FR 31425–27.

[11] 37 CFR 210.27(k)(4).

[12] *Id.*

[13] *Id.*

delivered within 60 days.[14] Acknowledging that the MLC would need time to implement these regulations, the May 2022 Rule provided a transition period ending on February 24, 2023, during which the MLC is not required to deliver invoices or response files within the specified timeframes.[15]

In response to the May 2022 Rule, the Office received relevant comments from only the MLC and DLC.[16] At a high level, the MLC objected to the invoice and response file timelines in the rule. It asserted operational concerns related to waste, inefficiency, and burden if required to comply with the May 2022 Rule's timeframes for delivering invoices and response files to DMPs for ROAs.[17] The DLC did not object to the MLC's position on this issue.[18] The MLC also proposed that, instead of permitting DMPs to pay additional royalties promptly after receiving an invoice from the MLC, they should always have to pay adjusted royalties contemporaneously with delivery of the ROA to the MLC.[19] The DLC disagreed on this point, stating that ''the option [for DMPs] to make royalty payments for adjustments only after receiving an invoice from the MLC should remain in place.'' [20]

Having reviewed these comments, the Office is considering revising the May 2022 Rule. However, as discussed below, because at least some of the issues surrounding adjustments may be impacted by the unresolved issue of the relationship between adjustments and late fees, the Office has concluded that it should conduct further proceedings before proposing any amendments.

B. Late Fees

The issue of late fees is not new to this proceeding. As previously detailed by the Office, stakeholders, including the MLC and DLC, disagree about whether late fees adopted by the CRJs for late payments of royalties apply to adjustments.[21] The Office previously declined to adopt a rule addressing the interplay between the CRJs' late fee regulation and the Office's provisions for adjustments because it was not clear at the time of the September 2020 Rule that doing so would be the best course ''particularly where the CRJs may wish themselves to take the occasion of [the *Phonorecords III*] remand or otherwise update their operative regulation in light of the [September 2020 Rule].'' [22] At the time, the Office said it would instead ''monitor the operation of this aspect of the [September 2020 Rule], and as appropriate in consultation with the CRJs.'' [23]

Since the September 2020 Rule, however, the CRJs have not taken any action on the late fee issue and have not indicated an intent that they plan to do so. At the same time, the MLC's and DLC's comments in response to the May 2022 Rule again raised the issue and confirmed their continued disagreement on the issue. [24] Both the MLC and DLC requested the Office provide guidance.[25] The DLC requested that the Office ''specify that when both the initial estimated payments and the later adjustment of such payments to account for the updated and finalized information are made according to the timelines established in the regulations, such payments are proper and have been made by the 'due date for payment' as set forth in 17 U.S.C. 115(d)(8)(B)(i).'' [26] The MLC opposed the DLC's position [27] and instead proposed regulatory language providing that nothing in the adjustment provisions ''shall change a blanket licensee's liability for late fees, where applicable.'' [28] Other parts of the MLC's comments on adjustments also touched on the issue of late fees. For example, discussing its opposition to allowing DMPs to avoid paying adjusted royalties until after receiving an invoice, the MLC argues that ''[f]ull payment of royalties is due and owing from the original due date of each month's royalties.'' [29]

C. Further Proceedings on Adjustments and Late Fees

In sum, resolution of when royalties are ''due'' and when late fees are incurred could be relevant to the adjustment issues being considered by the Office. The Office therefore finds it prudent to consider both issues concurrently. It intends to publish a notification of inquiry in the near future to expand the public record on the late fee issue before publishing a proposed rule. Once it has evaluated the relevant comments, the Office plans to issue a notice of proposed rulemaking that jointly addresses both late fees and the other concerns raised in response to the May 2022 Rule (*e.g.,* regarding the timing of royalty payments, invoices, and response files for adjustments).

II. Supplemental Interim Rule

One component of the May 2022 Rule, however, must be amended immediately to provide the Office with sufficient time to conduct these further public proceedings: the current February 24, 2023 expiration of the MLC's transition period. Based on the MLC's and DLC's comments discussed above, the Office is extending the length of the MLC's transition period during the pendency of the Office's further rulemaking activity in this area. To provide flexibility, the new rule provides that the MLC's transition period ends 30 days after receiving written notice from the Office. Prior to that time, as noted above, the Office expects to issue a superseding rule addressing the underlying issues as part of further public proceedings surrounding adjustments.

Because of the short amount of time remaining before the expiration of the MLC's current transition period on February 24, 2023, and based on the MLC's unopposed assertions that complying with the May 2022 Rule's timelines is operationally problematic, the Office finds that there is good cause to adopt this supplemental interim rule without public notice and comment,

[14] *Id.* § 210.27(k)(8).

[15] *Id.* § 210.27(k)(9).

[16] DLC Supplemental Interim Rule Comments (July 8, 2022) (''DLC Comments''); MLC *Ex Parte* Letter (Oct. 17, 2022); DLC *Ex Parte* Letter (Nov. 18, 2022); MLC *Ex Parte* Letter (Dec. 21, 2022).

[17] MLC *Ex Parte* Letter at 3–4, 8 (Oct. 17, 2022) (asserting, for example, that it would be ''wasteful and burdensome'' if the MLC is not allowed to abstain from processing a DMP's adjustments to royalty reporting for 2021 or 2022 until the MLC receives the DMP's ROA implementing the CRJs' final determination in the ongoing *Phonorecords III* remand proceeding, because the forthcoming final determination will require all DMPs to retroactively adjust streaming royalties for those years, thereby rendering moot all adjustments previously submitted); *id.* at 4–6 (asserting, for example, that the MLC's ''efficient and effective blanket license administration will be hindered if adjustments are required to be processed as they are received'' because it ''would necessarily preempt The MLC's ability to reprocess unmatched uses because reprocessing would have to be put on hold for each adjustment'').

[18] DLC *Ex Parte* Letter at 3–6 (Nov. 18, 2022) (stating that the DLC has ''no objection in principle to the MLC's request to delay processing of [2021 and 2022] adjustments'' and that it ''supports giving the MLC relief from its deadlines to process reports of adjustment and provide invoices and response files'').

[19] MLC *Ex Parte* Letter at 6–8 (Oct. 17, 2022).

[20] DLC *Ex Parte* Letter at 6 (Nov. 18, 2022).

[21] 85 FR 58136–37 (discussing the DLC's request ''for language to ensure DMPs are not subject to late fees for adjustments to estimates'' and the MLC's request ''to add language prescribing that no use of an estimate changes or affects the statutory due dates for royalty payments or the applicability of late fees to any underpayment of royalties that results from using an estimate''); 85 FR 22530; *see* 37 CFR 385.3; 17 U.S.C. 115(d)(8)(B).

[22] 85 FR 58137.

[23] *Id.*

[24] MLC *Ex Parte* Letter at 8 (Oct. 17, 2022); MLC *Ex Parte* Letter at 2–5 (Dec. 21, 2022); DLC Comments at 3.

[25] *See* 85 FR 58136–37; MLC *Ex Parte* Letter at 8 (Oct. 17, 2022); MLC *Ex Parte* Letter at 2–5 (Dec. 21, 2022); DLC Comments at 3.

[26] DLC Comments at 3.

[27] MLC *Ex Parte* Letter at 2–5 (Dec. 21, 2022).

[28] MLC *Ex Parte* Letter at 8 (Oct. 17, 2022).

[29] MLC *Ex Parte* Letter at 2 (Dec. 21, 2022).

and to make it effective immediately upon publication.[30]

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

Interim Regulations

For the reasons set forth in the preamble, the U.S. Copyright Office amends 37 CFR part 210 as follows:

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

§ 210.27 [Amended]

■ 2. Amend § 210.27(k)(9) by removing ''February 24, 2023'' and adding in its place ''30 calendar days after receiving written notice from the Copyright Office''.

Dated: January 26, 2023.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2023–02118 Filed 1–31–23; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2022–0370; FRL–9950–02–R5]

Air Plan Approval; Wisconsin; 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving rules submitted by the Wisconsin Department of Natural Resources (WDNR) as a revision to its State Implementation Plan (SIP). The submitted rules incorporate the 2015 primary and secondary National Ambient Air Quality Standards (NAAQS) for ozone. In addition, WDNR included several updates to ensure implementation of the ozone NAAQS, in areas currently or formerly designated as nonattainment for any ozone standard, in a manner consistent with Clean Air Act (CAA) requirements.

DATES: This final rule is effective on March 3, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2022–0370. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. What is being addressed in this document?

This rule approves Wisconsin's April 8, 2022, submission to update chapter NR 404 of Wisconsin's ambient air quality rule to incorporate the 2015 primary and secondary ozone national ambient air quality standards (NAAQS) and the chapter NR 484 incorporation by reference rule with the monitoring requirements related to the NAAQS to make Wisconsin's rules consistent with the Federal rules in the Wisconsin SIP. In addition, WDNR revised sections of chapters NR 407 (Operation permits), 408 (Construction permits for direct major sources in nonattainment areas) and 428 (nitrogen oxides (NO_X) reasonably available control technologies (RACT)), to ensure implementation of the Federal ozone NAAQS in areas currently or formerly designated as nonattainment for any ozone standard, in a manner consistent with CAA requirements. An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA's reasons for approval are provided in EPA's notice of proposed rulemaking (NPRM), dated August 16, 2022 (87 FR 50280), and will not be restated here.

II. What comments did we receive on the proposed rule?

EPA provided a 30-day review and comment period in the NPRM. The comment period ended on September 15, 2022. We received no comments on the proposed rule.

III. What action is EPA taking?

EPA is approving the revision to chapters NR 404, 407, 408, 428, and 484, as submitted on April 8, 2022, into the Wisconsin SIP. Specifically, EPA is approving NR 404.04(5)(d) and (Note), NR 407.02(4)(c)1. and Note, NR 408.02(24)(c), NR 408.02(32)(a)6., NR 428.20, NR 428.21(3), NR 428.255 and NR 484.04 Table 2(7s), as published in the Wisconsin Register #794, effective March 1, 2022.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Wisconsin Regulations discussed in Section I and listed in Section III of this preamble and set forth in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 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, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

[30] *See* 5 U.S.C. 553(b)(B), (d)(3).

• Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 26, 2023.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.2570 is amended by adding paragraph (c)(146) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(146) On April 8, 2022, the Wisconsin Department of Natural Resources (WDNR) submitted a State Implementation Plan (SIP) revision request. WDNR updated chapters NR 404 and 484 of Wisconsin's ambient air quality rule to include the 2015 primary and secondary NAAQS for ozone and its incorporation by reference rule to add EPA-promulgated monitoring requirements related to the NAAQS. WDNR also revised sections of chapters NR 407 (Operation permits), 408 (Construction permits for direct major sources in nonattainment areas) and 428 (Control of Nitrogen Compounds) to ensure implementation of the ozone NAAQS in a manner consistent with Federal regulations.

(i) *Incorporation by reference.* The following sections of the Wisconsin Administrative Code are incorporated by reference:

(A) NR 404 Ambient Air Quality Standards. NR 404.04(5)(d) and Note, as published in the Wisconsin Register, February 2022 No. 794, effective March 1, 2022.

(B) NR 407 Operation permits. NR 407.02(4)(c)1. and Note, as published in the Wisconsin Register, February 2022 No. 794, effective March 1, 2022.

(C) NR 408 Construction permits for direct major sources in nonattainment areas. NR 408.02(24)(c) and Note and (32)(a)6., as published in the Wisconsin Register, February 2022 No. 794, effective March 1, 2022.

(D) NR 428 Control of Nitrogen Compounds. NR 428.20, NR 428.21(3) and NR 428.255, as published in the Wisconsin Register, February 2022 No. 794, effective March 1, 2022.

(E) NR 484 Incorporation by reference. NR 484.04 Table 2(7s), as published in the Wisconsin Register, February 2022 No. 794, effective March 1, 2022.

(ii) [Reserved]

[FR Doc. 2023–01990 Filed 1–31–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2021–0742; FRL–10611–01–R5]

Finding of Failure To Attain and Reclassification of the Detroit Area as Moderate for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is determining that the Detroit area failed to attain the 2015 ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date. The effect of failing to attain by the applicable attainment date is that the Detroit area will be reclassified by operation of law to ''Moderate'' nonattainment for the 2015 ozone NAAQS on March 1, 2023, the effective date of this final rule. Accordingly, the Michigan Department of Environment, Great Lakes, and Energy (EGLE) must submit State Implementation Plan (SIP) revisions and implement controls to satisfy the statutory and regulatory requirements for Moderate areas for the 2015 ozone NAAQS according to the deadlines established in this final rule.

DATES: This final rule is effective on March 1, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2021–0742. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353–4489 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. Background Information

Clean Air Act (CAA) section 181(b)(2) requires EPA to determine, based on the design value of an ozone nonattainment area as of the area's attainment deadline, whether the area has attained the ozone standard by that date.[1] On August 3, 2018, EPA designated the Detroit area, consisting of Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties, as a Marginal nonattainment area for the 2015 ozone NAAQS (83 FR 25776). On April 13, 2022, EPA proposed to determine that the Detroit area failed to attain the 2015 ozone NAAQS by August 3, 2021, the applicable attainment date for Marginal areas, and did not qualify for a 1-year attainment date extension (87 FR 21842). The proposed determination was based upon complete, quality-assured and certified ozone air quality monitoring data that showed that the design value for the area exceeded 0.070 parts per million (ppm) for the 2018–2020 period. EPA proposed that the Detroit area would be reclassified as a Moderate nonattainment area by operation of law on the effective date of a final action finding that the area failed to attain the 2015 ozone NAAQS by the applicable attainment date for Marginal areas. Once reclassified as Moderate, the Detroit area would be required to attain the 2015 ozone NAAQS ''as expeditiously as practicable'' but no later than 6 years after the initial designation as nonattainment, which in this case would be no later than August 3, 2024.

In the April 13, 2022, proposal, EPA solicited comment on adjusting the due dates, in accordance with CAA section 182(i), for submission and implementation deadlines for all SIP requirements that apply to Moderate areas. On October 7, 2022, EPA finalized its proposed action for 22 Marginal areas that failed to attain by the applicable attainment date (87 FR 60897). In the October 7, 2022, rulemaking, EPA provided a response to comments relevant to all areas subject to reclassification.

II. Moderate Area SIP Due Dates

Once a nonattainment area is reclassified as Moderate, the responsible state agency must subsequently submit a SIP revision that satisfies the air quality planning requirements for a Moderate area under CAA section 182(b). SIP requirements that apply to Moderate areas are cumulative of CAA requirements for the Marginal classification and include additional Moderate area requirements as interpreted and described in the final SIP Requirements Rule for the 2015 ozone NAAQS (see CAA sections 172(c)(1) and 182(a) and (b), and 40 CFR 51.1300 through 51.1319). These requirements include reasonably available control measures and reasonably available control technology (RACM/RACT) and vehicle inspection and maintenance (I/M).

EPA's April 13, 2022, proposed rule discusses EPA's basis for establishing deadlines for Moderate area SIP revisions and implementation of RACM/RACT and Basic I/M programs (87 FR 21842, 21852). With respect to SIP requirements for Moderate areas, we proposed that for any of the Moderate area controls to influence attainment by the Moderate area attainment date, they would need to be implemented by the beginning of the 2023 ozone season at the latest. With respect to implementation deadlines for RACM/RACT, we proposed that the modeling and attainment demonstration requirements for 2015 ozone NAAQS nonattainment areas classified Moderate or higher require that a state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season, notwithstanding any alternative deadline established per 40 CFR 51.1312.[2] For reclassified areas, EPA's implementing regulations for the 2015 ozone NAAQS require that the state shall provide for implementation of RACT as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP submission deadline, whichever is earlier, or the deadline established by the Administrator in the final action issuing the area reclassification.[3] With respect to I/M, EPA proposed to allow areas newly required to implement Basic I/M up to 4 years after the effective date of designation and classification to fully implement the I/M program for states that do not intend to rely upon emission reductions from their Basic I/M program in attainment or reasonable further progress (RFP) SIPs.

EPA also discussed CAA section 182(i), under which the Administrator may adjust applicable deadlines for reclassified areas ''to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.'' In the April 13, 2022, rulemaking, which proposed reclassification for Detroit as well as 23 other areas, EPA noted that the ozone season begins in either January or March for the various areas.[4] To avoid inconsistencies between areas with various ozone season start dates, EPA proposed under CAA section 182(i) to set a deadline of January 1, 2023, for Moderate area SIP revisions and implementation of RACM/RACT for all areas.

To avoid the impractical outcome whereby EPA might finalize a January 1, 2023, due date that has already passed for the Detroit area, and because March is the start of the ozone season in Michigan, EPA is instead finalizing March 1, 2023, as the due date for SIP revisions addressing Moderate requirements for the Detroit area. RACM/RACT for the area must be implemented as expeditiously as practicable, but no later than the same date.

[1] An area's design value for the 2105 ozone NAAQS is the highest three-year average of the annual fourth-highest daily maximum eight-hour average concentrations of all monitors in the area. To determine whether an area has attained the ozone NAAQS prior to the attainment date, EPA considers the monitor-specific ozone design values in the area for the most recent three years with complete, quality-assured monitored data prior to the attainment deadline.

[2] See 40 CFR 51.1308(d).

[3] See 40 CFR 51.1312(a)(3)(ii).

[4] The ozone season is defined by state in 40 CFR part 58, appendix D. The ozone season for Michigan is March-October. See 80 FR 65292, 65466–67 (October 26, 2015).

Regarding the requirement for a Basic I/M program, EPA is finalizing an implementation deadline of no later than 4 years after the effective date of reclassification should EGLE not intend to rely upon emission reductions from their Basic I/M program in attainment or reasonable further progress (RFP) SIPs.

If an area attains the 2015 ozone NAAQS, the relevant state may request redesignation to attainment, provided the state can demonstrate that the criteria under CAA section 107(d)(3)(E) are met.[5] On March 14, 2022, EPA proposed to approve a January 3, 2022, request from EGLE to redesignate the Detroit area to attainment based on 2019–2021 monitoring data showing attainment of the 2015 ozone NAAQS (87 FR 14210). The comment period on EPA's proposed action closed on April 13, 2022, and EPA is currently reviewing all public comments to further assess whether Michigan adequately addressed all requirements applicable to redesignation that applied to Detroit on the date of EGLE's submittal.

III. What action is EPA Taking?

EPA is finalizing its proposed determination that the Detroit area failed to attain the 2015 ozone NAAQS by the applicable attainment date of August 3, 2021. Therefore, upon the effective date of this final action, the Detroit area will be reclassified by operation of law as Moderate for the 2015 ozone NAAQS. Once reclassified as Moderate, the Detroit area will be required to attain the standard ''as expeditiously as practicable'' but no later than 6 years after the initial designation as nonattainment, which in this case would be no later than August 3, 2024. Pursuant to CAA section 182(i), EPA is requiring Michigan to submit SIP revisions to address Moderate area requirements by the beginning of the ozone season, or March 1, 2023.

IV. Good Cause Exemption Under the Administrative Procedure Act (APA)

EPA finds there is good cause for this action to become effective less than 30 days after publication. The March 1, 2023, effective date is authorized under 5 U.S.C. 553(d)(3) of the APA, which allows an effective date less than 30 days after publication as provided by the agency for good cause found and published with the rule. EPA believes that there is ''good cause'' to make this rule effective less than 30 days after publication in the **Federal Register** to avoid any additional delay in development and implementation of the SIP requirements under 182(b), given the closeness to the beginning of the 2023 ozone season and the proximity of EPA's final action to the submission and implementation deadlines described in this rule. The agency believes that establishing an effective date of this action simultaneous with due dates resulting from this action will reconcile the competing statutory interests by minimizing a potentially impractical outcome in which the area might otherwise be subject to Moderate nonattainment area statutory and regulatory due dates that would already have passed prior to the normal 30 days post-publication effective date. Further, although this action will become effective less than 30 days after publication, a state need not wait until EPA's finding of failure to attain and reclassification is made effective before beginning to develop an attainment plan for a higher classification of an air quality standard.

V. Statutory and Executive Order Reviews.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget (OMB) because it responds to the CAA requirement to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable attainment date, and to take certain steps for areas that failed to attain.

B. Paperwork Reduction Act (PRA)

This rule does not impose any new information collection burden under the PRA not already approved by the Office of Management and Budget. This action does not contain any information collection activities and serves only to make final: (1) determinations that the Detroit Marginal nonattainment area failed to attain the 2015 ozone standards by the August 3, 2021, attainment date where such areas will be reclassified as Moderate nonattainment for the 2015 ozone standards by operation of law upon the effective date of the final reclassification action; and (2) adjust any applicable implementation deadlines.

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. The determination of failure to attain the 2015 ozone standards (and resulting reclassifications), do not in and of themselves create any new requirements beyond what is mandated by the CAA. This final action 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 as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

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. The division of responsibility between the Federal Government and the states for purposes of implementing the NAAQS is established under the CAA.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that 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 action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

[5] More information about redesignation is available at *https://www.epa.gov/ground-level-ozone-pollution/redesignation-and-clean-data-policy-cdp.*

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action 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.

K. Congressional Review Act

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: January 25, 2023.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, 40 CFR part 81 is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. Section 81.323 is amended in the table for ''Michigan—2015 8-Hour Ozone NAAQS [Primary and Secondary]'' by revising the entry for ''Detroit, MI'' to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN-2015 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
* * *	*	*	*	*
Detroit, MI:		Nonattainment	March 1, 2023	Moderate.
Livingston County				
Macomb County				
Monroe County				
Oakland County				
St. Clair County				
Washtenaw County				
Wayne County				
* * *	*	*	*	*

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

[2] This date is August 3, 2018, unless otherwise noted.

[FR Doc. 2023–01936 Filed 1–31–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0449; FRL–10566–01–OCSPP]

Fluopyram; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation revises the tolerance for residues of fluopyram in or on coffee, green bean and establishes tolerances for residues of fluopyram in or on multiple commodities which are identified and discussed later in this document. The Interregional Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective on February 1, 2023. Objections and requests for hearings must be received

on or before April 3, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0449, is available at *https://www.regulations.gov* or in-person at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Daniel Rosenblatt, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0449 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before April 3, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0449, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 22, 2021 (86 FR 52624) (FRL–8792–03–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E8932) by the Interregional Research Project Number 4 (IR–4), Project Headquarters, North Carolina University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. The petition requests to amend 40 CFR 180.661(a)(1) by establishing tolerances for residues of the fungicide fluopyram, *N*-[2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl]ethyl]-2-(trifluoromethyl)benzamide, in or on the following raw agricultural commodities: *Brassica,* leafy greens, subgroup 4–16B at 50 parts per million (ppm); celtuce at 20 ppm; coffee, green bean at 0.03 ppm; fennel, Florence, fresh leaves and stalk at 20 ppm; kohlrabi at 4 ppm; leafy greens subgroup 4–16A at 40 ppm; leaf petiole vegetable subgroup 22B at 20 ppm; papaya at 1.5 ppm; peppermint, dried leaves at 0.8 ppm; peppermint, fresh leaves at 0.6 ppm; spearmint, dried leaves at 0.8 ppm; spearmint, fresh leaves at 0.6 ppm; spice group 26 at 70 ppm; vegetable, *Brassica,* head and stem, group 5–16 at 4 ppm; individual commodities of proposed crop subgroup 6–XXA; edible podded bean legume vegetable subgroup at 4 ppm; individual commodities of proposed crop subgroup 6–XXB edible podded pea legume vegetable subgroup at 4 ppm; individual commodities of proposed crop subgroup 6–XXC: succulent shelled bean subgroup at 0.2 ppm; individual commodities of proposed crop subgroup 6–XXD: succulent shelled pea subgroup at 0.2 ppm; and the individual commodities of proposed crop subgroup 6–XXE: dried shelled bean, except soybean, subgroup at 0.7 ppm. Due to the length of the list of commodities, please refer to the document EPA issued in the **Federal Register** on September 22, 2021, for a complete list of the tolerances requested. The petition also requested the removal of the tolerances for residues of fluopyram in or on bean, dry at 0.70 ppm; *Brassica,* head and stem, subgroup 5A at 4.0 ppm; *Brassica,* leafy greens, subgroup 5B at 50 ppm; dill, seed at 70 ppm; leafy greens subgroup 4A at 40 ppm; leafy petioles subgroup 4B at 20 ppm; pea and bean, succulent shelled, subgroup 6B at 0.20 ppm; and vegetable, legume, edible podded, subgroup 6A at 4.0 ppm. That document referenced a summary of the petition prepared by IR–4, the petitioner, which is available in the docket, *https://www.regulations.gov.* Three comments were received on the Notice of Filing; however, the comments were not relevant to the petition for fluopyram tolerances that are the subject of this action.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA

determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified therein EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fluopyram including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluopyram follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The toxicological database for fluopyram has been re-evaluated as part of registration review and relevant studies were updated in accordance with current practices. The fluopyram database is considered complete.

Liver effects, thyroid effects, and decreased body weight were the most common and frequent findings in the subchronic and chronic oral toxicity studies in rats, mice, and dogs, and appeared to be the most sensitive effects in the fluopyram toxicological database. Increased liver tumors were observed in female rats in the carcinogenicity study at the highest dose tested (89 mg/kg/day). Thyroid effects (increased thyroid weight along with follicular cell hypertrophy and hyperplasia) were observed at dose levels similar to those that produced liver effects in rats and mice. In male mice, there was an increased incidence of thyroid adenomas at the highest dose tested (105 mg/kg/day). Fluopyram induces liver enzymes following constitutive androstane receptor and pregnane X receptor (CAR/PXR) activation, which causes increased metabolism of thyroid hormones. These changes lead to liver and thyroid hypertrophy and proliferation, eventually leading to liver tumors (female rat) and thyroid tumors (male mice). EPA classified fluopyram as ''Not Likely to be Carcinogenic to Humans'' at doses that do not induce cellular proliferation in the liver or thyroid glands. This classification was based on evidence that non-genotoxic modes of action for liver tumors in rats and thyroid tumors in mice have been established and that the carcinogenic effects have been demonstrated as a result of a mode of action dependent on activation of the CAR/PXR receptors. EPA determined that quantification of risk is not required. There is sufficient data to ascertain the mode of action of fluopyram. The chronic Reference Dose (RfD) is derived using the no-observed adverse-effect level (NOAEL) of 6 mg/kg/day as the POD which is below the dose of 11 mg/kg/day that caused cell proliferation in the liver (a key event in tumor formation) and the subsequent liver tumors at a higher dose (89 mg/kg/day). Additionally, there is no concern for mutagenicity.

Fluopyram did not elicit developmental or offspring effects, nor did it adversely affect reproductive parameters. No evidence of increased qualitative or quantitative susceptibility was observed in developmental or reproduction toxicity studies. There is no evidence of neurotoxicity.

Specific information on the studies received and the nature of the adverse effects caused by fluopyram as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found in the document titled ''Fluopyram. Human Health Risk Assessment for Proposed Uses on Coffee, Green Bean, Papaya, Peppermint, Spearmint and Crop Group Expansions/Conversions.'' (hereinafter ''Fluopyram Human Health Risk Assessment'') on pages 43–52 in docket ID number EPA–HQ–OPP–2021–0449.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the NOAEL and LOAEL. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints and PODs for fluopyram used for human risk assessment can be found in the Fluopyram Human Health Risk Assessment on pages 25–26.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluopyram, EPA considered exposure under the petitioned-for tolerances as well as all existing fluopyram tolerances in 40 CFR 180.661. EPA assessed dietary exposures from fluopyram in food as follows:

i. *Acute and exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for fluopyram.

In estimating acute dietary exposure, EPA used the Dietary Exposure Evaluation Model software using the Food Commodity Intake Database (DEEM–FCID) Version 4.02, which uses the 2005–2010 food consumption data from the United States Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, a partially refined acute dietary exposure assessment was conducted, incorporating field trial residues for coffee and the commodities of crop group 15 and crop subgroup 20A, and tolerance-level residues for all other crop commodities. One hundred percent crop treated (PCT) was assumed.

ii. *Chronic exposure.* In conducting the chronic dietary exposure

assessment, EPA used the food consumption data from the USDA's 2005–2010 NHANES/WWEIA and DEEM–FCID; version 4.02. As to residue levels in food, the chronic dietary exposure assumed tolerance-level residues for mint and papaya and used mean field trial data and empirical processing factors for all other commodities. Average PCT estimates were used for some crops.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fluopyram does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require, pursuant to FFDCA section 408(f)(1), that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the following conditions are met:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area, and the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows: almonds, 20%; apples, 25%; apricots, 5%; artichoke, 15%; broccoli, 2.5%; cabbage, 2.5%; carrots, 1%; cauliflower, 1%; cherries, 25%; cotton, 1%; dry beans and peas, 1%; grapefruit, 10%; grapes, raisins, 1%; table grapes, 5%; wine grapes; 20%; lemons, 1%; lettuce, 1%; onions, 1%; oranges, 15%; peaches, 1%; peanuts, 2.5%; pears, 5%; peppers, 5%; pistachios, 15%; potatoes, 20%; strawberries, 10%; tomatoes, 1%; walnuts, 10%; and watermelons, 15%. EPA assumed 100 PCT for all other commodities included in the chronic assessment.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5%. In those cases, the Agency would use less than 1% or less than 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the most recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the Agency uses less than 2.5% as the maximum PCT.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which fluopyram may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluopyram in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluopyram. Further information regarding EPA drinking water models used in pesticide exposure assessments can be found at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/pesticide-risk-assessment.*

Based on the Surface Water Concentration Calculator (SWCC) and Pesticide Root Zone Model—Ground Water (PRZM–GW) model, the estimated drinking water concentrations (EDWCs) of fluopyram for acute exposures are estimated to be 50.6 parts per billion (ppb) for surface water and 97.6 ppb for ground water. For chronic exposures for non-cancer assessments, the EDWCs of fluopyram are estimated to be 17.3 ppb for surface water and 90.5 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 97.6 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of 90.5 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

There are no residential exposures associated with the proposed uses of fluopyram on coffee, mint, and papaya in this action; however, residential post-application exposures are anticipated from other registered uses of fluopyram on golf course turf, residential lawns, fruit trees, nut trees, ornamentals, and gardens. From the reevaluation of the toxicity database, the endpoints selected for residential exposures include incidental oral and short- and intermediate-term inhalation endpoints, but a dermal endpoint is no longer selected. A dermal endpoint was not selected as there were no adverse effects observed in the route-specific dermal

toxicity study, which included evaluation of fluopyram target organs, up to the limit dose of 1,000 mg/kg/day. Additionally, there was no evidence of increased quantitative susceptibility in the fluopyram database.

EPA assessed residential exposure using the following assumptions. Residential handler exposures and risk are not assessed in this document because the existing registered uses for residential sites are from end-use products that require handlers to wear specific clothing and personal protective equipment (PPE). Thus, EPA has assumed that those products are not for homeowner use and a quantitative residential handler assessment is not warranted at this time. There are residential post-application exposures from existing turf uses that have been previously assessed. The residential exposure for use in the children 1 to less than 2 years old aggregate assessment reflects incidental oral hand-to-mouth post-application exposure to treated lawns. The MOE is 5,400, which is greater than the level of concern of 100 and therefore is not of concern. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fluopyram and any other substances, and fluopyram does not appear to produce a toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that fluopyram has a common mechanism of toxicity with other substances.

For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased susceptibility following *in utero* and/or postnatal exposure in the developmental toxicity studies in rats or rabbits, or in the 2-generation rat reproduction study. There is no evidence of neurotoxicity, and there are no residual uncertainties in the exposure database. While thyroid effects are observed throughout the database, EPA determined that the comparative thyroid assay (CTA) be waived based on a weight-of-evidence approach.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced from 10X to 1X. That decision is based on the following findings:

i. The toxicology database for fluopyram is complete and adequate for risk assessment. EPA waived the subchronic inhalation toxicity study requirement and the previously required CTA for fluopyram for the following reasons: (1) the margins of exposure are low using the current endpoints; (2) thyroid effects are well-characterized and protected for using the current endpoints; and (3) acute inhalation toxicity is low and the compound is unlikely to volatilize. The toxicology database includes acceptable developmental toxicity studies in the rat and rabbit and an acceptable reproductive toxicity study in the rat, as well as acute and subchronic neurotoxicity studies.

ii. Potential signs of neurotoxicity were observed in the rat acute neurotoxicity study (decreased motor activity) and in the rat chronic/carcinogenicity study (reduced use of hind-limbs and limited motor activity). However, these effects are not specific to neurotoxicity, occur in the presence of other effects, and can also be attributed to systemic toxicity. There is a low degree of concern for potential neurotoxic effects since (1) clear NOAELs were identified for these effects, (2) no other neurotoxic effects were identified in the database, (3) potentially neurotoxic effects are not the most sensitive effect in the toxicity database, and (4) the endpoints chosen for risk assessment are protective of these potentially neurotoxic effects.

iii. The available developmental toxicity studies in rats and rabbits and the multi-generation reproduction in rats demonstrate no evidence of increased susceptibility in the developing or young animals which were exposed during pre- or post-natal periods. No developmental or offspring effects were noted in these studies.

iv. There are no residual uncertainties in the exposure database. The acute dietary exposure assessment was performed using conservative exposure inputs, including field trial residue levels or tolerance level residues for all crops; and average field-trial residue levels were assumed for all crops in the chronic dietary exposure assessment. The acute dietary assessment assumed 100 PCT, whereas the chronic dietary assessment utilized average PCT numbers for some crops. Both acute and chronic dietary assessments incorporated empirical or default processing factors. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fluopyram in drinking water. EPA used similarly conservative assumptions to assess post application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by fluopyram.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary

exposure from food and water to fluopyram will occupy 25% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure. The aggregate acute risk estimate includes only exposure to residues of fluopyram in food and drinking water, which is below the Agency's level of concern of 100% of the aPAD and is not of concern.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluopyram from food and water will utilize 16% of the cPAD for all infants less than 1 year old, the population group receiving the greatest exposure. Chronic residential exposure to residues of fluopyram is not expected. Therefore, the chronic aggregate exposure is equivalent to the chronic dietary exposure, which is below the Agency's level of concern of 100% of the cPAD and is not of concern.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fluopyram is currently registered for uses that could result in short-term residential post-application exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fluopyram. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 2,100 for children (1 to less than 2 years old). Because EPA's level of concern for fluopyram is an MOE of 100 or below, the short-term aggregate risk is not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

The short-and intermediate-term PODs are the same and the intermediate-term exposures are smaller than the short-term exposures, thus, the short-term aggregate exposure assessment is protective of any intermediate-term exposures.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, fluopyram is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments and information described above, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluopyram residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology DFG Method S19 using GC/MSD (gas chromatography with mass-selective detection) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are no established Codex MRLs for *Brassica,* leafy greens, subgroup 4–16B; celtuce; coffee, green bean; fennel, Florence, fresh leaves and stalk; kohlrabi; leaf petiole vegetable subgroup 22B; mint; papaya; or edible podded peas. The U.S. tolerance for spice group 26 is harmonized with the Codex MRL of 70 ppm in/on dill seed, which is the representative crop for spice group 26. The U.S. tolerances for the succulent shelled bean subgroup 6–22C and succulent shelled pea subgroup 6–22D are harmonized with the Codex MRL of 0.2 ppm for the commodities in those subgroups.

For the remaining commodities (leafy greens subgroup 4–16A; vegetable, *Brassica,* head and stem, group 5–16; edible podded bean subgroup 6–22A; and dried shelled bean, except soybean, subgroup 6–22E), the established Codex MRLs are lower than the U.S. tolerances. Harmonization is not possible because decreasing the U.S. tolerances would put U.S. growers at risk of having violative residues despite legal use of fluopyram according to the label.

C. Revisions to Petitioned-For Tolerances

Because the final Phase VI crop group rule has been published, EPA is establishing tolerances for new subgroups in legume vegetable crop group 6–22 rather than for each individual commodity in those subgroups as requested by the petitioner. The Phase VI crop group rule allows the commodities to be covered as part of the new group or subgroups instead of needing to be listed separately. The Phase VI crop group was published on September 21, 2022, and was effective on November 21, 2022 (87 FR 57627) (FRL–5031–13–OCSPP).

V. Conclusion

Therefore, tolerances are established for residues of fluopyram, *N*-[2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl]ethyl]-2-(trifluoromethyl)benzamide, in or on *Brassica,* leafy greens, subgroup 4–16B at 50 ppm; celtuce at 20 ppm; fennel, Florence, fresh leaves and stalk at 20 ppm; kohlrabi at 4 ppm; leaf petiole vegetable subgroup 22B at 20 ppm; leafy greens subgroup 4–16A at 40 ppm; papaya at 1.5 ppm; peppermint, dried leaves at 0.8 ppm; peppermint, fresh leaves at 0.6 ppm; spearmint, dried leaves at 0.8 ppm; spearmint, fresh leaves at 0.6 ppm; spice group 26 at 70 ppm; vegetable, *Brassica,* head and stem, group 5–16 at 4 ppm; vegetable, legume, bean, edible podded, subgroup 6–22A at 4 ppm; vegetable, legume, pea, edible podded, subgroup 6–22B at 4 ppm; vegetable, legume, bean, succulent shelled, subgroup 6–22C at 0.2 ppm; vegetable, legume, pea, succulent shelled, subgroup 6–22D at 0.2 ppm; and vegetable, legume, pulse, bean, dried shelled, except soybean, subgroup 6–22E at 0.7 ppm. The tolerance for coffee, green beans at 0.03 ppm is revised to remove the footnote. The following tolerances are removed: bean, dry at 0.70 ppm; *Brassica,* head and stem, subgroup 5A at 4.0 ppm; *Brassica,* leafy greens, subgroup 5B at 50 ppm; dill, seed at 70 ppm; leafy greens subgroup 4A at 40 ppm; leafy petioles subgroup 4B at 20 ppm; pea and bean, succulent shelled, subgroup 6B; and vegetable, legume, edible podded, subgroup 6A.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 26, 2023.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.661, table 1 to paragraph (a)(1) is amended by:
■ a. Removing the entries for ''Bean, dry'' and ''*Brassica,* head and stem, subgroup 5A'';
■ b. Adding in alphabetical order the entry ''*Brassica,* leafy greens, subgroup 4–16B'';
■ c. Removing the entry for ''*Brassica,* leafy greens, subgroup 5B'';
■ d. Adding in alphabetical order the entry ''Celtuce'';
■ e. Revising the entry for ''Coffee, green beans'' by removing the footnote;
■ f. Removing the entry for ''Dill, seed'';
■ g. Adding in alphabetical order the entries ''Fennel, Florence, fresh leaves and stalk'', ''Kohlrabi'', ''Leaf petiole vegetable subgroup 22B'' and ''Leafy greens subgroup 4–16A'';
■ h. Removing the entries for ''Leafy greens subgroup 4A'' and ''Leafy petioles subgroup 4B'';
■ i. Adding in alphabetical order the entry ''Papaya'';
■ j. Removing the entry ''Pea and bean, succulent shelled, subgroup 6B'';
■ k. Adding in alphabetical order the entries ''Peppermint, dried leaves'', ''Peppermint, fresh leaves'', ''Spearmint, dried leaves'', ''Spearmint, fresh leaves'', ''Spice group 26'', ''Vegetable, *Brassica,* head and stem, group 5–16'', ''Vegetable, legume, bean, edible podded, subgroup 6–22A'', and ''Vegetable, legume, bean, succulent shelled, subgroup 6–22C'';
■ l. Removing the entry ''Vegetable, legume, edible podded, subgroup 6A'';
■ m. Adding in alphabetical order the entries ''Vegetable, legume, pea, edible podded, subgroup 6–22B'', ''Vegetable, legume, pea, succulent shelled, subgroup 6–22D''and ''Vegetable, legume, pulse, bean, dried shelled, except soybean, subgroup 6–22E''; and
■ n. Removing footnote 2.

The additions and revisions read as follows:

§ 180.661 Fluopyram; tolerances for residues.

(a) * * *
(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
* * * * * * *	
Brassica, leafy greens, subgroup 4–16B	50
* * * * * * *	
Celtuce	20

TABLE 1 TO PARAGRAPH (a)(1)—Continued

Commodity	Parts per million
* * * * * * *	
Coffee, green beans	0.03
* * * * * * *	
Fennel, Florence, fresh leaves and stalk	20
* * * * * * *	
Kohlrabi	4
Leaf petiole vegetable subgroup 22B	20
Leafy greens subgroup 4–16A	40
* * * * * * *	
Papaya	1.5
* * * * * * *	
Peppermint, dried leaves	0.8
Peppermint, fresh leaves	0.6
* * * * * * *	
Spearmint, dried leaves	0.8
Spearmint, fresh leaves	0.6
Spice group 26	70
* * * * * * *	
Vegetable, *Brassica,* head and stem, group 5–16	4
* * * * * * *	
Vegetable, legume, bean, edible podded, subgroup 6–22A	4
Vegetable, legume, bean, succulent shelled, subgroup 6–22C	0.2
Vegetable, legume, pea, edible podded, subgroup 6–22B	4
Vegetable, legume, pea, succulent shelled, subgroup 6–22D	0.2
Vegetable, legume, pulse, bean, dried shelled, except soybean, subgroup 6–22E	0.7
* * * * * * *	

[1] There are no U.S. registrations.

* * * * *

[FR Doc. 2023–02109 Filed 1–31–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 422

[CMS–4185–F2]

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

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule announces certain policies to improve program integrity and payment accuracy in the Medicare Advantage (MA) program. The purpose of this final rule is to outline our audit methodology and related policies for the contract-level MA Risk Adjustment Data Validation (RADV) program. Specifically, this final rule codifies in regulation that, as part of the RADV audit methodology, CMS will extrapolate RADV audit findings beginning with payment year (PY) 2018 and will not extrapolate RADV audit findings for PYs 2011 through 2017. We are also finalizing a policy whereby CMS will not apply an adjustment factor (known as a Fee-For-Service (FFS) Adjuster) in RADV audits. We are also codifying in regulation the requirement that MA organizations (MAOs) remit improper payments identified during RADV audits in a manner specified by CMS.

DATES: This final rule is effective on April 3, 2023.

FOR FURTHER INFORMATION CONTACT: Joseph Strazzire, 410–786–2775 or David Gardner, 410–786–7791.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Contract-level Risk Adjustment Data Validation (RADV) audits are our main corrective action for overpayments made to Medicare Advantage organizations (MAOs) when there is a lack of documentation in the medical record to support the diagnoses reported for risk adjustment. The purpose of this final rule is to outline our audit methodology and related policies for the contract-level RADV program. Specifically, this final rule codifies in regulation our approach to the use of extrapolation, our decision to not apply an FFS Adjuster in RADV audits, and the payment years in which these policies will apply.

We are finalizing that, as part of the RADV audit methodology, CMS will extrapolate RADV audit findings. We are not adopting any specific sampling or extrapolated audit methodology, but will rely on any statistically valid method for sampling and extrapolation that is determined to be well-suited to a particular audit. Rather than applying extrapolation beginning for payment year (PY) 2011 audits as we proposed,

we are finalizing a policy whereby we will not extrapolate RADV audit findings for PYs 2011 through 2017 and will begin extrapolation with the PY 2018 RADV audit. As a result, CMS will only collect the non-extrapolated overpayments identified in the CMS RADV audits and Department of Health and Human Services Office of Inspector General (HHS–OIG) audits between PY 2011 and PY 2017, and will begin collection of extrapolated overpayment findings for any CMS and OIG audits conducted in PY 2018 and any subsequent payment year. We believe that this is an appropriate policy because it recognizes our fiduciary duty to protect taxpayer dollars from overpayments, and preserves our ability to collect on potentially significant amounts of overpayments made to plans beginning in PY 2018 using an extrapolation methodology. This final rule will also allow CMS to focus on conducting future RADV audits as soon as practicable after an MAO payment year concludes, which was the topic of significant public comment to the proposed rule. Lastly, we have determined that it is in the best interest of all parties to ensure that the contract-level RADV appeals process, which is also outlined in regulation, is able to successfully process all RADV appeals. By not using an extrapolation methodology prior to PY 2018, we expect to better control the total number of active appeals that are submitted in the first few years following finalization of this rule, which will alleviate burden on MAOs and CMS.

We are also finalizing a policy whereby CMS will not apply an FFS Adjuster in RADV audits because we have determined that an FFS Adjuster is not appropriate. As described at great length in this final rule, we have decided not to apply an FFS Adjuster in RADV audits because: (1) we believe, consistent with the D.C. Circuit's decision in *UnitedHealthcare* (*UnitedHealthcare Insurance Co.* v. *Becerra,* 16 F.4th 867 (D.C. Cir. August 13, 2021, reissued November 1, 2021), *cert. denied,* 142 S. Ct. 2851 (U.S. June 21, 2022) (No. 21–1140)), that the actuarial equivalence provision of the statute applies only to how CMS risk adjusts the payments it makes to MAOs and not to the obligation of MAOs to return improper payments (for example, payments for unsupported diagnosis codes); and (2) it would not be reasonable to read the Social Security Act (the Act) as requiring a reduction in payments to MAOs by a statutorily-set minimum adjustment in the coding pattern adjustment, while at the same time prohibiting CMS from enforcing longstanding documentation requirements by requiring an offset to the recovery amounts calculated for CMS audits.

We are also codifying in regulation the requirement that MAOs remit improper payments identified during RADV audits in a manner specified by CMS. After the effective date of this final regulation, on a rolling basis (over a period of months, which will be communicated to MAOs by CMS), we will begin issuing the enrollee-level audit findings from the CMS RADV audits that have been completed, as well as recovering the enrollee-level improper payments identified in HHS–OIG audits.

Nothing in this rule changes the longstanding principle that a diagnosis code that is not documented in a patient's medical record is not a valid basis for CMS risk adjustment payments to an MAO. *UnitedHealthcare Ins. Co.* v. *Becerra,* 16 F.4th 867, 869 (D.C. Cir. 2021) (''Neither Congress nor CMS has ever treated an unsupported diagnosis for a beneficiary as valid grounds for payment to a Medicare Advantage insurer.''). Nor does this rule change the longstanding obligation of an insurer to refund payments to CMS if it learns through any means that a diagnosis lacks support in the beneficiary's medical record. *Id.*

II. Background

A. General Overview of Risk Adjustment Payments in the MA Program

The Balanced Budget Act of 1997 (BBA), Public Law (Pub. L.) 105–33, established a new Part C of the Medicare program, known then as the Medicare+Choice (M+C) program, which became effective in January 1999. As part of the M+C program, the BBA authorized CMS to contract with public or private organizations to offer a variety of health plan options for Medicare beneficiaries. These health plans provide all Medicare Part A and Part B (also known as ''Original Medicare,'' or ''Medicare FFS'') benefits, and most offer additional benefits beyond those covered under the Medicare FFS program. The M+C program in Part C of Medicare was renamed the Medicare Advantage (MA) program under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), enacted in December 2003. The MMA updated and improved the choice of plans for beneficiaries under Part C and changed the way benefits are established and payments are made. As of August 2022, over 29 million individuals receive their Medicare benefits through MA, which represents nearly half of the total Medicare beneficiary population.[1]

Section 1853(a)(1)(C) of the Act requires that CMS risk-adjust payments made to MAOs. Risk adjustment strengthens the MA program by ensuring that accurate payments are made to MAOs based on the health status and demographic characteristics of their enrolled beneficiaries, and that MAOs are paid appropriately for their plan enrollees (that is, less for healthier enrollees who are expected to incur lower health care costs, and more for less healthy enrollees who are expected to incur higher health care costs). Making accurate payments to MAOs also ensures we are safeguarding Federal taxpayer dollars.

The current risk adjustment model employed to adjust MAO payments is known as the CMS Hierarchical Condition Category (CMS–HCC) model. This model functions by categorizing International Classification of Disease, Clinical Modification (ICD–CM)[2] diagnosis codes into disease groups called Hierarchical Condition Categories, or HCCs. Each HCC includes diagnosis codes that are related clinically and have similar cost implications. There are approximately 9,875 diagnoses mapped to 86 HCCs in the CMS–HCC Risk Adjustment Model for 2022.[3] MA enrollee HCCs are assigned based on data submitted to CMS by MAOs. The HCCs contribute to an enrollee's risk score, which is used to adjust a base payment rate. Essentially, the higher the risk score for an enrollee, the higher the expected health care cost for the enrollee and the greater payment that is received by the MAO.

The CMS–HCC model was first used for payment in 2004 and has been recalibrated numerous times since then. When CMS recalibrates the CMS–HCC risk adjustment model, it uses data from Medicare FFS claims, using diagnoses in one year to predict the following year's expenditures. Claims data from beneficiaries enrolled in the Medicare FFS program are used to calibrate the CMS–HCC model, which produces a set of coefficients (also known as risk

[1] CMS, *CMS Fast Facts, August 2022 Edition,* pg.1, *https://data.cms.gov/sites/default/files/2022-08/4f0176a6-d634-47c1-8447-b074f014079a/CMSFastFactsAug2022.pdf.*

[2] The ICD–CM is a modification of the ICD, authorized by the World Health Organization, used as a source for diagnosis codes in the United States. The ICD–CM has been adopted by the Secretary as the standard medical data code set. *See* 45 CFR 162.1002.

[3] Source: *2022 Midyear Final ICD–10 Mappings* at *https://www.cms.gov/files/zip/2022-midyear-final-icd-10-mappings.zip.*

factors) that represent the marginal (additional) cost of each medical condition and demographic factor reported for a given beneficiary. (For additional information, see the Medicare Managed Care Manual, Ch. 7, section 70.1.[4]) Each beneficiary's risk coefficients are added together to form a risk score for that beneficiary that is used to adjust the insurer's base payment rate for that beneficiary.

The diagnosis data that MAOs submit to CMS do not undergo a validation review by CMS before being relied on by CMS to calculate each enrollee's risk score and make payments. Because there is an incentive for MAOs to potentially over-code diagnoses to increase their payments, that is, to code diagnoses not properly substantiated by medical record documentation, CMS conducts post-payment audits of MAO-submitted diagnosis data from a selection of MAOs for specific payment years to ensure that the diagnoses they submitted are supported by their enrollees' medical records. These audits are called contract-level Risk Adjustment Data Validation (RADV) program audits. While RADV audits are intended to identify improper risk adjustment payments, they are not specifically designed to detect fraud,[5] nor are they intended to identify all improper diagnosis submissions made by MAOs for risk adjustment payment.[6]

B. Purpose and Description of Contract-Level RADV Audits

The improper payment measurements conducted each year by CMS that are included in the HHS Agency Financial Report, as well as audits conducted by the HHS–OIG, have demonstrated that the MA program is at high risk of improper payments. In fiscal year (FY) 2021 (based on calendar year 2019 payments), we calculated that CMS made over $15 billion in Part C overpayments, a figure representing nearly 7 percent of total Part C payments.[7] The HHS–OIG has also released several reports over the past few years that demonstrate a high risk of improper payments in the MA program,[8] and for several years has identified the MA program as one of the top management and performance challenges facing HHS due to the high amount of improper payments.[9] The Medicare program, including MA, has also been identified by the Government Accountability Office (GAO) as a high-risk program due to the risk of substantial improper payments.[10]

RADV audits are our main corrective action for overpayments made to MAOs when there is a lack of documentation in the medical record to support the diagnoses reported for risk adjustment. We select MAOs for RADV audits using a risk-based approach that focuses on HCCs that are more likely to be in error as identified by prior RADV audits, Part C Improper Payment Measurements, and OIG findings, and other vulnerability analyses. RADV audits occur after the final risk adjustment data submission deadline for the MA contract year and after CMS recalculates the risk factors for affected individuals to determine if payment adjustments are necessary, as described at 42 CFR 422.310(g).[11] RADV audits are intended to confirm the presence of risk adjustment conditions (that is, diagnoses that map to HCCs) as reported by MAOs in medical record documentation. RADV audits confirm the presence of the diagnoses related to the enrollee's HCC profile through the review of certain categories of medical records submitted by the MAOs for the purpose of a RADV audit; specifically, inpatient hospital, hospital outpatient facility, and physician/practitioner (excluding suppliers of durable medical equipment, prosthetics, orthotics, and supplies) medical records. Risk adjustment discrepancies are identified when an enrollee's HCCs used for payment, which are based on MAO self-reported data, differ from the HCCs assigned based on the medical record review performed by CMS through the RADV audit process. Risk adjustment discrepancies can be aggregated to determine an overall level of payment error. In turn, payment error for a sample of contract enrollees can be used to calculate a total payment error estimate, for the larger universe of enrollees within an MAO contract from which a sample is drawn, within specified confidence intervals using statistical extrapolation.

C. History of the Contract-Level RADV Program

RADV audits have existed in various forms and approaches for over 20 years. RADV audits began for payment year (PY) 1999, when the amount of payment made to MAOs on a risk-adjusted basis was small (10 percent). During the audit period from PY 1999 until PY 2003, our RADV activity had an educational focus and was primarily intended to provide information that could be used by MAOs to improve the accuracy of the risk adjustment data submitted to CMS for payment. Payment adjustments (recoveries) were limited to enrollee-level adjustments for those enrollees sampled in the audits and were not extrapolated to the overall error of the

[4] *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/mc86c07.pdf.*

[5] For example, the Department of Justice is responsible for pursing potential violations of the False Claims Act, which includes certain elements of knowledge.

[6] CMS contract-level RADV audits focus on specific MAO contracts to determine and recoup improper payments. The HHS–OIG also undertakes audits of MAOs, similar to RADV audits, as part of its oversight functions. CMS can collect the improper payments identified during those HHS–OIG audits, including the extrapolated amounts calculated by the OIG. CMS also oversees the Part C Improper Payment Measurement, previously referred to as ''national RADV,'' to determine a program-wide improper payment rate as required by the Payment Integrity Information Act of 2019 (Pub. L. 116–117). In addition to risk adjustment oversight conducted by CMS, HHS also oversees HHS–RADV, which was created by the Affordable Care Act to strengthen the integrity of the Affordable Care Act Marketplace by validating the accuracy of data submitted by issuers that is used to calculate the amount of funds transferred to insurers based on the actuarial risks of the individuals they enroll. Neither the Part C Improper Payment Measurement nor the HHS–RADV programs are subject to the provisions of this final rule.

[7] HHS, FY 2021 HHS Agency Financial Report, pg. 211, *https://www.hhs.gov/sites/default/files/fy-2021-hhs-agency-financial-report.pdf.* CMS made over $23 billion in total Part C improper payments. The improper payment measurement for the MA program in FY 2021included both overpayments ($15 billion) and underpayments ($8 billion).

[8] For example, see reports: Medicare Advantage Compliance Audit of Specific Diagnosis Codes That Anthem Community Insurance Company, Inc. For example, see reports: Medicare Advantage Compliance Audit of Specific Diagnosis Codes That Anthem Community Insurance Company, Inc. (Contract H3655) Submitted to CMS, May 21, 2021, *https://oig.hhs.gov/oas/reports/region7/71901187.asp;* Medicare Advantage Compliance Audit of Specific Diagnosis Codes That Blue Cross Blue Shield of Michigan (Contract H9572) Submitted to CMS, February 24, 2021, *https://oig.hhs.gov/oas/reports/region2/21801028.asp;* Medicare Advantage Compliance Audit of Specific Diagnosis Codes That Highmark Senior Health Company (Contact H3916) Submitted to CMS, September 29, 2022, *https://oig.hhs.gov/oas/reports/region3/31900001.asp;* Medicare Advantage Compliance Audit of Specific Diagnosis Codes That Cariten Health Plan, Inc., (Contract H4461) Submitted to CMS, July 18, 2022, *https://oig.hhs.gov/oas/reports/region2/22001009.asp;* Medicare Advantage Compliance Audit of Diagnosis Codes That SCAN Health Plan (Contract H5425) Submitted to CMS, February 3, 2022, *https://oig.hhs.gov/oas/reports/region7/71701169.asp;* Medicare Advantage Compliance Audit of Diagnosis Codes That Humana, Inc., (Contract H1036) Submitted to CMS, April 19, 2021, *https://oig.hhs.gov/oas/reports/region7/71601165.asp.*

[9] For example, see OIG, 2021 Top Management and Performance Challenges Facing HHS, pg. 13, *https://oig.hhs.gov/reports-and-publications/top-challenges/2021/2021-tmc.pdf.*

[10] GAO, *Medicare Program & Improper Payments, https://www.gao.gov/highrisk/medicare-program-improper-payments.*

[11] *See* the May 23, 2014 final rule titled ''Medicare Program; Contract Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs Final Rule'' (79 FR 29843, at 29926) for a more detailed discussion of the timing and execution of the RADV audit and appeals process.

contract. As a result, for the few MA plans we audited, payment recovery amounts were small.

Risk adjustment payments using the CMS–HCC risk adjustment model began for the first time in PY 2004. Because of various risk adjustment payment methodology changes required in the BBA and the Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554), we provided a payment ''phase-in'' under the new risk adjustment methodologies from 2000 to 2007, when MAOs' payments were 100 percent risk-adjusted under the current methodology.[12] Under the new methodology that began in PY 2004, MAOs were required to submit diagnoses from multiple sites of care, which increased the administrative data burden on MAOs. Because of this burden and the associated phase-in of the new methodology, CMS considered PYs 2004 through 2006 as pilot years for the purpose of the RADV program and did not seek to recover improper payments for those payment years based on the audit results.

Improper payment recovery resumed for PY 2007, when we conducted two sets of RADV audits: (1) Pilot 2007, which involved 5 MA contracts; and (2) Targeted 2007, which involved 32 MA contracts. CMS began with the Pilot 2007 audit to test the methodology and make any needed changes before conducting the Targeted 2007 audit. CMS selected MA contracts after measuring the weighted average change in disease scores (risk scores) over the preceding 3-year period and grouping MAO contracts as high, medium, or low relative to other MA contracts that were eligible for a RADV audit. Through these two sets of audits, we recouped $13.7 million. Payment adjustments were again limited to enrollee-level adjustments for those enrollees sampled in the audits and not extrapolated to the overall contract error. After CMS' findings were reported to each MAO, any MAO that disagreed with CMS' determinations could challenge them through an administrative dispute and appeals process that was established by regulation (75 FR 19678). This dispute and appeals process, as subsequently amended (75 FR 32858 and 79 FR 29844), remains in effect and allows for the appeal of the medical record review determination and/or the payment error calculation through a three-level administrative review process, as outlined in 42 CFR 422.311. To date, CMS has not recovered based on RADV audit findings for audit years after PY 2007, as described more fully in this section of this rule.

1. Development of an Audit Methodology (PYs 2007 Through 2010)

After the RADV audits were conducted for PY 2007, CMS paused RADV audits for PYs 2008, 2009, and 2010. CMS used those years to continue refining the methodology for the RADV audits, including the consideration of statistical methods to calculate extrapolated improper payments based on the individual errors identified. The use of extrapolation would enable us to make contract-level payment adjustments rather than simply adjusting payments for specific enrollees from an audit sample, as we had done previously.

On December 20, 2010, we published an informal proposal on the CMS website that outlined our intended RADV methodology for: (1) selecting a statistically valid sample of enrollees from each audited MA contract; and (2) calculating a contract-level payment adjustment by extrapolating the results of that sample. We invited public comment on this proposed methodology.

2. Informal Proposal Comments and the FFS Adjuster

In response to the December 2010 informal proposal, some MAOs suggested that CMS cannot lawfully enforce the requirement of medical record documentation for diagnosis codes while making payments at the published rates. These MAOs argued that there is a difference in auditing standards between Medicare FFS and MA diagnosis data because, in contrast to the MAO-submitted diagnoses data, Medicare FFS data is ''unaudited'' by CMS. This difference purportedly exists because most FFS payments are made on the basis of the item or service provided and not the beneficiary's diagnosis or diagnoses. For example, an office visit is paid based on whether the evaluation and management service billed met Medicare coverage and payment rules, not based on what diagnoses are listed on the claim or in the medical record. As a result, they argued, the Medicare FFS data used to calculate MAO payments will understate the cost of treating various conditions and, because erroneous diagnoses in the FFS claims data are used to calibrate the MA payment model, CMS must either adjust payment rates (by raising them) or adjust documentation standards (by loosening them) to resolve the alleged incompatibility between the payment rates and documentation standards. This proposed adjustment to the MAO payment rates and/or documentation standard is referred to as an ''FFS Adjuster.''

To understand the MAOs' argument about why an FFS Adjuster is needed, some background is important. These MAOs ground their arguments in section 1853(a)(1)(C)(i) of the Act, which requires the Secretary to adjust payments to MAOs for demographic and health-related risk factors so as to ensure ''actuarial equivalence.'' As described previously, the Act requires that we calculate risk-adjusted payments to MAOs to ensure that MAOs are paid appropriately based on the enrollees' health status and demographic characteristics. The current risk adjustment model does this by calculating plan enrollees' risk scores and, in turn, using them to adjust the MAOs' base payment rates, which are the rates for the average beneficiary.

This system of risk adjustment rests on two important principles. First, MAOs' payments are calculated using the CMS–HCC risk adjustment model, which is published each time it is updated (see section 1853(b) of the Act).[13] Second, an MAO may only report a diagnosis when that diagnosis is properly supported by the beneficiary's medical records. As we noted in our April 15, 2022 Health Plan Management System (HPMS) memorandum, *Reminder of Existing Obligation to Submit Accurate Risk Adjustment Data,* MAOs must submit data that conforms to all relevant national standards, including the International Classification of Diseases, Tenth Revision, Clinical Modification (ICD–10–CM) Guidelines for Coding and Reporting requirement that diagnoses be documented in patients' medical records. (*See* 42 CFR 422.310(d)(1); 45 CFR 162.1002(c)(2) and (c)(3).) The diagnosis codes and other risk adjustment information that MAOs submit directly affect the calculation of CMS payments to the MAO. A diagnosis code that is not documented in a patient's medical record is not a valid basis for CMS risk adjustment payments to an MAO. *UnitedHealthcare Ins. Co.* v. *Becerra,* 16 F.4th 867, 869, 877 (D.C. Cir. 2021). Medical records properly support a reported diagnosis when they comply with all CMS data and documentation requirements, which are described in current agency policy

[12] CMS, *Advance Notice of Methodological Changes for Calendar Year (CY) 2004 Medicare+Choice (M+C) Payment Rates,* 4–5 (March 28, 2003), *https://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/Downloads/Advance2004.pdf.*

[13] *https://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/Announcements-and-Documents.*

documents, including the Medicare Managed Care Manual.[14] In their annual contracts with CMS, MAOs agree to operate in accordance with applicable Federal statutes, regulations, and policies, including policies described in the Medicare Managed Care Manual. MAOs are also required to submit a sample of medical records for the validation of this risk adjustment data, as required by CMS (see 42 CFR 422.310(e)).

3. The 2012 Methodology

The feedback received from industry in response to the informal proposal in 2010 was considered by CMS, and on February 24, 2012, we issued on our website [15] what we described as a final methodology for RADV contract-level payment error calculation, to begin with PY 2011 RADV audits (referred to herein as the ''2012 methodology''). That methodology described sampling techniques and a statistical calculation to extrapolate from the sample selected, as well as the use of an FFS Adjuster.[16] (Although the use of an FFS Adjuster beginning with PY 2011 RADV audits was included in the 2012 methodology, CMS has not issued final RADV audit results for PY 2011 audits or any subsequent year, and therefore, an FFS Adjuster has not been applied to any RADV audits issued by CMS to date.)

Sampling Technique: Under the 2012 methodology, up to 201 enrollees from each audited MA contract would be selected according to certain criteria. These criteria included, but were not limited to, the enrollee's: (1) continuous enrollment in the MA contract for the entire data collection year and January of the payment year; (2) lack of end-stage renal disease (ESRD) or hospice status for the entire data collection year and January of the payment year; (3) enrollment in Medicare Part B coverage for the entire data collection year; and (4) assignment of at least one CMS–HCC based on diagnoses submitted by the MAO for risk-adjustment payment. The RADV-eligible enrollees would then be ranked by risk score and divided into three equal strata (low risk score, average risk score, and high risk score), with an equal number of enrollees randomly selected from each stratum (for example, 67 enrollees per stratum in the case of an audit of 201 enrollees).

Payment Error Calculation: After medical records were reviewed, payment errors would be calculated for each selected enrollee based on the number of months the person was enrolled in the selected MA contract (and also was not in ESRD or hospice status) during the payment year. A payment error amount for each stratum would be calculated, which could include both RADV-identified overpayments and underpayments, and an overall payment error estimate for the audited contract would be derived, along with a 99 percent confidence interval around the payment error estimate.

FFS Adjuster: As part of the 2012 methodology, we also stated that we would apply an FFS Adjuster before finalizing audit recovery. The 2012 methodology stated that the actual value of the FFS Adjuster would be calculated by CMS based on a RADV-like review of records submitted to support FFS claims data.

CMS subsequently conducted an extensive study regarding the impact of such errors in Medicare FFS claims data for the purpose of determining the appropriate value of an FFS Adjuster. This study found that, in fact, errors in Medicare FFS claims data did not have any systematic effect on the risk scores calculated by the CMS–HCC risk adjustment model and, therefore, did not have any systematic effect on the payments made to MAOs. On October 26, 2018, we published an Executive Summary and Technical Appendix of our FFS Adjuster study findings on the CMS website, which are available at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-Risk-Adjustment-Data-Validation-Program/Resources.html.* Additional information on this study can also be found in the November 2018 proposed rule.

4. The 2018 RADV Proposed Rule

In the 2018 proposed rule, to enhance transparency and provide ample notice to MAOs, we proposed to codify in regulation our methodological approach to RADV audits that would apply to all of the payment year audits that have not yet been finalized. These methodologies would apply to PY 2011 and subsequent years and include our proposals to use extrapolation and not apply an FFS Adjuster to our RADV audit findings.

5. Subsequent **Federal Register** Notices (2018, 2019, 2021, and 2022)

Since publication of the 2018 proposed rule, we have published several related notices to further enhance transparency and encourage robust public comment:

- On December 27, 2018, we announced in the **Federal Register** (83 FR 66661) an extension of the comment period for the proposed RADV provisions until April 30, 2019, as well as a plan to release data underlying the October 26, 2018, FFS Adjuster Study.[17]
- On March 6, 2019, we issued a notice in the **Federal Register** (84 FR 8069) announcing the release of additional data underlying the FFS Adjuster Study, both on the CMS website and to those organizations who established data use agreements (DUAs) with the CMS Office of Enterprise Data Analytics (OEDA).[18]
- On April 25, 2019, we posted updates to existing documentation related to the study data, as well as additional data on the CMS website.[19]
- On April 30, 2019, we issued a notice in the **Federal Register** (84 FR 18215) granting an additional extension of the comment period for the proposed RADV provisions until August 28, 2019. We also announced that we would be releasing additional data underlying the FFS Adjuster study, including data containing Protected Health Information (PHI), to all parties who entered an applicable DUA with CMS and paid the required fee.[20]
- On June 28, 2019, we issued a notice in the **Federal Register** (84 FR 30983) [21] that we replicated the FFS Adjuster Study and published a summary of that replication as an addendum to the study on the CMS website.[22] The purpose of this replication was to allow us to test our initial results and release a more complete set of underlying data. (Certain intermediate data elements, not saved as part of the implementation of the initial study, were preserved and published in the addendum.) The

[14] *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/internet-Only-Manuals-IOMs-Items/CMS019326.*

[15] CMS, *Notice of Final Payment Error Calculation Methodology for Part C Medicare Advantage Risk Adjustment Data Validation Contract-Level Audits, https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/recovery-audit-program-parts-c-and-d/Other-Content-Types/RADV-Docs/RADV-Methodology.pdf.*

[16] *Id.* at 4–5.

[17] *https://www.federalregister.gov/documents/2018/12/27/2018-28070/medicare-and-medicaid-programs-risk-adjustment-data-validation.*

[18] *https://www.federalregister.gov/documents/2019/03/06/2019-04052/medicare-program-release-of-data-underlying-risk-adjustment-data-validation-provisions.*

[19] *https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-Risk-Adjustment-Data-Validation-Program/Other-Content-Types/RADV-Docs/NPRM-4185-Provisional-Data-Release-CPI-FFSA-Coefficients.xlsx.*

[20] *https://www.cms.gov/research-statistics-data-and-systems/files-for-order/limiteddatasets/.*

[21] *https://www.federalregister.gov/documents/2019/06/28/2019-13891/medicare-and-medicaid-programs-risk-adjustment-data-validation.*

[22] *https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-Risk-Adjustment-Data-Validation-Program/Resources.html.*

results of the replication were broadly consistent with the initial implementation of the study. In addition, the addendum contained further discussion of the study's assumptions and methodology. We also released the programming language used to implement the replication of the study, and a description of the technical requirements for use of that programming language.

• In the October 21, 2021 **Federal Register** (86 FR 58245), we issued a notice that provided a 1-year extension of the timeline for publication of the final rule.[23]

As part of this extension, we explained our determination that we were unable to meet the 3-year timeline for publication.[24] Based on extensive public comments received on the 2018 proposed rule and subsequent FFS Adjuster study and related data, along with delays resulting from the agency's focus on the COVID–19 public health emergency, we determined that additional time was needed to address the complex policy and operational issues that were raised. As such, we extended the timeline to publish the final rule from November 1, 2021 to November 1, 2022.

• In the November 1, 2022 **Federal Register** (87 FR 65723), we issued a notice that provided a 3-month extension of the timeline for publication of the final rule.[25] We explained that we were unable to meet the November 1, 2022, timeline for publication of the previously referenced RADV-audit related provisions. We explained that we continued to have ongoing delays resulting from the agency's focus on the COVID–19 public health emergency, and we determined that additional time continued to be needed to address the complex policy and operational issues that were raised. As such, we extended the timeline to publish the final rule from November 1, 2022, to February 1, 2023.

We received approximately 154 timely pieces of correspondence in response to the 2018 proposed rule and the subsequent notices and data releases. Summaries of the public comments that respond to the RADV provisions, and our responses to those public comments, are set forth in the discussion that follows. Additional public comments outside of the scope of the RADV proposed provisions were not considered and are not addressed in this final rule.

III. Provisions of the RADV Final Rule

A. Extrapolation of RADV Audit Findings

1. Use of Extrapolation in the Medicare Program

Extrapolation, or the act of estimating a value (such an overpayment amount for a Medicare provider) based on a statistically valid sample of units (such as Medicare claims), has historically been a standard part of auditing practice at CMS. There is significant guidance, including case law and best practices from HHS and other Federal agencies, stating that extrapolation may be utilized as a valid part of calculating improper payments. In particular, courts have held that sampling and extrapolation are a valid method of calculating improper Medicare payments, so long as statistically valid methods are used. *See United States* v. *Lahey Clinic Hosp., Inc.,* 399 F.3d 1, 18 n.19 (1st Cir. 2005) (noting that ''sampling of similar claims and extrapolation from the sample is a recognized method of proof'' for the United States in an affirmative case seeking recovery under a common-law theory). *See also Ratanasen* v. *California Dep't of Health Servs.,* 11 F.3d 1467, 1469–71 (9th Cir. 1993) (collecting cases in which sampling and extrapolation have been approved in the Medicaid context, and ''join[ing] other circuits in approving the use of sampling and extrapolation as part of audits in connection with Medicare and other similar programs''); *Chaves Cnty. Home Health Serv.* v. *Sullivan,* 931 F.2d 914, 917–23 (D.C. Cir. 1991). The authority to use sampling and extrapolation in Medicare audits is grounded in our statutory and regulatory authority to audit providers and recoup improper payments. *See Chaves,* 931 F.2d at 919 (interpreting the Medicare statute to allow for a ''sample adjudication procedure'' followed by extrapolation from that sample, which ''is reasonable given the logistical imperatives recognized by courts in other comparable circumstances'').

Sampling and extrapolation have been used to calculate improper payments in Medicare FFS (Part A and Part B) for decades. CMS formally approved of this technique in 1986 (HCFA Ruling 86–1), but Medicare Administrative Contractors (MACs), which are responsible for determining medical necessity and paying Medicare FFS claims, have been using it ''at least since 1972.'' *Chaves,* 931 F.2d at 921; *see id.* at 913 (explaining that ''sample adjudication has been used in previous instances involving post-payment review of 'coverage determinations' under Part A,'' and that HCFA Ruling 86–1 ''simply reiterated [the agency's] belief that it had the latitude to employ sample audits on post-payment review to efficiently recoup overpayments for non-covered services''). In 1991, the United States Court of Appeals for the District of Columbia Circuit, in *Chaves,* upheld the use of this audit methodology against arguments that the Medicare statute required individualized review of claims submitted by providers (*Id.* at 922).

The MMA imposed limits on the use of sampling and extrapolation in Medicare payment decisions in the context of Part A and Part B, when a settlement to resolve improper payments is not reached. Since 2003, Medicare Part A and Part B extrapolation under section 1893(f)(3) of the Act has been limited to instances in which the Secretary determines either that ''there is a sustained or high level of payment error'' or that ''documented educational intervention has failed to correct the payment error.'' No similar limitation applies to the MA program.

[23] *https://www.federalregister.gov/documents/2021/10/21/2021-22908/medicare-and-medicaid-programs-policy-and-technical-changes-to-the-medicare-advantage-medicare.*

[24] 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 or an interim final regulation.'' Section 1871(a)(3)(B) of the Act provides that ''[s]uch timeline . . . shall not be longer than 3 years except under exceptional circumstances.'' The Secretary therefore may not ''establish'' a ''regular timeline'' for the finalization of a proposal or interim final rule that exceeds three years, absent exceptional circumstances. Section 1871(a)(3)(B) of the Act authorizes the Secretary to ''vary such timeline''—that is, to alter the ''regular timeline'' initially ''establish[ed]'' for finalization—by publishing a timely notice in the **Federal Register** with ''a brief explanation of the justification for such variation.'' As we have said, ''[t]he Secretary may extend the initial targeted publication date of the final regulation, if the Secretary provides public notice including a brief explanation of the justification for the variation no later than the regulation's previously established proposed publication date.'' 69 FR 78443.

Under the plain text of the Act, no ''exceptional circumstances'' are required for the Secretary to extend the initial targeted publication date of the final regulation, but only ''a brief explanation of the justification'' for doing so. The Secretary has often extended such timelines without any reference to ''exceptional circumstances.'' (See 86 FR 50263; 85 FR 55385; 85 FR 52940; 85 FR 7; 79 FR 62356; 74 FR 8867; 72 FR 16794; 72 FR 13710.) But the Secretary has also said that the Act ''permits an extension of a published timeline under exceptional circumstances,'' 69 FR 78442, and has invoked ''exceptional circumstances'' in extending such timelines, including in the notices published in this rulemaking. For the reasons explained in this note, the Act has never required exceptional circumstances for such extensions—though exceptional circumstances have often been present, as they were here, when such timelines have been extended.

[25] *https://www.federalregister.gov/documents/2022/11/01/2022-23563/medicare-and-medicaid-programs-policy-and-technical-changes-to-the-medicare-advantage-medicare.*

As previously discussed, sampling and extrapolation is a generally accepted audit technique in the Medicare context, and the Act does not apply any limits to the use of extrapolation in the MA program. Therefore, we believe that CMS has the authority to implement this audit methodology in RADV audits for any case in which a RADV audit identifies improper risk-adjusted payments. We also believe that this is a reasonable approach to our RADV audits, given the sustained and high level of risk adjustment payment error, as previously described.

2. Summary of Proposed Rule

In the 2018 proposed rule, CMS proposed to extrapolate contract-level RADV audit findings using statistically valid random sampling techniques. CMS proposed to extrapolate findings in PY 2011 and all subsequent payment years, but specifically sought comment on how to treat the audits for PYs 2011, 2012, and 2013. In the proposed rule, we explained that we had conducted RADV audits for PYs 2011–2013 according to the sampling and extrapolation methodology described in the 2012 methodology but that these audits were not yet finalized because we had not yet issued the audit findings to the MAOs.[26] For PYs 2011 through 2013, we estimated that audited MA contracts received $650 million in improper payments.

In the 2018 proposed rule, we stated that, given the amount of improper payments identified under the MA program, interest in determining an accurate recovery amount for each audited MA plan, and importance of protecting the overall integrity of the program, we believed that it was in the public interest for CMS to apply the RADV payment error methodology(ies) adopted through this rulemaking to PY 2011 and all subsequent years. We stated that CMS would be acting in compliance with the improper payment obligations under the Act (most recently updated as part of the Payment Integrity Information Act of 2019 (PIIA)), as well as our fiduciary responsibility to recover funds due to the Medicare Trust Funds. We also noted that our February 2012 publication put MAOs on notice that CMS expected to calculate a contract-level payment error for PY 2011 and subsequent payments years by extrapolating from its review of a statistically valid sample of enrollees, and that MAOs have never been entitled to receive or retain payments associated with HCCs that cannot be validated by medical records.

We also proposed that MAOs would be required to remit extrapolated recovery amounts from RADV audit findings through CMS' payment system, the Medicare Advantage and Prescription Drug system (MARx), as offsets to MA plans' monthly capitation payments. In the event that the recovery amount exceeds the payment in one month, we proposed that the recovery would be spread across adjustments for multiple months until the full amount is recovered. We also proposed that CMS might likewise require MAOs to remit such recovery amounts based upon audit findings by the HHS–OIG.

We explained in the 2018 proposed rule that CMS is not required to set forth the methodology for calculating an extrapolated payment error through regulatory provisions. However, we explained that, in the interest of transparency, we were choosing to inform MAOs about our plans to use various sampling and extrapolation methodologies in RADV audits, as CMS deems appropriate, through rulemaking.

In addition to codifying in regulation our existing authority to use extrapolation techniques in the RADV context, we also used the 2018 proposed rule as a means to gather public feedback on sampling methodologies that could be employed for purposes of extrapolation. We explained that, in addition to the contract-level approach described in the 2012 RADV Methodology, we have identified other potential methodologies for sampling and extrapolation that are based on a particular sub-cohort or sub-cohorts in a given payment year. For example, a sub-cohort could be the enrollees for whom a particular HCC or one of a related set of HCCs (such as the three diabetes HCCs) was reported.

TABLE 1—DIABETES HCCS

HCC category description	HCC
Diabetes with acute complications ...	17
Diabetes with chronic complications	18
Diabetes without complication	19

After choosing an MA contract and a sub-cohort or sub-cohorts to audit, we would select a statistically significant sample of enrollees in the sub-cohort or sub-cohorts. After reviewing these enrollees' medical records that are submitted by the MAO, we would use statistical extrapolation to calculate and recoup the improper payments made to the audited MA contract for all enrollees in the sub-cohort or sub-cohorts in that payment year.

We noted in the 2018 proposed rule that using a sub-cohort methodology, such as one focused on enrollees with high-risk HCCs, could allow us to use a much smaller sample size to calculate a statistically valid extrapolated improper payment amount. This is possible because, when selecting a sample from a smaller population (that is, a sub-cohort of enrollees), one can still achieve an acceptable level of statistical confidence with that smaller sample size. This sub-cohort-based audit methodology would also allow us to spread our audit resources across a wider range of MA contracts and focus on cohorts of enrollees that raise programmatic concerns, while also reducing operational burden on both CMS and the MAOs due to the reduced sample size needed to calculate improper payments.

In the 2018 proposed rule, we invited comment on both the contract-level audit methodology published in February 2012 and our proposal for an extrapolated audit methodology based on sub-cohorts of enrollees. We also sought comment on whether there are particular situations in which one methodology may be preferable to the other. We emphasized that neither proposed methodology was meant to displace our longstanding authority to audit the medical records of particular enrollees who we believe may be associated with improper payments or to use any statistically valid audit methodology. We also stated that, if we finalize one or more sampling and extrapolation methodologies through this rulemaking, we would announce any future changes to that methodology (or those methodologies) through the Health Plan Management System (HPMS).

In addition, we stated that we may begin to conduct RADV audits for PYs 2014 and 2015 before finalizing the policies in the proposed rule, pursuant to our longstanding authority to review the medical records of any MA enrollee and recoup improper payments identified. We also sought comment on whether the use of sampling and extrapolation for certain payment years would require the exercise of our statutory authority to engage in retroactive rulemaking, as set out in section 1871(e)(1)(A) of the Act, which authorizes retroactive application of rules where ''failure to apply the change would be contrary to the public interest.''

We also discussed proposed changes to our RADV dispute and appeals regulations in 42 CFR 422.311 to conform with the finalized RADV provisions. Specifically, consistent with

[26] See 83 FR 55038.

our other proposed policies, we proposed to amend § 422.311 by adding language to clarify that recovery of improper payments from MAOs will be conducted according to the Secretary's payment error extrapolation and recovery methodologies, and that CMS will apply extrapolation to RADV audits beginning with PY 2011. We also requested comment on whether to explicitly expand the MAOs' RADV appeal rights, such as by permitting appeal of the RADV payment error calculation methodology used in a RADV audit, similar to practices in Medicare FFS. A summary of the comments received and our responses follow.

3. Summary of Public Comments

Comment: Several commenters supported CMS' proposal to use extrapolation in RADV audits, as well as our proposal to begin extrapolation for PY 2011 audits. Commenters indicated that this is the most effective way to address improper payments in MA.

Response: We thank commenters for their support. While we plan to finalize our proposal to apply extrapolation to RADV audits, we are making a change to the years in which to apply extrapolation to achieve what we believe is an appropriate final policy that still takes into consideration our obligation to address potentially significant improper payments in the MA program. Extrapolation will now begin with the PY 2018 RADV audits rather than PY 2011, as proposed. This change, as further described in this section of this rule, is being made due to our fiduciary duty to protect taxpayer dollars from overpayments, certain operational considerations, and public comments on the timeliness of RADV audits.

Comment: Several commenters opposed the use of extrapolation in RADV audits. Some commenters questioned whether we had the statutory authority to use sampling and extrapolation in RADV audits. These commenters suggested that, because section 1893(f)(3) of the Act grants CMS the authority to use sampling and extrapolation in certain circumstances when conducting audits in Medicare Part A and Part B, CMS cannot use those techniques in Part C audits without an equivalent grant of statutory authority.

Several commenters challenged the statistical and methodological validity of both the contract-level sampling and extrapolation techniques described in the 2012 methodology, as well as an approach based on sub-cohorts of enrollees. A commenter stated that it is more difficult for plans to determine results from extrapolation in MA than in Medicare FFS because RADV audits can include the review of multiple medical records to validate one diagnosis from various providers with ''disparate methods of documentation.''

Some comments focused on the application of extrapolation beginning in PY 2011. Several commenters asserted that increased liabilities of MAOs from retroactive application of an extrapolated payment error recovery would deter future participation by MAOs in the MA program and reduce benefits to beneficiaries. Several commenters expressed concern that extrapolation for past payment years will destabilize physician care. Specifically, the concern is that providers participating in risk-sharing contracts with MAOs that have not yet completed a final settlement may be at risk for losses. The same commenters believe that recovering improper payments when the audit methodology has been revised several times is inequitable to the MAOs.

Response: We appreciate these comments and considered them when finalizing the timing and content of these extrapolation policies. As discussed previously, CMS has the authority to use sampling and extrapolation in its RADV audits. Federal courts have held that sampling and extrapolation are a valid method of calculating improper Medicare payments, so long as statistically valid methods are used. The MMA added section 1893(f)(3) of the Act, which specifically applies to Medicare Part A and Part B and limits the use of extrapolation to determine overpayment amounts for recoupment under certain circumstances. This provision did not confer new authority to use extrapolation, but limited our preexisting audit authority in Medicare Part A and Part B. No similar limitation has been applied to audits in Medicare Part C. However, CMS will continue to focus its RADV efforts on MAOs identified as being at higher risk of improper payments.

In the implementation of this authority to use sampling and extrapolation in RADV, CMS will employ statistical methods to determine statistically valid sample sizes, accurately identify payment error, and extrapolate to the universe of enrollees from which the sample is selected. These statistically valid methods may include applying one or more RADV audit methodologies for any given RADV audit. In addition, while CMS views extrapolation as a statistically valid methodology for RADV audits, the agency may, at times, use its discretion to not utilize extrapolation in a particular instance. For example, there may be unforeseen circumstances in which the statistical validity of the sample is disturbed (such as the need to exclude a large number of cases from the sample due to the loss of medical records in a natural disaster) and extrapolation is no longer possible, despite the initial intent to do so. There may be other limited instances in which CMS seeks to collect overpayments associated only with enrollees in a given sample, or wishes to perform only a probe sample of RADV reviews without the use of a statistically valid sample and yet will seek to recover any identified, non-extrapolated overpayments. The OIG may also independently decide not to extrapolate for reasons outside the control of CMS, and CMS will still recover those overpayments in accordance with the provisions in this final rule. To account for this, we are finalizing § 422.311(a)(2) to read ''CMS *may* [emphasis added] apply extrapolation to audits for payment year 2018 and subsequent payment years,'' rather than ''CMS will apply extrapolation . . .'' as proposed. This language is not intended to signal that it would be a frequent occurrence to not extrapolate in PY 2018 and future audits; rather, extrapolation is expected to be the standard practice for RADV audits beginning in PY 2018.

As previously stated, we believe that it is in the best interest of the Federal Government and our efforts to protect taxpayer dollars to extrapolate in our RADV audits, given the substantial amount of improper payments in MA and the fact that RADV is CMS' main corrective action used to address the submission of inaccurate diagnosis data. However, we also have decided not to extrapolate for PY 2011 through 2017 audits, as originally proposed, due to certain operational considerations and public comments on the timeliness of RADV audits. The reasoning for this decision is discussed in greater detail later in this final rule.

In addition, we do not agree with the comment that RADV audits include the review of multiple medical records with ''disparate methods of documentation.'' We reemphasize that the policies we are finalizing in this rule do not impose new documentation requirements on providers. The core component of a RADV audit is ensuring that all diagnoses reported to CMS are properly supported by medical record documentation. CMS' existing regulatory documentation standards, 42 CFR 422.310(d)(1); 45 CFR 162.1002(c)(2) and (c)(3), including the RADV-specific authority to validate risk

adjustment data through the review of a sample of medical records at § 422.310(e), remain unchanged under this final rule and are described in current agency policy documents, including the Medicare Managed Care Manual (with which MAOs agree, in their MA contracts, to comply). MAOs are also already required to ensure that contracted providers meet MA documentation requirements.

We respectfully disagree with commenters' assertions that liabilities will increase. We are not imposing additional liabilities, penalties or retroactive application of new requirements or policy. We only seek to recover improper payments received by MAOs for HCCs that are not substantiated by enrollees' medical records. We continue to rely on existing program methods to establish auditing practices that encourage proper payment recovery consistent with established audit practices. We recognize that MAOs enter into agreements with providers, including those with a risk-sharing component, and we encourage all parties to those agreements to take steps to mitigate the submission of diagnosis codes that are not properly supported in the medical record.

We emphasize that nothing in this rule changes the longstanding principle that a diagnosis code that is not documented in a patient's medical record is not a valid basis for CMS risk adjustment payments to an MAO. Nor does this rule change the longstanding obligation of an insurer to refund payments to CMS if it learns that a diagnosis lacks support in the beneficiary's medical record.

Comment: Many comments were received on the proposed extrapolation methodologies, mainly focused on our proposed sub-cohort approach. Some commenters requested clarity on the sub-cohort methodology, while others expressed support for this methodology with various suggestions to improve it. Commenters questioned whether the proposed sub-cohort methodology will replace the existing contract-level methodology, which utilizes a general, non-targeted sampling methodology, and how CMS will determine which HCC groups will be used in the identification of sub-cohorts. A commenter requested that CMS confirm whether RADV will consist of a single audit methodology or whether MAOs will be subject to multiple audit methodologies.

Some commenters believe that applying a sub-cohort extrapolation methodology of enrollees would produce inaccurate results in RADV audits because of differences between plans with regard to size and risk characteristics. For example, several commenters argued that plans with a higher than average risk score are at increased risk for RADV audit because high-risk enrollees are more likely to have more HCCs. Other commenters believe that a small sample size, which CMS sees as a benefit of a sub-cohort methodology, will result in inaccuracies. Others commented that an extrapolation methodology based on sub-cohorts of enrollees would violate the statutory mandate of ''actuarial equivalence'' between payments made under MA and Medicare FFS because it would generate recoveries based on random outcomes without regard to specific characteristics of MA plans' diagnostic mix, enrollment size, and risk scores. A commenter requested that, if CMS adopts a sub-cohort extrapolation methodology, it uses a pilot period first before implementing the program on a large scale and extrapolating results.

Other comments spoke to extrapolation methods more generally, including the appropriate confidence interval, potential for plans of certain sizes to be unduly chosen for RADV audits, and perceived inability to assess potential liability for RADV audits already performed if CMS abandons the extrapolation methodology set forth in the 2012 methodology.

Other comments on our proposed extrapolation methodologies were focused on the impact of underpayments. A commenter objected to the RADV audit sampling methodology, arguing that it results in a purported payment recovery bias against MAOs. The commenter believes the results of the RADV audit sample are ''asymmetric,'' thus incorrectly representing the improper payment rate. More specifically, the commenter asserted that ''[t]hough there is no upper limit for how high the payment recovery amount can be, there is no balancing negative recovery amount.'' In other words, the commenter objected that MAOs cannot receive a payment from CMS based on a RADV audit if, overall, the risk scores should have been higher because, for instance, there were more supported diagnoses that had not been submitted (that is more under-coding) than unsupported diagnoses that had been submitted (that is over-coding). Other commenters shared these concerns, as well as voiced concern that RADV audit samples do not account for the reported bias that exists for enrollees who have no diagnosis codes submitted during the year but have existing documentation to support a diagnosis that could have been submitted. The same commenters perceive the audit methodology as being random and indiscriminate, believing that the results will incorrectly estimate the risk profile of enrollees.

A commenter requested information related to the sampling methodology used to select enrollees for the PY 2014 RADV audit. Specifically, the commenter requested details on the development of the regression model used to predict payment error and on the sampling criteria from which the RADV audit currently extrapolates. This commenter also contended that the PY 2014 methodology appears to maximize the probability of selecting individuals with coding errors.

Response: As previously explained, extrapolation is an established auditing practice and remains a valid method for addressing audit recoveries. In this final rule, we are clarifying the scope of our authority to strengthen the integrity of the MA program by identifying improper payments. Our initiatives are designed to ensure fair and accurate recovery efforts by focusing on the areas at highest risk of improper payments. We will use statistically valid methodologies to extrapolate improper payment findings to the universe of enrollees from which a sample is selected. These statistically valid methodologies may include applying one or more RADV audit methodologies for any given RADV audit. As previously discussed, we may also determine that extrapolation will not be applied in certain limited instances. We emphasize that, in this final rule, we are not adopting either the contract-level sampling and extrapolation technique described in the 2012 methodology or a specific extrapolated audit methodology based on sub-cohorts of enrollees. Instead, for future RADV audits, CMS will rely on any statistically valid method for sampling and extrapolation that it determines to be well-suited to a particular audit. We described the sub-cohort methodology in the 2018 proposed rule to provide the industry with transparency on potential audit methodologies. In addition, while not required, CMS will continue to disclose our extrapolation methodology to MAOs through HPMS memos or other appropriate means, providing MAOs with the information sufficient to understand the means by which CMS extrapolated the improper payment determination.

Any sampling and extrapolation methodologies adopted by CMS for RADV audits will be focused on MAO contracts and enrollees' HCCs that, through statistical modeling and/or data

analytics, are identified as being at highest risk for improper payments. This is an appropriate approach to any Federal MA audit that seeks to recoup taxpayer dollars that have been inappropriately paid to MAOs for diagnoses that are not supported in the medical record. This approach was also recommended by the GAO in a 2016 report titled ''Fundamental Improvements Needed in CMS's Effort to Recover Substantial Amounts of Improper Payments.'' [27] The GAO recommended that CMS ''modify [its] selection of contracts for contract-level RADV audits to focus on those contracts most likely to have high rates of improper payments by taking actions such as the following: selecting more contracts with the highest coding intensity scores; excluding contracts with low coding intensity scores; selecting contracts with high rates of unsupported diagnoses in prior contract-level RADV audits; if a contract with a high rate of unsupported diagnoses is no longer in operation, selecting a contract under the same MAO that includes the service area of the prior contract; and selecting some contracts with high enrollment that also have either high rates of unsupported diagnoses in prior contract-level RADV audits or high coding intensity scores.'' [28]

We also note that the purpose of RADV audits is to validate that diagnoses submitted by MAOs for risk-adjusted payment are properly supported by medical record documentation. *See* 42 CRF 422.310(e). RADV audits are the main corrective action used to address the submission of inaccurate diagnosis data. Occasionally, upon review of these medical records, CMS will uncover ''additional'' diagnoses supported by the medical records that were not submitted for payment by MAOs during the data collection period for enrollees selected in the sample. Under current contract-level RADV policy, when CMS uncovers these additional diagnoses that map to CMS–HCCs during medical record review of audited CMS–HCC(s), these newly-discovered diagnosis codes are used to recalculate risk scores in certain circumstances, which may result in an updated (reduced) improper payment calculation.

MAOs are required by CMS regulations (§§ 422.503 and 422.504) and MAO contracts to establish compliance programs and processes to ensure accurate diagnosis coding and the submission of accurate diagnosis data. These processes should enable MAOs to identify not only instances where diagnoses submitted for risk-adjustment payment are not supported by the medical record, but also diagnoses that may not have been submitted to CMS. MAOs can submit additional diagnoses for risk-adjusted payment up until the final risk adjustment data submission deadlines described at § 422.310(g)(2)(ii). As with overpayment recoveries under the Affordable Care Act and CMS's Overpayment Rule, the purpose of RADV audits is not to reopen submission deadlines and for CMS to make additional payments.[29] RADV audits identify overpayments after the final risk adjustment data submission deadline.

Comment: Some comments were focused on the scope and number of plans selected for RADV audit. A commenter objected to an increase in the number of plans selected for the RADV audits. Another commenter requested an explanation of how sample sizes will be determined for Program of All-Inclusive Care for the Elderly (PACE) organizations, most of which have fewer than 500 enrollees.

Response: As previously described, any extrapolation methodology adopted by CMS for RADV audits will be focused on MAO contracts that, through statistical modeling and/or data analytics, are identified as being at highest risk for improper payments. Examples of MAO contracts that may be deemed higher risk for the purposes of RADV audit selection are discussed later in this section. This is also the best approach to ensure that MAOs that do not show indications of being at high risk of improper payments are not exposed to audit burden to the exclusion of higher-risk plans. In addition, as noted previously, such an approach was recommended by the GAO in its April 2016 report.[30] CMS does not currently subject PACE organizations to RADV audits and CMS' selection methodology for each year will describe any adjustments made for PACE or other low enrollment contracts.

Comment: Several commenters noted that implementing these proposed policies would lead to more audit burden for providers because of an increase in documentation standards for treating providers. For example, commenters believe that this is a ''more stringent audit expectation'' that will increase administrative burden at a time in which there is already a physician shortage, thereby impacting patients. Another commenter contended that our extrapolation methodology should reflect that certain HCCs are more difficult to substantiate in medical record documentation than others.

Response: RADV audits will not impose new documentation requirements on health care providers and, therefore, we believe there will be no additional audit impact on providers that contract with MAOs to provide services to MA plan enrollees. As previously stated, nothing in this rule changes the longstanding principle that a diagnosis code that is not documented in a patient's medical record is not a valid basis for CMS risk adjustment payments to an MAO. In addition, there is a longstanding requirement under § 422.310(e), in place since the beginning of the MA program, that ''[MAOs] and their providers and practitioners will be required to submit a sample of medical records for the validation of risk adjustment data, as required by CMS,'' which is unaffected by this final rule. This requirement is consistent with longstanding requirements applicable to Medicare Part A and Part B providers that they furnish sufficient information to support payment. 42 U.S.C. 1395(g) (Effective July 7, 2004) (''[No]. . . . payments shall be made to any provider unless it has furnished such information as the Secretary may request in order to determine the amounts due such provider . . .''); *Clinic Res. Mgmt.* v. *Burwell,* 2015 WL 3932657, at *2 (S.D. Tex. June 26, 2015) (''The provider is responsible for maintaining and submitting adequate information to substantiate medical necessity and entitlement to payment.'').[31]

[27] GAO, at 26, *https://www.gao.gov/assets/gao-16-76.pdf* (April 2016).

[28] *Id.*

[29] Section 6402 of the Affordable Care Act (Pub. L. 11–148) established section 1128J(d) of the Act. Under the Part C and D Overpayment Rule (79 FR 29844), which implemented section 6402 of the Affordable Care Act, MAOs are required to correct overpayments by self-reporting and returning payments associated with MAO diagnosis codes not supported by medical record documentation. Although MAOs are required to correct identified overpayments after the final risk adjustment data submission deadline in order for CMS to conduct reruns and recover the overpayments, MAOs are not permitted to submit additional diagnoses for payment after the submission deadline.

[30] GAO, at 26, *https://www.gao.gov/assets/gao-16-76.pdf* (April 2016).

[31] Under section 1853(a)(3) of the Act, the Secretary must require MAOs to submit data regarding inpatient hospital services and other services, as well as other information as the Secretary deems necessary to calculate MA risk adjustment payments. This authority has been implemented at § 422.310, which requires MAOs to submit ''data necessary to characterize the context and purposes of each item and service provided to a Medicare enrollee by a provider, supplier, physician, or other practitioner.'' § 422.310(b). MAOs must submit data that conforms to CMS' requirements for data equivalent to Medicare FFS

Comment: A commenter contested CMS' proposal to recover contract-level payment adjustments through a lump-sum reduction in the plans' monthly payments through MARx. The commenter noted that, for example, CMS currently makes retroactive, beneficiary-specific adjustments related to miscellaneous corrections to beneficiaries' status (such as eligibility, State and county of residence, date of death, etc.) outside of the RADV process. The commenter requested that CMS seek only beneficiary-level recoveries through RADV audits so as not to overlap with these non-RADV recoveries.

Response: While we appreciate the commenter's consideration of the other areas in which CMS may make adjustments to MA payments, we do not believe that current and proposed RADV efforts overlap with non-RADV adjustments. RADV audits only validate diagnoses associated with a beneficiary's medical record documentation, not a beneficiary's demographic characteristics. If an HCC cannot be validated with medical records, MAOs are not entitled to the risk-adjustment payment associated with that HCC.

Comment: Several commenters opposed the application of our extrapolation methodology to past payment years claiming that, pursuant to section 1853(b)(2) of the Act, this would be considered a retroactive application of policy and CMS must disclose our RADV audit methodology changes prior to any payment year RADV audit. Some commenters also asserted that the application of this rule to past payment years would alter the actuarial soundness of payments previously received by MA contracts, as existing contracts relied on the RADV audit methodology we announced in the 2012 RADV Methodology. Other commenters also characterized this approach as contrary to the Supreme Court's holding in *Azar* v. *Allina Health Servs.,* 139 S. Ct. 1804, 204 L. Ed. 2d 139 (2019), which emphasized that a substantive legal standard must go through a notice-and-comment process.

Response: First, as a fundamental concept, this policy does not impose any new requirements on MAOs that could be construed as retroactive. The 2012 RADV Methodology did not create a different ''documentation standard'' for MA plans than the standard that applies to traditional Medicare providers, nor did we state that an FFS Adjuster should set a permissible rate for the submission of erroneous codes. There is only one documentation standard for diagnosis coding, as discussed previously: proper medical record documentation is required for any reported diagnosis code to be valid. That is the consistent policy throughout the Medicare program (see previous discussion).

The RADV auditing methodology has not fundamentally changed the longstanding requirement that a diagnosis submitted to CMS by an MAO for payment must be properly supported by medical record documentation. See *UnitedHealthcare Ins. Co.* v. *Becerra,* 16 F.4th 867, 869, 877 (D.C. Cir. August 13, 2021, reissued November 1, 2021), *cert. denied,* 142 S. Ct. 2851 (U.S. June 21, 2022) (No. 21–1140). Rather, it only enforces the well-established regulatory requirement that MA diagnoses be validated under that longstanding documentation standard. (For additional information, see § 422.310(e); 83 FR 55037 (and authorities cited therein).)

We also noted in the 2018 proposed rule that we may begin to conduct RADV audits for additional payment years (specifically, 2014 and 2015) before this proposal is finalized, pursuant to our longstanding authority to review the medical records of any MA enrollee and recoup any improper payments identified.

Even if this methodology was determined to be a retroactive application of policy, a position with which we do not agree, it is still necessary to comply with statutory requirements and is in the public interest for CMS to apply extrapolation to past payment years, and, therefore, is authorized under the Act. CMS has the authority, in accordance with section 1871(e)(1)(A) of the Act, to apply retroactive changes in regulations, manual instructions, interpretative rules, statements of policy, or guidelines of general applicability to items and services furnished before the effective date of the change, if the Secretary determines that ''such retroactive application is necessary to comply with statutory requirements or failure to apply the change would be contrary to the public interest.'' We believe that recovering extrapolated improper amounts is necessary to comply with statutory requirements and advances the public interest by protecting the overall integrity of the MA program. We have a statutory mandate under the PIIA to reduce improper payments and a fiduciary responsibility to recover funds due and owed to the Medicare Trust Funds.

As previously discussed, HHS and the GAO have identified a significant volume of improper payments in the MA program,[32] and RADV audits are the main way CMS ensures payment accuracy to MAOs. As further discussed in the Regulatory Impact Analysis section of this final rule, CMS estimates extrapolated improper payment recoveries of approximately $479 million per audit year beginning with the PY 2018 audit. We also believe that there will be an additional sentinel effect of RADV audits on the improper payment rate as MAOs improve their processes to report only those diagnoses that meet CMS requirements for risk adjustment payment.

In addition, as discussed previously, RADV audits will not impose new documentation requirements on health care providers. The core component of a RADV audit is ensuring that all diagnoses are properly supported by medical records. We only seek to recover improper payments received by MAOs for HCCs that are not substantiated by enrollees' medical records. MAOs have never been entitled to receive or retain payments associated with HCCs that cannot be validated by medical records. Therefore, applying the rule under the public interest exception in section 1871(e)(1)(A) of the Act would not upset any settled or reasonable reliance interests. This all serves the public interest by reducing the improper allocation of taxpayer dollars that can otherwise be used for other purposes within the Federal Government, including solvency of the Medicare Trust Funds. Thus, applying the rule retroactively is necessary to comply with statutory requirements and in the public interest within the meaning of section 1871(e)(1)(A) of the Act.

Comment: Several comments provided input on the potential promulgation of rules permitting administrative appeals of RADV audit methodology. A commenter opined that such procedures were unnecessary because stakeholders had an opportunity to participate in the development of our methodology through the notice-and-comment

data, when appropriate, and to all relevant national standards. The International Classification of Diseases, Tenth Revision, Clinical Modification (ICD–10–CM) Guidelines for Coding and Reporting is the existing national standard. (*See* § 422.310(d)(1); 45 CFR 162.1002(c)(2) and (c)(3)). This is consistent with obligations imposed on hospitals and providers in Medicare Parts A and B, who are required to furnish proper documentation and comply with the ICD Guidelines. See, for example, 42 U.S.C. 1395g and 1395n.

[32] For example, the FY 2021 HHS Agency Financial Report, pg. 211, *https://www.hhs.gov/sites/default/files/fy-2021-hhs-agency-financial-report.pdf,* states that Part C Improper Payment Measurement (IPM) estimated approximately $15 billion in overpayments for calendar year 2019 risk-adjusted payments to MAOs.

rulemaking process, and that permitting challenges to our methodology in the administrative appeals context would generate ''numerous unnecessary practical problems'' for us. Another commenter supported the expansion of RADV audit appeals to allow MAOs to demonstrate that alternative methodologies would be more accurate, and to show that cohorts sampled for RADV audits might not be representative of the contract population.

Response: We appreciate the commenters' input and concerns. We do not believe it would be appropriate to expand our appeals regulations to allow MAOs to appeal the RADV audit methodology, as revisions to the appeal regulations were not part of our proposed rule and stakeholders did not have the opportunity to provide comments on specific proposed policies. As such, MAOs will continue to be able to use the RADV appeals process currently set forth in § 422.311. Any future changes to our appeals process would occur through separate notice and comment rulemaking.

Comment: Several comments outside the scope of the proposed rule were received, including those related to the RADV program and other CMS programs. Out-of-scope comments pertaining to the RADV program included recommendations for changes to RADV documentation requirements and procedures; requests that CMS prohibit MAOs from auditing providers for patient records within the RADV cohort during the course of RADV audit; a request to expand the hardship exception to account for delays in acquiring medical records resulting from providers who are ''traveling, sick, or deceased;'' a request to implement a schedule whereby RADV audits would be performed within 2 years of the applicable dates of service; challenges in collecting medical records created several years before the RADV audit; and requests for clarification of how CMS treats ''non-unique'' diagnosis codes during RADV audits when, even if one code is in error, there may be one or more diagnoses that substantiate the same HCC.

Other out-of-scope comments pertained to the RADV dispute and appeals processes. These comments included requests for CMS to provide MAOs with more time to appeal a RADV audit finding; expand MAOs' appeal rights by removing the current limitation cited in § 422.311(c)(2)(iv) that allows MAOs, for each audited HCC, to appeal only one medical record that has undergone a RADV review; use an independent third party to reconsider disputed HCCs and/or payment error calculations; allow additional flexibility in disputing medical record interpretation during the appeals process and for MAOs to supplement medical records with documents that could not be obtained at the time of the audit; and allow MAOs to file complaints of underpayments by CMS.

Other comments were received unrelated to RADV, such as requests to make burden-reducing changes to the Medicare Part C Recovery Audit program requirements and requests for payment parity between MA and Medicare FFS.

Response: While we appreciate this feedback, these comments do not directly relate to the proposed changes to the RADV audit program, which is focused on our policies related to the use of extrapolation and the non-application of an FFS Adjuster, and are therefore outside of the scope of this final rule. Updated resources on RADV rules and methodologies are available on the CMS website at *https://www.cms.gov/Research-Statistics-Data-andSystems/Monitoring-Programs/Medicare-Risk-Adjustment-Data-Validation-Program/Resources.* We also encourage stakeholders to engage with CMS throughout the course of an audit cycle and to provide feedback on programmatic improvements that can be considered outside of this rulemaking process.

4. Summary of Final Policies

After consideration of public comments, we are finalizing the use of extrapolation under the contract-level RADV program. However, we are modifying our proposed policy to extrapolate beginning in PY 2011. We are instead finalizing our ability to extrapolate beginning in PY 2018 due to considerations of appropriateness in light of public comments and certain operational concerns, as well as our obligations to protect the sustainability of the Medicare program. We are announcing, through this final rule, our interpretation of our statutory and regulatory authority as authorizing the use of sampling and extrapolation in RADV audits. We are not adopting any particular statistical sampling methodology in this final rule. As previously noted, CMS will use statistically valid methods for sampling and extrapolation that we determine to be well-suited to a particular RADV audit.

After reviewing comments and considering the matter further, we also believe that the use of sampling and extrapolation to calculate audit recoveries would not be retroactive within the requirements of section 1871(e)(1)(A) of the Act. The use of sampling and extrapolation for prior payment years is not retroactive because the substantive requirement of proper medical record documentation of all diagnoses submitted for payment remains unchanged, whether we calculate audit recoveries on an enrollee-by-enrollee basis or use a statistically valid sample of enrollees to extrapolate. Enrollee-level audit recoveries and extrapolated audit recoveries are simply two different ways of enforcing the same medical record documentation requirement under § 422.310(e).

While we believe that the use of sampling and extrapolation for prior payment years is not a retroactive application of policy, even if it was somehow interpreted as retroactive, we still believe that recovering extrapolated improper amounts is necessary to comply with statutory requirements and advances the public interest by protecting the overall integrity of the MA program. We have a statutory mandate under the PIIA to reduce improper payments and a fiduciary responsibility to recover funds due and owed to the Medicare Trust Funds. The RADV program was developed as one of the primary methods to address CMS' responsibility to recover improper payments in the MA program.

In addition, although we stated in the proposed rule that we intended to apply any finalized RADV payment error methodology or methodologies to PY 2011 and all subsequent years, we have decided to begin to exercise our authority to collect extrapolated recoveries with the PY 2018 RADV audit. Based on our review of a number of factors, CMS determined it is in the overall best interests of the RADV program and ultimately the Part C program itself to limit all RADV improper payment recoveries for PYs 2011 through 2017 to enrollee-level adjustments for those enrollees sampled in the payment validation audits. Our reasoning for this decision follows.

First, after careful consideration of the comments received, we believe that the most appropriate decision is to begin extrapolation with the PY 2018 audits. As a result, CMS will not collect extrapolated overpayments identified as a result of either CMS RADV or HHS–OIG audits for payment years prior to PY 2018, but will collect enrollee-level overpayments identified in those audits. As previously described, we believe that beginning extrapolation for PY 2018 RADV audits represents an appropriate policy because it recognizes our

fiduciary duty to protect taxpayer dollars from overpayments and preserves our ability to collect on significant (extrapolated) amounts of overpayments made to plans beginning in PY 2018. This final rule will also allow CMS to focus on conducting future RADV audits as soon as practicable after an MAO payment year concludes, which was the topic of significant public comment to the proposed rule.

Lastly, we have determined that it is in the best interest of all parties to ensure that the contract-level RADV appeals process, which is also outlined in regulation, is able to successfully process all RADV appeals. By not using an extrapolation methodology prior to PY 2018, we expect to better control the total number of active appeals that are submitted in the first few years following finalization of this rule, which will alleviate burden on MAOs and CMS. This includes appeals that result from CMS RADV audits, as well as CMS recoveries made based upon improper payments identified in HHS–OIG audits of MAOs. When this rule is finalized, we will begin issuing the enrollee-level audit findings from the CMS RADV audits that have been completed (that is, CMS RADV audits for PYs 2011 through 2013, followed eventually by PY 2014 and PY 2015 audits), as well as recovering enrollee-level improper payments identified in HHS–OIG audits. The release of these results in quick succession could result in an unprecedented influx of MAO appeals into the RADV appeals process. HHS' past experience with appeals backlogs, particularly for Medicare FFS claims, has demonstrated that proactive steps to avoid large volumes within an abbreviated period of time is key to ensuring the timely processing of all appeals. Depending upon the number of RADV audit appeals filed by plans, there may be a possible appeals backlog that could lead to significant burden on MAOs and CMS. It can also divert government resources away from other important activities that could also reduce MAO burden, such as finding ways that RADV audits can be performed in quicker succession to the conclusion of any payment year reconciliation period, resulting in future RADV audits being more contemporaneous, which was the topic of significant public comments to the proposed rule.

At the same time, this finalized policy also recognizes our fiduciary duty to protect taxpayer dollars from overpayments and preserves our ability to collect on significant (extrapolated) amounts of overpayments made to plans beginning in PY 2018. We understand that this decision means that certain amounts of improper payments will be left uncollected in those earlier payment years (PYs 2011 through 2017) because we will only be collecting the non-extrapolated improper payments identified for PYs 2011 through 2017 and not the extrapolated overpayments that we will be collecting for PY 2018 and subsequent payment years. However, for the reasons previously described, we believe that the overall long-term success of the RADV program and ultimately the Part C program requires us to consider several issues and balance the collection of extrapolated improper payments with the practical realities of the current RADV program.

We are finalizing our RADV regulations as proposed, with the exception of a change to the payment year in which extrapolation will begin. Specifically, we are—

- Revising § 422.300 to include ''collection of improper payments;''
- Amending § 422.310(e) to announce that extrapolation may be applied in RADV audits for PY 2018 forward and by adding a requirement for MAOs to remit improper payments based on RADV audits in accordance with a manner specified by CMS; [33] and
- Amending § 422.311 by clarifying that recovery of improper payments from MAOs will be conducted according to the Secretary's payment error extrapolation and recovery methodologies and that CMS may apply extrapolation to RADV audits for PY 2018 and subsequent payment years.

While we appreciate the comments received as to potential expansions of MAO appeals rights, we are not finalizing any other changes to the RADV appeals process as part of this final rule because no specific appeals-related policies were proposed.

B. Fee-For-Service Adjuster

1. Description of an FFS Adjuster

As previously described, risk adjustment ensures that MAOs are paid appropriately for their plan enrollees, and section 1853(a)(1)(C) of the Act requires that we calculate risk-adjusted payments to MAOs based on specific criteria, such as age, disability status, gender, institutional status, and health status. As discussed earlier, MAOs' payments are calculated using the CMS–HCC risk adjustment model, which is published each time it is updated (see section 1853(b) of the Act).[34] Additionally, an MAO may only report a diagnosis, and claim the associated payment, when that diagnosis is properly supported by the beneficiary's medical records. Medical records properly support a reported diagnosis when they comply with all CMS data and documentation requirements, which are described in current agency policy documents, including Chapter 7 of the Medicare Managed Care Manual.[35] Plans are also required to submit a sample of medical records for the validation of this risk adjustment data (see 42 CFR 422.310(e)).

Some MAOs have suggested that CMS cannot lawfully enforce the requirement of medical record documentation for diagnosis codes while making payments at the published rates. These MAOs argue that there is a difference in auditing standards between Medicare FFS and MA diagnosis data. In contrast to the MAO-submitted diagnosis data, these MAOs claim that Medicare FFS data is ''unaudited'' by CMS and presumably contains erroneous diagnosis codes not properly supported by beneficiaries' medical records. As a result, they argue, the Medicare FFS data used to calculate MAO payments will understate the cost of treating various conditions. To address the presence of erroneous diagnoses in the FFS claims data used to calibrate the MA payment model, MAOs argue that CMS must raise payment rates to MAOs or relax the documentation standard that CMS applies to reported medical diagnoses to ensure accurate payments. MAOs refer to this concept of a proposed adjustment to the payment rates and/or documentation standard for MAOs as an ''FFS Adjuster.'' These MAOs ground their arguments in section 1853(a)(1)(C)(i) of the Act, which requires the Secretary to adjust payments to MAOs for demographic and health related risk factors so as to ensure ''actuarial equivalence.'' According to these MAOs, an FFS Adjuster would either adjust payment rates (by raising them) or adjust documentation standards (by loosening them) to resolve the alleged incompatibility between the current rates and current documentation standards. In the 2012 methodology, using the term somewhat differently,

[33] See discussion regarding the use of ''may'' in § 422.310(e). This language is not intended to signal that it would be a frequent occurrence to not extrapolate in PY 2018 and future audits; rather, extrapolation is expected to be the standard practice for RADV audits beginning in PY 2018. This will allow CMS with flexibility to not extrapolate in certain limited instances the Agency determines to be appropriate.

[34] *https://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/Announcements-and-Documents.*

[35] *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/mc86c07.pdf.*

CMS said that it would ''apply a Fee-for-Service Adjuster (FFS Adjuster) amount as an offset to the preliminary recovery amount'' calculated for RADV audits under that methodology.

2. Summary of 2018 Proposed Rule

In the 2018 proposed rule, we proposed not to include the FFS Adjuster described in the 2012 methodology in any final RADV payment error methodology. We stated that a study that we conducted found that errors in Medicare FFS claims data do not lead to systematic payment error in the MA program and that, even if there was evidence of systematic payment error, it would be inequitable to only correct payment errors made to audited contracts. We sought comment on our proposal not to use an FFS Adjuster. We also sought comment in our June 28, 2019 **Federal Register** notice and request for additional comment (84 FR 30983) regarding how the statutory minimum levels of the coding pattern adjustment set at section 1853(a)(1)(C)(ii) of the Act bear on the issue of whether or not to apply an FFS Adjuster.

3. Summary of Public Comments

We received numerous comments regarding our proposal to not include an FFS Adjuster in RADV.

Comment: Several commenters expressed support for CMS' proposal not to apply an FFS Adjuster, including the Medicare Payment Advisory Commission (MedPAC).[36] These commenters discussed the study results demonstrating that errors in FFS Medicare claims data do not systematically bias MA risk scores, and said that if such bias existed, applying an FFS Adjuster to RADV would not be the appropriate remedy to address that bias because only a small number of MA plans undergo RADV audits each year. These commenters further asserted that any potential bias from undocumented FFS diagnoses is negligible and that the application of an FFS Adjuster would require significant effort for negligible benefit.

Response: We thank these commenters for their support of not applying an FFS Adjuster to the RADV methodology. We agree with these comments for the reasons described throughout this final rule.

Comment: Some commenters contended that an FFS Adjuster is required to ensure ''actuarial equivalence'' between payments to MA plans and payments under the Medicare FFS program. Some commenters also contended that the ''same methodology'' provision of section 1853(b)(4)(D) of the Act requires the application of an FFS Adjuster in RADV. Other commenters argued that CMS needs to apply an FFS Adjuster to comply with the district court's holding in *UnitedHealthCare Insurance Co.* v. *Azar,* 330 F. Supp. 3d 173 (D.D.C. 2018), *rev'd sub nom. UnitedHealthcare Insurance Co.* v. *Becerra,* 16 F.4th 867 (D.C. Cir. August 13, 2021, reissued November 1, 2021), *cert. denied,* 142 S. Ct. 2851 (U.S. June 21, 2022) (No. 21–1140). A commenter requested that CMS suspend ongoing RADV audits and not begin any new RADV audits until an FFS Adjuster is developed for use in RADV audits and in MAOs' calculations of improper payments.

Response: As a general matter, we believe that it is in the best interest of the Federal Government and taxpayers for CMS to continue RADV audits for the purpose of addressing the high dollar amounts of improper payments, as well as to employ a RADV methodology that does not include the application of an FFS Adjuster. Further, the ''actuarial equivalence'' requirement under section 1853(a)(1)(C) of the Act and ''same methodology'' provision under section 1853(b)(4)(D) of the Act do not require the use of an FFS Adjuster. First, as described by the D.C. Circuit, these provisions do not apply to the obligation to return improper payments for MAO diagnosis codes that are unsupported by medical records. Although the D.C. Circuit did not address the RADV audit context in its decision in *UnitedHealthcare,* this position is consistent with the D.C. Circuit's reasoning in that case. (*See UnitedHealthcare,* 16 F.4th at 869, 891–92.) Second, it would be unreasonable to interpret the Act as requiring a minimum reduction in payments in one provision (the coding pattern provision), while at the same time prohibiting CMS in an adjacent provision (the actuarial equivalence provision) from enforcing those longstanding documentation requirements (by requiring an offset to the recovery amount calculated for CMS audits). (Section 1853(a)(1)(C)(ii) of the Act requires a minimum coding pattern adjustment to reduce the risk scores of all MA beneficiaries, and therefore, MA payment rates. Such a minimum coding pattern adjustment accounts for differences in coding patterns between MA and Medicare FFS, given that MAOs have a greater incentive than FFS providers to report diagnoses.) These points are further explained later in this section.

The first basis for our decision not to apply an FFS Adjuster is because we believe that the actuarial equivalence provision of the statute applies only to how CMS risk adjusts the payments it makes to MAOs, and not to the obligation to return improper payments for diagnosis codes submitted by MAOs to CMS lacking medical record support. This position is consistent with the D.C. Circuit's decision in *UnitedHealthcare.* There, a group of MAOs challenged the Secretary's Part C Overpayment Rule (the ''Overpayment Rule'') (79 FR 29844), which implemented section 6402 of the Affordable Care Act and required MAOs to self-report and return payments associated with MAO diagnosis codes not supported by medical record documentation. The district court invalidated the Overpayment Rule. *UnitedHealthcare,* 330 F. Supp. 3d at 192.

However, the D.C. Circuit reversed the district court, holding that the actuarial equivalence provision applies only to how CMS risk adjusts the payments it makes to MAOs, and not to the obligation of MAOs to return improper payments for diagnosis codes, submitted by MAOs to CMS, lacking medical record support. (*See UnitedHealthcare,* 16 F.4th at 883–887.) The D.C. Circuit also held that even if the actuarial equivalence provision applied, plaintiffs' claims would still fail because they did not meet their burden in showing, either through empirical evidence or persuasive logic, that application of the Overpayment Rule would lead to systematic underpayment of MAOs. (*Id.* at 887 through 891.)

While the D.C. Circuit decision pertained only to the Overpayment Rule and declined to address RADV audits, its reasoning applies just as strongly in the RADV context and supports our conclusion that an FFS Adjuster is not appropriate in a RADV audit. ''The role of the actuarial-equivalence provision is to require CMS to model a demographically and medically analogous beneficiary population in traditional Medicare to determine the prospective lump-sum payments to [MAOs].'' (*Id.* at 870.) The RADV program, like the Overpayment Rule, applies after the fact to require MAOs to refund any payment to which they are not entitled, based on diagnoses that lack support in the medical record. The purpose of RADV audits is to recover payments that were made improperly based on diagnoses not supported by medical record documentation. If a payment is made to an MAO based on a diagnosis code not supported by

[36] *https://www.medpac.gov/wp-content/uploads/import_data/scrape_files/docs/default-source/comment-letters/08122019_medpac_ma_radv_comment_v3_sec.pdf.*

medical record documentation, the entire payment for that code is in error and should be recovered in full because the payment standard has not been met. RADV audits only address issues relating to diagnoses that are not supported by valid medical record documentation.

Comment: Several commenters expressed concern that our proposal to extrapolate without applying an FFS Adjuster to payment recoveries achieved through RADV audits will overlap with coding pattern adjustments or create a double-recovery by CMS.

Response: Section 1853(a)(1)(C)(ii) of the Act requires the implementation of a minimum coding pattern adjustment to reduce risk scores of all MA beneficiaries, and therefore MA payment rates. This minimum coding pattern adjustment accounts for differences in coding patterns between MA and Medicare FFS, given that MAOs have a greater incentive than FFS providers to report diagnoses. To meet this requirement, each year, CMS has implemented an adjustment to offset the effects on MA risk scores of higher levels of coding patterns in MA relative to FFS. (See section 1853(a)(1)(C)(ii) of the Act.) Under section 1853(a)(1)(C)(ii)(III) of the Act, the minimum adjustment factor for 2019 and each subsequent year is 5.90 percent. CMS has, each year, implemented the minimum coding pattern adjustment reduction required by statute.

As CMS has explained in its annual MA advance notices and rate announcements, the coding pattern adjustment, unlike RADV, is not intended to address unsupported or inaccurate codes reported by MAOs in particular instances but only the general practice, relative to Medicare FFS, of reporting codes with greater intensity, including codes that are nonetheless accurate.[37] Contrary to some commenters' assertions, the coding pattern adjustment provision of the statute actually supports our decision not to apply an FFS Adjuster, and we rely on that conclusion here as a second basis for our decision not to apply an FFS Adjuster. We briefly review the history of that provision:

- The coding pattern adjustment was enacted as part of the Deficit Reduction Act of 2005. (Pub. L. 109–171 (February 8, 2006), codified at 42 U.S.C. 1395w–23(a)(1)(C)(ii)(I) and (II).)
- The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), section 1853(a)(1)(C)(ii) of the Act was amended to require that the adjustment be at least 4.71 percent in 2014, rising annually to at least 5.7 percent in 2019. (Pub. L. 111–152, tit. I, subtit. B, section 1102(e), 124 Stat. 1046.) (For payment years 2010 to 2013, CMS applied a 3.41 percent adjustment.[38])
- Section 1853(a)(1)(C)(ii)(III) of the Act was subsequently amended again in the American Taxpayer Relief Act of 2012 to require the Secretary to make a reduction of at least 4.91 percent in 2014, rising to at least 5.9 percent by 2019. (Pub. L. 112–240, tit. VI, subtit. C, section 639, 126 Stat. 2357.)

CMS audits reinforce longstanding documentation requirements. We believe it would be unreasonable to interpret the Act as requiring a minimum reduction in payments in one provision (the coding pattern provision), while at the same time prohibiting CMS in an adjacent provision (the actuarial equivalence provision) from enforcing those longstanding documentation requirements (by requiring an offset to the recovery amount calculated for CMS audits). To the contrary, because the Act requires CMS to reduce payments to MAOs by at least a specific minimum percentage, the only reasonable interpretation of the Act is that CMS would pay MAOs at those reduced rates, under the existing payment model,[39] and enforce the longstanding documentation requirements through CMS' audits.

Comment: Several comments disputed our suggestion that addressing any diagnosis error in FFS Medicare claims through a RADV FFS Adjuster would introduce inequities between plans that are audited and plans that are not audited. Specifically, commenters discussed that not applying an FFS Adjuster would be a disadvantage to the MA plans selected for RADV audits because the audited plans are held to a higher, inappropriate standard of medical documentation than unaudited plans.

Response: As we stated in the proposed rule, the purpose of RADV audits is to recover improper payments resulting from diagnoses that are not supported in the medical record documentation, which is a longstanding documentation standard that applies to all plans equally and regardless of whether the plan is subject to a RADV audit. The objective of an audit is to promote fair and impartial recovery of improper payments due to insufficient documentation in accordance with regulations. As we stated in the proposed rule, even if systematic error exists, it would be inequitable to correct such errors in the payments made only to audited plans through the application of an FFS Adjuster. We also do not intend for this conclusion to suggest that we believe an FFS Adjuster is appropriate or necessary outside of the RADV context.

Our position is consistent with the conclusion of the D.C. Circuit, which is that the actuarial-equivalence requirement is not an ''entitle[ment] . . . to a precise payment amount'' for a Medicare Advantage insurer, but only ''an instruction to the Secretary regarding the design of the risk adjustment model as a whole . . . describ[ing] the type of 'payment amount[s]' that the risk adjustment model should produce''; ''[i]t does not directly govern how CMS evaluates the validity of diagnoses or defines 'overpayment.' '' (*UnitedHealthcare,* 16 F.4th at 885–86).

Comment: Several commenters asserted that moving forward without an FFS Adjuster would render the RADV auditing requirements flawed, unclear, stringent and unrealistic, and increase the burden placed on providers to ensure accuracy as a result. Specifically, commenters believe this ''more stringent audit expectation'' during a physician shortage would not serve the public interest and would be detrimental to the MA program. A commenter argued that increased auditing requirements for MA providers would be contrary to CMS' other efforts focused on reducing unnecessary provider burden. Other commenters also noted burden for patients, while others believe that this policy will have a disproportionate impact on smaller, not-for-profit special needs plans with fewer resources to pay audit recoveries.

Response: This final rule does not impose a new documentation standard on MA providers, nor is there a distinction in the documentation standards between the MA and FFS Medicare programs. Section 1815(a) of the Act (Medicare Part A) states that ''no such payments shall be made to any

[37] Announcement of Calendar Year (CY) 2011 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter at 19 (April 5, 2010); *see also* Announcement of Calendar Year (CY) 2017 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter at 54 (April 4, 2016); Announcement of Calendar Year (CY) 2012 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter at 37–38 (April 4, 2011).

[38] Announcement of Calendar Year (CY) 2010 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies at 19–29 (April 6, 2009).

[39] Any changes to the CMS–HCC payment model are published in the annual payment notice.

provider unless it has furnished such information as the Secretary may request in order to determine the amounts due such provider under this part for the period with respect to which the amounts are being paid or any prior period.'' Additionally, Section 1833(e) of the Act (Medicare Part B) states that ''[n]o payment shall be made to any provider of services or other person under this part unless there has been furnished such information as may be necessary in order to determine the amounts due such provider or other person under this part for the period with respect to which the amounts are being paid or for any prior period.'' Section 1172 of the Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104–191) also requires both providers and health plans to use standard content, formats, and coding for health care transactions. In addition, the Secretary has adopted various organizations' formats and code sets, including the ICD–10 and the ICD Guidelines, which is the national standard for both FFS and MA. See 45 CFR 162.1002. CMS has always required proper medical record documentation in order for any reported diagnosis code or claim to be valid. (*See, for example, Becerra,* 16 F. 4th at 869 (''[n]either Congress nor CMS has ever treated an unsupported diagnosis for a beneficiary as valid grounds for payment to a Medicare Advantage insurer'').) That is the consistent policy throughout the Medicare program, including MA and FFS.[40] (See 42 CFR 422.310 (''MA organizations must submit data that conform to CMS' requirements for data equivalent to Medicare fee-for-service data, when appropriate, and to all relevant national standards.'').) As such, we do not believe that RADV audits impose any new level of burden on providers or violate any initiatives to reduce that burden.

This rule, rather than the 2012 methodology, will govern CMS' conduct of RADV audits. Nonetheless, we did not intend the 2012 methodology to suggest that contract-level RADV audits create a different ''documentation standard'' for MAOs than the standard that applies to traditional Medicare providers, or that any FFS Adjuster should set a permissible rate for the submission of invalid diagnosis codes. After a lengthy consideration of these issues, and more than a decade of additional experience with the Medicare Advantage program, we have decided not to apply an FFS Adjuster in RADV audits because: (1) we believe, consistent with the D.C. Circuit's decision in *UnitedHealthcare,* that the actuarial equivalence provision of the statute applies only to how CMS risk adjusts the payments it makes to MAOs and not to the obligation of MAOs to return improper payments (that is, payments for unsupported diagnosis codes); and (2) it would not be reasonable to read the Act as requiring a reduction in payments to MAOs by a statutorily-set minimum adjustment in the coding pattern adjustment, while at the same time prohibiting CMS from enforcing longstanding documentation requirements by requiring an offset to the recovery amounts calculated for CMS audits.

Comment: A commenter opined that the cost to stakeholders of extrapolating payment error recoveries without an FFS Adjuster outweighed any benefits to the rule. The commenter noted that CMS' analysis of the regulatory impact in the proposed rule ignored changes in MA bids, including reduced or eliminated product availability, increased administrative costs to MAOs for auditing provider medical record documentation and coding, and the cost of responding to RADV audits. Other commenters argued that extrapolation, along with the elimination of the FFS Adjuster, would threaten the MA program more generally through consequences on the bidding process, reduced incentives for cost savings, reduced benefits to enrollees, and increased premiums. A commenter requested that CMS consider that selecting contracts that represent a disproportionate amount of an MAO's business for RADV audits may drive smaller organizations out of the MA program.

Response: It is our objective to strengthen the MA program by ensuring that the payments received by MAOs are accurate and that the Federal Government recovers any funds, representing taxpayer dollars, to which an MAO was not entitled. Our RADV audit methodology, which will not include an FFS Adjuster, should not have any material impact on MAOs' bidding practices or offerings because any funds recovered under RADV would be for payments to which the MAO was never entitled. Consistent with a prior GAO recommendation to focus on MAO contracts most likely to have high rates of improper payments, we have also shifted our RADV approach from a largely untargeted, random sampling from a universe of most of an audited MAOs' enrollees to a more targeted, risk-based approach that incorporates risk factors, such as HCCs that were more likely to be in error. This current approach enables the Federal Government to focus its limited auditing resources on areas where improper payments are more likely to be found, and reduces audit burden on those MAOs that are not at high risk of improper payments. We believe, for example, that MAOs that implement meaningful steps to reduce the reporting of unsupported diagnoses will be less likely in the future to be chosen for a CMS RADV audit because the indicators of potential improper payment risk will be greatly reduced in the risk adjustment data.

Comment: A commenter requested that CMS withdraw the proposed RADV provisions and develop a new audit procedure in concert with industry stakeholders. Several commenters noted that CMS has announced no plans to address FFS Medicare diagnosis errors in the original payments to plans. These commenters assert that CMS' failure to provide a general adjustment for payment bias does not justify our proposal not to apply an FFS Adjuster for audited plans.

Response: We believe these comments are outside the scope of the proposed rule's provisions. The RADV program enforces the longstanding medical record documentation regulatory requirement as it relates to risk adjustment, not the analyses performed to determine the risk adjustment coefficients used to calculate risk scores, and thus risk-adjusted payments. It would be inappropriate to address these determinations and calculations via this final rule's RADV payment error methodology.

Comment: Several commenters requested that we provide additional disclosures of information related to our FFS Adjuster study to enhance transparency, some arguing that the Information Quality Act (Pub. L. 106–554) requires disclosure of such materials. For example, a commenter requested copies of the medical records reviewed during the FFS Adjuster study and diagnostic coding protocols followed by reviewers, citing the Information Quality Act as the justification for this request. Another stated that additional data is needed in order to provide a meaningful response, such as the HCCs mapped from diagnoses on the claims from Medicare FFS data. A commenter argued that the RADV provisions violated the Administrative Procedures Act (APA) due to the disclosure of insufficient

[40] FFS Medicare claims are subject to error correction and payment adjustment when they are based on diagnosis codes not supported by the medical record. *See* Medicare Program Integrity Manual sections 3.3.1.1, 3.3.2.1, 3.6.2.4, 6.5.2, 6.5.3., *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/internet-Only-Manuals-IOMs-Items/CMS019033.*

methodology or data to support these policies. Another criticized the extension of the proposed rule comment period beyond 60 days as favoritism by CMS for MAOs as opposed to other stakeholders. Finally, a commenter asserted that the study was not compliant with actuarial professional standards because CMS did not identify a qualified actuary involved in the study and did not release information about how the study or proposed policy complied with the Actuarial Standards of Practice.

Response: Our approach after the release of the proposed rule was to ensure as much transparency as possible so that stakeholders could provide meaningful comment to our proposal not to apply an FFS Adjuster. To this end, we maximized data availability to the public and provided extended time for stakeholders to examine and opine on the data used in the study. As stated previously, since the publication of the FFS Adjuster Study on October 26, 2018, and the 2018 proposed rule on November 1, 2018, we published data and several related notices to further enhance transparency and to encourage robust public comment, including enhanced discussions of the methodology and assumptions used to conduct the study, extensions to the comment period of the proposed rule, and the release of the results of a replicated study. The data and methodology we disclosed should sufficiently allow for stakeholders to evaluate and comment on the study.

Comment: As part of the comments received, MAOs analyzed and assessed our FFS study and the data, assumptions, and methodology it relied on. Many of these comments provided lengthy analysis and critique, and some commenters performed counter-studies. Commenters criticized CMS' recalibration of the CMS–HCC model, the Inflated Post-Audit Risk Score (IPARS) adjustment, and the decision to convert claim-level discrepancy rates to beneficiary-level discrepancy rates.

Response: We appreciate the lengths that commenters went to examine and provide comment on our study, and we agree that any study that relies on assumptions, estimates, and projections has inherent limitations. However, the finalization of our proposal not to apply an FFS Adjuster does not depend on the results of our study. Even if systematic payment error exists, it does not impact the requirement that submitted diagnoses must be adequately supported by medical records. An adjustment factor to account for hypothetical systematic payment differences would not be appropriately applied in the RADV context, even if such systematic differences existed. Additionally, our decision relies on our reading of the coding pattern adjustment statutory provision and its minimum levels.

Further, although we are not relying on the empirical findings of our study as the basis for our decision not to apply an FFS Adjuster, we do not agree with those commenters who claim that our study or their counter-studies provide evidence that FFS errors systematically reduce payments to MAOs.

First, the magnitude of over-coding (diagnosis codes unsupported by medical records) in the Medicare FFS data is much smaller than some commenters have suggested. While some have claimed that the rate is as high as over 30 percent, our study calculated beneficiary-level discrepancy rates for each HCC that were on average only about 3 percent, with a median of 1.8 percent. The beneficiary-level error rate, and not the claim-level error rate, is the appropriate measure of inappropriate coding because an HCC is supported if just one claim in the relevant year for that beneficiary is supported.

Second, the FFS data contains significant under-coding (unreported diagnosis codes that have medical record support), which would likely offset the effects of FFS over-coding, to the extent any such effects exist. Although accurate coding supported by the medical record is required in Medicare FFS, Medicare FFS providers have less of an incentive to report all valid, supported codes because this does not increase their payments as directly as it does for MAOs in Part C. This is supported by the extant literature.[41] Significantly, the commenters' counter-studies purporting to show that Medicare FFS errors systematically reduce payments to MAOs do not adequately address the offsetting effects of Medicare FFS under-coding.

Third, the effects of Medicare FFS over-coding are also offset by the increased costs associated with that over-coding. As noted previously, Medicare FFS claims are subject to error correction and payment adjustment when they are based on diagnosis codes not supported by the medical record. (See Medicare Program Integrity Manual sections 3.3.1.1, 3.3.2.1, 3.6.2.4, 6.5.2, 6.5.3.) Thus, if CMS were to delete the unsupported Medicare FFS codes used to calibrate the risk adjustment model, it would also have to remove certain expenditures associated with those codes that should have been denied for payment. The purpose of the IPARS adjustment was to account for this relationship and the offsetting effects of costs associated with FFS over-coding.[42] The commenters' counter-studies did not adequately address these effects.

Fourth and finally, we note that the counter-studies purporting to prove that an FFS Adjuster in a specific amount is required employed widely differing methodologies and arrived at widely varying estimates for their FFS Adjuster. For example, one commenter claimed that an FFS Adjuster of 9 percent would be appropriate based on the analysis they conducted, while another claimed the appropriate amount would be 33 percent based on their analysis. The fact that these studies can be conducted in various different ways and produce such a wide range of results raises the question whether an FFS Adjuster is even a reasonable or practical means of addressing any risk adjustment coefficients that were too low and any that were too high, and if that was because of any over- and/or under-coding by FFS providers. It also further shows the complexity of the issues in measuring the effects of both under-coding and over-coding in FFS, and the fact that any related study must rely on assumptions, estimates, and projections,

[41] Kronick and Welch found that positive coding intensity in the MA risk scores increased faster than comparable FFS risk scores. Richard Kronick & Pete Welch, *Measuring Coding Intensity in the Medicare Advantage Program,* Medicare & Medicaid Research Review, 2014 Vol. 4, No. 2, at E1–E19. *https://www.cms.gov/mmrr/downloads/mmrr2014_004_02_a06.pdf.*

Frogner et al. examined the impact of incomplete FFS coding in the context of the CMS–HCC model and found that it biases payments to MAOs upwards. Bianca K. Frogner, Gerard F. Anderson, Robb A. Cohen & Chad Abrams, *Incorporating New Research Into Medicare Risk Adjustment,* 49 Medical Care 295 (2011). *https://journals.lww.com/lww-medicalcare/Fulltext/2011/03000/Incorporating_New_Research_Into_Medicare_Risk.11.aspx.*

Welch et al. found that regional variation of diagnostic coding in FFS was related to case-fatality. H.G. Welch, S.M. Sharp, D.J. Gottlieb, J.S. Skinner & J.E. Wennberg, *Geographic Variation in Diagnosis Frequency and Risk of Death Among Medicare Beneficiaries,* 305 JAMA 1113 (2011). That is, FFS Medicare enrollees have variable diagnostic coding. *https://jamanetwork.com/journals/jama/fullarticle/646152.*

Finally, MedPAC (1998) demonstrated that the persistence in diagnostic coding for FFS beneficiaries was low from year to year, even for conditions that were serious and permanent, documenting incomplete coding for FFS enrollees. Medicare Payment Advisory Commission, Report to the Congress: Medicare Payment Policy, Vol. 1 at 32, Vol. 2 at 15–18 (1998).

[42] We note that applying the IPARS adjustment rather than directly studying this effect empirically is an inherent limitation of our study. As a result, our study's empirical findings are limited to the conclusion that attenuation bias, an effect described in the June 28, 2019 Addendum, does not systematically reduce payments to MAOs.

and will, therefore, have inherent limitations.

Thus, we do not agree with commenters who claim that our study or their counter-studies provide evidence that Medicare FFS errors systematically reduce payments to MAOs. For a complete discussion of the study methodology and all of its conclusions, see the November 1, 2018, proposed rule, the FFS Adjuster Study and Technical Appendix published on October 26, 2018, the study Addendum published June 28, 2019, and the other study documents previously described in this rule.

4. Summary of Final Policies

We are finalizing our proposal to not apply an FFS Adjuster to RADV audits because the ''actuarial equivalence'' and ''same methodology'' provisions do not apply to the obligation of an MAO to report and return improper payments for diagnoses lacking medical record support, including those improper payments identified during a RADV audit. We have also concluded that it would not be reasonable to interpret the Act as requiring a reduction in payments to MAOs by at least a statutorily-set minimum percentage pursuant to the coding pattern adjustment, while at the same time prohibiting CMS from enforcing longstanding documentation requirements by requiring an offset to the recovery amounts calculated for CMS audits.

While the D.C. Circuit's decision in *UnitedHealthcare* pertained to the Part C Overpayment Rule, its reasoning supports our conclusion that an FFS Adjuster is neither required nor appropriate in the context of RADV. ''The role of the actuarial-equivalence provision is to require CMS to model a demographically and medically analogous beneficiary population in traditional Medicare to determine the prospective lump-sum payments to [MAOs].'' (*UnitedHealthcare,* 16 F.4th at 870.) The RADV program, like the Overpayment Rule, applies after the fact to require MAOs to refund any payment to which they are not entitled, based on diagnoses that lack support in the medical record.

In the proposed rule, we also discussed a study that we conducted that concluded that diagnosis error in FFS claims data does not lead to systematic payment error in the MA program. We also stated that, even if systematic error exists, it would be inequitable to correct such errors in the payments made to audited contracts only. Furthermore, in the interest of transparency, CMS publicly released additional data underlying the study cited in the proposed rule related to the FFS Adjuster, provided information on a replication of our original study, and extended the comment period to allow more time for stakeholders to review the data and provide comment.

Despite our discussion of the FFS Adjuster study in the proposed rule and efforts to achieve transparency, we are not relying upon the study to reach our conclusion that an FFS Adjuster is not appropriate in the RADV context. We recognize that any study that aims to demonstrate the impact of potential error in Medicare FFS diagnoses data on MA requires the use of certain assumptions, estimations, and projections, and that any theoretical study has natural limits that must account for those assumptions. However, that does not change our ultimate conclusion that, even if systematic payment error exists, an adjustment factor to account for this error would not be appropriately applied in the RADV context. We also do not intend for this conclusion to suggest that we believe an FFS Adjuster is appropriate or necessary outside of the RADV context.

Our position is consistent with the conclusion of the D.C. Circuit, which is that the actuarial-equivalence requirement is not an ''entitle[ment] . . . to a precise payment amount'' for a Medicare Advantage insurer, but only ''an instruction to the Secretary regarding the design of the risk adjustment model as a whole . . . describ[ing] the type of 'payment amount[s]' that the risk adjustment model should produce''; ''[i]t does not directly govern how CMS evaluates the validity of diagnoses or defines 'overpayment.''' (*UnitedHealthcare,* 16 F.4th at 885–86.)

IV. Collection of Information Requirements

As defined under 5 CFR 1320.3(b) and (c) of the Paperwork Reduction Act of 1995 (PRA's) (44 U.S.C. 3501 *et seq.*) implementing regulations, this final rule does not impose any new or revised ''collection of information'' requirements or related ''burden.'' More specifically, the utilization of extrapolation will not affect the existing process for MAOs submitting medical record documentation pursuant to RADV audits under § 422.310(e). The existing requirements for MAOs submitting medial record documentation are active and approved by OMB under control number 0938–1000 (CMS–10191). As this final rule is not imposing any new or revised ''collection of information'' requirements or related ''burden'', this rule is not subject to the requirements of the PRA.

V. Regulatory Impact Analysis

A. Statement of Need

This final rule clarifies certain program integrity policies in the MA program, specifically, the recovery of improper payments identified during RADV audits, and aligns with the Administration's focus on the fiscal sustainability of the MA program and the interests of Medicare beneficiaries, providers, and MAOs.

The improper payment measurements conducted each year by CMS, which are included in the HHS Agency Financial Report, as well as audits conducted by the HHS–OIG, have demonstrated that the MA program is at high risk of improper payments. In FY 2021 (based on CY 2019 payments), we calculated that the agency made over $15 billion in erroneous overpayments.[43] (The improper payment measurements CMS conducts for all programs include both overpayments and underpayments.) The HHS–OIG has also released several reports over the past few years that also demonstrate a high risk of improper risk adjustment payments in the MA program,[44] and has identified the MA program as one of the top management and performance challenges facing HHS for several years due to the high rate of improper payments.[45] The Medicare program, including MA, has also been identified by the GAO as a high-risk

[43] HHS, FY 2021 HHS Agency Financial Report, *https://www.hhs.gov/sites/default/files/fy-2021-hhs-agency-financial-report.pdf.*

[44] For example, see reports: Medicare Advantage Compliance Audit of Specific Diagnosis Codes That Anthem Community Insurance Company, Inc. (Contract H3655) Submitted to CMS, May 21, 2021, *https://oig.hhs.gov/oas/reports/region7/71901187.asp;* Medicare Advantage Compliance Audit of Specific Diagnosis Codes That Blue Cross Blue Shield of Michigan (Contract H9572) Submitted to CMS, February 24, 2021, *https://oig.hhs.gov/oas/reports/region2/21801028.asp;* Medicare Advantage Compliance Audit of Specific Diagnosis Codes That Highmark Senior Health Company (Contact H3916) Submitted to CMS, September 29, 2022, *https://oig.hhs.gov/oas/reports/region3/31900001.asp;* Medicare Advantage Compliance Audit of Specific Diagnosis Codes That Cariten Health Plan, Inc., (Contract H4461) Submitted to CMS, July 18, 2022, *https://oig.hhs.gov/oas/reports/region2/22001009.asp;* Medicare Advantage Compliance Audit of Diagnosis Codes That SCAN Health Plan (Contract H5425) Submitted to CMS, February 3, 2022, *https://oig.hhs.gov/oas/reports/region7/71701169.asp;* Medicare Advantage Compliance Audit of Diagnosis Codes That Humana, Inc., (Contract H1036) Submitted to CMS, April 19, 2021, *https://oig.hhs.gov/oas/reports/region7/71601165.asp.*

[45] See OIG, 2021 Top Management and Performance Challenges Facing HHS, pg. 13, *https://oig.hhs.gov/reports-and-publications/top-challenges/2021/index.asp.*

program due to the risk of substantial improper payments.[46]

RADV audits are CMS' main corrective action for improper overpayments in the MA program made to MAOs when there is a lack of documentation in the medical record to support the diagnoses reported for risk adjustment. The RADV audits confirm the presence of the diagnoses related to the enrollee's HCC profile through the review of certain categories of medical records submitted by the MAOs for the purpose of a RADV audit. Risk adjustment discrepancies are identified when an enrollee's HCCs used for payment (which is, again, based on MAO self-reported data) differ from the HCCs assigned based on the medical record review performed by CMS through the RADV audit process. Risk adjustment discrepancies can be aggregated to determine an overall amount of payment error for sampled enrollees. In turn, this payment error for the sample of contract enrollees can be extrapolated to calculate a payment error estimate for the universe of enrollees from which the sample is selected, within specified confidence intervals.

The policies in this final rule are essential to having an effective RADV program that protects taxpayer dollars and ensures oversight of the MA program.

B. Overall Impact

We examined the impact of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

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. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with significant regulatory action/s and/or with economically significant effects ($100 million or more in any 1 year). Based on our estimates, OMB's Office of Information and Regulatory Affairs has determined this rulemaking is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act). Accordingly, we have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the rulemaking. Finally, in accordance with the provision of the Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

Section 202 of UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. In 2022, that threshold is approximately $165 million. This final rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $165 million in any one year.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than $8.0 million to $41.5 million in any 1 year. This final rule affects MAOs with a minimum threshold for small business size of $41.5 million (*see the Small Business Administration's website at http://www.sba.gov/content/small-business-size-standards*). This final rule additionally affects hospitals (NAICS subsector 622) and a variety of provider categories, including physicians and specialists (NAICS subsector 621).

To clarify the flow of payments between these entities and the Federal Government, note that MAOs submit bids (that is, proposed plan designs and projections of the revenue needed to provide those benefits, divided into three categories—basic benefits, supplemental benefits, and Part D drug benefits) in June for operation in the following contract year. These bids project payments to hospitals, providers, and staff as well as the cost of administration and profits. These bids in turn determine the payments from the Medicare Trust Fund to the MAOs that pay providers and other stakeholders for their provision of covered benefits to enrollees in MA plans. Consequently, our analysis will focus on MAOs.

There are various types of Medicare health and drug plans, including MAOs, demonstrations, section 1876 cost plans, Part D prescription drug plans (PDPs), and PACE organizations. There are a variety of ways to assess whether MAOs meet the $41.5 million threshold for small businesses. The assessment can be done by examining net worth, net income, cash flow from operations, and/or projected claims as indicated in their bids. Using projected monetary requirements and projected enrollment for 2018 from submitted bids, 32 percent of the MAOs fell below the $41.5 million threshold for small businesses. Additionally, an analysis of 2016 data shows that 32 percent of all MAOs fall below the minimum threshold for small businesses.

If a rule potentially has a significant impact on a substantial number of small entities, the rule must discuss steps taken, including alternatives, to minimize the burden on small entities. While some of the entities affected by this rule are not-for-profit organizations and small businesses, the impact is not significant. No changes are made to long-standing audit documentation standards as a result of this rule; therefore, there is no significant impact to small entities (or any entities). MAOs provide medical record documentation to CMS as a normal business practice pursuant to RADV audits. Consequently, the Secretary has certified that this final rule will not have a significant economic impact on a substantial

[46] *https://www.gao.gov/highrisk/medicare-program-improper-payments.*

number of small entities, and we have met the requirements of the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. Therefore, the Secretary has certified that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals, and as a result we are not preparing an analysis for section 1102(b) of the Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. Because this final rule does not impose any substantial costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

C. Regulatory Review Cost

If regulations impose administrative costs on reviewers, such as the time needed to read and interpret this final rule, then we should estimate the cost associated with regulatory review. There are approximately 750 MA contracts (of which, 65 MA contracts include PDPs). We assume each entity will have one designated staff member who will review the entire rule. Other assumptions are possible and will be reviewed after the calculations.

Using the 2021 wage information from the Bureau of Labor Statistics (BLS) for medical and health service managers (code 11–9111), we estimate that the cost of reviewing this rule is $115.22 per hour, including fringe benefits and overhead costs (*http://www.bls.gov/oes/current/oes_nat.htm*). Assuming an average reading speed for technical material of 200 words per minute, we estimate that it will take approximately 2 hours for each person to review this final rule. For each entity that reviews the rule, the estimated cost is therefore, $230.44 (2 hours * $115.22). Therefore, we estimate that the total cost of reviewing this regulation is $172,830 ($230.44 * 750 reviewers).

Note that this analysis assumes one reader per contract. Some alternatives include assuming one reader per parent entity. Using parent organizations instead of contracts would reduce the number of reviewers to approximately 500 (assuming approximately 250 parent organizations), and this would reduce the total cost of reviewing by a third. However, we believe it is likely that reviewing will be performed at the contract level. The argument for this is that a parent organization might have local reviewers; even if that parent organization has several contracts that might have a reader for each distinct geographic region, to identify effects of provisions specific to that region.

D. Detailed Economic Analysis

This final rule creates regulations to govern the collection of extrapolated audit findings in MA. As we develop our approach to statistical sampling and extrapolation, we are taking account of the recommendations of the 2016 GAO report entitled, ''Fundamental Improvements Needed in CMS' Effort to Recover Substantial Amounts of Improper Payments.'' The GAO recommended that CMS select plans based on the risk for improper payments. Prior to the GAO report, CMS selected stratified random samples of enrollees during RADV audits, including our 2011 to 2013 audits for which we proposed to apply the policies in this rule. However, beginning with the 2014 audit year, CMS began incorporating the potential risk of improper payments to MAOs, based on past audit findings and other factors, into selecting enrollee samples for audits. Accordingly, CMS expects to be more effective in identifying improper payments in future audit years.

To clarify in more detail how the final rule impacts the recovery audit process, we note the following:

- The Part C Improper Payment Measurement audits are conducted annually to measure payment error in the Medicare Part C program. After defining the eligible population, a representative sample of beneficiaries from risk adjustment eligible contracts are selected for medical record review. MAOs submit medical record documentation to substantiate the CMS–HCCs payments sampled by CMS for each year's Part C Improper Payment Measurement. Certified coders code the medical records, and the findings are used to recalculate risk scores for each sampled beneficiary. The difference between the payment risk scores and the recalculated risk scores is termed Risk Adjustment Error. Validation results from the sample are extrapolated to the broader Part C population to produce payment error estimates that meet the PIIA requirements for the payment year. No recoveries are made through these audits.
- Findings from the Part C Improper Payment Measurement and contract-level audits are used to help identify cohorts of beneficiaries for which CMS may be most at risk for making improper payments to MAOs. While CMS has flexibility to decide how to focus audits, CMS intends to focus audits on such MAOs in the future, and has been taking a more focused approach on areas of high risk of improper payments starting with the PY 2014 RADV audits.
- By better targeting contract-level RADV audits based on MAOs' risk of receiving improper payments, CMS expects to have a sentinel effect and reduce the historical Part C improper payment rate over time.

1. Expected Impact of These Provisions

While we cannot fully estimate the quantitative impact of this provision, we can clearly identify certain components of impact. We start with some basic facts:

- With extrapolation applied to audit findings for payment years 2018 and later, we would realize a positive return on investment. The annual cost per year for the contract-level RADV audit program activities, with or without the changes finalized in this rule, is approximately $51 million.
- Extrapolating audit findings does not increase the cost burden on the plan. The cost to the plan of complying with a RADV audit is neither the subject of nor affected by this provision.
- We estimate that findings from audits of MAO contracts for PYs 2011, 2012, and 2013 will identify a total of $683.2 million in extrapolated improper payments. This $683.2 million represents a transfer from the Federal Government to insurers, because it reflects improper payments for human coding error which CMS paid to MAOs. Although we will not exercise our authority to seek extrapolated contract-level recoveries for these payment years, we refer to the $683.2 million in improper payments to estimate future expected recoveries from finalizing this rule.
- 30 contracts per year were audited in PYs 2011 through 2013.
- Approximately 80 percent of the audited contracts in 2011 through 2013 had findings of improper payments.

Using this data, we can conclude as follows:

- $683.2 million divided by 3 audit years is $227.7 million per audit year.
- $227.7 million per audit year divided by 24 contracts (30 contracts multiplied by 0.80) with audit findings

per year is approximately $9.5 million in findings per contract per year.

• As we are adopting GAO recommendations by focusing on contracts at higher risk for improper payments, if the average level of audit findings per contract, at a minimum, holds constant, the $9.5 million per contract with audit findings per year multiplied by 30 contracts with audit findings per year would produce approximately $285 million in improper payment recoveries per audit year.[47]

With extrapolation applied to audit findings beginning with 2018 payment year audits, the expected level of recovery in calendar year 2025 (the year in which we project to initiate improper payment recoveries for PY 2018 audits) would produce $428.4 million in net recovery (that is, $479.4 million minus the annual cost of the RADV program of $51 million). However, we note that while non-extrapolated recoveries would likely result in an average of $8.2 million in estimated improper payment recoveries associated with each audited payment year, the RADV audit program would not achieve positive net recoveries per year without the RADV rule (see Table 2).

• Improper payment recoveries in years 2025 and later increase based on projected rates of growth in MA spending. The 10-year impact of this final rule is estimated in Table 3. Estimating recovery amounts per year is difficult for the following reasons:

• The improper payment rate per year, as indicated in the reports of the CMS Chief Financial Officer, have been declining and are likely to continue to decline due to the impact that these RADV audits have on MAO efforts to reduce the reporting of unsupported HCCs.

• The aggregate amount paid to MAO contracts is increasing due to enrollment growth and other cost inflationary factors. The Office of the Actuary at CMS annually publishes a Trustees Report that contains projected annual MA enrollment in aggregate. All other things being equal, the increase in enrollment will cause nominal dollars in error to increase. The historical decline in the error rate may or may not offset the increase due to increasing enrollment, making a projection difficult.

• We previously indicated that acceptance of GAO recommendations would facilitate auditing contracts with cohorts of enrollees associated with higher degrees of risk for CMS making improper payments, and therefore assume there would be findings in all contract audits.

For the reasons cited previously in this section, we are increasing the annual estimate of recoveries of improper payments to the Medicare Trust Fund at the same rate as the projected growth in MA spending stated in the FY 2023 President's Budget, beginning with $479.4 million for 2025 (when we anticipate beginning to receive extrapolated recoveries). In 2023 and 2024, we estimate receiving approximately $13.1 million and $28.0 million, respectively, in non-extrapolated recoveries from 2011 through 2013 and 2014 and 2015 payment year audits. Accordingly, the result would be negative net recovery amounts of $37.9 million ($13.1 million minus the $51 million annual cost of the RADV audit program) in 2023 and $23 million ($28 million minus $51 million) in 2024.

In total, the estimated recovery amount from 2023 through 2032 is $4.7 billion (see Table 3). This money is a reduction in spending of the Medicare Trust Fund resulting mostly from recoveries (or transfers) from MAOs to the Federal Government; there will be no money transferred to enrollees.

The intent of this rule is to protect taxpayer dollars and ensure oversight of the MA program, in part by reducing the Part C improper payment rate.

2. Alternatives Considered

This rule includes transfers from MAOs to the Federal Government. The aggregate impact of each of these over 10 years is approximately $4.7 billion (see Table 3). Various alternatives to this rulemaking were considered, including the use and timing of extrapolation, as well as the application of an FFS Adjuster. These alternatives are described in this section of this rule.

a. Alternatives Related to the Extrapolation of RADV Findings

As an alternative to our decision to extrapolate our RADV audits beginning in PY 2018, we considered policies whereby we would not extrapolate and would only collect improper payments associated with sampled enrollees as a result of RADV audits. While such a policy would likely be favorably received by MAOs, it would result in a drastic reduction in potential recoveries and dilute the sentinel impact that the RADV program has on reducing the Part C improper payment rate. Specifically, annual net recoveries of improper payments (that is, estimated collections from past audits minus the estimated annual audit program costs) would be reduced from approximately $234 million[48] to negative $42.8 million (see Table 2). Given the overall cost of $51 million per year to administer the RADV program, this would result in a negative return on investment of approximately $6.2:1 (negative $51 million divided by $8.2 million). This would be in direct conflict with our responsibilities under the PIIA to reduce improper payments and fiduciary responsibility to recover improper payment from the Medicare Trust Funds, and therefore, this alternative was not an acceptable alternative to CMS.

We also considered whether to apply extrapolation beginning in PY 2011, as proposed, as well as other payment years after PY 2011. Beginning extrapolation in PY 2011 would result in the collection of approximately $2 billion in improper payments for PYs 2011 to 2017, in contrast to the $41.1 million in improper payments we estimate to collect for these years as a result of this final rule. While we believe that applying extrapolation to RADV findings beginning in PY 2011 (or other payment year after PY 2011) would be a supportable decision and consistent with our mandate to protect taxpayer dollars, we determined that the overall long-term success of the RADV program (and ultimately the MA program) requires us to consider the projected level of effort and likelihood of collecting improper payments along with other practical realities.

As previously described, we believe that beginning extrapolation for PY 2018 RADV audits represents an appropriate policy because it recognizes our fiduciary duty to protect taxpayer dollars from overpayments and preserves our ability to collect on significant (extrapolated) amounts of overpayments made to plans beginning in PY 2018. This final rule will also allow CMS to focus on conducting future RADV audits as soon as practicable after an MAO payment year concludes, which was the topic of significant public comment to the proposed rule. Lastly, we have determined that it is in the best interest of all parties to ensure that the contract-level RADV appeals process, which is also outlined in regulation, is able to

[47] The $285 million amount is a theoretical estimated amount for the audit of PY 2014; however, as we have previously explained, CMS will begin extrapolation with the PY 2018 RADV audits. The $285 million amount is the baseline amount from which CMS begins adjusting estimated improper payment recoveries for inflation beyond PY 2014. Note, if CMS conducts more than one payment year audit annually, savings estimates will be higher in subsequent years.

[48] $234 million in net recoveries is derived by subtracting $51 million (cost of administering the CMS RADV audit program) from the theoretical estimated amount of extrapolated recoveries ($285 million) that would have been collected if extrapolation was applied for the PY 2014 audits.

successfully process all RADV appeals. By not using an extrapolation methodology prior to PY 2018, we expect to better control the total number of active appeals that are submitted in the first few years following finalization of this rule, which will alleviate burden on MAOs and CMS.

b. Alternatives Related to the Application of an FFS Adjuster to RADV Improper Payment Determinations

As an alternative to our decision to not apply an FFS Adjuster to our RADV overpayment determinations, we considered whether to finalize a policy whereby we would apply an FFS Adjuster to RADV overpayment determinations. While we contemplated adoption of an FFS Adjuster as part of our 2012 Methodology, we believe that finalizing such an approach through regulatory or other means would be an unsupportable and unreasonable interpretation of the Act.

As previously described, we have determined that the ''actuarial equivalence'' and ''same methodology'' provisions do not apply to the obligation of an MAO to report and return overpayments that they have identified, including overpayments due to lack of medical record support for diagnoses, or their obligation to return overpayments identified based on a RADV audit. In *UnitedHealthcare,* the D.C. Circuit held that actuarial equivalence and same methodology do not apply to the MAOs' obligation to report and return overpayments that they have identified, including overpayments arising from the MAOs' submission of and payments based on diagnoses unsupported by their beneficiaries' medical records. Although *UnitedHealthcare* addressed the enforceability of the Part C overpayment regulation, its reasoning applies just as strongly in the RADV context and supports our conclusion that the use of an FFS Adjuster is neither required nor appropriate for an RADV audit.

We have also concluded that it would be unreasonable to interpret the Act as requiring a minimum reduction in payments in one provision (the coding pattern provision), while at the same time prohibiting CMS in an adjacent provision (the actuarial equivalence provision) from enforcing those longstanding documentation requirements (by requiring an offset to the recovery amount calculated for CMS audits). To the contrary, because the Act requires CMS to reduce payments to MAOs by at least a specific minimum percentage, the only reasonable interpretation of the Act is that CMS would pay MAOs at those reduced rates, under the existing payment model,[49] and enforce the longstanding documentation requirements through CMS' audits.

TABLE 2—EXPECTED NET RECOVERIES OF CMS RADV IMPROPER PAYMENTS PER YEAR WITHOUT EXTRAPOLATION

Label	Item	Amount ($ in millions)—non-extrapolated	Source or calculation
(A)	Estimated Non-Extrapolated Collections for 2011–2015 audits.	$41.1	
(B)	Number of years, 2011–2015	5	
(C)	Estimated Average Non-Extrapolated Collections per year.	$8.2	(C) = (A)/(B).
(D)	RADV audit programs costs per year	$51	Estimated costs of RADV program in which statistically valid samples are pulled to audit sub-cohorts of enrollees for a minimum of 30 contracts per year.
(E)	Estimated net recoveries of improper payments per year without extrapolation.	($42.8)	(E) = (C) − (D).

TABLE 3—IMPACT ON ESTIMATED COLLECTIONS OF IMPROPER PAYMENTS PER YEAR FROM RADV RULE

[$ in millions]

	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total
Estimated Non-Extrapolated Collections Assumed Without RADV Final Rule Changes	13.1	28.0	11.6	10.9	12.7	13.5	14.4	15.4	16.4	17.5	153.5
Estimated Collections from Audits Completed in Prior Years With RADV Final Rule Changes	13.1	28.0	479.4	447.5	522.6	557.2	594.0	633.2	675.0	719.5	4,669.5
Additional Estimated Collections as a Result of RADV Final Rule	0.0	0.0	467.8	436.6	509.9	543.7	579.6	617.8	658.6	702.0	4,516.0

E. Accounting Statement and Table

As required by OMB Circular A–4 (available at *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/*), Table 4 shows the costs and transfers associated with the provisions of this final rule for calendar years 2022 through 2031.

[49] Any changes to the CMS–HCC payment model are published in the annual payment notice.

TABLE 4—ACCOUNTING STATEMENT—CLASSIFICATION OF ESTIMATED TRANSFERS

Category	Discount rate		Period covered
	7%	3%	
Transfers:			
Annualized Monetized Transfers ($ in Millions)	$410	$433	CYs 2023–2032.
From Whom to Whom	MAOs to Federal Government.		

We estimate that from 2022 through 2031 this final rule will generate Federal annualized monetized transfers of $410 million and $433 million, at the 7 percent and 3 percent discount rates respectively, from MAOs back to the Medicare Trust Fund.

This final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on January 24, 2023.

List of Subjects in 42 CFR Part 422

Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy Reporting and record keeping requirements.

For the reasons stated in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 422 as follows:

PART 422—MEDICARE ADVANTAGE PROGRAM

■ 1. The authority citation for part 422 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

Subpart G—PAYMENTS TO MEDICARE ADVANTAGE ORGANIZATIONS

■ 2. Section 422.300 is revised to read as follows:

§ 422.300 Basis and scope.

This subpart is based on sections 1106, 1128J(d), 1852, 1853, 1854, and 1858 of the Act. It sets forth the requirements for making payments to MA organizations offering local and regional MA policies, including calculation of MA capitation rates and benchmarks, conditions under which payment is based on plan bids, adjustments to capitation rates (including risk adjustment), collection of risk adjustment data, conditions for use and disclosure of risk adjustment data, collection of improper payments and other payment rules. Section 422.458 specifies the requirements for risk sharing payments to MA regional organizations.

■ 3. Section 422.310 is amended by revising paragraph (e) to read as follows:

§ 422.310 Risk adjustment data.

* * * * *

(e) *Validation of risk adjustment data.* MA organizations and their providers and practitioners are required to submit a sample of medical records for the validation of risk adjustment data, as required by CMS. There may be penalties for submission of false data. MA organizations must remit improper payments based on RADV audits, in a manner specified by CMS. For RADV audits, CMS may extrapolate RADV Contract-Level audit findings for payment year 2018 and subsequent payment years.

* * * * *

■ 4. Section 422.311 is amended by revising paragraph (a) to read as follows:

§ 422.311 RADV audit dispute and appeal processes.

(a) *Risk adjustment data validation (RADV) audits.* In accordance with §§ 422.2 and 422.310(e), the Secretary annually conducts RADV audits to ensure risk-adjusted payment integrity and accuracy.

(1) Recovery of improper payments from MA organizations will be conducted in accordance with the Secretary's payment error extrapolation and recovery methodologies.

(2) CMS may apply extrapolation to audits for payment year 2018 and subsequent payment years.

* * * * *

Dated: January 26, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–01942 Filed 1–30–23; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 230126–0026]

RIN 0648–BL75

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 23 to the Mackerel, Squid, and Butterfish Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: This action implements approved measures for Amendment 23 to the Mackerel, Squid, and Butterfish Fishery Management Plan. Amendment 23 was developed by the Mid-Atlantic Fishery Management Council to establish a revised Atlantic mackerel rebuilding plan, set the 2023 Atlantic mackerel specifications including a river herring and shad catch cap for the Atlantic mackerel fishery, establish a recreational possession limit, and modify in-season closure measures. This action is necessary to prevent overfishing and rebuild the Atlantic mackerel stock based on a 2021 management track assessment that found that Atlantic mackerel stock remains overfished and overfishing is occurring. Amendment 23 is intended to ensure that Atlantic mackerel are sustainably managed to achieve optimum yield on a continuing basis. Additionally, this action approves the updated management goals and objectives of the Mackerel, Squid, and Butterfish Fishery Management Plan with the purpose of ensuring that management continues to reflect and address the current needs and condition of the mackerel, squid, and butterfish fisheries.

DATES: Effective February 1, 2023.

ADDRESSES: Copies of Amendment 23, including the Environmental Assessment, the Regulatory Impact Review, and the Regulatory Flexibility Act Analysis (EA/RIR/RFAA) prepared in support of this action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The supporting documents are also accessible via the internet at: *https://www.mafmc.org/s/Mackerel-Rebuilding-2_2023-01-10.pdf*.

NMFS also prepared a Categorical Exclusion (CE) for this action in compliance with the National Environmental Policy Act, detailing why part of this action is administrative in nature and may be categorically excluded from requirements to prepare either an Environmental Impact Statement or EA. Copies of the CE for this action are available upon request from NMFS.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Policy Analyst, (978) 281–9150.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic mackerel fishery is managed under the Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) through an annual quota, possession limits, and a catch cap for bycatch of river herring and shad. In-season accountability measures (AM), including closures of the fishery through possession limit reductions, help ensure catch does not exceed the Atlantic mackerel annual catch limit (ACL) or the river herring and shad catch cap. Reactive AMs require a pound-for-pound payback the following year if landings exceed the Atlantic mackerel ACL.

Current regulations require the Council's Mackerel, Squid, and Butterfish Monitoring Committee to develop specifications recommendations based upon the acceptable biological catch (ABC) advice of the Council's Scientific and Statistical Committee (SSC). Specifications are the combined suite of commercial and recreational catch levels and management measures necessary to prevent such catch levels from being exceeded. As part of this process, total allowable levels of foreign fishing, joint venture processing, and commercial and recreational annual catch targets (ACT) for up to 3 years. These specifications are reviewed annually, and may be revised by the Council based on updated information.

Atlantic mackerel recruitment has been declining since 1999 and has been below the long-term average since 2009. On November 29, 2019 (84 FR 58053), as requested by the Council, NMFS implemented a 5-year Atlantic mackerel rebuilding plan. However, using data through 2019, a July 2021 Atlantic mackerel management track assessment concluded that the Atlantic mackerel stock remained overfished and subject to overfishing and that because previous assumptions about potential recruitment that did not come to fruition, the 2019 rebuilding plan no longer provided a realistic rebuilding approach. Stock biomass is estimated to have nearly tripled in size from 2014 to 2019 (from approximately 8 percent to 24 percent of rebuilt), but full rebuilding on the original schedule, by 2023, now appears impossible. The stock is expected to be less than half rebuilt by 2023. The final assessment summary report is available on the Northeast Fishery Science Center website (*https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/fishery-stock-assessments-new-england-and-mid-atlantic*).

In response to the 2021 Atlantic mackerel management track assessment, the SSC recommended that measures be implemented to eliminate or minimize additional catch to reduce the potential biological impacts of catch levels while the Council developed a revised Atlantic mackerel rebuilding plan. On January 12, 2022 (87 FR 1700), NMFS published an interim rule that reduced the 2022 domestic annual harvest (DAH) of Atlantic mackerel from 17,312 mt to 4,963 mt in order to limit U.S. commercial catch to approximately the levels realized during 2021. These interim measures were extended on July 6, 2022 (87 FR 40139), to remain effective for the entire 2022 Atlantic mackerel fishing year and expired on January 13, 2023.

In response to the 2021 Atlantic mackerel management track assessment, the Council developed Amendment 23 to revise the Atlantic mackerel rebuilding plan to prevent overfishing and rebuild the stock, as required by section 303 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). At its June 2022 meeting, the Council recommended to establish a 10-year Atlantic mackerel rebuilding plan and the 2023 Atlantic mackerel specification through Amendment 23. On August 19, 2022, the Council submitted the amendment and draft EA to NMFS for preliminary review. The Council reviewed the regulations in this rule, as drafted by NMFS, and deemed them to be necessary and appropriate, as specified in Section 303(c) of the Magnuson-Stevens Act. This action also includes 2023 Atlantic mackerel specifications based on the Amendment 23 Atlantic mackerel rebuilding plan, including a modified fishery closure approach, a status quo river herring and shad catch cap, and a new recreational possession limit, as described further below.

A notice of availability (NOA) for the amendment published in the **Federal Register** on October 25, 2022 (87 FR 64430), with a comment period ending on December 27, 2022. We published a proposed rule in the **Federal Register** on November 2, 2022 (87 FR 66120), with a comment period ending on January 3, 2023.

When a Council approves and then transmits a fishery management plan or amendment to NMFS, NMFS publishes a notice of availability in the **Federal Register** announcing a 60-day comment period. Within 30 days of the end of the comment period, NMFS must approve, disapprove, or partially approve the plan or amendment based on consistency with law. After considering public comment on the NOA and proposed rule, we approved Amendment 23. This final rule implements the management measures in Amendment 23. The details of the development of the measures in Amendment 23 were described in the NOA and proposed rule, and are not repeated here.

This final rule also announces previously-approved goals and objectives to the Mackerel, Squid, and Butterfish FMP that were developed in Amendment 22 to the FMP. The focus of Amendment 22 was to revise the number and type of *Illex* squid permits and to update the goals and objectives of the FMP. An NOA for Amendment 22 was published in the **Federal Register** on June 7, 2022 (87 FR 34629). No proposed rule was published for Amendment 22 pending a final decision on the Amendment. On September 6, 2022, NMFS informed the Council that, in accordance with section 304(a)(3) of the Magnuson-Stevens Act, while the management actions of Amendment 22 were disapproved, we would revise the FMP goals and objectives in a future rulemaking. These updates to the FMP do not require associated federal regulations.

Approved Measures

1. Atlantic Mackerel Rebuilding Plan

This action implements an Atlantic mackerel rebuilding plan that is predicted to have a 61-percent probability of rebuilding the Atlantic mackerel stock in 10 years. This

rebuilding plan assumes a fishing mortality rate of 0.12, and that recruitment starts low (similar to recruitment from 2009 to present) and then increases toward long-term typical recruitment as the stock rebuilds. Table 1 shows the projected ABCs for the duration of the rebuilding plan. The 2023 ABC specified in Table 1 is implemented through this action, but the other ABCs provided are projections that will be revisited during future specification setting. A new stock assessment in 2023 will inform the quotas set beyond 2023.

TABLE 1—PROJECTED ATLANTIC MACKEREL ABC AND STOCK BIOMASS

	Catch (mt)	Biomass (mt)
2023	8,094	80,745
2024	9,274	91,738
2025	10,540	103,756
2026	11,906	116,857
2027	13,408	131,291
2028	15,004	146,553
2029	16,631	162,239
2030	18,261	177,731
2031	19,814	192,045
2032	21,215	204,796

While less or zero catch would rebuild the Atlantic mackerel stock faster, the Council recommended a rebuilding plan that is as short a time as possible given the stock's status, biology, needs of fishing communities, and the interaction of the stock within the marine ecosystem. This rebuilding alternative and associated 2023 ABC will set a quota 41-percent lower than the 2019–2021 average landings of 6,187 mt with an associated $3.62 million average ex-vessel revenue. However, given the relatively few vessels participating in the Atlantic mackerel fishery in recent years, the relatively low landings, and the small reduction in quota from recent landings, the impacts would be slightly negative in the short term. However, from a long-term perspective, a rebuilt Atlantic mackerel stock could return about $7.1 million annually to the Atlantic mackerel fishery.

2. Atlantic Mackerel Specifications

Based on the above Atlantic mackerel rebuilding plan, the 2023 ABC is 8,094 mt. The 2023 Atlantic mackerel specifications include ABC deductions for expected Canadian catch (2,197 mt), recreational catch (2,143 mt), and estimated commercial discards (115 mt) to set a commercial quota of 3,639 mt as shown in Table 2. This commercial quota is a 27-percent decrease from the interim 2022 commercial quota.

TABLE 2—2023 ATLANTIC MACKEREL SPECIFICATIONS

ABC/ACL	8,094 mt	a.
Canadian Catch Deduction	2,197 mt	b.
Recreational Catch Deduction	2,143 mt	c.
Commercial Discards	115 mt	d.
Commercial Quota	3,639 mt	e = a − b − c − d.

The Canadian catch deduction is based on recent Canadian landings. The 2021 Canadian landings were 4,395 mt. Canada closed its directed Atlantic mackerel fishery for 2022 and therefore may have minimal landings in 2022. The Council decided to deduct 2,197 mt from the 2023 ABC, which represents half of the 2021 Canadian landings. The 2,143-mt recreational deduction is the 2019–2021 average recreational catch minus 17 percent to account for an expected reduction in recreational catch due to the new recreational possession limit. The 115-mt commercial discard deduction is based on the average discard rate from 2017–2019. There have been no ABC overages in the mackerel fishery, so it was determined that a management uncertainty buffer is not necessary at this time, and the modified in-season closure measures below are expected to effectively manage catch and prevent overages.

3. In-Season Closure Provisions

To address the lower quota available to the U.S. commercial Atlantic mackerel fishery, this action implements a modified closure approach. This modified closure approach includes an initial closure with different thresholds based on the time of year, and a final closure when the fishery is close to harvesting the full commercial quota (see Table 3). This action retains the existing measures in the regulations that provide NMFS with the discretion to not close the fishery in November and December if performance suggests that a quota overage is unlikely.

TABLE 3—ATLANTIC MACKEREL COMMERCIAL FISHERY CLOSURE APPROACH

	Time of year	Unharvested DAH remaining (mt)	2023 Closure threshold amounts (mt)	Possession limit adjustments
Initial Closure	Before May 1	886	2,753	40,000 lb (18.14 mt) for Tier 1, 2, or 3 limited access permits;
	May 1 or after	443	3,196	5,000 lb (2.27 mt) for incidental/open access permits.
Final Closure	Any time of year	100	3,539	5,000 lb (2.27 mt) for all federal Atlantic mackerel permit holders.

4. Recreational Possession Limit

Because of the low Atlantic mackerel ABCs needed, at least at the beginning of the rebuilding period, a recreational possession limit was deemed necessary to ensure recreational catch is reduced to commensurate with the reduction in the commercial quota. This action implements a 20-fish per person Atlantic mackerel possession limit. This limit applies to all Atlantic mackerel charter/party permit holders (including

crew members) and private anglers. The 20-fish recreational possession limit is estimated to reduce recreational catch by 17 percent compared to average 2019–2021 recreational catch which is expected to assist in achieving a rebuilt stock.

The Council has been working closely with the states of Maine, New Hampshire, and Massachusetts, as the majority of recreational Atlantic mackerel catch occurs in these state waters (there has been minimal recreational mackerel catch south of Massachusetts in recent years). The Council has coordinated with the aforementioned states in the development of these recreational measures, and it appears likely that these states will mirror the Federal recreational possession limit. This coordination is needed in order to achieve the necessary reduction in catch.

5. River Herring and Shad Catch Cap

In 2014, Amendment 14 to the FMP (February 24, 2014; 79 FR 10029) implemented a catch cap to manage the bycatch of river herring and shad in the Atlantic mackerel fishery. Once this cap is reached in a given fishing year, Atlantic mackerel commercial possession limits are reduced to 20,000 lb (9.08 mt) for the rest of the year. The catch caps are monitored based on river herring and shad bycatch recorded in observer and portside sampling data for mackerel trips by limited access vessels, or trips in which at least 20,000 lb (9.08 mt) of Atlantic mackerel are landed.

This action implements a river herring and shad catch cap in the Atlantic mackerel fishery of 129 mt.

6. FMP Goals and Objectives

This action announces the previously-approved updated and revised goals and objectives of the Mackerel, Squid, and Butterfish FMP as follows:

Goal 1: Maintain sustainable mackerel, squid, and butterfish stocks.

- *Objective 1.1:* Prevent overfishing and maintain sustainable biomass levels that achieve optimum yield in the mackerel, squid, and butterfish fisheries.
- *Objective 1.2:* Consider and, to the extent practicable, account for the roles of mackerel, squid, and butterfish species/fisheries in the ecosystem.

Goal 2: Acknowledging the difficulty in quantifying all costs and benefits, achieve the greatest overall net benefit to the Nation, balancing the needs and priorities of different user groups and effects of management on fishing communities.

- *Objective 2.1:* Provide the greatest degree of freedom and flexibility to harvesters and processors (including shoreside infrastructure) of mackerel, squid, and butterfish resources consistent with attainment of the other objectives of this FMP, including minimizing additional restrictions.
- *Objective 2.2:* Allow opportunities for commercial and recreational mackerel, squid, and butterfish fishing, considering the opportunistic nature of the fisheries, changes in availability that may result from changes in climate and other factors, and the need for operational flexibility.
- *Objective 2.3:* Consider and strive to balance the social and economic needs of various sectors of the mackerel, squid, and butterfish fisheries (commercial including shoreside infrastructure and recreational) as well as other fisheries or concerns that may be ecologically linked to mackerel, squid, and butterfish fisheries.
- *Objective 2.4:* Investigate opportunities to access international/shared resources of mackerel, squid, and butterfish species.

Goal 3: Support science, monitoring, and data collection to enhance effective management of mackerel, squid, and butterfish fisheries.

- *Objective 3.1:* Improve data collection to better understand the status of mackerel, squid, and butterfish stocks, the role of mackerel, squid, and butterfish species in the ecosystem, and the biological, ecological, and socioeconomic impacts of management measures, including impacts to other fisheries.
- *Objective 3.2:* Promote opportunities for industry collaboration on research.
- *Objective 3.3:* Encourage research that may lead to practicable opportunities to further reduce bycatch in the mackerel, squid, and butterfish fisheries.

Comments and Responses

We received 11 comments on the NOA and proposed rule from individual constituents and non-governmental organizations including from The Pew Charitable Trusts, Oceans North, Wild Oceans, Conservation Law Foundation, Bennet Nickerson Environmental Consulting, and Natural Resource Defense Council. One comment was not relevant to the proposed rule and is not discussed further. One comment was not relevant to the rule itself, but had questions about how industry is involved in the rule making process. Five comments supported the Atlantic mackerel rebuilding plan, four opposed the rebuilding plan. Those opposed to the rebuilding plan advocated for disapproval of Amendment 23 and to have the Council select a different rebuilding alternative, and one comment opposed to the action advocated for only subsistence fishing for Atlantic mackerel.

We received zero comments on the updated FMP goals and objectives in response to the Amendment 22 NOA. Some of the comments received in response to the Amendment 22 NOA referenced the updated goals and objectives, but there were no comments on the goals and objectives themselves.

Comment 1: Five commenters support the proposed Atlantic mackerel rebuilding plan. One stated that it was in alignment with the Magnuson-Stevens Act, one noted the importance of protecting historical food sources, and one noted that this action is a good first step, but would like to see more done to protect the long-term population of Atlantic mackerel and to protect other marine species. Additionally, one comment supported the rebuilding plan, but would like to see more animal welfare taken into account.

Response: We have approved the proposed Atlantic mackerel rebuilding plan and the 2023 specifications. We will continue to monitor the Atlantic mackerel stock status through regular stock assessments and base future catch limits on the most recent stock information available.

Comment 2: One comment requested clarification on how commercial and recreational fishermen's input is collected and used during the development of this action.

Response: The public, including industry members, are invited to participate several times through the development of any amendment. For this action, public comments were solicited at Council meetings in August and December 2021 and June 2022; two informational webinars were hosted by Council staff on January 11 and 12, 2021, to provide background and gather public input; the Council also hosted five public hearings throughout April and May of 2022; and, finally, the public was asked to provide comment on the NOA and proposed rule. Comments were accepted both orally and/or written at these various opportunities. Public comments were presented to the Mackerel, Squid, and Butterfish Monitoring Committee and the Council prior to meetings and taken into account by those members when making recommendations and decisions on this action. The comments on the NOA and proposed rule were provided directly to NMFS to ensure the public

had the opportunity to comment and notify the government of any proposed action that would not satisfy applicable statues.

Comment 3: Three comments opposed the proposed Atlantic mackerel rebuilding plan and advocated that NMFS disapprove this action and either close the fishery, develop a new rebuilding plan, or have the Council select a different alternative. Two of these comments claimed that the best available science was not taken into consideration when selecting the preferred alternatives for this action. One of these comments goes on to further claim that the Council violated the Magnuson-Stevens Act by selecting a rebuilding alternative that was not the recommendation of the SSC. This comment also opined that the EA drafted for this action did not conduct a thorough evaluation of the cumulative impacts of climate change and the Atlantic Ocean ecosystem in the face of a depleted forage base and advocated that the 129-mt river herring and shad catch cap be disapproved and that a 3-inch (7.62-cm) minimum codend mesh size be required for the Atlantic mackerel fishery.

Response: Amendment 23 was developed using the best available science, including new information provided in the 2021 Atlantic mackerel management track assessment results and the 2021 Canadian Atlantic mackerel assessment. The SSC endorsed that all the rebuilding plan alternatives in this action are expected to rebuild Atlantic mackerel within 10 years based on the best scientific information available, which is consistent with the Magnuson-Stevens Act and the National Standards. The SSC also identified that the 2023 ABCs for each potential rebuilding plan were consistent with the best scientific information available.

The EA for this action did evaluate the cumulative impacts of climate change and the Atlantic Ocean ecosystem as describe in section 7.6. Additionally, the Council developed this action under the guidance of their Ecosystem Approach to Fisheries Management and in reference to the most recent State of the Ecosystem Reports.

The river herring and shad catch cap of 129 mt is the No Action alternative and we do not have the authority to select a different alternative through the amendment process. This alternative was selected by the Council because lower caps may be impracticable to monitor. Additionally, the revised commercial fishery closure approach will have added benefits to river herring and shad by lowering the possession limits for mackerel will below the 20,000-lb (9.08-mt) possession limit required when reaching the river herring and shad catch cap. The 3-inch (7.62-cm) minimum mesh requirement measure that was considered, but ultimately rejected during the development of this action due to the lack of gear selectivity studies for Atlantic mackerel that would allow quantitative analysis of this measure. Additional investigation of the effects of a minimum mesh may be evaluated in the future.

Finally, if this action were to be disapproved, it would have the opposite desired effect of both this action and these comments received. A disapproval of this action would result in the implementation of the No Action alternative that reverts the Atlantic mackerel quota to 2021 levels including a DAH of 17,312 mt due to the rollover provisions found in § 648.22(d)(1) and the expiration of the 2022 interim rule on January 13, 2023. Disapproval of Amendment 23 would be detrimental to the Atlantic mackerel stock because it would allow for potential overfishing to continue throughout the 2023 fishing year. Moreover, the alternative that the commenters prefer has a lower likelihood of accomplishing rebuilding than the one implemented in this final rule.

Comment 4: One comment opposed the proposed action advocating for a closure of the Atlantic mackerel commercial fishery and to only allow subsistence fishing for Atlantic mackerel.

Response: This comment did not supply any rationale or evidence in support of closing the Atlantic mackerel commercial fishery and for subsistence fishing for Atlantic mackerel.

Changes From the Proposed Rule

There are no changes to the regulatory text from the proposed rule, but this final rule announces the approval of the updated FMP goals and objectives which were not included in the proposed rule. The updated goals and objectives were the subject of public notice and comment in the NOA for Amendment 22. This change to the FMP is solely administrative, and does not necessitate associated Federal regulations, and therefore did not require additional public comment.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries finds that the need to implement these measures in a timely manner constitutes good cause, under the authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date of this action. This action implements the Atlantic mackerel rebuilding plan and the 2023 Atlantic mackerel specifications. This rule is being issued at the earliest possible date following a 2021 Atlantic mackerel management track assessment that identified the need for a revised rebuilding plan. The Council took immediate action to develop this revised rebuilding plan which was developed throughout 2022. Additionally, we implemented an interim rule to reduce the catch limits of Atlantic mackerel for the 2022 fishing year and that interim rule expired January 13, 2023, after which the original 2022 harvest quotas became effective. Failure to implement the new lower quotas of this rule creates a risk of additional overfishing in a stock that is the subject of rebuilding because until this rule is implemented, the Atlantic mackerel quota reverts back to 17,312 mt which is almost five times the quota calculated for this year in order to rebuild the stock. Additionally, approximately 500 mt of Atlantic mackerel has already been harvested for the 2023 fishing year, and a delay in implementation could lead to the 2023 quota being exceeded.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: January 26, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14, revise paragraph (g)(1)(ii) and add paragraph (g)(1)(iii), and revise paragraph (g)(4) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(g) * * *

(1) * * *

(ii) *Recreational possession.* Take and retain, possess, or land Atlantic mackerel in excess of the recreational limits contained in § 648.26(a)(3).

(iii) *Transfer and purchase.* (A) Purchase or otherwise receive for a commercial purpose; other than solely for transport on land; Atlantic chub mackerel, Atlantic mackerel, *Illex* squid, longfin squid, or butterfish caught by a vessel that has not been issued a Federal Atlantic mackerel, *Illex* squid, longfin squid, or butterfish vessel permit, unless the vessel fishes exclusively in state waters.

(B) Transfer longfin squid, *Illex* squid, or butterfish within the EEZ, unless the vessels participating in the transfer have been issued the appropriate LOA from the Regional Administrator along with a valid longfin squid, butterfish, or *Illex* squid moratorium permit and are transferring species for which the vessels are permitted, or a valid squid/butterfish incidental catch permit.

* * * * *

(4) *Presumption.* For purposes of this part, the following presumption applies: All Atlantic chub mackerel, Atlantic mackerel, *Illex* squid, longfin squid, or butterfish possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such species were purchased for bait or harvested by a vessel fishing exclusively in state waters or, for Atlantic chub mackerel, outside of the Atlantic Chub Mackerel Management Unit.

* * * * *

■ 3. In § 648.21, revise paragraph (c)(2) to read as follows:

§ 648.21 Mid-Atlantic Fishery Management Council risk policy.

* * * * *

(c) * * *

(2) The SSC may specify higher 2023–2032 ABCs for Atlantic mackerel based on $F_{REBUILD}$ instead of the methods outlined in paragraph (a) of this section to implement a rebuilding program that would rebuild this stock by 2032.

* * * * *

■ 4. In § 648.24, revise paragraphs (b)(1)(i) through (iii) to read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(b) * * * (1) * * * (i) *First phase commercial closure.* (A) Unless otherwise determined in paragraph (b)(1)(iii) of this section, NMFS will close the commercial Atlantic mackerel fishery, which includes vessels issued an open access or limited access Atlantic mackerel permit, including a limited access Tier 3 Atlantic mackerel permit, in the EEZ when the Regional Administrator projects before May 1 that 886 mt of the Atlantic mackerel DAH is remaining. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed, as specified in § 648.26.

(B) Unless otherwise determined in paragraph (b)(1)(iii) of this section, NMFS will close the commercial Atlantic mackerel fishery, which includes vessels issued an open access or limited access Atlantic mackerel permit, including a limited access Tier 3 Atlantic mackerel permit, in the EEZ when the Regional Administrator projects on or after May 1 that 443 mt of the Atlantic mackerel DAH is remaining. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed, as specified in § 648.26.

(C) Unless previously closed pursuant to paragraph (b)(1)(i)(A) or (b)(1)(i)(B) of this section, NMFS will close the Tier 3 commercial Atlantic mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the Tier 3 Atlantic mackerel landings cap will be harvested. Unless otherwise restricted, the closure of the Tier 3 commercial Atlantic mackerel fishery will be in effect for the remainder of that fishing period, with incidental catches allowed as specified in § 648.26.

(ii) *Second phase commercial quota closure.* When the Regional Administrator projects that 100 mt of the Atlantic mackerel DAH is remaining, NMFS will reduce the possession of Atlantic mackerel in the EEZ applicable to all commercial Atlantic mackerel permits for the remainder of the fishing year as specified in § 648.26(a)(2)(iii)(A).

(iii) NMFS has the discretion to not implement measures outlined in paragraphs (b)(1)(i)(B) or (b)(1)(ii) of this section during November and December if the Regional Administrator projects that commercial Atlantic mackerel landings will not exceed the DAH during the remainder of the fishing year.

* * * * *

■ 5. In § 648.26, revise paragraphs (a)(1) introductory text, (a)(1)(i) through (iv), and (a)(2), and add paragraph (a)(3) to read as follows:

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

(a) * * *

(1) *Initial commercial possession limits.* A vessel must be issued a valid limited access Atlantic mackerel permit to fish for, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel in or harvested from the EEZ per trip, provided the fishery has not been closed as specified in § 648.24(b)(1).

(i) A vessel issued a Tier 1 limited access mackerel permit is authorized to fish for, possess, or land Atlantic mackerel with no possession restriction in or harvested from the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a first phase or second phase commercial fishery closure, as specified in § 648.24(b)(1)(i) or § 648.24(b)(1)(ii).

(ii) A vessel issued a Tier 2 limited access mackerel permit is authorized to fish for, possess, or land up to 135,000 lb (61.23 mt) of Atlantic mackerel in or harvested from the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a first phase or second phase commercial fishery closure, as specified in § 648.24(b)(1)(i) or § 648.24(b)(1)(ii).

(iii) A vessel issued a Tier 3 limited access mackerel permit is authorized to fish for, possess, or land up to 100,000 lb (45.36 mt) of Atlantic mackerel in or harvested from the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a first phase or second phase commercial fishery closure, or 90

percent of the Tier 3 landings cap has been harvested, as specified in § 648.24(b)(1)(i) or § 648.24(b)(1)(ii).

(iv) A vessel issued an open access Atlantic mackerel permit may fish for, possess, or land up to 20,000 lb (9.08 mt) of Atlantic mackerel in or harvested from the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a first phase or second phase commercial fishery closure, as specified in § 648.24(b)(1)(i) or § 648.24(b)(1)(ii).

* * * * *

(2) *Atlantic mackerel closure possession restrictions.* Any Atlantic mackerel possession restrictions implemented under paragraph (a)(2) of this section will remain in place for the rest of the fishing year, unless further restricted by a subsequent action. If the entire commercial Atlantic mackerel fishery is closed due to harvesting the river herring/shad catch cap, as specified in § 648.24(b)(6) before a first phase or second phase commercial fishery closure, then the Atlantic mackerel possession restrictions specified in § 648.26(a)(2)(iii)(B) shall remain in place for the rest of the fishing year unless further reduced by the possession restrictions specified in § 648.26(a)(2)(iii)(A).

(i) *Limited Access Fishery.* (A) During a closure of the commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i), when 886 mt of the DAH is remaining before May 1 or when 443 mt of the DAH is remaining on or after May 1, vessels issued a Tier 1, 2, or 3 limited access Atlantic mackerel permit, may not take and retain, possess, or land more than 40,000 lb (18.14 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(B) During a closure of the Tier 3 commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i)(C), when 90 percent of the Tier 3 landings cap is harvested, vessels issued a Tier 3 limited access Atlantic mackerel permit may not take and retain, possess, or land more than 40,000 lb (18.14 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(ii) *Open Access Fishery.* During a closure of the Atlantic mackerel commercial sector pursuant to § 648.24(b)(1)(i), when 886 mt of the DAH is remaining before May or when 443 mt of the DAH is remaining on or after May 1, vessels issued an open access Atlantic mackerel permit may not take and retain, possess, or land more than 5,000 lb (2.27 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(iii) *Entire commercial fishery*—(A) *Commercial quota closure.* During a closure of the entire commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(ii), when 100 mt of the DAH is remaining, vessels issued an open or limited access Atlantic mackerel permit may not take and retain, possess, or land more than 5,000 lb (2.27 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(B) *River herring/shad catch cap closure.* During a closure of the limited access commercial Atlantic mackerel fishery pursuant to § 648.24(b)(6), when 95 percent of the river herring/shad catch cap has been harvested, vessels issued an open or limited access Atlantic mackerel permit may not take and retain, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(3) *Recreational possession limits.* The recreational Atlantic mackerel possession limit for charter/party and private recreational anglers is 20 Atlantic mackerel per person per trip, including for-hire crew.

* * * * *

[FR Doc. 2023–01959 Filed 1–31–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 21
Wednesday, February 1, 2023

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 52

[NRC–2022–0151]

Qualification of Class 1E Battery Chargers, Inverters, and Uninterruptible Power Supply Systems for Production and Utilization Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft regulatory guide (DG), DG–1412, ''Qualification of Class 1E Battery Chargers, Inverters, and Uninterruptible Power Supply Systems for Production and Utilization Facilities.'' This DG is the proposed Revision 1 of Regulatory Guide (RG) 1.210, ''Qualification of Safety-Related Battery Chargers and Inverters for Nuclear Power Plants.'' DG–1412 describes an approach that is acceptable to the NRC staff to meet regulatory requirements for the qualification of safety related or Class 1E battery chargers, inverters, and uninterruptible power supply systems for production and utilization facilities. It endorses Institute of Electrical and Electronic Engineers (IEEE) Standard (Std.) 650–2017, ''IEEE Standard for Qualification of Class 1E Static Battery Chargers, Inverters, and Uninterruptible Power Supply Systems for Nuclear Power Generating Stations.''

DATES: Submit comments by March 3, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

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–2022–0151. 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 individuals 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: Michael Eudy, Office of Nuclear Regulatory Research, telephone: 301–415–3104, email: *Michael.Eudy@nrc.gov* and Adakou Foli, Office of Nuclear Reactor Regulation, telephone: 301–415–1984, email: *Adakou.Foli@nrc.gov*. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0151 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–2022–0151.
- *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 a.m. and 4 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0151 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. Additional Information

The NRC is issuing for public comment a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The DG, entitled ''Qualification of Class 1E Battery Chargers, Inverters, and Uninterruptible Power Supply Systems

for Production and Utilization Facilities,'' is temporarily identified by its task number, DG–1412 (ADAMS Accession No. ML22160A570).

DG–1412 is proposed Revision 1 to RG 1.210, ''Qualification of Safety-Related Battery Chargers and Inverters for Nuclear Power Plants.'' The proposed revision endorses Institute of Electrical and Electronics Engineers (IEEE) Standard (Std.) 650–2017, ''IEEE Standard for Qualification of Class 1E Static Battery Chargers, Inverters, and Uninterruptible Power Supply Systems for Nuclear Power Generating Stations.''

The staff is also issuing for public comment a draft regulatory analysis (ADAMS Accession No. ML22160A589). The NRC staff developed the regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Proposed Rules'' section of the **Federal Register** to comply with publication requirements under chapter I of title 10 of the *Code of Federal Regulations* (CFR).

III. Backfitting, Forward Fitting, and Issue Finality

The NRC staff may use this regulatory guide as a reference in its regulatory processes, such as licensing, inspection, or enforcement. However, the NRC staff does not intend to use the guidance in this regulatory guide to support NRC staff actions in a manner that would constitute backfitting as that term is defined in Section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,'' nor does the NRC staff intend to use the guidance to affect the issue finality of an approval under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The staff also does not intend to use the guidance to support NRC staff actions in a manner that constitutes forward fitting as that term is defined and described in MD 8.4. If a licensee believes that the NRC is using this regulatory guide in a manner inconsistent with the discussion in this Implementation section, then the licensee may file a backfitting or forward fitting appeal with the NRC in accordance with the process in MD 8.4.

IV. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: January 26, 2023.

For the Nuclear Regulatory Commission.

Edward F. O'Donnell,

Acting Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2023–02012 Filed 1–31–23; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 328

RIN 3064–AF26

FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo; Extension of Comment Period

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On December 21, 2022, the FDIC published in the **Federal Register** a Notice of Proposed Rulemaking (NPR) seeking comment on proposed changes to the FDIC's regulations relating to the FDIC's official sign, the FDIC's official advertising statement, and misrepresentations of deposit insurance coverage. The NPR provided for a 60-day comment period, which would have closed on February 21, 2023. The FDIC is extending the comment period until April 7, 2023, to allow interested parties additional time to analyze the proposal and prepare comments.

DATES: The comment period for the NPR published on December 21, 2022 (87 FR 78017), is extended from February 21, 2023, to April 7, 2023.

ADDRESSES: Interested parties are invited to submit written comments, identified by RIN 3064–AF26, by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments on the agency website.
- *Email: comments@fdic.gov.* Include RIN 3064–AF26 in the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments—RIN 3064–AF26, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.
- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of the notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Division of Depositor and Consumer Protection: Luke H. Brown, Associate Director, 202–898–3842, *LuBrown@FDIC.gov;* Meron Wondwosen, Senior Policy Analyst, 202–898–7211, *MeWondwosen@FDIC.gov;* Edward J. Hof, Senior Policy Analyst, 202–898–7213, *EdwHof@FDIC.gov;* Legal Division: James Watts, Counsel, 202–898–6678, *jwatts@FDIC.gov;* Vivek Khare, Counsel, 202–898–6847, *vkhare@fdic.gov.*

SUPPLEMENTARY INFORMATION: On December 21, 2022, the FDIC published in the **Federal Register** [1] an NPR proposing revisions to the regulations implementing section 18(a) of the Federal Deposit Insurance Act.[2]

The NPR stated that the comment period would close on February 21, 2023. The FDIC has received requests to extend the comment period. An extension of the comment period will provide additional opportunity for the public to prepare comments to address

[1] 87 FR 78017.

[2] 12 U.S.C. 1828(a); 12 CFR 328.

the matters raised by the NPR. As such, the FDIC is extending the comment period for the NPR from February 21, 2023, to April 7, 2023.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on January 27, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–02114 Filed 1–31–23; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

31 CFR Part 240

RIN 1530–AA22

Indorsement and Payment of Checks Drawn on the United States Treasury

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: The Bureau of the Fiscal Service (Fiscal Service) at the Department of the Treasury (Treasury) is proposing to amend its regulations governing the payment of checks drawn on the United States Treasury. Specifically, to prevent Treasury checks from being negotiated after cancellation by Treasury or a payment certifying agency—also known as payments over cancellation (POCs)—Fiscal Service is proposing amendments that would require financial institutions use the Treasury Check Verification System (TCVS), or other similar authorized system, to verify that Treasury checks are both authentic and valid. This proposal also contains conforming amendments, including the addition of a definition of ''cancellation'' or ''canceled.'' Finally, the proposal would amend the reasons for which a Federal Reserve Bank must decline payment of a Treasury check to include prior cancellation of the check, so that Fiscal Service may place what is commonly referred to as a ''true stop'' on a Treasury check and avoid a POC.

DATES: Comments on the proposed rule must be received by April 3, 2023.

ADDRESSES: Comments on this proposed rule, identified by docket FISCAL–2021–0001, should only be submitted using the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions on the website for submitting comments.
- *Mail:* Department of the Treasury, Bureau of the Fiscal Service, Attn: Gary Swasey, Director, Post Payment Modernization Division, 13000 Townsend Rd., Philadelphia, PA 19154.

The fax and email methods of submitting comments on rules to Fiscal Service have been decommissioned.

Instructions: All submissions received must include the agency name (Bureau of the Fiscal Service) and docket number FISCAL–2021–0001 for this rulemaking. In general, comments received will be published on *regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. In accordance with the U.S. government's eRulemaking Initiative, Fiscal Service publishes rulemaking information on *www.regulations.gov. Regulations.gov* offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

FOR FURTHER INFORMATION CONTACT: Gary Swasey, Director, Post Payment Modernization Division, at (215) 516–8145 or *gary.swasey@fiscal.treasury.gov;* or Thomas Kearns, Senior Counsel, at (202) 874–6680 or *thomas.kearns@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Currently, when either Treasury or a payment certifying agency puts a ''stop payment'' (or ''check stop'') on a Treasury check to cancel it, the canceled check may still be negotiated, which leads to a POC. POCs are improper payments that amount to approximately $98 million each year. Resolving POCs also costs the Federal Government approximately $1.3 million each year.

Financial institutions often have access to real-time or same-day check verification information to ensure that non-Treasury checks have not been canceled, and soon this will be the case for Treasury checks as well. Fiscal Service's Treasury Check Verification System (TCVS) provides verification information for Treasury checks, but currently TCVS has a one-day lag. However, Fiscal Service expects to complete enhancements to TCVS that will allow same-day verification by mid-2023.

TCVS is available at no cost to financial institutions, either for single-item use via a free online web portal or for bulk verification of Treasury checks via an Application Programming Interface (API). TCVS verifies the authenticity of a Treasury check using the check symbol and serial number (*i.e.,* the 4-digit and 8-digit components, respectively, that together comprise a unique Treasury check number), check date, and payment amount.

Use of TCVS is currently optional. At present, Treasury procedures charge back POCs to the certifying agency, so banks have little incentive to use TCVS to avoid POCs. Only approximately 40% of all Treasury checks are run through TCVS before being negotiated.

After enhancements to Treasury's systems have been implemented and same-day Treasury check verification is functional, Fiscal Service proposes requiring that a financial institution use its check verification system when negotiating a Treasury check if the financial institution is to avoid liability for accepting a Treasury check that has been canceled. Financial institutions will be notified via a communication from the Federal Reserve's Customer Relations Support Office, **Federal Register** notice, and/or other appropriate means at least 30 days prior to the date that enhanced TCVS will become available for use and this requirement becomes effective.

Under existing rules, financial institutions are required to use ''reasonable efforts'' to ensure that a Treasury check is authentic (*i.e.,* not counterfeit) and also are responsible if they accept a Treasury check that has been previously negotiated, but they are not required to ensure that a Treasury check has not been canceled. The definition of ''reasonable efforts'' found in 31 CFR 240.2 does not currently include a requirement to use Treasury's check verification system to ensure that a Treasury check is valid (*i.e.,* a payable instrument that has not been canceled and meets the criteria for negotiability). Fiscal Service proposes revising the definition of ''reasonable efforts'' to include this verification process.

Requiring a financial institution to use TCVS (or a subsequent check verification system built to carry out the same function) has several benefits. It will greatly reduce POCs, as it will allow certifying agencies to place a ''true stop'' on a Treasury check. It will also help financial institutions reduce instances where a Treasury check (or an item purporting to be a Treasury check) is charged back to the financial institution, by allowing the financial institution to verify that the Treasury check is not counterfeit, that the amount has not been altered, and that the check is not stale-dated (*i.e.,* more than twelve months past the date of issuance and

thus no longer negotiable). Use of Treasury's check verification system will also help financial institutions avoid liability by reducing instances where a financial institution accepts a Treasury check that has been previously negotiated. However, because Treasury often is not informed immediately that a Treasury check has been negotiated, the enhanced check verification system will not eliminate acceptance of duplicate presentations entirely. (The enhancements to TCVS expected in mid-2023 will allow TCVS to provide information on negotiated Treasury checks on the same day Fiscal Service receives that information, but will not speed up Treasury's receipt of that information.) In some cases, TCVS may not have information to provide before the financial institution that accepted the duplicate presentation makes funds available, which it typically does no later than the next business day. As a practical matter, though, often the second presentation of a Treasury check does not occur until after Treasury's records have been updated. In this instance, use of TCVS will allow the financial institution to avoid liability by declining the previously negotiated Treasury check when it is presented.

Additionally, although the required usage of Treasury's check verification system will be limited to verifying the check symbol and check serial numbers, the payment amount, and the negotiation status of the check (*e.g.,* valid, cashed, canceled), the enhanced system may eventually allow for the optional verification of other check information, such as the payee name and ZIP code. These capabilities will better enable financial institutions to identify Treasury checks that have been altered, or counterfeit checks that purport to be Treasury checks, and thus help financial institutions avoid liability for accepting such checks that are not valid.

II. Summary of Proposed Rule Changes

A. Amendment to the Definition of, and Guarantee Regarding, ''Reasonable Efforts''

Part 240 currently includes a presentment guarantee, made by the guarantor of a check presented to Treasury for payment, that the guarantor has made all reasonable efforts to ensure that the check is an authentic Treasury check and not a counterfeit check. The current definition of ''reasonable efforts'' focuses on the watermark and/or other security features of a security check, to ensure that the Treasury check is authentic and not counterfeit. We propose to amend the definition of ''reasonable efforts'' to include verifying not only the Treasury check's authenticity, but also the check's validity, by requiring use of Treasury's check verification system to ensure that the check has not been canceled. Exceptions to this requirement would exist where Treasury's check verification system is not operating and is thus unavailable.

A corresponding amendment to the presentment guarantees found in the regulations would change the guarantee of Treasury check's authenticity to include a presentment guarantee regarding the check's validity as well, as described below.

B. Adding a Definition of ''Validity''

Currently, part 240 does not define ''validity.'' We propose adding a definition of ''validity'' or ''valid check.''

The proposed definition describes a valid Treasury check as a payable instrument (*i.e.,* not a counterfeit check, as defined in the existing regulations) that meets the criteria for negotiability (*i.e.,* it has not been previously negotiated or canceled). A corresponding amendment to the presentment guarantees would add a new presentment guarantee regarding the check's validity.

C. Adding a Definition of ''Cancellation'' or ''Canceled''

Currently, part 240 does not define ''cancellation'' or ''canceled'' with regard to a Treasury check. We propose adding a definition of ''cancellation'' or ''canceled.''

This definition describes a canceled Treasury check as one that was once a valid and negotiable instrument, but is no longer due to a reason other than the Treasury check's negotiation. A Treasury check may be canceled because it has limited payability (*i.e.,* it is older than one year past its issuance date and thus stale-dated), or because Treasury or the certifying agency has placed a ''stop payment'' (as defined below) on it.

D. Adding a Definition of ''Stop Payment''

Currently, the regulations do not define a ''stop payment'' with regard to a Treasury check. We propose adding a definition of this term.

This proposed definition describes the situation where Treasury or the certifying agency has indicated in its systems that an authentic Treasury check should not be paid. Reasons for issuing a stop payment on a Treasury check include that the Treasury check has been reported lost or stolen, it has been issued to a deceased payee, or it was discovered to be improper. Once a stop payment has been placed on a Treasury check, the check has been canceled and is no longer a valid Treasury check (even though it is an authentic Treasury check).

E. Amendment to the Processing of Checks, Declination, and the Reasons for Refusal

Current Treasury regulations require that a Federal Reserve Bank cash a Treasury check presented to it, except in certain circumstances where the Federal Reserve Bank must instead refuse to pay the Treasury check. The check must be refused if (1) the check bears a material defect or alteration, (2) the check was presented more than one year later than the check's date of issuance, or (3) the Federal Reserve Bank has been notified by Treasury, pursuant to Treasury regulations, that a check was issued to a deceased payee. We propose adding a fourth circumstance in which a Federal Reserve Bank must refuse to pay a Treasury check: if the Federal Reserve Bank has been notified by Treasury that a Treasury check is not valid.

As noted above, under the proposed definition, a Treasury check is not valid if the Treasury check is counterfeit, previously negotiated, or canceled.

A corresponding amendment to the regulation regarding Treasury's right of first refusal will include the instruction for Treasury to decline payment of a Treasury check when Treasury is being requested to make payment on a check that is not valid.

The Fiscal Service invites comments on the proposed regulation to require financial institutions to verify that a Treasury check has not been canceled, to prevent payments over cancellation (POCs). We invite commenters' views on all aspects of the proposed rule, which would permit Treasury to place a ''true stop'' on Treasury checks to avoid POCs, including whether the proposed definitions (*e.g.,* ''reasonable efforts'' ''cancellation'' ''canceled'' ''valid'') are reasonable and appropriate.

III. Section-by-Section Analysis

A. Section 240.2—Definitions

We propose to amend the definitions section of part 240, found at 31 CFR 240.2, by removing the lettering within that section (the list letters (a), (b), (c), etc.), and simply listing the terms in alphabetical order within the section. This comports with the Office of the Federal Register's recommendation for a list of definitions found in regulations, as stated in Section 2–13 of the Document Drafting Handbook. This

change also removes the need to re-letter the list of definitions when new definitions are added to the list.

For the reasons set forth above, we propose amending § 240.2 to revise the definition of ''reasonable efforts''; add the definition of ''cancellation'' or ''canceled''; add the definition of ''stop payment'' or ''check stop'' or ''stop''; and add the definition of ''validity'' or ''valid check.'' These four definitions are the only substantive changes to the rule's definitions section; the other terms are listed without substantive change, for purposes of removing the lettering system only, as described above.

These proposed new definitions and amendments to existing definitions will help effectuate and clarify the requirement for financial institutions to use Treasury's check verification system when negotiating Treasury checks in order to avoid liability for accepting a Treasury check that is not valid due to cancellation. They will allow help effectuate and clarify that the use of Treasury's check verification system will assist financial institutions in avoiding liability for accepting Treasury checks that have already been negotiated or have been altered, as well as for accepting counterfeit checks that purport to be Treasury checks.

B. Section 240.4—Presentment Guarantees

We propose amending the presentment guarantees to include a guarantee that the guarantor has made reasonable efforts to ensure that the check is an authentic Treasury check and that it is valid at the time of acceptance.

C. Section 240.6—Provisional Credit; First Examination; Declination; Final Payment

We propose amending the reasons that Treasury will decline a Treasury check upon first examination to include the fact that the check has been canceled, in addition to when the check has already been paid.

D. Section 240.12—Processing of Checks

We propose amending the reasons that a Federal Reserve Bank must refuse payment of a Treasury check to include circumstances where the Federal Reserve Bank has been notified that the Treasury check has been canceled or is otherwise not valid.

IV. Procedural Analysis

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For example, you may wish to discuss: (1) whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make the rule easier to understand.

Regulatory Planning and Review

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

Regulatory Flexibility Act Analysis

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule could potentially impose a significant additional burden or cost on three to seven small entities, out of a total of approximately 8,000 financial institutions that qualify as small entities.

The proposed rule only adds a simple query to the list of reasonable steps that banks take when determining the validity of a Treasury check. Treasury offers a free verification tool for bulk verification of Treasury checks via an Application Programming Interface (API) or for single-item use via a free online web portal. Use of the web portal requires no purchase of special equipment by financial institutions and requires only a standard internet connection. Banks should be able to complete a single-check search using this free web portal in approximately 30 seconds to one minute per search. An analysis of the 100 largest FDIC-insured institutions under $600 million in assets and the 100 largest federally insured credit unions under $600 million in assets shows that all but one of these financial institutions accepted fewer than 9,500 Treasury checks in 2020. The median for these 200 institutions was approximately 2,974 Treasury checks cashed in 2020, and the average was approximately 3,105. At an estimated 30 seconds per verification, 3,105 items would amount to approximately 26 staff hours per year. Congress has stated, by means of example, that additional recordkeeping requirements of 175 staff hours per year would constitute a significant impact on a small business entity. *See* 126 Cong. Rec. part 16, S10,938 (Aug. 6, 1980). Even assuming a full minute for the use of the TCVS web portal to query an individual Treasury check, these figures are well below the 10,500 checks that it would take to constitute 175 staff hours in a year (and the 21,000 checks needed with 30-second searches).

Additionally, an analysis of all the approximately 9,000 financial institutions that negotiated Treasury checks in 2020 shows that only 325 of them negotiated over 21,000 Treasury checks. Of those 325, only three are identifiable as small businesses with assets under $600 million. Even using the one-minute allotment for each use of the Treasury web portal, which translates into 10,500 negotiated Treasury checks, this figure increases to just seven small financial institutions (*i.e.,* those with assets under $600 million) receiving more than that number of Treasury checks.

Finally, it is worth noting that at approximately 90.3 million checks, Treasury check volume in 2020 was considerably higher than for other recent years, largely due to an increased quantity of check payments made under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. By means of comparison, in the previous three calendar years (2019, 2018, and 2017), Treasury issued 54.2 million, 55.9 million, and 58.4 million Treasury checks, respectively. In years with fewer Treasury checks issued, it is reasonable to expect that financial institutions will be presented with a correspondingly lower Treasury check volume. Treasury estimates that with the possible exception of three to seven entities as mentioned above, financial institutions considered small entities will spend substantially fewer than 175 staff hours per year verifying the validity of Treasury checks through the manual use of TCVS; smaller financial institutions that receive fewer Treasury checks would likely spend significantly less time. Additionally, any financial institution manually processing a large enough quantity of Treasury checks that it might experience a significant economic impact, due to the staff-hours required for such manual processing, would have the option instead to use an API to access Treasury's check verification system for use with bulk files. As with manual access, bulk access to the verification tool is free of charge to financial institutions.

Treasury anticipates that no more than three to seven small financial institutions, out of approximately 8,000 such entities, may potentially be subject to a significant impact as a result of this proposed rule. This translates into substantially less than 1% of all small financial institutions (between 0.04% and 0.1%). Thus, the proposed rule will not have a significant impact on a substantial number of small financial

institutions. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is not required. Treasury invites comments on the potential impacts this proposed rule would have on small entities.

Unfunded Mandates Act of 1995

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

List of Subjects in 31 CFR Part 240

Authenticity, Canceled, Cancellation, Check, Check stop, Declination, Financial institutions, Presentment, Presentment guarantees, Processing, Reasonable efforts, Stop, Treasury check, Treasury check verification system, Valid check, Validity, Verification.

For the reasons set out in the preamble, the Bureau of the Fiscal Service proposes to amend 31 CFR part 240 as follows:

PART 240—INDORSEMENT AND PAYMENT OF CHECKS DRAWN ON THE UNITED STATES TREASURY

■ 1. The authority citation for part 240 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 321, 3327, 3328, 3331, 3334, 3343, 3711, 3712, 3716, 3717; 332 U.S. 234 (1947); 318 U.S. 363 (1943).

■ 2. Revise § 240.2 to read as follows:

§ 240.2 Definitions.

Administrative offset or *offset,* for purposes of this section, has the same meaning as defined in 31 U.S.C. 3701(a)(1) and 31 CFR part 285.

Agency means any agency, department, instrumentality, office, commission, board, service, or other establishment of the United States authorized to issue Treasury checks or for which checks drawn on the United States Treasury are issued.

Cancellation or *canceled* means that a Treasury check is no longer a valid instrument, due to the one-year limitation on negotiability and payment described in § 240.5(a), or the placement of a stop payment on the check by Treasury or the certifying agency.

Certifying agency means an agency authorizing the issuance of a payment by a disbursing official in accordance with 31 U.S.C. 3325.

Check or *checks* means an original check or checks; an electronic check or checks; or a substitute check or checks.

Check payment means the amount paid to a presenting bank by a Federal Reserve Bank.

Counterfeit check means a document that purports to be an authentic check drawn on the United States Treasury, but in fact is not an authentic check.

Days means calendar days. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or Federal holiday; the first day is not included. For example, if a reclamation was issued on July 1, the 90-day protest period under § 240.9(b) would begin on July 2. If the 90th day fell on a Saturday, Sunday or Federal holiday, the protest would be accepted if received on the next business day.

Declination means the process by which Treasury refuses to make final payment on a check, *i.e.,* declines payment, by instructing a Federal Reserve Bank to reverse its provisional credit to a presenting bank.

Declination date means the date on which the declination is issued by Treasury.

Disbursing official means an official, including an official of the Department of the Treasury, the Department of Defense, any Government corporation (as defined in 31 U.S.C. 9101), or any official of the United States designated by the Secretary of the Treasury, authorized to disburse public money pursuant to 31 U.S.C. 3321 or another law.

Drawer's signature means the signature of a disbursing official placed on the front of a Treasury check as the drawer of the check.

Electronic check means an electronic image of a check drawn on the United States Treasury, together with information describing that check, that meets the technical requirements for sending electronic items to a Federal Reserve Bank as set forth in the Federal Reserve Banks' operating circulars.

Federal Reserve Bank means a Federal Reserve Bank or a branch of a Federal Reserve Bank.

Federal Reserve Processing Center means a Federal Reserve Bank center that images Treasury checks for archiving check information and transmitting such information to Treasury.

Financial institution means:

(1) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(2) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(3) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(4) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union which is eligible to make application to become an insured credit union under section 201 of such Act (12 U.S.C. 1781);

(5) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) which is an insured depositary institution (as defined in such Act) (12 U.S.C. 1811 *et seq.*) or is eligible to apply to become an insured depositary institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(6) Any financial institution outside of the United States if it has been designated by the Secretary of the Treasury as a depositary of public money and has been permitted to charge checks to the General Account of the United States Treasury.

First examination means Treasury's initial review of a check that has been presented for payment. The initial review procedures, which establish the authenticity and integrity of a check presented to Treasury for payment, may include reconciliation; retrieval and inspection of the check or the best available image thereof; and other procedures Treasury deems appropriate to specific circumstances.

Forged or unauthorized drawer's signature means a drawer's signature that has been placed on the front of a Treasury check by a person other than:

(1) A disbursing official; or

(2) A person authorized to sign on behalf of a disbursing official.

Forged or unauthorized indorsement means:

(1) An indorsement of the payee's name by another person who is not authorized to sign for the payee; or

(2) An indorsement of the payee's name made by another person who has been authorized by the payee, but who has not indorsed the check in accordance with § 240.4 and §§ 240.13 through 240.17; or

(3) An indorsement added by a financial institution where the financial institution had no authority to supply the indorsement; or

(4) A check bearing an altered payee name that is indorsed using the payee name as altered.

Guarantor means a financial institution that presents a check for payment and any prior indorser(s) of a check.

Master Account means the record of financial rights and obligations of an account holder and the Federal Reserve Bank with respect to each other, where opening, intraday, and closing balances are determined.

Material defect or alteration means:

(1) The counterfeiting of a check; or

(2) Any physical change on a check, including, but not limited to, a change in the amount, date, payee name, or other identifying information printed on the front or back of the check (but not including a forged or unauthorized drawer's signature); or

(3) Any forged or unauthorized indorsement appearing on the back of the check.

Minor means the term minor as defined under applicable State law.

Monthly statement means a statement prepared by Treasury which includes the following information regarding each outstanding reclamation:

(1) The reclamation date;

(2) The reclamation number;

(3) Check identifying information; and

(4) The balance due, including interest, penalties, and administrative costs.

Original check means the first paper check drawn on the United States Treasury with respect to a particular payment transaction.

Payee means the person that the certifying agency designated to receive payment pursuant to 31 U.S.C. 3528.

Person means an individual, institution, including a financial institution, or any other type of entity; the singular includes the plural.

Presenting bank means:

(1) A financial institution which, either directly or through a correspondent banking relationship, presents checks to and receives provisional credit from a Federal Reserve Bank; or

(2) A depositary which is authorized to charge checks directly to Treasury's General Account and present them to Treasury for payment through a designated Federal Reserve Bank.

Provisional credit means the initial credit provided to a presenting bank by a Federal Reserve Bank. Provisional credit may be reversed by Treasury until the completion of first examination or final payment is deemed made pursuant to § 240.6(d).

Reasonable efforts means, at a minimum, confirming the validity of a check, using Treasury's check verification system or other similar authorized system, whenever such system is available, as well as the authenticity of the check such as by verifying the existence of the Treasury watermark on an original check. Acceptance of a check by electronic image or other non-physical means does not impact reasonable efforts requirements. Based upon the facts at hand, including whether a check is an original check, a substitute check, or an electronic check, reasonable efforts may require the verification of other security features.

Reclamation means a demand for the amount of a check for which Treasury has requested an immediate refund.

Reclamation date means the date on which a reclamation is issued by Treasury. Normally, demands are sent to presenting banks or other indorsers within two business days of the reclamation date.

Reclamation debt means the amount owed as a result of Treasury's demand for refund of a check payment, and includes interest, penalties and administrative costs assessed in accordance with § 240.8.

Reclamation debtor means a presenting bank or other indorser of a check from whom Treasury has demanded a refund in accordance with §§ 240.8 and 240.9. The reclamation debtor does not include a presenting bank or other indorser who may be liable for a reclamation debt, but from which Treasury has not demanded a refund.

Recurring benefit payment includes but is not limited to a payment of money for any Federal Government entitlement program or annuity.

Stop payment means that Treasury or a certifying agency has indicated that a Treasury check should not be paid and instead should be canceled. A stop payment could be placed on a Treasury check for reasons including that the check was reported lost or stolen; the check was determined to have been issued improperly; the payee was deceased prior to the issuance of the check; or any other allowable reason.

Substitute check means a paper reproduction of a check drawn on the United States Treasury that meets the definitional requirements set forth at 12 CFR 229.2(aaa).

Treasury means the United States Department of the Treasury, or when authorized, an agent designated by the Secretary of the Treasury or their delegee.

Treasury Check Offset means the collection of an amount owed by a presenting bank in accordance with 31 U.S.C. 3712(e).

Truncate means to remove a paper check from the forward collection or return process and send to a recipient, in lieu of such paper check, a substitute check or an electronic check.

U.S. securities means securities of the United States and securities of Federal agencies and Government corporations for which Treasury acts as the transfer agent.

Validity or *valid check* means an authentic Treasury check that is a payable instrument and has not been previously negotiated or canceled.

Writing includes electronic communications when specifically authorized by Treasury in implementing instructions.

■ 3. Amend § 240.4 by revising paragraph (d) to read as follows:

§ 240.4 Presentment guarantees.

* * * * *

(d) *Authenticity and Validity.* That the guarantors have made all reasonable efforts to ensure that a check is both an authentic Treasury check (*i.e.,* it is not a counterfeit check) and a valid Treasury check (*i.e.,* it has not been previously negotiated or canceled).

* * * * *

■ 4. Amend § 240.6 by revising paragraph (c)(3) to read as follows:

§ 240.6 Provisional credit; first examination; declination; final payment.

* * * * *

(c) * * *

(3) Treasury has already received presentment of a substitute check, electronic check, or original check relating to the check being presented, such that Treasury is being requested to make payment on a check it has already paid; or Treasury is being requested to make payment on a check that is not valid due to a stop payment or other cancellation.

* * * * *

■ 5. Amend § 240.12 by revising paragraphs (a)(1)(ii) and (iii), and adding paragraph (a)(1)(iv) to read as follows:

§ 240.12 Processing of checks.

(a) * * *

(1) * * *

(ii) A check was issued more than one year prior to the date of presentment;

(iii) The Federal Reserve Bank has been notified by Treasury, in accordance with § 240.15(c), that a check was issued to a deceased payee; or

(iv) The Federal Reserve Bank has been notified by Treasury that a check is not valid.

* * * * *

David A. Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2023–01024 Filed 1–31–23; 8:45 am]

BILLING CODE 4810–AS–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket Nos. RM2023–1; RM2023–3; Order No. 6430]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Order denying request and notice of proposed rulemaking.

SUMMARY: The Commission is acknowledging a recent filing requesting the Commission consider a motion for reconsideration or, in the alternative, petition regarding appropriate analytical principles for retiree health benefit costs. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 8, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On December 9, 2022, the Commission issued Order No. 6363, which, in relevant part, identified how the accepted analytical principles would apply to the treatment of retiree health benefit normal costs in fiscal year (FY) 2022.[1] The Commission stated that should any party ''desire the Commission rely on a different analytical principle with regard to the . . . normal cost payments . . . , [it] may petition the Commission for a change pursuant to 39 [CFR] part 3050.'' Order No. 6363 at 11. On December 19, 2022, the National Postal Policy Council, the Alliance of Nonprofit Mailers, the American Catalog Mailers Association, the Association for Postal Commerce, the Major Mailers Association, the National Association of Presort Mailers, and N/MA—The News/Media Alliance (Mailers) filed a motion requesting reconsideration of Order No. 6363, or in the alternative, adoption of a petition to change the analytical principles applied to the FY 2022 retiree health benefit normal costs.[2] For the reasons discussed below, the Commission reaffirms the applicable findings in Order No. 6363 and provides notice of its intent to consider the Mailers' petition to change the analytical principles applied to the FY 2022 retiree health benefit normal costs.

II. Background

In its annual periodic reports to the Commission, the Postal Service is permitted to use only accepted analytical principles. 39 CFR 3050.10. Accepted analytical principles refer to the analytical principles that were applied by the Commission in its most recent Annual Compliance Determination (ACD) unless different analytical principles subsequently were accepted by the Commission in a final rule. 39 CFR 3050.1(a).

Retiree health benefit normal costs represent the present value of the estimated retiree health benefits attributable to active employees' current year of service.[3] Between FY 2017 and FY 2021, the Postal Service was required to pay retiree health benefit normal costs and amortization payments for the unfunded portion of the Postal Service Retiree Health Benefit Fund (PSRHBF) obligation as calculated by the Office of Personnel Management (OPM).[4] On April 6, 2022, President Joseph Biden signed the Postal Service Reform Act (PSRA) into law.[5] Section 102 of the PSRA repealed former 5 U.S.C. 8909a(d), thus eliminating the required annual retiree health benefit payments. Under the requirements of the PSRA, the Postal Service will instead be required to pay into the PSRHBF for current retiree health care costs equal to the excess of the cost of annual claims over premiums. The Postal Service will not, however, be required to make these payments until OPM computes whether ''top up'' payments are due (which will occur not later than June 30, 2026) or the PSRHBF is exhausted. Thus, no retiree health benefit payments were due in FY 2022.

After several letters and filings concerning how the Postal Service should address the changed retiree health benefit payment requirements (in addition to other changes to costs) caused by the PSRA,[6] the Commission

[1] Docket No. RM2023–1, Order Granting Petition, In Part, for Reconsideration, December 9, 2022, at 10 (Order No. 6363). The Postal Service has separately appealed Order No. 6363. *See U.S. Postal Serv.* v. *Postal Regul. Comm'n,* No. 23–1003 (D.C. Cir. Jan. 6, 2023), ECF Document No. 1980503, at 1–3.

[2] Docket Nos. RM2023–1 and RM2023–3, Motion for Reconsideration or, in the Alternative, Petition to Initiate a Proceeding Regarding the Appropriate Analytical Principle for Retiree Health Benefit Normal Costs, December 19, 2022 (Mailers' Motion and Petition). The Mailers initially designated their petition as Proposal Eight. In Order No. 6382, the Commission redesignated the petition as NPPC et al. Proposal One to distinguish it from proposals initiated by the Postal Service. Docket Nos. RM2023–1 and RM2023–3, Order Granting Motion for Extension of Time, December 21, 2022, at 2 n.2 (Order No. 6382). This change continues to be reflected in the caption for Docket No. RM2023–3 and is how the Commission will reference the Mailers' petition in this proceeding.

[3] Docket No. ACR2021, *Financial Analysis of United States Postal Service Financial Results and 10–K Statement,* May 18, 2022, at 7 n.9.

[4] Former 5 U.S.C. 8909a(d)(3)(B). As explained in detail in Section IV.A., *infra,* these requirements replaced different retiree health benefit funding requirements that were in place between FY 2007 and FY 2016.

[5] Postal Service Reform Act of 2022, Public Law 117–108, 136 Stat. 1127 (2022).

[6] *See* Letter from Richard T. Cooper, Managing Counsel, Corporate and Postal Business Law to Erica A. Barker, Secretary and Chief Administrative Officer, August 12, 2022, available at *https://www.prc.gov/docs/122/122469/Lttr%20re%20PSRA%20Effects%20ACR%20CRA.pdf;* Letter from Erica A. Barker, Secretary and Chief Administrative Officer to Richard T. Cooper, Managing Counsel, Corporate and Postal Business Law, October 7, 2022, available at *https://www.prc.gov/docs/123/123096/Response%20Letter.pdf;* Docket No. RM2023–1, Petition for Reconsideration and Initiation of Proceeding, November 4, 2022; Letter to Erica A. Barker, Secretary and Chief Administrative Officer, October 13, 2022, styled Motion for Reconsideration of Response to the Postal Service's Proposed Changes to Accepted Analytical Principles, available at *https://www.prc.gov/docs/123/123145/Motion%20for%20Reconsideration_PropChange_.pdf;* Docket No. RM2023–1, Response of the United States Postal Service in Opposition to GCA Petition

Continued

issued Order No. 6363. In Order No. 6363, the Commission determined that the existing accepted analytical principles are to be applied in the Postal Service's FY 2022 Annual Compliance Report (ACR), which is filed by the Postal Service in late December of each calendar year.[7] The Commission then identified how the accepted analytical principles would apply to the costs at issue, including the treatment of retiree health benefit normal costs, and described the process by which any party could petition for a change to the accepted analytical principles and receive a determination from the Commission prior to the FY 2022 ACR docket's conclusion and the issuance of the FY 2022 ACD in late March of 2023. Order No. 6363 at 10–11; 39 U.S.C. 3653(b).

With regard to the treatment of retiree health benefit normal costs, the Commission noted that the PSRA removed the requirement that the Postal Service make retiree health benefit payments in FY 2022. *See* Order No. 6363 at 10. The Commission explained that:

> Accepted analytical principles dictate the treatment of the costs incurred by the Postal Service, and do not require inclusion of costs that are not incurred. Applying the accepted principles to the costs incurred under the new requirements of [the] PSRA does not require the Commission to accept a change in analytical principles.

Id. The Commission concluded that ''[a]s a result, under the accepted methodology, there are no amortization and normal costs to account for in the Postal Service's financial reporting for FY 2022. Including such costs not incurred by the Postal Service would require a change in accepted methodology.'' *Id.*

The Commission stated that should any party ''desire the Commission rely on a different analytical principle with regard to the amortization and normal cost payments (which the Postal Service does not incur in FY 2022 or beyond), [it] may petition the Commission for a change pursuant to 39 [CFR] part 3050.'' *Id.* at 11. The Commission stated that for such a petition to be considered for purposes of the FY 2022 ACD, it must be filed no later than December 21, 2022. *Id.* The Commission stated that review of any petitions will take place in new rulemaking dockets, rather than in Docket No. RM2023–1. *Id.*

III. The Mailers' Motion and Petition and Responses

A. Mailers' Motion and Petition

On December 19, 2022, the Mailers' filed a motion for reconsideration of Order No. 6363, and in the alternative, requested that the Commission accept their petition and begin a proceeding to change the accepted analytical principles applying to FY 2022 retiree health benefit normal costs consistent with NPPC et al. Proposal One. Mailers' Motion and Petition at 1.

The primary argument raised by the Mailers in favor of reconsideration is that the current accepted analytical principles dictate that FY 2022 retiree health benefit normal costs ''should be treated as accrued in FY 2022 and distributed as attributable or institutional in the same manner as they have been in every year since FY 2008.'' *Id.* Thus, the Mailers request that the Commission reconsider Order No. 6363's conclusion that excluding retiree health benefit normal costs from the annual Cost and Revenue Analysis Report (CRA) filed with the FY 2022 ACR is not a change in analytical principles. *Id.* at 2. They also request reconsideration of the decision ''to impose the burden on mailers to petition the Commission for a change in analytical treatment, when it is the Postal Service, not the mailers, that is proposing [a change in analytical principles].'' *Id.*

The Mailers assert that ''[t]he normal costs at issue are the costs incurred this year for post-retirement health benefits for current employees'' and that because employees are entitled to those benefits due to work performed in FY 2022, those benefits are earned in FY 2022. *Id.* at 2–3. The Mailers further assert that retiree health benefit normal costs have been accrued and attributed in the year they are earned since 2008. *Id.* at 3. To support this assertion, the Mailers state that the Postal Service uses accrual accounting and that a basic principle of accrual accounting is that costs accrue when incurred. *Id.* The Mailers state that this principle is the accepted analytical principle for normal costs ''that the Commission and Postal Service have applied consistently in every year since 2008.'' *Id.*

The Mailers explain that the accrued costs reflected in the Trial Balance form the basis of costs by cost segment and component, and that accrual in each segment in the Trial Balance matches the segment cost in the cost segments and components, which in turn form the basis of the CRA and ACR, critical documents for purposes of the ACD. *Id.* at 4. The Mailers note that the FY 2021 Cost Segment 18 summary description explains how the normal cost of retiree health benefits are attributed and assert that the Commission relied on this in the FY 2021 ACD. *Id.* at 4–5. They state that ''[a] failure to accrue and attribute [retiree health benefit] normal costs in FY 2022 would constitute a change in the distribution of normal costs among attributable and institutional costs'' and that ''[a]llowing the Postal Service to circumvent this process by categorically 'omitting' these costs from the Trial Balance would circumvent this institutional safeguard on the integrity of the cost models.'' *Id.* at 5. The Mailers emphasize that the Commission's regulations require that the Postal Service use accepted analytical principles in the ACR, that is, those applied by the Commission in the most recent ACD unless different analytical principles were accepted by the Commission in a final rule. *Id.* (citing 39 CFR 3050.1(a), .10). They conclude that the regulations thus require the Postal Service to accrue in FY 2022 retiree health benefit normal costs that were earned in FY 2022, which they assert is the established analytical principle. *Id.* at 6.

The Mailers further assert that the fact ''[t]hat normal costs are accrued in this way was resolved in Docket No. RM2007–1, as the Commission implemented the Postal Accountability and Enhancement Act.'' *Id.* The Mailers cite to the Postal Service's comments in that proceeding, which discuss attributing normal costs differently than in accordance with payment schedules and attributing normal costs as they are earned. *Id.* at 6–8. The Mailers also assert that accruing normal costs in this way was also consistent with the former General Accounting Office and current Government Accountability Office (GAO)'s ''longstanding view on this issue'' and cite to documents from 1992 and 2002, in which the Postal Service was urged to adopt accrual accounting for retiree health benefit costs. *Id.* at 7–8. The Mailers conclude that this was the approach adopted by the Commission and applied ''in every annual compliance review proceeding since FY 2008.'' *Id.* at 8.

The Mailers state that ''failing to accrue the [retiree health benefit] normal costs in the year that they are earned would have real world negative consequences,'' the most important of which is violation of the principles of cost causation embodied in the Postal Accountability and Enhancement Act

for Reconsideration and Initiation of Proceeding, November 10, 2022; Docket No. RM2023–1, Reply of Mailer Associations to Response of the United States Postal Service in Opposition to GCA Petition for Reconsideration and Initiation of Proceeding, November 21, 2022.

[7] Order No. 6363 at 2; 39 U.S.C. 3652. *See* Docket No. ACR2022, United States Postal Service FY 2022 *Annual Compliance Report,* December 29, 2022.

(PAEA).[8] The Mailers assert that ''[e]conomic costs are the foundation of postal cost accounting, and the economic costs of postal workers include [retiree health benefit] normal costs'' and that omitting such costs would mean that costs do not reflect economic costs. Mailers' Motion and Petition at 8–9. The Mailers argue that this would lead to inefficient rates, particularly for workshare discounts. *Id.* at 9. Specifically, the Mailers explain that ''[o]mitting a portion of the direct and indirect labor costs from the calculation of avoided costs would unavoidably result in underestimates of costs avoidances, which in turn would lead to inefficiently priced workshare discounts'' and could result in inaccurate findings that some workshare discounts exceed avoided costs and must be adjusted. *Id.* The Mailers assert that this harm could potentially lead to long-term distortions in workshare discounts. *Id.*

Because the Mailers claim that the accepted analytical principle ''unquestionably accrues [retiree health benefit] normal costs as a cost in the year in which they are incurred,'' they assert that it is the Postal Service, and not the Mailers, that wants to change the accepted analytical principle for FY 2022. *Id.* at 9–10. The Mailers assert that Order No. 6363 accepted an admission by the Postal Service that a change to an analytical principle was required but also ''somehow simultaneously held that there is no change in the underlying analytical principle and that therefore *mailers* must initiate a proposed change.'' *Id.* at 10 (emphasis in original). The Mailers assert that ''[i]t is illogical and unreasonable both to accept a changed treatment and say that the principle has not changed.'' *Id.* The Mailers state that the Postal Service has not requested a change in accepted analytical principle for the retiree health benefit normal costs, but because a change is being proposed in the Mailers' view, the Postal Service should bear the burden of advocating for a change. *Id.* Thus, the Mailers allege that Order No. 6363 erred in requiring the Mailers, and not the Postal Service, to initiate a proceeding regarding the treatment of FY 2022 retiree health benefit normal costs. *Id.* at 10–11.

The Mailers also argue that the PSRA provides no basis for abandoning the accepted analytical principle that retiree health benefit normal costs are accrued when earned because the timing of funding is irrelevant to accrual accounting. *Id.* at 11. Thus, the Mailers assert that the Postal Service and Order No. 6363 incorrectly contend that the PSRA changed postal cost accounting because the legislation only amended how the retiree health benefits are funded. *Id.* The Mailers assert that while Section 102 of the PSRA altered how the benefits are funded, it did not eliminate the cost of retiree health benefit normal costs because those costs are incurred (and accrued) ''daily as postal employees do their work, just as in past years.'' *Id.* at 11–12. The Mailers further assert that ''[n]othing in the PSRA changed the statutory definition of attributable costs or the statutory requirement that products cover their attributable costs based on reliably identified causal relationships.'' *Id.* at 12.

The Mailers reiterate that the retiree health benefit normal costs have been accrued and attributed in a consistent manner for the past 14 years, including years when payments were reduced and deferred by Congress and years when the Postal Service defaulted on them. *Id.* at 13. They assert that Order No. 6363 reverses this long-standing practice ''even though the benefits are still being earned and the costs incurred in the very same way'' and that ''[c]osts that are incurred annually in the normal course of operation do not flip from accrued to non-accrued and back . . . depending on whether OPM deems an invoice necessary.'' *Id.* They further assert that the analytical principles identified in Order No. 6363 are inconsistent with the treatment the retiree health benefit normal costs received in FY 2009 and FY 2011 when Congress reduced the payment amounts, but the retiree health benefit normal cost was calculated in the same way as other years. *Id.* at 13–14. The Mailers also assert that the Postal Service's FY 2022 Form 10–K shows that the Postal Service accrued $4.4 billion in FY 2022 retiree health benefit normal costs in its actuarial liability, which they claim contradicts the contention that there are no retiree health benefit normal costs to accrue and attribute. *Id.* at 15.

The Mailers argue, in the alternative, that if the Commission finds the current accepted analytical principles permit exclusion and non-attribution of retiree health benefit normal costs when there is no required current year payment, then the Commission should change the analytical principles. *Id.* at 16. The Mailers, thus, petition the Commission pursuant to 39 CFR 3050.11 to change the accepted analytical principles for retiree health benefit normal costs if the motion for reconsideration portion of the Mailers' Motion and Petition is not granted. *Id.* The Mailers' proposal (*i.e.,* NPPC et al. Proposal One) and the basis for the proposal are discussed in Section V.A., *infra.*

B. Responses to the Mailers' Motion and Petition

On January 4, 2023, the Postal Service and the Package Shippers Association (PSA) filed responses to the Mailers' Motion and Petition.[9] PSA supports the Mailers' Motion and Petition, agreeing that FY 2022 retiree health benefit normal costs should be accrued and then attributed to products in the same proportions as direct labor costs and asserting that this is the same methodology that has been applied to these costs since 2006. PSA Response at 1. PSA acknowledges that the PSRA changed when the Postal Service makes payments for retiree health benefit costs but asserts that the PSRA did not ''address cost accrual principles generally or the causality-based cost attribution requirements,'' which it believes necessitate that FY 2022 retiree health benefit normal costs be accrued and attributed. *Id.* at 1–2. Like the Mailers, PSA cites to the Postal Service's comments in Docket No. RM2007–1, which it asserts show that how retiree health benefit normal costs are incurred should not be linked to payment schedules and that such normal costs ''have been accrued and attributed . . . in the year in which they were incurred since the enactment of the PAEA.'' *Id.* at 2. PSA also echoes the Mailers' assertion that the PSRA's changes are not a sufficient reason to change the established approach and similarly points to FY 2011 when payments were deferred but retiree health benefit normal costs still accrued as an example of the accepted methodology. *Id.* at 2–3. PSA further asserts that ''[t]his approach of accruing and attributing [retiree health benefit] normal costs is the only approach that complies with the statutory causation-based costing requirements'' as ''the statute . . . requires that costs with a reliably identified causal relationship to a specific product be attributed to that product.'' *Id.* at 3. PSA states that retiree health benefit normal costs have long

[8] *Id. See* Postal Accountability and Enhancement Act, Public Law 109–435, 120 Stat. 3198 (2006).

[9] Docket Nos. RM2023–1 and RM2023–3, Response of the United States Postal Service to Mailers' Motion for Reconsideration and Petition, January 4, 2023 (Postal Service Response); Docket Nos. RM2023–1 and RM2023–3, Comments of the Package Shippers Association, January 4, 2023 (PSA Response). In Order No. 6382, the Commission extended the deadline for responding to the Mailers' Motion and Petition to January 4, 2023. Order No. 6382 at 3. *See* Docket Nos. RM2023–1 and RM2023–3, Motion of the United States Postal Service for Leave to File Consolidated or Concurrent Responses to Mailers' December 19th Filing, December 20, 2022.

been attributed to products, and that such costs in FY 2022 are not less caused by products than in prior years and therefore cannot be excluded from attribution. *Id.* at 3–4.

The Postal Service opposes both the request for reconsideration of Order No. 6363 and the alternative request to adopt NPPC et al. Proposal One. Postal Service Response at 1. With respect to the request for reconsideration, the Postal Service states that request is not justified under 39 CFR 3010.165 because the Commission committed no material errors of fact or law in identifying the accepted analytical principles in Order No. 6363 and the Mailers had adequate prior opportunity to submit arguments on this issue. *Id.* at 2. The Postal Service argues that the Commission should deny the request for consideration and proceed to the merits of resolving what analytical principles should apply in FY 2022 and future years with regard to retiree health benefit normal costs. *Id.* at 2–3. The Postal Service asserts that Order No. 6363 was correct in finding that the accepted methodology does not require the inclusion of costs that are not incurred by the Postal Service and further asserts that the Mailers' approach has ''an insurmountable impediment'' because it seeks to attribute costs where the actual entry for that component is zero, and with zero normal costs recorded in FY 2022, ''there are no costs to apportion between attributable and institutional.'' *Id.* at 3–4. The Postal Service states that this is confirmed by language in the FY 2021 Cost Segment 18 summary description. *Id.* at 4. The Postal Service acknowledges that the Mailers ''wish to dispute whether or not the entry . . . should be zero in FY 2022'' but asserts that this issue is properly addressed in an evaluation of NPPC et al. Proposal One rather than through reconsideration of Order No. 6363. *Id.*

The Postal Service contends that NPPC et al. Proposal One should be rejected on the merits. The Postal Service objects to the Mailers' contention that the PSRA should not have any effect on normal cost accruals and attribution in FY 2022 and argues that the Mailers' proposed approach runs afoul of Congressional intent. *Id.* at 5, 7. Specifically, the Postal Service argues that ''[t]he PSRA changes in fact bear directly on how [retiree health benefit] costs must be treated'' because the PSRA reversed key PAEA provisions relating to retiree health benefits. *Id.* at 7. The Postal Service explains that the PAEA required prefunding of future retiree health benefit normal costs and that the PSRA eliminated this requirement, switching back to the pre-PAEA pay-as-you-go approach to paying for these costs. *Id.* at 7–8. The Postal Service cites to the House Report accompanying the PSRA as affirming this. *Id.* at 8–9. The Postal Service emphasizes that ''a cost at its essence consists of an amount someone is *required* to pay'' and argues that the Commission should continue to recognize the limitations of a strictly ''economic'' approach to costing when ''disparities between theoretical 'economic' costs and booked 'accounting' costs'' exist.'' *Id.* at 9 (emphasis in original).

The Postal Service specifically takes issue with the Mailers' assertion that ''[c]osts that are incurred annually in the normal course of operation do not flip from accrued to non-accrued and back . . . depending on whether OPM deems an invoice necessary.'' *Id.* at 10 (citing Mailers' Motion and Petition at 13). The Postal Service argues that the format in which OPM conveys payment information is not necessarily dispositive, but '''[e]conomic' costs can indeed flip back and forth from accrued to non-accrued depending on whether *Congress* through legislation deems payment to be *required* or not (which, in turn, is what will determine whether OPM issues an invoice or not).'' *Id.* (emphasis in original). The Postal Service asserts that ''[w]ith respect to [retiree health benefit] costs, such flipping has occurred several times in the past'' and outlines the legislative history of varying payment requirements for retiree health benefits. *Id.* at 10–11. The Postal Service argues that ''[e]ach of these changes directly affected cost accruals by virtue of changing the nature or scope of the obligations that Congress was imposing on the Postal Service, and the PSRA is no exception, regardless of how adamantly Mailers insist[ ] that it is.'' *Id.* at 11. The Postal Service emphasizes that under the PSRA, it ''is at this time under *no* type of obligation to make prefunding payments reflecting those normal costs'' and that NPPC et al. Proposal One does not justify a change in the analytical principles to require that costs that are not incurred be included in either the financial or regulatory reporting. *Id.* (emphasis in original).

The Postal Service also argues that NPPC et al. Proposal One should be rejected because ''Mailers fail to articulate exactly how their Proposal One would operate in any way that could possibly meet rational regulatory guidelines.'' *Id.* at 12. The Postal Service states that while the result the Mailers hope to achieve is clear ''how they would propose to get there is distinctly unclear'' and ''[t]o the extent that a potential pathway can be surmised, it has additional unacceptable shortcomings.'' *Id.*

To support these arguments, the Postal Service first explains that steps it took in FY 2021 for accruing and attributing retiree health benefit normal costs, beginning with receiving an OPM invoice with a precise amount payable for FY 2021 retiree health benefit normal costs, reporting that amount in the Trial Balance and components 202 and 208, and then partially attributing component 202 costs to products. *Id.* at 12–13. The Postal Service states that NPPC et al. Proposal One seeks to ensure that the amounts are attributed in FY 2022, but given that no OPM invoice was issued, it is unclear from the Mailers' proposal what steps would be taken to effectuate that since no retiree health benefit normal costs were entered in the Postal Service's accounting records for FY 2022. *Id.* at 13–14. The Postal Service explains the issues it sees with inserting the costs at the Trial Balance step, including that that such an approach would be inconsistent with Generally Accepted Accounting Principles (GAAP) requirements and would cause issues in future years as ''top up'' payments are required. *Id.* at 14–15, n.5.

The Postal Service suggests that ''it seems much more plausible'' that Mailers are suggesting that the normal costs be inserted as a regulatory adjustment in a later step and that they are looking to use the accounting and regulatory process used prior to FY 2017, which the Postal Service views as a separate procedure from the one employed between FY 2017 and FY 2021. *Id.* at 15–19. However, the Postal Service takes issue with the Mailers' reference to negative adjustments made in FY 2009 and FY 2011. *Id.* at 19–20.

The Postal Service differentiates the FY 2009 and FY 2011 adjustments on the grounds that the legislative changes in FY 2009 and FY 2011 ''were transitory adjustments to or deferrals of payment amounts previously specified by Congress'' and not permanent changes to the Postal Service's payment obligations (unlike the PSRA, which ''affirmatively did abandon the prefunding concept''). *Id.* The Postal Service also differentiates the FY 2009 and FY 2011 adjustments because making the same adjustments for FY 2022 would result in the attributable cost portion of the retiree health benefit normal costs exceeding the accrued retiree health benefit accounting costs when in FY 2009 and FY 2011 the attributed portion of the retiree health

benefit normal costs did not exceed accrued total costs. *Id.* at 20–21. The Postal Service concludes that in FY 2022, where there were no accrued retiree health benefit costs because no retiree health benefit payments were required, attributing a portion of normal costs as advocated by the Mailers ''would open the door for the complete untethering of regulatory costs from booked accounting costs.'' *Id.* at 21.

C. Mailers' Reply Comments

On January 11, 2023, the Mailers filed a motion for leave to file reply comments and concurrently submitted reply comments.[10] The Commission received no objections to the motion and finds that no party is prejudiced by granting the motion, particularly in light of the additional opportunity to comment that will be provided as discussed in Section V.B., *infra.* Thus, the Motion for Reply Comments is granted.

In the reply comments, the Mailers reemphasize that the burden of proof should be on the Postal Service. Mailers' Reply Comments at 1–2. The Mailers assert that nothing in the Postal Service Response supports excluding retiree health benefit normal costs from periodic reporting given that retiree health benefit normal costs are ''earned benefits'' and ''part of the economic costs of handling mail.'' *Id.* at 2. Mailers reiterate that the PSRA did not change the treatment of retiree health benefit costs, and that in their view, the PSRA ''addressed solely the timing of payment, not the regulatory handling of the cost.'' *Id.* The Mailers argue that the PSRA did not change the legal standard governing cost attribution or direct the Postal Service to abandon systemwide accrual costing. *Id.* at 2–3.

The Mailers also assert that the ''real world consequences'' of failing to attribute retiree health benefit normal costs is demonstrated through the FY 2022 ACR, where ''[t]he omission of more than $2 billion of attributable costs makes material changes to workshare discount passthroughs compared to if those costs were included.'' *Id.* at 3 (footnote omitted). The Mailers point to several workshare discounts being reported as having passthroughs exceeding 100 percent, despite those passthroughs previously being set at 100 percent in the most recent rate adjustment proceeding, which the Mailers assert ''is very largely due to the omission of $2.4 billion in attributable costs.'' *Id.* at 4–5. The Mailers also note that workshare discounts with passthroughs below 85 percent were also affected as they ''now appear to have larger passthroughs—again almost entirely due to the omission of more than $2 billion in attributable retiree health benefit normal costs.'' *Id.* at 5. The Mailers assert that this will result in inaccurate compliance findings with respect to workshare discounts, may harm the goals of pricing and operational efficiency, and will impede efforts to move workshare discounts with low passthroughs to more efficient levels. *Id.*

IV. Commission Analysis

As discussed in Section II., *supra,* the Commission's regulations permit that the Postal Service use only accepted analytical principles in its annual periodic reports to the Commission. 39 CFR 3050.10. Accepted analytical principles refer to the analytical principles that were applied by the Commission in its most recent ACD unless a different analytical principle subsequently was accepted by the Commission in a final rule. 39 CFR 3050.1(a). The filings before the Commission contain arguments concerning both what the accepted analytical principles related to the treatment of retiree health benefit normal costs *currently are* as well as arguments about whether and how the accepted analytical principles *should be changed.*

The primary question that needs to be resolved with respect to the request for reconsideration is what the accepted analytical principles for the treatment of retiree health benefit normal costs are *currently.* Thus, this section elaborates on Order No. 6363's explanation and application of the current accepted analytical principles and addresses the arguments raised concerning what the accepted analytical principles are currently. Arguments concerning whether and how the accepted analytical principles should be changed will be addressed when the Commission considers the merits of NPPC et al. Proposal One in a future order after receiving further comment on NPPC et al. Proposal One. *See* Sections IV.C., V., *infra.*

Order No. 6363 found that the current accepted analytical principles do not require the Postal Service to include costs not incurred (such as retiree health benefit normal costs in FY 2022) in its annual periodic reports to the Commission and that ''[i]ncluding such costs not incurred by the Postal Service would require a change in accepted methodology.'' Order No. 6363 at 10. The Mailers disagree and argue that the current accepted analytical principles require that FY 2022 retiree health benefit normal costs ''be treated as accrued in FY 2022 and distributed as attributed or institutional in the same manner as they have been in every year since FY 2008.'' Mailers' Motion and Petition at 1.

A. The Applicable Accepted Analytical Principles

Between FY 2007 and FY 2016, the retiree health benefit expenses due and payable by the Postal Service were employer premiums and mandated statutory prefunding payments.[11] OPM was required to annually estimate the balance in the PSRHBF taking into account retiree health benefit normal costs,[12] which are the economic costs of the estimated future retiree health benefits earned during the year by current employees. Normal costs were included in the calculation of the PSRHBF balance and reported on the Postal Service's Forms 10–K [13] but not assessed or required to be paid by the Postal Service. Thus, during that period, the only retiree health benefit costs due and payable were the premiums and mandated statutory prefunding payments, notwithstanding the separate calculation of retiree health benefit normal costs by OPM to fulfill the reporting requirements of former 5 U.S.C. 8909a(d)(1) and 39 U.S.C. 3654(b)(2).[14]

Between FY 2017 and FY 2021, the retiree health benefit expenses due and payable by the Postal Service changed. The Postal Service was no longer required to pay the employer premiums and mandated statutory prefunding requirements. The Postal Service was instead required to pay retiree health

[10] Docket Nos. RM2023–1 and RM2023–3, Motion for Leave to File Reply Comments, January 11, 2023 (Motion for Reply Comments); Docket Nos. RM2023–1 and RM2023–3, Reply Comments Regarding the Appropriate Analytical Principle for Retiree Health Benefit Normal Costs, January 11, 2023 (Mailers' Reply Comments).

[11] 5 U.S.C. 8906(g)(2)(A); former 5 U.S.C. 8909a(d)(3)(A).

[12] Former 5 U.S.C. 8909a(d)(1) stated ''[n]ot later than June 30, 2007, and by June 30 of each succeeding year, [OPM] shall compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service employees during the most recently ended fiscal year.''

[13] *See* 39 U.S.C. 3654(b)(1).

[14] 39 U.S.C. 3654(b)(1)(C) in turn requires that the Postal Service report on its Forms 10–K ''components of net periodic costs.'' 39 U.S.C. 3654(b)(1)(C). The reporting requirements of 39 U.S.C. 3654(b) remain in effect. The Mailers argue that the fact that the Postal Service's FY 2022 Form 10–K shows retiree health benefit normal costs illustrates that retiree health benefits accrued in FY 2022. Mailers' Motion and Petition at 15. However, the reason the FY 2022 Form 10–K shows retiree health benefit normal costs is solely because it is required by 39 U.S.C. 3654(b)(1)(C). The normal costs presented are not included in expenses, nor do they impact the Postal Service's balance sheet.

benefit normal costs and to make amortization payments for the unfunded portion of the PSRHBF obligation. Former 5 U.S.C. 8909a(d)(3)(B).

To address the PAEA's requirements, the Postal Service and the Commission developed the analytical principle that has been applied in each fiscal year from FY 2007 to FY 2021. It allows for the attribution of retiree health benefit normal costs, which have been attributed by applying the estimated labor volume variabilities to the retiree health benefit normal costs in the same proportions as direct labor costs.[15] Thus, under this methodology, the attributable portion of normal costs have been calculated and distributed to specific products since FY 2007. It is this analytical principle that the Mailers focus on and assert is the sole methodology applying to the treatment of retiree health benefit normal costs.

However, as explained further below, the Commission's adoption of this analytical principle regarding the attribution of retiree health benefit normal costs in response to the PAEA did not supersede a separate longstanding analytical principle regarding the scope of postal costs and resulting limits on the pool of costs that may be attributable to products.

This relevant analytical principle relates to the concepts of ''economic costs'' and ''accounting costs.'' Accounting costs refer to booked costs or the actual amounts incurred in accordance with existing authoritative accounting literature by the Postal Service. As explained above, between FY 2007 and FY 2016, these were the employer premiums and mandated statutory prefunding payments. Between FY 2017 and FY 2021, these were the amortization payments and retiree health benefit normal cost payments. In this case, economic costs refer to the retiree health benefit normal costs (even in years when there was not an accounting cost for the normal costs). Also included in economic costs were costs for the Civil Service Retirement System (CSRS) pensions between FY 2007 and FY 2016.[16] Economic costs include costs for benefits as benefits are earned regardless of whether an actual payment is due for the costs (and thus regardless of whether the economic costs are also accounting costs). The longstanding analytical principle limits the extent to which economic costs can be attributed to the total amount of booked or accounting costs.[17] As a result, total accounting costs serve as a ceiling that attributed economic costs cannot exceed.

The Mailers and PSA place significant weight on Postal Service's comments in Docket No. RM2007–1, which they allege make clear that retiree health benefit normal costs were expected to be considered ''economic costs'' that would be attributed as they were earned.[18] The Mailers assert that the Commission ''agreed'' with the Postal Service's approach and that the attribution of these costs was resolved in Docket No. RM2007–1. Mailers' Motion and Petition at 6, 8. The Mailers and PSA are correct that the Postal Service's comments reflect the analytical principle that retiree health benefit normal costs would be attributed to products. However, the Mailers and PSA ignore that the Postal Service's comments and the approach adopted by the Commission also included the critical limiting principle that the extent to which these economic costs can be attributed is capped at the total amount of accounting costs and focus solely on the principle related to attributing retiree health benefit normal costs in their selective emphasis of the Postal Service's comments. In the referenced comments, the Postal Service emphasized the need to apply the limiting principle to retiree health benefit normal costs, stating that:

> [I]t will be necessary to reconcile the economic and accounting costs reported in the Postal Service statements, with the primary concern being that the attributed 'economic' costs not exceed the accounting costs. This can be addressed by setting the accounting costs as a ceiling that the attributed costs may not exceed.

Docket No. RM2007–1 Postal Service Comments at 30. It is these two principles together that determine the extent to which economic costs (*e.g.,* retiree health benefit normal costs) are attributed to products.

Another fundamental analytical principle is that the Postal Service's accounting systems record the costs that accrue to the Postal Service each fiscal year (*i.e.,* the accounting costs). *See* n.17, *supra* and n.22, *infra.* While accounting rules incorporate elements that mirror concepts of economic costing (*e.g.,* accrual accounting recognizes costs and revenues when incurred, even if payment occurs at a different time), accounting costs do not always align with economic costs.[19]

Attributable costs are statutorily defined as ''the direct and indirect postal costs attributable to . . . product[s] through reliably identified causal relationships.'' 39 U.S.C. 3631(b). Economic cost analysis is relevant to the determination of attributable costs in some circumstances because it can identify and measure costs with a causal relationship to a product or group of products (as it has in the case of retiree health benefit normal costs). However, because attributable costs are a subset of total postal costs, they cannot exceed the corresponding total accounting costs, which define and measure the accrued costs of the Postal Service each fiscal year.

In each year since FY 2007, the attributable portion of the economic

[15] *See* Docket No. ACR2007, Library Reference USPS–FY07–2—FY 2007 Cost Segments and Components Report (Hard copy & Excel), December 28, 2007, Word document ''FY07–2.Supplement.Health.Benefit.Costs.doc,'' at 4.

[16] *Id.* at 4–5. The PAEA suspended the Postal Service's CSRS contributions after FY 2016.

[17] Even prior to the PAEA, the Postal Service and the Commission used accounting costs as the foundation for assigning costs to ''subclasses,'' which in turn were used as a basis for rate setting. As the Commission explained in a summary of the process generally used,

> The process that produces the estimates in the CRA takes dollars from hundreds of subaccounts in the Postal Service's Books of Account and assigns them to one of hundreds of 'functional' cost components. (Functional costs are viewed as economic costs). Costs in the various functional components are analyzed to see how they vary with mail volume. The volume variable part is then distributed to subclasses according to piece counts or other 'distribution keys' that imply subclass causation. The Postal Service's estimates of the costs and revenues generated by each subclass of mail are derived from the intricate rules that it uses to convert its accounting costs to functional costs, apply variability percentages to functional costs, and distribute the variable portion to subclasses.

Docket No. RM2003–3, Final Rule on Periodic Reporting Requirement, November 3, 2003, at 21–22 (Order No. 1386). When the PAEA was enacted and the Commission put new periodic reporting requirements in place, the Commission generally left this pre-PAEA reporting structure in place with that structure forming the basis of the analytical principles applied after the PAEA's enactment. *See* Docket No. RM2008–4, Notice of Final Rule Prescribing Form and Content of Periodic Reports, April 16, 2009, at 2 (Order No. 203) (stating that ''[t]he Postal Service commends the rules for leaving the existing financial reporting structure essentially intact while adapting it from a subclass-based format to a product-based format. It notes that the fundamental building blocks of cost reporting will remain the same, separating accrued costs into segments, applying variability studies to form pools of attributable costs, and using data collection systems to distribute those pools to products, as summarized in the Cost and Revenue Analysis (CRA) Report and the Cost Segments and Components (CSC) Report.'').

[18] Mailers' Motion and Petition at 6–8 (citing Docket No. RM2007–1, Initial Comments of the United States Postal Service on the Second Advance Notice of Proposed Rulemaking, June 18, 2007, at 29, 30 (Docket No. RM2007–1 Postal Service Comments)); PSA Response at 2 (citing Docket No. RM2007–1 Postal Service Comments at 29). The Mailers also place emphasis on GAO statements on postal accounting; however, the Mailers do not provide any evidence of GAO's statements resulting in the adoption of a particular analytical principle or otherwise influencing the accepted analytical principles applied by the Commission. Mailers' Motion and Petition at 7–8.

[19] For example, accounting depreciation schedules may not align with the economic depreciation of certain capital assets.

costs were less than the total accounting costs. This allowed the analytical principle regarding the attribution of retiree health benefit normal costs to be applied without contravening the additional limiting principle that attributable costs cannot be greater than accounting costs. The principle was applied so that the attributable portion of economic costs were classified as attributable costs and the remainder of the accounting costs were classified as institutional costs.

In FY 2022, a different situation arose because accounting costs for retiree health benefits were zero in FY 2022 due to the PSRA. The FY 2022 retiree health benefit normal costs were accrued on the Trial Balance from October 2021 (the start of FY 2022) through March 2022 (the last month before the PSRA took effect) because during that period, the Postal Service was expected to be obligated to pay the retiree health benefit normal costs pursuant to the not-yet-repealed provisions of the PAEA. Then the accrual was reversed pursuant to Section 102(c)(1) of the PSRA as shown in Table I.[20]

TABLE I—FY 2022 ACCRUAL OF RETIREE HEALTH BENEFITS NORMAL COSTS

[National trial balance]

Effective account (8 digits)		Month beginning balance	Month activity	Prior period adjustment	YTD balance
51204.000	RETIREE HEALTH BENEFIT—NORMAL COST	$0.00	$358,333,333.00	$0.00	$358,333,333.00
51204.000	RETIREE HEALTH BENEFIT—NORMAL COST	358,333,333.00	358,333,333.00	0.00	716,666,666.00
51204.000	RETIREE HEALTH BENEFIT—NORMAL COST	716,666,666.00	358,333,333.00	0.00	1,074,999,999.00
51204.000	RETIREE HEALTH BENEFIT—NORMAL COST	1,074,999,999.00	358,333,333.00	0.00	1,433,333,332.00
51204.000	RETIREE HEALTH BENEFIT—NORMAL COST	1,433,333,332.00	358,333,333.00	0.00	1,791,666,665.00
51204.000	RETIREE HEALTH BENEFIT—NORMAL COST	1,791,666,665.00	358,333,333.00	0.00	2,149,999,998.00
51204.000	RETIREE HEALTH BENEFIT—NORMAL COST	2,149,999,998.00	(2,149,999,998.00)	0.00	0.00

Source: Postal Service National Trial Balance October 2021, Excel file ''NTB_Public_Oct2021_FY22.xlsx,'' tab ''1 National Trial Balance,'' cells A through F1450, November 19, 2021; Postal Service National Trial Balance November 2021, Excel file ''National Trial Balance_Redacted_November 2021.xlsx,'' tab ''1 National Trial Balance,'' cells A through F1464, December 17, 2021; Postal Service National Trial Balance December 2021, Excel file ''National Trial Balance-Redacted, December, 2022 (FY 2022).xlsx,'' tab ''1 National Trial Balance,'' cells A through F1485, February 1, 2022; Postal Service National Trial Balance January 2022, Excel file ''National Trial Balance-January2022_Redacted.xlsx,'' tab ''1 National Trial Balance,'' cells A through F1503, February 28, 2022; Postal Service National Trial Balance February 2022, Excel file ''National Trial Balance-Redacted_February2022_FY2022.xlsx,'' tab ''1 National Trial Balance,'' cells A through F1510, March 21, 2022; Postal Service National Trial Balance March 2022, Excel file ''National Trial Balance-Redacted_March-FY22.xlsx,'' tab ''1 National Trial Balance,'' cells A through F1515, May 5, 2022; Postal Service National Trial Balance April 2022, Excel file ''National Trial Balance_Redacted_April 2022_FY 2022.xlsx,'' tab ''1 National Trial Balance,'' cells A through F1516, May 24, 2022.

The accepted analytical principle requires that total accounting costs serve as the ceiling for attributed economic costs. As shown in Table I, in FY 2022, the total accounting costs were accrued in accordance with the provisions of the PAEA and then retroactively reversed according to the provisions of the PSRA.[21] Due to the PSRA, there are no retiree health benefit costs incurred by the Postal Service in FY 2022, and thus the accounting costs in FY 2022 are zero.[22] With no accounting costs in FY 2022 and that serving as a ceiling for the amount of economic costs that can be attributed, the amount of economic costs (*i.e.,* retiree health benefit normal costs) that can be attributed in FY 2022 is also zero.

This is not to say that the economic costs of retiree health benefits do not exist in FY 2022. As discussed above, economic costs include costs for benefits as benefits are earned, and retiree health benefit normal costs were earned by employees in FY 2022. However, as also discussed above, it is the Postal Service's accounting systems that record the costs that the Postal Service accrues each fiscal year, and because attributable costs are a subset of total postal costs, they cannot exceed the corresponding total accounting costs as recorded by the Postal Service's accounting systems. Given that accounting costs set the limit on the economic costs that can be attributed and no retiree health benefit accounting costs accrued in FY 2022, Order No. 6363 correctly stated that ''under the accepted methodology, there are no . . . normal costs to account for in the Postal Service's financial reporting for FY 2022'' and that ''[i]ncluding such costs not incurred by the Postal Service would require a change in accepted methodology.'' Order No. 6363 at 10.

Table II is an excerpt from the CSCs annually filed by the Postal Service as part of its ACR. It presents Component 208 ''Retiree Health Benefits'' appearing in Cost Segment 18 in the CSCs for FY 2008 through FY 2021. The ''Total Cost'' column reflects the total accounting costs for each fiscal year. The first and second columns reflect the total volume variable and product specific (*i.e.,* attributed economic) costs, and total ''Other'' costs, respectively. The table reflects that in each fiscal year the total postal costs accounted for (*i.e.,* the sum of attributed economic costs and ''Other'' costs) equals total accounting costs.

[20] Section 102(c)(1) of the PSRA repealed payments ''required from the Postal Service under section 8909a of title 5, United States Code, as in effect on the day before the date of enactment of this Act that remains unpaid as of such date of enactment.'' Postal Service Reform Act of 2022, Public Law 117–108, 136 Stat. 1127 (2022).

[21] OPM's FY 2022 Agency Financial Report affirms this reversal. *See* U.S. Office of Personnel Management, Agency Financial Report, Fiscal Year 2022, November 2022, at 69, available at *https://www.opm.gov/about-us/budget-performance/performance/2022-agency-financial-report.pdf,* (stating ''[t]he Postal Service Reform Act of 2022, Public Law 117–108, changes the method in which required payments into the PSRHBF are calculated, and cancelled the payments due from Postal Service under Section 8909a. Pursuant to Public Law 117–108, OPM wrote off the $57 billion receivables due from the Postal Service to the PSRHB in FY 2022. Additionally, FY 2022 accrued Postal Service receivables related to PSRHBF were reversed.'').

[22] As stated above, the Postal Service's accounting systems record the costs that accrue to the Postal Service each fiscal year and those costs flow through to the CRA and Cost Segment and Component Reports (CSCs). *See* n.17, *supra.* The Mailers acknowledge this in the Mailers' Motion and Petition, stating that: [A]ccrued costs as reflected in the trial balance (submitted in each ACR and therefore an analytical principle) form the basis of costs by cost segments and components. The accrual in each segment in the trial balance matches exactly the segment cost in the cost segments and components (CSCs). This information forms the basis of the CRA and ACR upon which the Commission bases its annual compliance determinations. Mailers' Motion and Petition at 4. Despite this understanding, the Mailers state that applying the FY 2021 Cost Segment 18 summary description in FY 2022 necessitates accruing retiree health benefit normal costs and attributing them. *Id.* at 5. As the Postal Service explains, applying the FY 2021 methodology as the Mailers propose in FY 2022 results in ''no costs to apportion between attributable and institutional'' because as the FY 2021 Cost Segment 18 summary description makes clear, the actual entry in the component from which the costs are derived is zero. Postal Service Response at 4. *See* Docket No. ACR2022, Response of the United States Postal Service in Opposition to Mailers' Motion Seeking Information Request, January 19, 2023, at 4–5.

TABLE II—COST SEGMENT AND COMPONENT REPORT

[Cost Segment 18 Component Number 208]

Fiscal year	Tot vol var & prod spec	Other costs	Total costs
2008	2,893,912	4,512,671	7,406,583
2009	2,508,684	881,649	3,390,333
2010	2,405,455	5,341,956	7,747,411
2011	2,208,733	231,970	2,440,704
2012	2,025,233	11,703,848	13,729,081
2013	1,870,005	6,579,793	8,449,798
2014	1,772,889	6,912,530	8,685,419
2015	1,870,872	6,940,267	8,811,140
2016	1,775,528	7,329,175	9,104,702
2017	1,844,997	2,415,224	4,260,221
2018	2,051,538	2,429,166	4,480,704
2019	2,125,932	2,438,478	4,564,409
2020	2,150,070	2,509,587	4,659,658
2021	2,345,438	2,764,664	5,110,102

Numbers may not add across due to rounding.

Source: Docket No. ACR2008, Library Reference USPS–FY08–2, Excel file ''FY08PubSeg&CompRpt.xlsx,'' tab ''CS18,'' cells U58, U59, U60, December 29, 2008; Docket No. ACR2009, Library Reference USPS–FY09–2, Excel file ''FY09 Public CS&C Rpt.xlsx,'' tab ''CS18,'' cells U59, U60, U61, December 29, 2009; Docket No. ACR2010, Library Reference USPS–FY10–2, Excel file ''FY10 Public CS&C Rpt.xlsx,'' ''tab CS18,'' cells U60, U61, U62, December 29, 2010; Docket No. ACR2011, Library Reference USPS–FY11–2, Excel file ''FY11Public CS&CRpt.xlsx,'' tab ''CS18,'' cells U60, U61, U62, December 29, 2011; Docket No. ACR2012, Library Reference USPS–FY12–2, Excel file ''FY12.Public CS&CRpt.xlsx,'' tab ''CS18,'' cells U60, U61, U62, December 28, 2012; Docket No. ACR2013, Library Reference USPS–FY13–2, Excel file ''FY13.Public CS&CRpt.Revised.xlsx,'' tab ''CS18,'' cells U61, U62, U63, December 27, 2013; Docket No. ACR2014, Library Reference USPS–FY14–2, Excel file ''FY14.2.Public Cost Segs and Comp.xlsx,'' tab ''CS18,'' cells U61, U62, U63, December 29, 2014; Docket No. ACR2015, Library Reference USPS–FY15–2, Excel file ''FY15.Public Cost Segs and Comps.xlsx,'' tab ''CS18,'' cells U59, U60, U61, December 29, 2015; Docket No. ACR2016, Library Reference USPS–FY16–2, Excel file ''FY16Public Cost Segs and Comps.xlsx,'' tab ''CS18,'' cells AC59, AC60, AC61, December 29, 2016; Docket No. ACR2017, Library Reference USPS–FY17–2, Excel file ''FY17Public Cost Segs and Comps.xlsx,'' tab ''CS18,'' cells AE59, AE60, AE61, December 29, 2017; Docket No. ACR2018, Library Reference USPS–FY18–2, Excel file ''FY18Public Cost Segs and Comps.xlsx,'' tab ''CS18,'' cells AE58, AE59, AE60, December 29, 2018; Docket No. ACR2019, Library Reference USPS–FY19–2, Excel file ''FY19Public Cost Segs and Comps.xlsx,'' tab ''CS18,'' cells AE58, AE59, AE60, December 27, 2019; Docket No. ACR2020, Library Reference USPS–FY20–2, Excel file ''FY20Public Cost Segs and Comps.xlsx,'' tab ''CS18,'' cells AE58, AE59, AE60, December 29, 2020; Docket No. ACR2021, Library Reference USPS–FY21–2, Excel file ''FY21Public Cost Segs and Comps.xlsx,'' tab ''CS18,'' cells AE58, AE59, AE60, December 29, 2021.

The Mailers and PSA point to FY 2009 and FY 2011 as supportive of their proposed approach because during those years Congress reduced or deferred retiree health benefit funding requirements, but retiree health benefit normal costs were still attributed to products. *See* Mailers' Motion and Petition at 13–14; PSA Response at 2–3. However, as shown in Table II, the Postal Service and the Commission have consistently applied the same analytical principle in all fiscal years. In FY 2009, the mandated statutory prefunding payment was retroactively reduced by statute, and in FY 2011, a scheduled payment was deferred to the following fiscal year.[23] This caused, in both years, the total economic costs to exceed accounting costs, but the attributable portion of the economic costs were less than total accounting costs in those years as in all other years. *See* Table II, *supra.* The analytical principle setting accounting costs as the ceiling for attributed economic costs was correctly applied in each year because the attributable economic costs did not exceed total accounting costs despite the changes by Congress to the required payments in FY 2009 and FY 2011.

B. The Process To Change Accepted Analytical Principles

The Mailers request reconsideration of the requirement that they petition for a change in the accepted analytical principles because they assert that it is the Postal Service, and not the Mailers, that wants to change the accepted analytical principles for FY 2022 and thus should bear the burden of advocating for the change. Mailers' Motion and Petition at 9–10. They further assert that that Order No. 6363 was contradictory in finding and accepting a change in analytical principles and saying the principles were unchanged. *Id.* at 10.

As a preliminary matter, the Commission notes that the Mailers appear to misread Order No. 6363. Order No. 6363's primary objectives were to identify the current accepted analytical principles applying to the costs at issue (including retiree health benefit normal costs), find that those accepted analytical principles were the ones to be applied for purposes of the FY 2022 ACR, and delineate a process for proposing changes to those analytical principles. Order No. 6363 at 2, 10–11. Order No. 6363 found that the current accepted analytical principles applying to the retiree health benefit normal costs do ''not require inclusion of costs that are not incurred'' and that ''under the accepted methodology, there are no . . . normal costs to account for in the Postal Service's financial reporting for FY 2022.'' *Id.* at 10. Thus, Order No. 6363 concluded that ''[i]ncluding such costs not incurred by the Postal Service would require a change in accepted methodology.'' *Id.* Because the Commission found with respect to retiree health benefit normal costs that the accepted analytical principles reflected the approach advocated by the Postal Service, and not the Mailers, the Commission further stated that ''should the Mailers desire the Commission rely on a different analytical principle with regard to the . . . normal cost payments (which the Postal Service does not incur in FY 2022 or beyond), Mailers may petition the Commission for a change pursuant to 39 [CFR] part 3050.'' *Id.* at 11.

The application of the analytical principles described in Order No. 6363 is consistent with the Commission's elaboration on the current accepted analytical principles related to retiree health benefit normal costs discussed in

[23] Continuing Appropriations Resolution, 2010, Public Law 111–68, 123 Stat. 2023 (2009); Continuing Appropriations Act, 2012, Public Law 112–33, 125 Stat. 363 (2011).

Section IV.A., *supra.* Thus, the Mailers' view that FY 2022 retiree health benefit normal costs should be treated as accrued in FY 2022 and attributed to specific products (despite the fact there are no accounting costs in FY 2022) reflects a change in accepted analytical principles. As referenced in Order No. 6363, the Commission's regulations set forth a process for changing analytical principles, stating that ''any interested person, including the Postal Service or a public representative, may submit a petition to the Commission to initiate [a proceeding to change an accepted analytical principle].'' 39 CFR 3050.11(a); *see* 39 U.S.C. 3652(e)(2). Because it is the Mailers who desire a change in the accepted analytical principles, the Commission's regulations and Order No. 6363 appropriately placed the burden to petition and advocate for such a change on the Mailers. In circumstances where it is the Postal Service that desires a change in the accepted analytical principles, the burden is on the Postal Service to propose and advocate for such a change.[24]

C. Other Arguments Raised by the Mailers

The Mailers raise two other arguments that the Commission finds important to address at this juncture. First, Mailers assert that failing to accrue and attribute retiree health benefit normal costs has ''real world negative consequences.'' Mailers' Motion and Petition at 8. Specifically, the Mailers argue that failing to attribute these costs violates the cost causation principles contained in the PAEA and would result in erroneous cost avoidances for workshare discounts, which would result in less efficient workshare discounts. *Id.* at 8–9. The Mailers point to workshare discounts in the FY 2022 ACR as demonstrating this issue. Mailers' Reply Comments at 3–5. PSA raises similar arguments. PSA Response at 1–3.

The Commission notes that even if one were to accept the Mailers' analysis as true, it would not change what the accepted analytical principles currently are (as described in Section IV.A., *supra*) and thus does not influence the Commission's conclusions related to the Mailers' request for reconsideration of Order No. 6363. Instead, this argument relates to whether the current accepted analytical principles should be changed and how they may, from the Mailers' perspective, be improved. In accordance with 39 U.S.C. 3654(e), accepted analytical principles may be changed ''to improve the quality, accuracy, or completeness of Postal Service data . . . whenever it shall appear that—(1) the data have become significantly inaccurate or can be significantly improved; or (2) those revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.'' 39 U.S.C. 3654(e). Because the Commission will consider whether to adopt NPPC et al. Proposal One as new accepted analytical principles, the Commission plans to consider the Mailers' arguments that their approach better aligns with the PAEA and will result in more accurate costing for workshare discounts in conjunction with its consideration of NPPC et al. Proposal One. *See* Section V., *infra.*

Second, the Mailers, PSA, and the Postal Service have significant disagreement over how the PSRA affected whether retiree health benefit normal costs should be accrued and attributed in FY 2022.[25] Specifically, the Mailers argue that the PSRA had no effect on economic costs related to retiree health benefit normal costs, and because those costs still exist, they should continue to be attributed as they have been in the past. Mailers' Motion and Petition at 11–12; Mailers' Reply Comments at 2–3.

There is no dispute that the economic costs of retiree health benefit normal costs exist in FY 2022 as they have in prior years. However, as explained in Section IV.A., the PSRA changed whether there were any retiree health benefit accounting costs due and payable in FY 2022. Due to the PSRA, there were zero accounting costs related to retiree health benefits in FY 2022, and under the current accepted analytical principles, with no accounting costs incurred in FY 2022, there is no basis for attributing retiree health benefit normal costs in FY 2022. *See* Section IV.A., *supra.*

D. Conclusion

The primary basis of the Mailers' request for reconsideration of Order No. 6363 is that the Commission erred in determining that the current accepted analytical principles do not require retiree health benefit normal costs to be treated as accrued and attributed to products in FY 2022. Mailers' Motion and Petition at 1. As discussed in Order No. 6363 and Section IV.A., *supra,* the Commission finds that the Mailers' view of the current accepted analytical principles is incorrect. Thus, the Commission denies the Mailers' Motion and Petition with regard to the request for reconsideration of Order No. 6363.

In the alternative to granting reconsideration in their favor, the Mailers request that the Commission initiate a rulemaking proceeding and determine in that proceeding that retiree health benefit normal costs should be treated as accrued and attributed to products in Docket No. ACR2022 (which will culminate in the FY 2022 ACD). The Commission grants the request to consider the Mailers' petition to change the analytical principles applied to the FY 2022 retiree health benefit normal costs and provides notice of the proposed rulemaking in Section V., *infra.*

V. Notice of Proposed Rulemaking on Analytical Principles Used in Periodic Reporting (NPPC et al. Proposal One)

A. NPPC et al. Proposal One

On December 19, 2022, the Mailers requested that the Commission initiate a rulemaking proceeding to consider a change in analytical principles if the Commission denied their motion for reconsideration. *See* Mailers' Motion and Petition at 2. The Commission has designated the proposed change in analytical principles as NPPC et al. Proposal One. Order No. 6382 at 2 n.2. NPPC et al. Proposal One proposes that FY 2022 retiree health benefit normal costs be treated as accrued in FY 2022 and attributed to specific products to the same ''degree as composite labor costs.'' Mailers' Motion and Petition at 1, 5, 13.

The Mailers assert that treating retiree health benefit normal costs as accrued each year and attributing them would improve the quality, accuracy, and completeness of the data in the Postal Service's periodic reports when compared to the current analytical principles. *Id.* at 16. The Mailers further assert that accruing and attributing retiree health benefit normal costs in the year in which they are earned ''is consistent with economic cost accounting'' as these normal costs ''are a component of the economic cost of postal work.'' *Id.* The Mailers claim that from a practical perspective, NPPC et al. Proposal One is preferable because excluding retiree health benefit normal costs would result in inaccurate cost avoidance estimates, which would, in turn, result in inaccurate compliance determinations with respect to workshare discounts. *Id.* at 16–17. The Mailers assert that this harm would not just occur in FY 2022, but would result in future distortions in workshare

[24] *See, e.g.,* Order No. 6363 at 10–11; Docket No. RM2023–2, Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Seven), December 12, 2022.

[25] Mailers' Motion and Petition at 11–12; PSA Response at 1–3; Postal Service Response at 7–12; Mailers' Reply Comments at 2–3.

discounts even if the treatment of normal costs changed in the future. *Id.* at 17. The Mailers also state that ''the categorical exclusion of select costs would also erode the accuracy of the Commission's compliance findings with respect to . . . competitive products.'' *Id.*

The Mailers state the NPPC et al. Proposal One ''is fully consistent with the legal standard that attributable costs are 'the direct and indirect postal costs attributable to each class or type of mail service through reliably identified causal relationships.' '' *Id.* (quoting 39 U.S.C. 3622(c)(2)). They assert that ''[e]arned [retiree health benefit] costs plainly satisfy that standard, and attributing them improves the quality of postal accounting by making it more consistent with statutory requirements.'' *Id.* The Mailers state that according to the Postal Service's FY 2022 10–K, retiree health benefit normal costs were $4.4 billion in FY 2022, and that ''proper treatment of these costs would increase attributable costs by approximately $2.6 billion . . . consistent with attribution levels in recent years.'' *Id.* The Mailers represent that nothing in NPPC et al. Proposal One would affect how those costs are currently attributed to particular classes and products. *Id.* at 18.

B. Notice and Comment

The Commission will use Docket No. RM2023–3 for consideration of matters raised by NPPC et al. Proposal One. More information on NPPC et al. Proposal One may be accessed via the Commission's website at *http://www.prc.gov.* Interested persons may submit comments on NPPC et al. Proposal One no later than February 8, 2023.[26] Comments should be filed in Docket No. RM2023–3. Pursuant to 39 U.S.C. 505, Jennaca D. Upperman is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

VI. Ordering Paragraphs

It is ordered:

1. The Motion for Reconsideration or, in the Alternative, Petition to Initiate a Proceeding Regarding the Appropriate Analytical Principle for Retiree Health Benefit Normal Costs, filed December 19, 2022, is denied with regard to the request for reconsideration of Order No. 6363 consistent with the body of this Order.

2. The Commission will use Docket No. RM2023–3 for consideration of the matters raised by NPPC et al. Proposal One, as described in the Motion for Reconsideration or, in the Alternative, Petition to Initiate a Proceeding Regarding the Appropriate Analytical Principle for Retiree Health Benefit Normal Costs, filed December 19, 2022.

3. Comments by interested persons on NPPC et al. Proposal One are due no later than February 8, 2023 and should be filed in Docket No. RM2023–3.

4. Pursuant to 39 U.S.C. 505, the Commission appoints Jennaca D. Upperman to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

5. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2023–01930 Filed 1–31–23; 8:45 am]

BILLING CODE 7710–FW–P

[26] This comment deadline is set consistently with the 2-week deadline envisioned in Order No. 6363. Order No. 6363 at 11, n.17.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2022–0987; FRL–10615–01–R3]

Clean Data Determination; District of Columbia, Maryland, and Virginia; Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard Clean Data Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Washington, District of Columbia-Maryland-Virginia (the Washington Area or the Area) nonattainment area has clean data for the 2015 8-hour ozone national ambient air quality standard (2015 ozone NAAQS). This proposed clean data determination (CDD) under EPA's Clean Data Policy is based upon quality-assured, quality-controlled, and certified ambient air quality monitoring data showing that the area has attained the 2015 ozone NAAQS based on 2019 to 2021 data available in EPA's Air Quality System (AQS) database. If finalized, this proposed CDD would suspend the obligations of the District of Columbia (DC), the State of Maryland (MD) and the Commonwealth of Virginia (VA) to submit certain attainment planning requirements for the nonattainment area for as long as the Area continues to attain the 2015 ozone NAAQS.

DATES: Written comments must be received on or before March 3, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2022–0987 at *www.regulations.gov*, or via email to *gordon.mike@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, 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 *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Keila M. Pagán-Incle, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103–2852. The telephone number is (215) 814–2926. Ms. Pagán-Incle can also be reached via electronic mail at *pagan-incle.keila@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us'' or ''our'' are used, it is intended to refer to the EPA.

Table of Contents

I. Background and Purpose

On October 26, 2015 (80 FR 65291), EPA promulgated a revised primary and secondary NAAQS for ozone to provide requisite increased protection of public health and welfare, respectively. In that action, EPA strengthened both standards from 0.075 parts per million (ppm) to 0.070 ppm, and retained the indicator (O_3), averaging time (8-hour) and form (annual fourth-highest daily maximum, averaged over three years) of the existing standards. Effective August 3, 2018 (83 FR 25776), EPA designated 52 areas throughout the country as nonattainment for the 2015 ozone NAAQS, including the Washington Area,[1] which was classified as a Marginal nonattainment area. This designation was based on certified air quality monitoring data from calendar years 2014 to 2016. In that action, EPA established the attainment date for Marginal nonattainment areas as three years from the effective date of the final designations. Thus, the attainment date for Marginal nonattainment areas for the 2015 ozone NAAQS was August 3, 2021.[2]

On April 13, 2022 (87 FR 21842), EPA proposed to determine that 24 Marginal areas, including the Washington Area, failed to attain the 2015 ozone NAAQS by their applicable attainment date and the areas were therefore going to be reclassified by operation of law as Moderate nonattainment upon the effective date of the final reclassification notice. On October 7, 2022 (87 FR 60897), EPA published the final action in the **Federal Register** stating that 22 Marginal areas or portions of areas failed to attain the standard by the applicable attainment date, including the Washington Area. In that action, EPA reclassified the Washington Area as Moderate nonattainment for the 2015 ozone NAAQS because it failed to attain the standard by the attainment date of August 3, 2021. This designation was based on quality-assured, quality-controlled, and certified ozone air quality monitoring data from calendar years 2018 to 2020. More recent air quality data from 2019 to 2021 indicates that the Washington Area is now attaining the 2015 ozone standard—the basis for EPA's proposed CDD.

II. EPA Clean Data Policy and Clean Data Determinations

Following enactment of the Clean Air Act (CAA) Amendments of 1990, EPA discussed its interpretation of the requirements for implementing the NAAQS in the ''General Preamble for the Implementation of title I of the CAA Amendments of 1990'' (General Preamble).[3] In 1995, based on the interpretation of CAA sections 171, 172, and 182 in the General Preamble, EPA set forth what has become known as its ''Clean Data Policy'' for the 1-hour ozone NAAQS.[4] Under the Clean Data Policy, for a nonattainment area that can demonstrate attainment of the standard before implementing CAA nonattainment measures, EPA interprets the requirements of the CAA that are specifically designed to help an area achieve attainment, including attainment demonstrations, implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), reasonable further progress (RFP) demonstrations, emissions limitations and control measures as necessary to provide for attainment, and contingency measures, to be suspended for so long as air quality continues to meet the standard.[5]

EPA may issue a CDD under our Clean Data Policy when a nonattainment area is attaining the 2015 ozone NAAQS based on the most recent available data. EPA will determine whether the area has attained the 2015 ozone NAAQS based on available information, including air quality monitoring data for the affected area. If the CDD is made final, then certain attainment plan requirements for the area are suspended for so long as the area continues to attain the NAAQS.

Furthermore, the suspension of the obligation to submit an attainment plan is only appropriate where the area remains in attainment of the NAAQS. A CDD under the Clean Data Policy does not serve to alter the area's nonattainment designation. CDDs are not redesignations to attainment. For EPA to redesignate an area to attainment the state must submit, and EPA must approve, a redesignation request for the area that meets the requirements of CAA section 107(d)(3).

III. Analysis of Air Quality Data

EPA has reviewed the ambient air monitoring data for ozone, consistent with the requirements contained in 40 Code of Federal Regulations (CFR) part 50 and recorded in EPA's AQS database for the Washington Area from 2019 through 2022. On the basis of that review, EPA has concluded that this Area attained the 2015 ozone NAAQS at the end of the 2021 ozone season, based on certified 2019 to 2021 ozone data. In addition, preliminary ozone data for 2022 that are available in AQS, but not yet certified, is consistent with continued attainment of the 2015 ozone NAAQS.

Under EPA regulations, the 2015 ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.070 ppm.[6] This 3-year average is referred to as the design value (DV). When calculating the DV, digits to the right of the third decimal place are truncated.[7] When the DV is less than or equal to 0.070 ppm at each monitor within the area, then the area is meeting the NAAQS. In addition, the 2015 ozone DVs are based solely on ozone season data.[8] Ozone season is defined for each state or portion of a state.[9] The ozone season for DC, MD and VA runs from March 1st to October 31st each year.[10] There is also a data completeness requirement that is met when the average percentage of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in Appendix I of 40 CFR part 50. The Washington Area has complete data for the years 2018 to 2021, as shown in Table 1 in this document.

[1] The Washington Area consists of the following counties/cities: Calvert County, Charles County, Frederick County, Montgomery County, and Prince George's County in Maryland; Alexandria city, Arlington County, Fairfax County, Fairfax city, Falls Church city, Loudoun County, Manassas Park city, Manassas city, Prince William County in Virginia; and all of the District of Columbia. *See* 40 CFR 81.309, 81.321, and 81.347.

[2] *See* 83 FR 25776 (June 4, 2018).

[3] 57 FR 13498, 13564 (April 16, 1992).

[4] *See* Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment areas Meeting the Ozone National Ambient Air Quality Standard,'' dated May 10, 1995. (1995 John S. Seitz Memo). Further description of EPA's Clean Data Policy can be found in the ''Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2'' (referred to as the Phase 2 Final Rule), (70 FR 71612, November 29, 2005). The Tenth, Seventh, and Ninth Circuit U.S. District Courts have upheld EPA rulemakings applying the Clean Data Policy. *See Sierra Club* v. *EPA,* 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9th Cir., June 28, 2005) memorandum opinion.

[5] 1995 John S. Seitz memo.

[6] *See* 40 CFR 50.19(b).

[7] See 40 CFR part 50, appendix P.

[8] *See* 40 CFR 51.1300(b), which refers to 40 CFR part 50, appendix U.

[9] *See* 40 CFR 51.1300(j), which refers to 40 CFR part 58, appendix D, section 4.1, Table D–3.

[10] *Id.*

TABLE 1—COMPLETENESS DATA PERCENTAGE (%) FROM 2018 TO 2021 FOR THE WASHINGTON AREA

Location	AQS Site ID	2018	2019	2020	2021
District of Columbia	110010041	98	100	96	90
District of Columbia	110010043	98	98	96	98
District of Columbia	110010050	100	100	94	98
Calvert, MD	240090011	98	93	97	98
Charles, MD	240170010	95	90	97	96
Frederick, MD	240210037	100	99	95	98
Montgomery, MD	240313001	99	96	92	96
Prince George's, MD	240330030	99	96	99	100
Prince George's, MD	240338003	99	95	98	99
Prince George's, MD	240339991	93	93	98	99
Arlington, VA	510130020	99	99	98	96
Fairfax, VA	510590030	96	98	96	99
Fauquier, VA	510610002	99	95	99	100
Loudoun, VA	511071005	99	90	99	96
Prince William, VA	511530009	99	100	98	99
Stafford, VA	511790001	97	97	96	90

Table 2 in this document shows the fourth-highest maximum 8-hour average ozone concentrations for the Washington Area monitors for the years 2018 to 2022. Table 3 in this document shows the ozone design values for these same monitors based on the following 3-year periods: 2018–2020, 2019–2021 and 2020–2022.

TABLE 2—FOURTH-HIGHEST 8-HOUR OZONE AVERAGE CONCENTRATIONS (PPM) IN THE WASHINGTON AREA FROM 2018 TO 2022

Location	AQS Site ID	2018	2019	2020	2021	2022*
District of Columbia	110010041	0.050	0.062	0.054	0.064	0.059
District of Columbia	110010043	0.073	0.071	0.063	0.072	0.066
District of Columbia	110010050	0.073	0.067	0.063	0.069	0.051
Calvert, MD	240090011	0.067	0.058	0.054	0.062	0.058
Charles, MD	240170010	0.068	0.061	0.052	0.066	0.061
Frederick, MD	240210037	0.067	0.065	0.063	0.067	0.061
Montgomery, MD	240313001	0.069	0.062	0.059	0.068	0.063
Prince George's, MD	240330030	0.070	0.071	0.064	0.066	0.061
Prince George's, MD	240338003	0.070	0.065	0.060	0.070	0.064
Prince George's, MD	240339991	0.073	0.075	0.065	0.071	0.065
Arlington, VA	510130020	0.070	0.068	0.062	0.070	0.061
Fairfax, VA	510590030	0.066	0.070	0.057	0.068	0.062
Fauquier, VA	510610002	0.060	0.055	0.049	0.060	0.056
Loudoun, VA	511071005	0.065	0.060	0.060	0.066	0.061
Prince William, VA	511530009	0.065	0.060	0.057	0.062	0.058
Stafford, VA	511790001	0.064	0.059	0.056	0.062	0.058

*The 2022 data in this column is preliminary and has yet to be certified.

TABLE 3—OZONE DESIGN VALUES (PPM) FOR THE WASHINGTON AREA

Location	AQS Site ID	2018–2020	2019–2021	2020–2022*
District of Columbia	110010041	0.055	0.060	0.059
District of Columbia	110010043	0.069	0.068	0.067
District of Columbia	110010050	0.067	0.066	0.061
Calvert, MD	240090011	0.059	0.058	0.058
Charles, MD	240170010	0.060	0.059	0.060
Frederick, MD	240210037	0.065	0.065	0.064
Montgomery, MD	240313001	0.063	0.063	0.063
Prince George's, MD	240330030	0.068	0.067	0.064
Prince George's, MD	240338003	0.065	0.065	0.065
Prince George's, MD	240339991	0.071	0.070	0.067
Arlington, VA	510130020	0.066	0.066	0.064
Fairfax, VA	510590030	0.064	0.065	0.062
Fauquier, VA	510610002	0.054	0.054	0.055
Loudoun, VA	511071005	0.061	0.062	0.062
Prince William, VA	511530009	0.060	0.059	0.059
Stafford, VA	511790001	0.059	0.059	0.059

*The 2022 data in this column is preliminary and has yet to be certified.

EPA's review of these data indicate that the Washington Area met the attainment standard in 2019–2021 and the preliminary data from 2022 indicates that the DV for the period of 2020–2022 is consistent with continued attainment of the 2015 ozone NAAQS.

IV. Proposed Action

EPA is proposing to determine that the Washington Moderate ozone nonattainment area has attained the 2015 NAAQS for ozone. This determination is based upon certified ambient air monitoring data that show the area has monitored attainment of the 2015 ozone NAAQS based on 2019 to 2021 data. In addition, preliminary [11] ozone data for 2022 that are available in EPA's AQS database, but not yet certified, is consistent with continued attainment of the 2015 ozone NAAQS. As provided in 40 CFR 51.1318, if EPA finalizes this CDD, it would suspend the requirements for such area to submit attainment demonstrations, associated RACM, including RACT, RFP plans, and contingency measures under CAA section 172(c)(9), and any other planning State Implementation Plan (SIP) revision related to attainment of the 2015 ozone NAAQS for this Area, for so long as the area continues to attain the standard. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** sections of this **Federal Register**.

V. Statutory and Executive Order Reviews

This rulemaking action makes a clean data determination for attainment of the 2015 ozone NAAQS based on air quality and does not impose additional requirements. For that reason, this clean data determination:

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

In addition, this proposed clean data determination for the Washington Area for the 2015 ozone NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the multi-state area, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2023–01973 Filed 1–31–23; 8:45 am]

BILLING CODE 6560–50–P

[11] The data in AQS is quality-assured data from the states. States have until May 1st of the calendar year following the year in which the data was collected to make any changes without prior notification to EPA. For the 2022 ozone data, States can make changes until the data is ''certified'' by the state on or before May 1st, 2023.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Chapter III

[Docket No. FMCSA–2018–0037]

RIN 2126–AC17

Safe Integration of Automated Driving Systems (ADS)-Equipped Commercial Motor Vehicles (CMVs)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Supplemental advance notice of proposed rulemaking (SANPRM).

SUMMARY: FMCSA requests public comment about factors the Agency should consider in amending the Federal Motor Carrier Safety Regulations (FMCSRs) to establish a regulatory framework for ADS-equipped CMV operations. FMCSA previously published an advance notice of proposed rulemaking (ANPRM) on May 28, 2019, seeking comments on FMCSRs that may need to be amended, revised, or eliminated to facilitate the safe introduction of ADS-equipped CMVs onto the Nation's roadways. FMCSA continues to consider amendments to the FMCSRs to ensure the safe integration of ADS-equipped CMVs into interstate motor carriers' operations and issues this SANPRM to request additional information.

DATES: Comments on this document must be received on or before March 20, 2023.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2018–0037 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket/FMCSA-2018-2018-0037/document.* 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 or Courier:* Dockets Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., 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.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. David Sutula, Division Chief, Vehicle

and Roadside Operations, Office of Carrier, Driver, and Vehicle Safety Standards, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–9209; *david.sutula@dot.gov*. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this SANPRM (FMCSA–2018–0037), indicate the specific section of this document to which your 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 FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2018-0037/document*, click on this SANPRM, click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8.5 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. Confidential Business Information

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 (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this SANPRM 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 SANPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket for this rulemaking. Submissions containing CBI should be sent electronically to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy at *brian.g.dahlin@dot.gov*. At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

C. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2018-0037/document* and choose the document to review. To view comments, click this SANPRM, then 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.

D. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*. As described in the system of records notice DOT/ALL 14 –FDMS, which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices*, the comments are searchable by the name of the submitter.

II. Legal Basis for the Rulemaking

This SANPRM is based on 49 U.S.C. 31502 (originally enacted as part of the Motor Carrier Act of 1935 (1935 Act)); 49 U.S.C. chapter 311, subchapter III (originally enacted as part of the Motor Carrier Safety Act of 1984 (1984 Act)); and 49 U.S.C. chapter 313 (originally enacted as part of the Commercial Motor Vehicle Safety Act of 1986 (1986 Act)). Both 49 U.S.C. 31502 and 49 U.S.C. chapter 311, subchapter III vest broad rulemaking authority in the Secretary of Transportation (Secretary) to prescribe regulations on CMV safety, which includes the authority to issue regulations governing ADS-equipped CMV operations and operators. In this regard, section 31502(b) provides, ''The Secretary of Transportation may prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.'' Section 31136(a) requires the Secretary of Transportation to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles.'' The provision further requires that: ''At a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely . . .; (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators; and (5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section . . .'' (49 U.S.C. 31136(a)(1)–(5)). Additionally, section 31308 gives the Secretary broad authority to ''prescribe regulations on minimum uniform standards for the issuance of commercial drivers' licenses [CDLs] and learner's permits by the States . . . .'' This SANPRM is based primarily on section 31502(b), which authorizes requirements to address the safety of operations and equipment of a motor carrier, and on section 31136(a)(1), which requires provisions to ensure that CMVs are maintained, equipped, and operated safely. Sections 31136(a)(2) through (5) are not immediately relevant to this SANPRM. These statutes provide sufficient legal authority for the Secretary to issue regulations on the operation of ADS-equipped CMVs. Before prescribing regulations, the Secretary must consider their costs and benefits (49 U.S.C. 31136(c)(2)(A) and 31502(d)).

The Administrator of FMCSA is delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary by 49 U.S.C. chapters 311, 313, and 315 as they relate to CMV operators, programs, and safety.

III. Executive Order (E.O.) 12866 (Regulatory Planning and Review) and E.O. 13563 (Improving Regulation and Regulatory Review)

This SANPRM is a not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563. Accordingly, the Office of Management and Budget has not reviewed it under these orders.

Executive Orders 12866 and 13563 require agencies to provide a meaningful opportunity for public participation. Accordingly, the Agency has asked commenters to answer a variety of questions to elicit practical information about alternative approaches, including the associated costs and benefits of those approaches, and relevant scientific, technical, and economic data.

IV. Background

A. FMCSA's 2019 ANPRM

FMCSA is responsible for overseeing the safety of CMVs, their drivers, and their operation in interstate commerce. The Agency works with Federal, State, and local enforcement agencies, the motor carrier industry, and interested stakeholders to reduce crashes, injuries, and fatalities involving large trucks and buses. The FMCSRs provide rules to support the safe operation of CMVs, and these rules apply to motor carriers who operate ADS-equipped CMVs. Since 2017, FMCSA has engaged in multiple stakeholder outreach activities and has taken other actions to assist the Agency in understanding issues related to ADS-equipped CMV operations and to consider what amendments to the FMCSRs may be necessary to reduce safety risk associated with the operation of ADS-equipped CMVs. In 2019, FMCSA summarized previous outreach and other actions related to ADS-equipped CMVs in an ANPRM (84 FR 24449, 24450–51, May 28, 2019). The ANPRM also requested public comment about which FMCSRs may need to be amended, revised, or eliminated to facilitate the safe introduction of ADS-equipped CMVs onto the Nation's roadways. In this regard, the ANPRM posed specific questions on the following topics: whether the FMCSRs require a human driver; CDL endorsements; drivers' hours of service rules; medical qualification standards for human operators; distracted driving and monitoring; requirements to ensure safe driving; inspection, repair, and maintenance; roadside inspections; cybersecurity; and confidentiality of shared information. FMCSA extended the comment period to August 28, 2019 (84 FR 37228, Jul. 31, 2019), and the Agency received 122 comments from individuals and 59 from organizations. Interested parties can view the comments the Agency received at *https://www.regulations.gov/docket/FMCSA-2018-0037/comments*.

In the ANPRM, FMCSA explained that the Department adopted the SAE International's definitions for the levels of driving automation set forth in SAE J3016 (''Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles''). The six levels of automation range from Level 0 (driver support features but no driving automation) to Level 5 (full driving automation). FMCSA continues to explore the potential risks and safety benefits of Levels 0–3 driving automation and driver assistance technologies. FMCSA, however, does not believe there is a need to revise the FMCSRs to address the integration of Levels 0–3 equipment because a licensed human CMV driver must be seated behind the wheel of these vehicles at all times to perform, or be ready to take over, dynamic driving tasks. The focus of this notice is Level 4 and 5 ADS-equipped CMVs because it is only at those levels that an ADS can control all aspects of the dynamic driving task without any expectation of an intervention from a human driver.

B. Departmental and Modal Administration Publications and Actions

Since FMCSA's publication of the ANPRM, the Department has continued engagement with key transportation stakeholders to develop a national policy framework to facilitate the safe integration of ADS technology, as well as other emerging technologies, into the transportation system. Prioritizing safety while supporting the power of innovation to transform transportation for the better are central to the Department's approach, as memorialized in both the National Roadway Safety Strategy (NRSS) and the U.S. DOT Innovation Principles, both released in January 2022.[1] The NRSS outlines the Department's comprehensive approach to significantly reducing serious injuries and deaths with a long-term goal of zero roadway fatalities. The NRSS recognizes the Department's responsibility to use holistic approaches to assess the safety of emerging technologies such as ADS. The NRSS explains that the Department is actively researching test methods, procedures, and criteria to assess long-term safety benefits of ADS, as well as broader impacts on workers, drivers, and all people who use the Nation's roadways.

Additionally, the NRSS describes actions taken by the Department and DOT modal administrations to enable the safe deployment of new and emerging vehicle technologies. For example, the National Highway Traffic Safety Administration (NHTSA) issued Standing General Order 2021–01 on June 29, 2021, amended on August 5, 2021, that requires identified vehicle manufacturers and operators to report to NHTSA crashes involving vehicles equipped with ADS or certain advanced driver assistance systems.[2] The Standing General Order, which remains in effect until June 2024, enables NHTSA and the Department to obtain timely and transparent notification of real-world crashes associated with vehicles equipped with an ADS and, when appropriate, may lead DOT modal administrations to gather additional data and information or conduct an investigation, when warranted, into emerging safety issues potentially arising from the on-road testing, development, use, or deployment of new driving automation technologies.

The U.S. DOT Innovation Principles will guide the Department's work in supporting transportation innovation.[3] Innovations consistent with these principles should reduce deaths and serious injuries on the roadways. The Department will also encourage partnerships and collaborations through an outcomes-based approach. FMCSA's approach to safety oversight of motor carriers operating ADS-equipped CMVs is consistent with the Department's innovation principles and commits FMCSA to fostering purpose-driven innovation that is technology neutral, and protects the interests of the public, workers, and communities.

V. Discussion and Supplemental Questions for Response

ADS-equipped CMVs have the potential to produce measurable safety benefits in crashes involving human error. ADS-equipped CMVs, however, present operational characteristics and challenges that may introduce new and complex safety risks that need to be monitored and may require FMCSA to

[1] The NRSS is available at *https://www.transportation.gov/sites/dot.gov/files/2022-02/USDOT-National-Roadway-Safety-Strategy.pdf*.

[2] The Standing General Order, as well as crash report data, is available at *https://www.nhtsa.gov/laws-regulations/standing-general-order-crash-reporting#:~:text=NHTSA%20issued%20the%20General%20Order,are%20free%20of%20defects%20that*.

[3] The Innovation Principles are available at *https://www.transportation.gov/priorities/transformation/us-dot-innovation-principles*.

modify existing and/or adopt new regulatory standards. ADS developers are actively engaged in the development, testing, and limited deployment of ADS-equipped CMVs, and promoting their use in commercial motor carrier operations. Although many ADS-equipped CMVs are being tested in manufacturer or developer owned fleets, many developers and manufacturers are also working to integrate their ADS equipment into existing motor carrier fleets. To mitigate potential safety risks associated with in-service use of ADS-equipped CMVs, FMCSA is developing an appropriate regulatory framework.

In this SANPRM, which is a supplement to the ANPRM published May 28, 2019, FMCSA invites comment on additional questions and those issued in the previous ANPRM, to help FMCSA assess benefits, costs, and other impacts of any potential proposal issued later. If interested parties have new information regarding the questions presented in the 2019 ANPRM, those comments may be submitted in response to this SANPRM. The 2019 ANPRM is available at 84 FR 24449 or at the following link: *https://www.regulations.gov/document/FMCSA-2018-0037-0131*.

A. Notification by Motor Carriers Operating Level 4 or 5 ADS-Equipped CMVs

To more effectively oversee Level 4 or 5 ADS-equipped CMV operations, FMCSA is considering establishing a requirement for motor carriers to notify FMCSA that they will operate those CMVs in interstate commerce without a human driver behind the wheel. It may be necessary to require motor carriers operating such vehicles to notify the Agency to facilitate monitoring of those operations and give FMCSA the opportunity to address any unique in-service safety issues involved in the operations of such vehicles, and, if necessary, to target safety interventions to correct those issues. FMCSA therefore seeks comment on (1) regulatory approaches that would enable the Agency to obtain relevant safety information and (2) the current and anticipated size of the population of motor carriers operating ADS-equipped CMVs.

Questions

1.1. Should FMCSA require motor carriers operating Level 4 or 5 ADS-equipped CMVs to notify FMCSA before operating those vehicles in interstate commerce without a human driver behind the wheel? If so, what potential methods or procedures should be established to notify FMCSA of those operations?

1.2. Before operating in interstate commerce, should motor carriers be required to submit information, data, documentation, or other evidence that demonstrates to FMCSA that motor carriers seeking to operate Level 4 or 5 ADS-equipped CMVs have appropriate safety management controls in place to operate the vehicle in accordance with the manufacturer's specifications and with Federal requirements? If so, please describe any recommended approaches including the information to be provided and appropriate techniques for reviewing that information. If available, provide cost estimates for proposed approaches.

1.3. What data should FMCSA collect and maintain regarding Level 4 or 5 ADS-equipped CMVs engaged in interstate transportation? How would such information be used and how would it improve FMCSA's ability to oversee the safe operation of Level 4 or 5 ADS-equipped CMVs?

1.4. What is the current size of the Level 4 or 5 ADS-equipped CMV population? What is the anticipated size of the population within 5 years? What might the size of the population be in 10 years?

1.5. On average, how many days are Level 4 or 5 ADS-equipped CMVs expected to be operational per year?

B. Oversight for Remote Assistants

As FMCSA explained in the ANPRM, at Level 5 driving automation, the ADS technology will be expected, by definition, to be capable of performing all driving functions under all conditions. For Level 4 driving automation the ADS technology would be limited to certain operational design domains (ODD). However, when a Level 4 CMV reaches the limit of its ODD, continued operation may require a human driver, either seated behind the wheel or located remotely, to directly control the CMV. (See the ANPRM for more information on operational design domains (84 FR 24449, 24452)). Human drivers who may operate an ADS-equipped CMV from a remote location are generally referred to as *remote drivers*.[4] FMCSA stated in the ANPRM that the FMCSRs applicable to drivers seated behind the wheel of the CMV, such as drug and alcohol use and testing, CDL requirements, hours of service, distracted driving, and medical qualification standards, should continue to apply to remote drivers who are able to take control of an ADS-equipped CMV operating on a public road. This remains FMCSA's position.

During FMCSA's continued engagement with stakeholders, the Agency has learned that some motor carriers' operational models may also include the use of a person operating as a remote assistant[5] who would remotely monitor the Level 4 or 5 ADS-equipped CMV. On an as-needed basis, the remote assistant would engage (via a wireless telematics connection) with the vehicle if/when the ADS is unable to perform the dynamic driving task and enters a minimal risk condition due to a system fault, mechanical failure, an event that caused the vehicle to enter into a condition or location outside its ODD, and/or other anomalies that the ADS was unable to negotiate. In such circumstances the remote assistant may enable the ADS to complete the driving task but in all circumstances the on-board ADS would complete or execute the actual vehicle control maneuvers. That is, the remote assistant would not engage in direct control of the vehicle throttle, steering, accelerator, turn signals, lighting, or other vehicle control functions. The remote assistant may also engage with law enforcement personnel, first responders and/or other public officials engaged in traffic and CMV oversight operations. FMCSA seeks information on what requirements, if any, should be imposed on persons performing remote assistant duties for motor carriers operating Level 4 or 5 ADS-equipped CMVs.

Questions

2.1. To what extent should the Federal requirements otherwise applicable to CMV drivers (such as hours-of service limitations, drug and alcohol testing, and physical qualifications), also apply to a remote assistant who is not expected to take control of the dynamic driving task of an ADS-equipped CMV operating at Level 4?

2.2. What, if any, aspects of the remote assistant job function may require FMCSA oversight including minimum standards and/or auditing, *e.g.,* training, physical qualifications, and other job-performance related measures? Please provide rationale and evidence for the recommended manner of oversight.

2.3. Are there any qualification requirements that FMCSA should

[4] The definition of *remote driver* is a driver who is not seated in a position to manually exercise in-vehicle braking, accelerating, steering, and transmission gear selection input devices (if any), but is able to operate the vehicle.

[5] The definition of *remote assistance* is a human who provides remote information or advice to an ADS-equipped vehicle in driverless operation in order to facilitate trip continuation when the ADS encounters a situation it cannot manage.

consider for remote assistants, such as related experience, *e.g.,* as a CDL holder?

2.4. Are there any specific limitations that should be imposed on the working conditions of remote assistants, such as limitations on the number of ADS-equipped CMVs that a remote assistant is simultaneously responsible for or the number of hours that a remote assistant may work?

2.5. Are there any other considerations that FMCSA should be aware of relating to individuals who may function as remote assistants?

C. Vehicle Inspection and Maintenance

As indicated in the ANPRM, motor carriers operating Level 4 or 5 ADS-equipped CMVs must comply with existing vehicle inspection and maintenance regulations, including the requirements for pre-trip, post-trip, periodic, and roadside inspections, unless and until those regulations are revised through an FMCSA final rule. Additionally, the ANPRM noted that motor carriers operating Level 4 or 5 ADS-equipped CMVs would necessarily require a means to ensure that the ADS equipment is properly maintained and functioning.

Level 4 or 5 ADS-equipped CMVs have the potential to operate almost continuously, except for re-fueling and maintenance. FMCSA is therefore considering whether additional inspection requirements would be appropriate for Level 4 or 5 ADS-equipped CMVs to reduce overall safety risk associated with this new technology and to account for their extended periods of operation without direct human observation.

At the same time, roadside inspections of Level 4 or 5 ADS-equipped CMVs would be uniquely challenging in the absence of a human driver to engage in the inspection process. For example, during a Level 1[6] roadside inspection, a human driver is generally required to communicate with enforcement officers and perform tasks associated with the inspection, such as testing the braking system, lighting functions, and the fifth wheel movement. The Agency therefore is soliciting comment to better inform its rulemaking proposals in the areas of inspection and maintenance of ADS-equipped CMVs.

The Commercial Vehicle Safety Alliance (CVSA) recently released a new program and procedures on inspections of ADS-equipped CMVs, which it developed through a multiparty working group.[7] FMCSA requests public comment on the CVSA document,[8] and it welcomes information and comment on activities of other stakeholder groups, including consensus standards bodies, that are considering ADS technology and deployment.

Questions

3.1. Should Level 4 or 5 ADS-equipped CMVs be subject to pre-trip inspection requirements for their mechanical and ADS components in addition to those specified in 49 CFR 392.7, including those which might necessitate new inspection equipment, before such CMVs are dispatched and after a specified period of operation? If so, what methods should be used to conduct these additional inspection items, what equipment components should be inspected, what documentation should be required, who should be responsible for conducting those inspections and what qualifications or specialized training should be required, and how frequently should the additional inspections be conducted?

3.2. If additional inspections, inspection equipment, or additional qualifications for inspectors are proposed, provide an estimate of the costs associated with such additional requirements including the approximate time to complete the additional inspection requirements, costs of any proposed training if additional inspector requirements are proposed, and the paperwork burden associated with such training.

3.3. What technical barriers exist to conducting conventional roadside inspections (which require interactions with the human driver) of Level 4 or 5 ADS-equipped CMVs and what approaches currently exist or might be developed to remove those barriers?

3.4. What, if any, pre-trip inspection requirements, documentation, and communications capability (for making the results of such inspections available to law enforcement personnel), should be imposed on motor carriers operating Level 4 and 5 ADS-equipped CMVs as a condition for by-passing conventional roadside inspection stations?

3.5. If Level 4 or 5 ADS-equipped CMVs are not required by the States to undergo roadside inspections during operation, what information should be communicated by the motor carrier and CMV to the State inspectors (*e.g.,* the results of potential alternative pre-trip inspections, and/or the real-time operational status and condition of safety critical systems such as brakes, tires, lighting systems, steering, and ADS components)? Are there other data and performance information that would need to be made available to ensure adequate vehicle maintenance and safe operations?

3.6. What communication systems currently exist that would allow roadside inspection officers to receive information regarding Level 4 or 5 ADS-equipped CMVs, and what information could be transmitted via these systems regarding the mechanical condition of the CMV and other operational documentation, (*e.g.,* shipping documents and origin/destination), while in route?

3.7 Under what safety situations should State inspectors and/or FMCSA receive immediate notification of an unsafe maintenance or operational issue, if any? What data and information would need to be provided in instances such as tow-away crashes or those that disable key operational features of a CMV? Under such safety situations, what return to service process would ensure any maintenance and operation issues have been addressed?

3.8. If Level 4 or 5 ADS-equipped CMVs are not subject to State roadside inspections, how would law enforcement agencies and motor carriers ensure that such CMVs are not used to engage in unlawful activity, *e.g.,* human trafficking, cargo theft?

3.9. Should Level 4 or 5 ADS-equipped CMVs be subject to additional post-trip inspection requirements for the mechanical or ADS components of the CMV?

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,

Administrator.

[FR Doc. 2023–02073 Filed 1–31–23; 8:45 am]

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[6] See *https://www.cvsa.org/inspections/all-inspection-levels/* for a description of inspection levels.

[7] See *https://www.cvsa.org/news/new-enhanced-cmv-inspection-program/*.

[8] CVSA's ''Enhanced CMV Inspection Program for Automated Vehicle Motor Carrier Operations'' can be found in the docket for this SANPRM.

Notices

Federal Register
Vol. 88, No. 21
Wednesday, February 1, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Additives

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S. Codex Office is sponsoring a public meeting on February 21, 2023, from 9–12 p.m. EST. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 53rd Session of the Codex Committee on Food Additives (CCFA) of the Codex Alimentarius Commission, in Hong Kong, People's Republic of China on March 27–31, 2023. The U.S. Manager for Codex Alimentarius and the Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 53rd Session of the CCFA and to address items on the agenda.

DATES: The public meeting is scheduled for February 21, 2023, from 9 a.m. to 12 p.m. EST.

ADDRESSES: The public meeting will take place in a hybrid format. The on-site location is Meeting Room 1A–001 at the Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5001 Campus Drive, College Park, MD 20740–3835. Documents related to the 53rd Session of the CCFA will be accessible via the internet at the following address: *https://www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CCFA&session=53.*

Dr. Paul Honigfort, U.S. Delegate to the 53rd Session of the CCFA, invites interested U.S. parties to submit their comments electronically to the following email address: *ccfa@cfsan.fda.gov.*

Registration: In-person attendees may register to attend the public meeting at the following email address: *ccfa@cfsan.fda.gov.* Virtual attendees may register to attend the public meeting via video teleconference here: *https://fda.zoomgov.com/meeting/register/vJIsd-6sqj8oEj61dNRGO8b-j0Ml6ffauzw.* Attendees should register by February 16, 2023. After registering, you will receive a confirmation email containing information about joining the meeting. For further information about the public meeting, contact Dr. LaShonda Cureton by phone at: +1 (240) 402–1351 or by email at *Lashonda.Cureton@fda.hhs.gov.*

For further information about the 53rd session of CCFA, contact U.S. Delegate, Dr. Paul Honigfort, by phone at: +1 (240) 402–1206 or by email at *Paul.Honigfort@fda.hhs.gov,* or Alternate U.S. Delegate, Dr. Daniel Folmer by phone at +1 (240) 402–1274 or by email at *Daniel.Folmer@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference of the Codex Committee on Food Additives are:

(a) to establish or endorse permitted maximum levels for individual food additives;

(b) to prepare priority lists of food additives for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives;

(c) to assign functional classes to individual food additives;

(d) to recommend specifications of identity and purity for food additives for adoption by the Commission;

(e) to consider methods of analysis for the determination of additives in food; and

(f) to consider and elaborate standards or codes for related subjects such as the labelling of food additives when sold as such.

The CCFA is hosted by China and the meeting is attended by the United States as a member of the Codex Alimentarius.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 53rd Session of the CCFA will be discussed during the public meeting (agenda item documents can be found on the Codex Alimentarius website at *https://www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CCFA&session=53*):

- Matters Referred by the Codex Alimentarius Commission and other subsidiary bodies
- Matters of Interest arising from FAO/WHO and from the 92nd and 95th Meetings of the Joint FAO/WHO Expert Committee on Food Additives (JECFA)
- Proposed draft specifications for identity and purity of food additives arising from the 92nd and 95th JECFA meeting
- Endorsement and/or revision of maximum levels for food additives and processing aids in Codex standards
- Alignment of the food additive provisions of commodity standards: Report of the electronic working group (EWG) on Alignment
- General Standard for Food Additives (GSFA): Food additive provisions for colors in food categories 01.0 through 03.0 and subcategories including adopted provisions for colors with Note 161 and draft proposed draft provisions (outstanding from CCFA52)
- General Standard for Food Additives (GFSA): Report of the EWG on the GSFA
- General Standard for Food Additives (GFSA): Proposals for new and/or revision of food additive provisions (replies to circular letter (CL) 2021/55–FA)
- Status paper on all adopted food additive provisions in the GSFA for additives with sweetener function but not associated with Note 161
- General information on the availability of data related to nitrates and nitrites (replies to CL 2021/82–FA)

- Information on commercial use of ortho-phenylphenol (INS 232) in food (replies to CL 2021/83–FA)
- Proposed draft revision to the *International Numbering System (INS) for Food Additives* (CAC/GL 36–1989) Proposals for additions and changes to the Priority List of Substances proposed for evaluation by JECFA (replies to CL 2021/81–FA)
- Discussion paper on mapping Food Categories of the GSFA to the FoodEx2 database
- Discussion paper on the food additive provision for the use of trisodium citrate in FC 01.1.1 ''Fluid milk (plain)''
- Discussion paper on the use of certain food additives in wine production
- Other Business and Future Work

Public Meeting

At the public meeting on February 21, 2023, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Dr. Paul Honigfort, U.S. Delegate to the 53rd Session of the CCFA, at *ccfa@cfsan.fda.gov.*

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA Codex web page located at: *http://www.usda.gov/codex,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscriptions themselves and have the option to password protect their accounts.

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How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *https://www.usda.gov/oascr/filing-program-discrimination-complaint-usda-customer,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email. Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410; Fax: (202) 690–7442; Email: *program.intake@usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on January 26, 2023.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2023–02020 Filed 1–31–23; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: School Meals Operations Study: Evaluation of the School-Based Child Nutrition Programs

AGENCY: Food and Nutrition Service (FNS), United States Department of Agriculture (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 collection is a revision of a currently approved collection for the School Meals Operations (SMO) Study (OMB control number 0584–0607) information collection with updated survey instruments for school year (SY) 2022–2023. This study will collect data from State agencies and public school food authorities (SFAs), including disaggregated administrative data, on the continued use and effectiveness of the nationwide Child Nutrition (CN) COVID–19 waivers, and continuation of SMO information collection with updated survey instruments.

DATES: Written comments must be received on or before April 3, 2023.

ADDRESSES: Comments may be sent to: Darcy Güngör at *darcy.gungor@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 Darcy Güngör at *darcy.gungor@usda.gov,* 703–305–4345.

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: School Meals Operations Study: Evaluation of the School-based Child Nutrition Programs.

Form Number: N/A.

OMB Number: 0584–0607.

Expiration Date: 12/31/2024.

Type of Request: Revision of a currently approved collection.

Abstract: FNS administers the school-based Child Nutrition (CN) Programs (*i.e.,* the school meal programs) in partnership with States and local SFAs. Section 28(a) of the Richard B. Russell National School Lunch Act authorizes the USDA Secretary to conduct annual national performance assessments of the school meal programs. FNS plans to conduct this annual assessment through the SMO Study in SY 2023–2024. This notice covers the fourth year of the SMO Study, which will collect data from State and local agencies on the CN COVID–19 waivers as well as data on state and local CN Program operations during SY 2022–2023. Data collection will occur in SY 2023–2024.

The fourth year of the SMO Study is a minor revision of a currently approved collection for the SMO Study. The SMO study is designed to collect timely data on the continued use and effectiveness of the CN COVID–19 waivers as well as policy, administrative, and operational issues in the school-based CN Programs, which contributes to budget preparation, development and implementation of program policy and regulations, and identification of areas for technical assistance and training. This study will help FNS obtain:

1. General descriptive data on the characteristics of CN Programs to inform the budget process and answer questions about topics of current policy interest;

2. Data on Program operations to identify potential topics for training and technical assistance for SFAs and State agencies (SAs) responsible for administering the CN Programs;

3. Administrative data to identify program trends and predictors;

4. Information on the use and effectiveness of the CN COVID–19 waivers.

The activities to be conducted subject to this notice include:

- Collecting disaggregated administrative data from 67 State Agency Directors that are currently only reported in aggregate on forms FNS–10, Report of School Program Operations, FNS–418, Report of the Summer Food Service Program for Children, and FNS–44, Report of the Child and Adult Care Food Program (which are approved under OMB# 0584–0594, Food Programs Reporting System (FPRS), expiration date 07/31/2023)
- Conducting a web survey of 54 State CN Directors
- Conducting a web survey of 1,266 SFA Directors

To reduce data collection burden on SFAs, the SMO Study will analyze existing administrative data collected from SAs which will limit the number and type of questions included in surveys to SAs and SFAs. To facilitate data collection, SAs will receive an agenda for initial telephone meetings and a template for the data request. The data request template will link each data element to the corresponding item number on forms FNS–10, FNS–418, and FNS–44. Examples of the types of data that the administrative request will respond to include number of schools and students participating in the meal programs and the number of meals served under the meal programs.

SMO will also conduct surveys of a census of SAs and a nationally representative sample of SFAs on key topics identified annually. Recruitment will be a three-step process. First, data collection will begin with an email to regional offices requesting their assistance by sending a letter of support to States. Next, the study team will send an advance letter to the States that describes the study and asks CN Directors to send a letter of support to SFAs. Third, the study team will send an invitation to States and SFAs to complete the web survey. To maximize the opportunity to reach all respondents, the study team will attempt to contact them by mail, email, and phone. Participants will be able to complete the survey on the web, in hard copy, or over the phone.

The goal of data collection for the SMO Study is to respond to annual research questions on the following topics: (1) school participation, (2) student participation, (3) meal counting, (4) financial management, and (5) program integrity. This revision covers data collection for one school year, with revisions of surveys and administrative data collection instruments from previous years.

Note: Personally identifiable information will not be used to retrieve survey records or data.

Affected Public: State, Local, and Tribal Governments: Respondent groups identified include: (1) SFA Directors for public schools, and (2) State Agency Directors from all 50 States, 3 territories, and the District of Columbia.

Estimated Number of Respondents: The total estimated number of respondents is 1,339. This includes (1) 67 State Agency Directors who are expected to participate in the administrative data collection, 54 of whom are also CN Directors who will be participating in the CN Director survey (3 of the 54 CN Directors are also expected to participate in the pretest), and (2) 1,266 SFA Directors. Six SFA Directors are expected to participate in the pretest of the SFA Director web survey; these six SFA Director pretest participants are unique respondents and will not be included in the sample for the SFA survey. Of the 1,266 public SFA Directors included in the sample for the SFA Director web survey, 1,012 are expected to respond and FNS expects 254 will not respond to the study activities (non-respondents).

Estimated Number of Responses per Respondent: State Agency Director respondents will be asked to complete an initial telephone meeting and respond to the FNS–10, FNS–418 and FNS–44 administrative data requests one time. SFA Director and CN Director respondents will be asked to complete their respective web surveys one time. In the event of non-response, CN Directors may receive reminder emails and phone calls until the target of 67 respondents is reached for the administrative data collection. Child Nutrition Directors may receive reminder emails, phone calls, and a last chance postcard until the target of 54 respondents is reached for the web survey. Similarly, SFA Directors who do not respond to the web survey may receive reminders via email, phone, or post card until the target number of 1,012 respondents is reached.

FNS estimates that respondents will average 7.33 responses (7,948 responses/1,085 respondents) across the entire collection, with non-respondents averaging 15.32 responses (3,892 responses/254 non-respondents). Across all participants in the collection (respondents and non-respondents) the average number of responses is 8.84 (11,840 responses/1,339 total respondents).

Estimated Total Annual Responses: 11,840.

Estimated Time per Response: The estimated time per response ranges from 3 minutes (0.05 hours) to 6 hours depending on the instrument, as shown in the table below, with an average estimated time for all participants of 13.20 minutes (0.22 hours) per response.

Estimated Total Annual Burden on Respondents: 119,985.60 minutes (1,999.76 hours). See the table below for estimated total annual burden for each type of respondent.

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Table 1. Total estimated annualized burden – hours

State / Local Government

			Responsive					Non-Responsive					All
Type of respondents	Type of survey instruments	Sample Size	Number of respondents	Frequency of response	Total Annual responses	Hours per response	Annual burden (hours)	Number of Non-respondents	Frequency of response	Total Annual responses	Hours per response	Annual burden (hours)	Total Annual hour burden
State CN Directors	Web survey and administrative data pre-test and debrief	3	3	1	3	1.00	3.00	0	0	0	0.00	0.00	3.00
State CN Directors	Study support email (from FNS RO to SA)	67	67	1	67	0.05	3.35	0	0	0	0.00	0.00	3.35
State CN Directors	Study support email (from SA to SFA)	54	54	1	54	0.33	17.82	0	0	0	0.00	0.00	17.82
State CN Directors	Advance letter	67	67	1	67	0.05	3.35	0	0	0	0.00	0.00	3.35
State CN Directors	Advance email	67	67	1	67	0.05	3.35	0	0	0	0.00	0.00	3.35
State CN Directors	Initial Telephone Meeting Agenda	67	67	1	67	0.33	22.11	0	0	0	0.00	0.00	22.11
State CN Directors	FNS-10 Administrative data request for FY 2023	55	55	1	55	6.00	330.00	0	0	0	0.00	0.00	330.00
State CN Directors	FNS-418 Administrative data request for FY 2023	53	53	1	53	4.00	212.00	0	0	0	0.00	0.00	212.00
State CN Directors	FNS-44 Administrative data request for FY 2023	55	55	1	55	6.00	330.00	0	0	0	0.00	0.00	330.00
State CN Directors	Web survey	54	54	1	54	0.50	27.00	0	0	0	0.00	0.00	27.00
State CN Directors	Brochure	54	54	1	54	0.05	2.70	0	0	0	0.00	0.00	2.70
State CN Directors	Invitation email	54	27	1	27	0.05	1.35	27	1	27	0.05	1.35	2.70
State CN Directors	Reminder email	27	19	4	76	0.05	3.80	8	4	32	0.05	1.60	5.40
State CN Directors	Telephone reminder script	8	4	2	8	0.08	0.66	4	2	8	0.00	0.00	0.66
State CN Directors	Last chance post card	4	4	1	4	0.05	0.20	0	0	0	0.00	0.00	0.20
SFA Directors	Web survey pre-test & debrief	6	6	1	6	1.00	6.00	0	0	0	0.00	0.00	6.00
SFA Directors	Study support email (from SA to SFA)	1,266	1,266	1	1,266	0.05	63.30	0	0	0	0.00	0.00	63.30
SFA Directors	Advance letter and invitation	1,266	1,012	1	1,012	0.05	50.60	254	1	254	0.05	12.70	63.30
SFA Directors	Web survey	1,266	1,012	1	1,012	0.50	506.00	254	1	254	0.05	12.70	518.70
SFA Directors	Brochure	1,266	1,012	1	1,012	0.05	50.60	254	1	254	0.05	12.70	63.30
SFA Directors	Invitation email	1,266	317	1	317	0.05	15.85	949	1	949	0.05	47.45	63.30
SFA Directors	Reminder email	949	617	4	2,468	0.05	123.40	332	4	1,328	0.05	66.40	189.80
SFA Directors	Telephone reminder script	332	66	2	132	0.08	10.96	266	2	532	0.08	44.16	55.11
SFA Directors	Last chance post card	266	12	1	12	0.05	0.60	254	1	254	0.05	12.70	13.30
TOTAL		**1,339**	**1,085**	**7.33**	**7,948**	**0.22**	**1,788.00**	**254**	**15.32**	**3,892**	**0.05**	**211.76**	**1,999.76**

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2023–02055 Filed 1–31–23; 8:45 am]

BILLING CODE 3410–30–C

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 February 1, 2023.

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–533–817	731–TA–817	India	Certain Cut-To-Length Carbon-Quality Steel Plate (4th Review).	Mary Kolberg, (202) 482–1785.
A–560–805	731–TA–818	Indonesia	Center Cut-To-Length Carbon-Quality Steel Plate (4th Review).	Mary Kolberg, (202) 482–1785.
A–580–836	731–TA–821	South Korea	Center Cut-To-Length Carbon-Quality Steel Plate (4th Review).	Mary Kolberg, (202) 482–1785.
A–570–060	731–TA–1369	China	Fine Denier Polyester Staple Fiber (1st Review).	Thomas Martin, (202) 482–3936.
A–533–875	731–TA–1370	India	Fine Denier Polyester Staple Fiber (1st Review).	Thomas Martin, (202) 482–3936.
A–580–893	731–TA–1371	South Korea	Fine Denier Polyester Staple Fiber (1st Review).	Thomas Martin, (202) 482–3936.
A–583–860	731–TA–1372	Taiwan	Fine Denier Polyester Staple Fiber (1st Review).	Thomas Martin, (202) 482–3936.
A–570–901	731–TA–1095	China	Lined Paper Products (3rd Review)	Mary Kolberg, (202) 482–1785.
A–533–843	731–TA–1096	India	Lined Paper Products (3rd Review)	Mary Kolberg, (202) 482–1785.
A–570–864	731–TA–895	China	Pure Magnesium (4th Review)	Mary Kolberg, (202) 482–1785.
C–533–818	701–TA–388	India	Center Cut-To-Length Carbon-Quality Steel Plate (4th Review).	Mary Kolberg, (202) 482–1785.
C–560–806	701–TA–389	Indonesia	Center Cut-To-Length Carbon-Quality Steel Plate (4th Review).	Mary Kolberg, (202) 482–1785.
C–580–837	701–TA–391	South Korea	Center Cut-To-Length Carbon-Quality Steel Plate (4th Review).	Mary Kolberg, (202) 482–1785.
C–570–061	701–TA–579	China	Fine Denier Polyester Staple Fiber (1st Review).	Jacky Arrowsmith, (202) 482–5255.
C–533–876	701–TA–580	India	Fine Denier Polyester Staple Fiber (1st Review).	Thomas Martin, (202) 482–3936.
C–533–844	701–TA–442	India	Lined Paper Products (3rd Review)	Mary Kolberg, (202) 482–1785.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these

proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[2]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC 's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: January 20, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–02083 Filed 1–31–23; 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).

[2] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–813]

Polyethylene Terephthalate Sheet From the Sultanate of Oman: Final Results of Changed Circumstances Review, Revocation of the Antidumping Duty Order, and Rescission of Administrative Reviews; 2020–2021 and 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is revoking the antidumping duty (AD) order on polyethylene terephthalate (PET) sheet from the Sultanate of Oman (Oman). Because the AD order is being revoked, Commerce is rescinding the 2020–2021 and 2021–2022 AD administrative reviews.

DATES: Applicable February 1, 2023.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3860.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2020, Commerce published an AD order on PET sheet from Oman.[1] On December 27, 2022, Commerce published the preliminary results of the changed circumstances review (CCR) and revocation of the *Order,* pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216 and 19 CFR 351.222.[2] We invited interested parties to comment on the *Preliminary Results.* We received no comments.

Final Results of Changed Circumstances Review and Revocation of the Order

Because no party submitted comments regarding the *Preliminary Results* of this CCR,[3] and the record contains no further information or evidence that weighs against the proposed revocation, Commerce determines, pursuant to sections 751(d)(1) and 782(h) of the Act, and 19 CFR 351.222(g), that there are changed circumstances that warrant revocation of the *Order.* Specifically, in light of the petitioners' statement of lack of interest, and the absence of comments from any interested party opposing the *Preliminary Results,* we find that producers accounting for substantially all of the production of the domestic like product to which the *Order* pertains lack interest in the relief provided by the *Order.* Accordingly, we are revoking the *Order.*

Scope of the Order

The merchandise covered by the *Order* is raw, pretreated, or primed polyethylene terephthalate sheet, whether extruded or coextruded, in nominal thicknesses of equal to or greater than 7 mil (0.007 inches or 177.8 μm) and not exceeding 45 mil (0.045 inches or 1143 μm) (PET sheet). The scope includes all PET sheet whether made from prime (virgin) inputs or recycled inputs, as well as any blends thereof. The scope includes all PET sheet meeting the above specifications regardless of width, color, surface treatment, coating, lamination, or other surface finish.

The merchandise subject to the *Order* is properly classified under statistical reporting subheading 3920.62.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the

[1] *See Polyethylene Terephthalate Sheet from the Republic of Korea and the Sultanate of Oman: Antidumping Duty Orders,* 85 FR 55824 (September 10, 2020) (*Order*).

[2] *See Polyethylene Terephthalate Sheet from the Sultanate of Oman: Preliminary Results of Changed Circumstances Review and Intent to Revoke the Antidumping Duty Order,* 87 FR 79277 (December 27, 2022) (*Preliminary Results*).

[3] *Id.,* 87 FR at 79278 (''{W}e preliminarily conclude that producers accounting for substantially all of the production of the domestic like product to which the *Order* pertains lack interest in the relief provided by the *Order.* Thus, we preliminarily determine that changed circumstances warrant revocation of the *Order.*'').

written description of the scope is dispositive.

Application of the Final Results of the Changed Circumstances Review

Section 751(d)(3) of the Act provides that ''{a} determination under this section to revoke an order . . . shall apply with respect to unliquidated entries of subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date determined by the administering authority.'' Commerce's general practice is to instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping duties, and to refund any estimated antidumping duties on, all unliquidated entries of the merchandise covered by a revocation that are not covered by the final results of an administrative review or automatic liquidation.[4] Commerce is currently conducting the first and second administrative reviews of this *Order* (covering the periods March 3, 2020, through August 31, 2021, and September 1, 2021, through August 31, 2022, respectively) for respondent OCTAL SAOC–FZC.[5] We have not yet issued the final results for any administrative review of this *Order.*[6]

Consistent with our practice, we are applying the final results of this CCR to all unliquidated entries of the merchandise covered by the *Order* which have been entered, or withdrawn from warehouse, for consumption on or after March 3, 2020, *i.e.,* the effective date of the preliminary determination in the underlying less-than-fair-value (LTFV) investigation.

Rescission of Antidumping Duty Administrative Reviews

As the *Order* is being revoked effective as of the date of the preliminary determination in the LTFV investigation, Commerce is rescinding the administrative reviews[7] consistent with 19 CFR 351.213(d)(4) and 351.222(g)(4).

Instructions to CBP

Because we determine that there are changed circumstances that warrant revocation of the *Order,* we will instruct CBP to discontinue the suspension of liquidation and the collection of cash deposits of estimated antidumping duties, to liquidate all unliquidated entries that were entered on or after March 3, 2020, without regard to antidumping duties, and to refund all AD cash deposits on all such merchandise.

Commerce intends to issue instructions to CBP no earlier than 35 days after the date of publication of these final results and revocation 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).

Notification to Interested Parties

This notice serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results, revocation and rescissions in accordance with sections 751(a)(1), 751(b), and 777(i) of the Act and 19 CFR 351.213(d)(4), 19 CFR 351.216, and 19 CFR 351.222.

Dated: January 26, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–02085 Filed 1–31–23; 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 March 2023

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in March 2023 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Aluminum Foil from China, A–570–053 (1st Review)	Jacky Arrowsmith, (202) 482–5255.
Honey from China, A–533–817 (4th Review)	Thomas Martin, (202) 482–3936.
Polyester Staple Fiber from China, A–560–805 (4th Review)	Thomas Martin, (202) 482–3936.

[4] *See, e.g., Certain Pasta from Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part,* 76 FR 27634 (May 12, 2011); *Stainless Steel Bar from the United Kingdom: Notice of Final Results of Changed Circumstances Review and Revocation of Order, in Part,* 72 FR 65706 (November 23, 2007); *Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation of Order In Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany,* 71 FR 66163 (November 13, 2006); *Notice of Final Results of Antidumping Duty Changed Circumstances Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Canada and Germany,* 71 FR 14498 (March 22, 2006); and *Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China,* 68 FR 62428 (November 4, 2003).

[5] OCTAL SAOC–FZC was the sole respondent in the investigation and only company for which a review was requested in the administrative reviews.

[6] *See Polyethylene Terephthalate Sheet from the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 60992 (October 7, 2022); *see also* Memorandum, ''2020–2021 Antidumping Duty Administrative Review of Polyethylene Terephthalate Sheet from the Sultanate of Oman: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated January 23, 2023; and *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 66275, 66278 (November 3, 2022).

[7] *Id.*

	Department contact
Countervailing Duty Proceedings	
Aluminum Foil from China, C–570–054 (1st Review)	Jacky Arrowsmith, (202) 482–5255.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in March 2023.

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: January 20, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–02084 Filed 1–31–23; 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

National Oceanic and Atmospheric Administration

[RTID 0648–XC585]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Replacement of Pier 302 at Naval Base Point Loma, San Diego, California

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the U.S. Navy to incidentally harass, by Level B harassment only, marine mammals during construction activities associated with a Pier 302 Replacement project at Naval Base Point Loma, San Diego, California.

DATES: This authorization is effective from October 1, 2023 through September 30, 2024.

FOR FURTHER INFORMATION CONTACT: Jessica Taylor, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On July 27, 2022, NMFS received a request from the U.S. Navy for an IHA to take marine mammals incidental to construction activities associated with replacing Pier 302 at Naval Base Point Loma (NBPL), San Diego, CA. Following NMFS' review of the application, the U.S. Navy submitted a revised version on September 22, 2022. The application was deemed adequate and complete on October 27, 2022. The U.S. Navy's request is for take of six species of marine mammals by Level B harassment only. Neither the U.S. Navy nor NMFS expect serious injury or mortality to result from this activity, therefore, an IHA is appropriate. There were no changes from the proposed to the final IHA.

NMFS has previously issued IHAs to the U.S. Navy for similar work over the past 9 years at NBPL in San Diego Bay (Bay), including IHAs issued effective from September 1, 2013, through August 31, 2014 (78 FR 44539, July 24, 2013; Year 1 Project), October 8, 2014 through October 7, 2015 (79 FR 65378, November 4, 2014; Year 2 Project), October 8, 2015 through October 7, 2016 (80 FR 62032, October 15, 2015; Year 3 Project), October 8, 2016 through October 7, 2017 (81 FR 66628,

September 28, 2016; Year 4 Project), October 8, 2017 through October 7, 2018 (82 FR 45811, October 2, 2017; Year 5 Project), September 15, 2020 through September 14, 2021 (85 FR 33129, June 1, 2020; Floating Dry Dock Project), October 1, 2021 through September 30, 2022 (86 FR 7993, February 3, 2021; Pier 6 Replacement Project), and January 15, 2022 through January 14, 2023 (86 FR 48986, September 1, 2021; Fuel Pier Inboard Pile Removal Project). The U.S. Navy complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results specific to NBPL may be found in the Estimated Take section.

Description of Activity

The U.S. Navy plans to replace Pier 302 at the Naval Information Warfare Center (NIWC) Pacific Bayside Complex on NBPL. Pier 302 houses the U.S. Navy marine mammal pens and support vessels. As part of the project, the U.S. Navy will use vibratory extraction to remove the existing components of marine mammal pens, and impact and vibratory hammers to install new pens. The purpose of the project is to provide the U.S. Navy's marine mammal program with adequate facilities to house its marine mammals and provide a safe working environment for personnel to support the U.S. Navy's overall mission to maintain, train, and equip combat ready Naval forces.

The Navy's activity includes impact and vibratory pile driving, which may result in the incidental take of marine mammals, by Level B harassment only. No Level A harassment is anticipated to occur, and none is authorized. Due to mitigation measures, only takes by Level B harassment are requested. NBPL is located along the mouth and northern edge of San Diego Bay, CA. The project covers an area of 9,061 feet (ft.)^2 (842 meters (m)^2). Construction activities will occur over 32 days within a 1 year window from October 1, 2023 to September 30, 2024. The Navy states that it will conduct work only in daylight hours. A detailed description of the planned construction project is provided in the **Federal Register** notice for the proposed IHA (87 FR 68442, November 15, 2022). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

Comments and Responses

A notice of NMFS' proposal to issue an IHA to the U.S. Navy was published in the **Federal Register** on November 15, 2022 (87 FR 68442). That notice described, in detail, the U.S. Navy's activities, the marine mammal species that may be affected by the activities, and the anticipated effects on marine mammals. During the 30-day public comment period, no public comments were received.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is expected and authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is expected to occur, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

There are six marine mammal species that are potentially expected to be present during all or a portion of the in-water work associated with this project in San Diego Bay, including the California sea lion (*Zalophus californianus*), the northern elephant seal (*Mirounga angustirostris*), the harbor seal (*Phoca vitulina*), the bottlenose dolphin (*Tursiops truncatus*), the Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the common dolphin (*Delphinus delphis*). The Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*) recently determined both the long-beaked and short-beaked common dolphin belong in the same species and we adopt this taxonomy. However, the SARs still describe the two as separate stocks, and that stock information is presented in Table 1. Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates. For some species, this geographic area may extend beyond U.S. waters. All stocks managed under the MMPA in this region are assessed in NMFS' U.S. Pacific 2021 SARs. All values presented in Table 2 are the most recent available at the time of publication and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*).

TABLE 1—MARINE MAMMAL SPECIES[4] LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N)[1]	Stock abundance (CV, N_{min}, most recent abundance survey)[2]	PBR	Annual M/SI[3]
Order Artiodactyla—Infraorder Cetacea— Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Bottlenose dolphin	*Tursiops truncatus*	California Coastal	-, -, N	453 (0.06, 346, 2011)	2.7	≥2.0
Short-beaked common dolphin.	*Delphinus delphis delphis*	California/Oregon/Washington	-, -, N	1,056,308 (0.21, 888,971, 2018).	8889	≥30.5

TABLE 1—MARINE MAMMAL SPECIES [4] LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Long-beaked common dolphin.	*Delphinus delphis capensis*	California	-, -, N	83,379 (0.216, 69,636, 2018).	668	≥29.7
Pacific white-sided dolphin	*Lagenorhynchus obliquidens*	California/Oregon/Washington	-, -, N	34,999 (0.222, 29,090, 2018).	279	7
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (N/A,233,515, 2014).	14011	>320
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	California	-, -, N	30,968 (N/A, 27,348, 2012).	1641	43
Northern elephant seal	*Mirounga angustirostris*	California breeding	-, -, N	187,386 (N/A, 85,369, 2013).	5122	13.7

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/;* Committee on Taxonomy (2022)).

As indicated above, all six species (with seven managed stocks) in Table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. While gray whales, Risso's dolphins, and Steller sea lions have been sighted around California coastal waters in the past, these species' general spatial occurrence is such that take is not expected to occur as they typically occur more offshore. Therefore, the Navy did not request, and NMFS is not authorizing take of these species.

A detailed description of the species likely to be affected by the Naval Base Point Loma Pier 302 Replacement Project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (87 FR 68442, November 15, 2022); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to the NMFS website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.

TABLE 2—MARINE MAMMAL HEARING GROUPS—Continued

[NMFS, 2018]

Hearing group	Generalized hearing range *
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the Navy's pile driving activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the project area. The notice of the proposed IHA (87 FR 68442, November 15, 2022) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from the Navy's pile driving activities on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of the proposed IHA (87 FR 68442, November 15, 2022).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which has informed both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to the acoustic sources. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* vibratory or impact pile driving and removal) discussed in detail below in the Mitigation section. Level A harassment is neither anticipated nor authorized.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the authorized take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by temporary threshold shift (TTS) as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

The Navy's construction activities include the use of continuous (vibratory pile-driving) and impulsive (impact pile-driving) sources, and therefore the RMS SPL threshold of 160 dB re 1 μPa is applicable for impulsive noise. For continuous noise, the RMS SPL

threshold of 129.6 dB re 1 μPa is applicable as a de facto harassment threshold, based upon measured noise data for San Diego Bay as referenced in the Description of Activity section in the notice for the proposed IHA (87 FR 68442, November 15, 2022).

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Navy's activity includes the use of impulsive (impact hammer) and non-impulsive (vibratory hammer) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{p,0\text{-pk,flat}}$: 219 dB; $L_{E,p,LF,24h}$: 183 dB	*Cell 2:* $L_{E,p,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{p,0\text{-pk,flat}}$: 230 dB; $L_{E,p,MF,24h}$: 185 dB	*Cell 4:* $L_{E,p,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{p,0\text{-pk,flat}}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB	*Cell 6:* $L_{E,p,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{p,0\text{-pk.flat}}$: 218 dB; $L_{E,p,PW,24h}$: 185 dB	*Cell 8:* $L_{E,p,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{p,0\text{-pk,flat}}$: 232 dB; $L_{E,p,OW,24h}$: 203 dB	*Cell 10:* $L_{E,p,OW,24h}$: 219 dB.

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0\text{-pk}}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017). The subscript ''flat'' is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the project. Marine mammals are expected to be affected by sound generated by the primary components of the project (*i.e.,* impact and vibratory pile driving).

In order to calculate distances to the Level A harassment and Level B harassment thresholds for the methods and piles being used in this project, the Navy used acoustic monitoring data from various similar locations to develop source levels for the different pile types, sizes, and methods planned for use (Table 4).

TABLE 4—SOURCE LEVELS FOR REMOVAL AND INSTALLATION ACTIVITIES

Method	Pile size/type	Peak sound pressure (dB re 1 μPa) [1]	Mean maximum RMS SPL (dB re 1 μPa) [1]	SEL (dB re 1 μPa2 sec) [1]	Source
Pile Removal Activities					
Vibratory Extraction	18″ Octagonal Concrete [2]		[3] 162		NAVFAC SW, 2022.
	18″ Steel Pipe		[4] 156		Denes *et al.,* 2016.
Pile Installation Activities					
Impact Pile Driving	24″ Octagonal Concrete	188	176	166	Caltrans, 2020.
	14″ Square Concrete	183	166	154	Caltrans, 2020.
Vibratory Hammer	6″ Round Steel [5]	171	155	155	Illingworth and Rodkin, 2007.

[1] As measured, or calculated, at 10 m (33 ft).

[2] In the absence of information on vibratory extraction of 18-inch octagonal concrete piles, source data from 20-inch concrete square piles NAVFAC SW (2022) was used as a proxy source level.

[3] The maximum mean calculated source value for 20-inch square concrete piles (NAVFAC SW, 2022) was 162 dB RMS based on unpublished data from the Pier 6 Replacement Project.

[4] Table 20 in Denes *et al.* (2016) records a value of 152.4 dB RMS at 17 m (56 ft) for vibratory extraction. This data point, and a transmission loss of 15LogR, was used to back-calculate a value of 155.9 dB RMS at 10 m (33 ft) (rounded to 156 dB RMS).

[5] In the absence of information on vibratory installation of 6-inch round steel piles, source data from 12-inch round steel piles (Illingworth & Rodkin, 2017) was used as a proxy source level.

Abbreviations: μPa = microPascal; dB = decibel; RMS = root mean square; SPL = sound pressure level; m= meters; SEL = sound exposure level.

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

TL = B * Log10 (R1/R2),

where

TL = transmission loss in dB
B = transmission loss coefficient; for practical spreading equals 15
R1 = the distance of the modeled SPL from the driven pile, and
R2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for the Navy's activities. The Level B harassment zones and areas of zones of influence (ZOIs) for the Navy's activities are shown in Table 5.

TABLE 5—DISTANCE TO LEVEL B HARASSMENT THRESHOLDS AND ZOI AREAS

Method	Pile size/type	Maximum RMS SPL (dB re 1 μPa) [1]	Projected radial distance to Level B harassment thresholds and ensonified area [1 2]	
			Distance m	Area km^2
Pile Removal Activities				
Vibratory Extraction	18″ Octagonal Concrete	162	1,445	3.13
	18″ Steel Pipe	156	575	0.68
Pile Installation Activities				
Impact Pile Driving [3]	24″ Octagonal Concrete	176	117	0.041
Impact Pile Driving	14″ Square Concrete	166	25	<0.01
Vibratory Hammer	6″ Round Steel	155	494	0.45

[1] The Level B ZOIs for continuous pile removal and installation activities are based on the distance for noise to decay to ambient levels (129.6 dB re 1μPa), while 160 dB was used for impulsive sound.
[2] Assumes Practical Spreading Loss.
[3] With or without High-pressure Water Jetting.
Abbreviations: dB re 1 μPa = decibels referenced to a pressure of 1 microPascal, km^2 = square kilometers, m = meters, ft = feet, RMS = root mean square, ZOI = Zone of Influence.

Level A Harassment Zones

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources, such as pile installation or removal, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. The isopleths generated by the User Spreadsheet used the same TL coefficient as the Level B harassment zone calculations (*i.e.,* the practical spreading value of 15). Inputs used in the User Spreadsheet (*e.g.,* number of piles per day, duration and/or strikes per pile) are presented in Table 1 of the notice for the proposed IHA (87 FR 68442, November 15, 2022). The maximum RMS SPL/SEL SPL and resulting isopleths are reported below in Table 6. The maximum RMS SPL value was used to calculate Level A harassment isopleths for vibratory pile driving and extraction activities, while the single strike SEL SPL value was used to calculate Level A isopleths for impact pile driving activities.

TABLE 6—DISTANCES TO LEVEL A HARASSMENT THRESHOLDS

Method	Pile size/type	Maximum RMS SPL (dB re 1 μPa) [1]	Single strike SEL (dB re 1 μPa^2 sec) [1]	Duration (hrs/day)	Project distances to Level A thresholds (m)		
					MF	PW	OW
Pile Removal Activities							
Vibratory Extraction	18″ Octagonal Concrete [2]	162	N/A	1.25	0.8	5.6	0.4
	18″ Steel Pipe	[2] 156	N/A	0.25	0.1	0.8	0.1
Pile Installation Activities							
Impact Pile Driving	24″ Octagonal Concrete	176	166	1.33	4.1	[3] 62.4	4.5
	14″ Square Concrete	166	154	0.25	0.2	2.5	0.2
Vibratory Hammer	6″ Round Steel	155	155	0.07	0.0	0.3	0.0

[1] As measured at 10 m (33 ft.).

[2] Table 20 in Denes *et al.* (2016) records a value of 152.4 dB RMS at 17 m (56 ft.) for vibratory extraction. This data point, and a transmission loss of 15LogR, was used to back-calculate a value of 156 dB RMS at 10 m (33 ft.).

[3] Value is greater than the standard shutdown zone of 20 m (see Mitigation section) and will be monitored as shutdown zone to ensure no Level A takes of harbor seals or northern elephant seals occur during impact pile driving of 24-inch octagonal concrete piles.

Abbreviations: RMS = root mean square, dB re 1 μPa = decibels referenced to a pressure of 1 microPascal, m = meters, ft = feet, SEL = sound exposure level, MF = mid-frequency cetaceans, PW = phocid pinnipeds, OW = otariid pinnipeds.

Marine Mammal Occurrence

In this section, we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations. Unless otherwise specified, the term ''pile driving'' in this section, and all following sections, may refer to either pile installation or removal. NMFS has carefully reviewed the Navy's analysis and concludes that it represents an appropriate and accurate method for estimating incidental take that may be caused by the Navy's activities.

Daily occurrence estimates of marine mammals in the project area are based upon the Year 4 IHA monitoring report from the Fuel Pier Replacement Project (NAVFAC SW, 2017b). Year 4 is expected to be most representative of typical species occurrences as this monitoring period had the highest number of activity days and the highest average number of animals observed per day for the three most common species in the area (California sea lion, harbor seal, bottlenose dolphin), with the exception of Year 2. However, Year 2 was an El Niño year and not considered representative of typical species occurrences. The Year 2 monitoring report data was used for any species not observed in Year 4 (common dolphin, Pacific white-sided dolphin, northern elephant seal) (NAVFAC SW, 2015) (Table 7). Years 1, 3, and 5 included significantly less monitoring effort than Years 2 and 4, and may also not be representative of typical species richness and occurrences.

TABLE 7—TOTAL AND DAILY SPECIES OCCURRENCES DURING YEARS 2 AND 4 IHA MONITORING

Species	Year 2 IHA (100 monitoring days; El Nino year)		Year 4 IHA (152 monitoring days)	
	Total observed	Average per day	Total observed	Average per day
California sea lion	7,507	75.1	2,263	*14.9
Harbor seal	248	2.5	88	*0.6
Bottlenose dolphin	695	7	67	*0.4
Common dolphin	850	*8.5	N/A	N/A
Pacific white-sided dolphin	27	*0.3	N/A	N/A
Northern elephant seal	[1] 1	[1] 1	N/A	N/A

* Mean estimate used for daily occurrences for current analysis.

[1] Same individual hauled out each day.

Year 4 monitoring consisted of the longest effort of all 5 IHA years for the Navy Fuel Pier Replacement Project, and daily occurrence estimates for California sea lions, harbor seals, and bottlenose dolphins were selected from this year. Common dolphins, Pacific white-sided dolphins, and northern elephant seals were not sighted in Year 4; however, these species were sighted in Year 2 monitoring. Pacific white-sided dolphins were only sighted during this year. Daily occurrence estimates for common dolphins and Pacific white-sided dolphins were selected from Year 2. Only one northern elephant seal was sighted during the Year 2 monitoring, and the same individual was hauled out each day. Using a daily occurrence estimate from past monitoring was, therefore, not an accurate approach for estimating occurrence of northern elephant seals. Past monitoring efforts, including the one northern elephant seal sighted during Year 2 monitoring and a sighting north of the project area, (McConchie, 2015; NAVFAC SW, 2015) documented a total of two juvenile northern elephant seals in the project area, as described in the Description of Marine Mammals in Areas of Specified Activities section in the proposed IHA (87 FR 68442, November 15, 2022). Due to increasing stock numbers, there is a reasonable probability that this species could be sighted in the project area during construction activities. Instead of using past monitoring data to estimate daily occurrence, it is expected that two northern elephant seals may be observed in the project area during construction activities, based upon previous sighting data. The Navy added a buffer of five seals to this estimate for a total of seven expected elephant seals in the area during construction activities, and NMFS agrees with this approach.

Monitoring during Year 4 yielded an observation of 2,263 California sea lions over the course of the 152-day monitoring period. These observations equate to an average of 14.9 California sea lions observed per day, and approximately 15 California sea lions expected to be in the vicinity of Pier 302, when this estimate is rounded.

Based upon monitoring during Year 4, 88 harbor seals were observed over the course of the 152-day monitoring period. These observations equate to an average of 0.6 harbor seals observed per day, and approximately 1 seal per day expected to be in the vicinity of Pier 302 when this estimate is rounded.

Monitoring during Year 4 yielded an observation of 67 bottlenose dolphins in the project area over the course of the 152-day monitoring period. This observation equates to an average of 0.4, or 1 if rounded, bottlenose dolphins expected to be in the vicinity of Pier 302 each day of the construction activities.

During Year 2 monitoring, 850 common dolphins were sighted in the project area over the course of the 152-day monitoring period. This equates to an average of 8.5 common dolphins observed per day. When rounded to the nearest whole number, 9.0 individuals are expected to be sighted per day in the vicinity of Pier 302.

Monitoring during Year 2 documented 7 sightings of Pacific white-sided dolphins, comprising 27 individuals, with an average of 0.28 individuals sighted per day of monitoring. Rounding this estimate to the nearest whole number leads to 1.0 individual per day to be expected to be

in the vicinity of Pier 302 during the construction activities.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur.

Daily occurrence estimates were multiplied by the number of days of pile removal and installation (32 days) to calculate estimated take by Level B harassment of California sea lions, harbor seals, bottlenose dolphins, common dolphins, Pacific white-sided dolphins, and northern elephant seals (Table 8).

TABLE 8—AUTHORIZED TAKES BY LEVEL B HARASSMENT AND PERCENT OF STOCK AUTHORIZED FOR TAKE

Species	Expected daily average individuals	Authorized take by Level B harassment	Percentage of stock authorized for take
California sea lion [1]	15	480	0.19
Harbor seal [1]	1	32	0.10
Bottlenose dolphin [1]	1	32	7.1
Common dolphin (long and short beaked) [2]	9	288	* 0.35
Pacific white-sided dolphin [2]	1	32	0.09
Northern elephant seal	([3])	7	0.004

[1] Average daily counts based on observations during Year 4 Fuel Pier Replacement Project Monitoring (NAVFAC SW, 2017b).
[2] Average daily counts based on observations during Year 2 Fuel Pier Replacement Project Monitoring (NAVFAC SW, 2015).
[3] Expected potential of two northern elephant seals over the duration of project activity with a +5 buffer for Level B Take.
* Percent population calculated for each stock of common dolphins. Percentage in the table represents the percent of take of long-beaked common dolphins as this would be a greater percentage than if all take were attributed to short-beaked common dolphins (0.03 percent).

By using the sighting-based approach, take values are not affected by the estimated harassment distances from Tables 5 and 6. Given the very small Level A harassment isopleths for all species and mitigation measures, no take by Level A harassment is anticipated or authorized.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Shutdown Zones

Before the commencement of in-water construction activities, the Navy will establish shutdown zones for all activities. The purpose of a shutdown zone is to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). During all in-water construction activities, the Navy will implement a standard 20 m (66 ft) shutdown zone, with the exception of a 70 m (230 ft) zone for phocids during the use of impact pile driving for the 24-inch octagonal concrete piles. These distances exceed the estimated Level A harassment distances (Table 10). During the impact installation of the 24-inch octagonal concrete piles, the shutdown zone for phocids will be buffered to 70 m (230 ft) to encompass the Level A harassment zone. Adherence to this expanded shutdown zone will avoid the potential for the take of phocids by Level A harassment during impact pile driving. If a marine mammal enters a buffered shutdown zone, in-water activities will be stopped until visual confirmation that the animal has left the zone or the animal is not sighted for 15 minutes.

All marine mammals will be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If a marine mammal enters the Level B harassment zone, in-water activities will continue and the animal's presence within the estimated harassment zone will be documented.

The Navy will also establish shutdown zones for all marine mammals for which take has not been authorized or for which incidental take has been authorized, but the authorized number of takes has been met. These zones are equivalent to the Level B harassment zones for each activity. If a marine mammal species not covered under this IHA enters the shutdown zone, all in-water activities will cease until the animal leaves the zone or has not been observed for at least 1 hour, and NMFS will be notified about species and precautions taken. Pile removal will proceed if the non-IHA species is observed to leave the Level B harassment zone or if 1 hour has passed since the last observation.

If shutdown and/or clearance procedures would result in an imminent safety concern, as determined by the Navy, the in-water activity will be allowed to continue until the safety concern has been addressed, and the animal will be continuously monitored. The Navy Point of Contact (POC) will be consulted before re-commencing activities.

TABLE 9—SHUTDOWN ZONES AND LEVEL B HARASSMENT ZONES

Method	Pile size/type	Shutdown zones m (ft)			Level B harassment zones m (ft)
		MF	PW	OW	
Pile Removal Activities					
Vibratory Extraction	18″ Octagonal Concrete	20 (66)	20 (66)	20 (66)	1,445 (4,742)
	18″ Steel Pipe	20 (66)	20 (66)	20 (66)	575 (1,888)
Pile Installation Activities					
Impact Pile Driving	24″ Octagonal Concrete	20 (66)	[1] 70 (230)	20 (66)	117 (383)
	14″ Square Concrete	20 (66)	20 (66)	20 (66)	25 (82)
Vibratory Hammer	6″ Round Steel	20 (66)	20 (66)	20 (66)	494 (1,619)

[1] Level A ZOI buffered from 62.5 m up to 70 m.

Protected Species Observers

The placement of protected species observers (PSOs) during all pile driving activities (described in the Monitoring and Reporting section) will ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving will be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zones listed in Table 10, pile driving activity will be delayed or halted. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones will commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

Soft-Start Procedures

Soft-start procedures provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft-start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Based on our evaluation of the applicant's measures, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring during pile driving activities will be conducted by PSOs meeting NMFS' following requirements:

- Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods will be used;
- At least one PSO will have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute education (degree in biological science or related field) or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization; and
- A minimum of two PSOs must be on duty for all in-water construction activities. A lead observer or monitoring coordinator must be designated to

coordinate monitoring and log project and monitoring activity data. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

• PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

PSOs will have the following additional qualifications:

• Ability to conduct field observations and collect data according to assigned protocols;

• Experience or training in the field identification of marine mammals, including the identification of behaviors;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

The Navy will have at least two PSOs stationed at the best possible vantage points in the project area to monitor during all pile driving activities. If a PSO sights a marine mammal in the shutdown zone, the PSO must alert the ''command'' PSO to notify the equipment operator to shut down. If the ''command'' PSO does not respond, any PSO has the authority to notify the need for a shutdown. If the ''command'' PSO calls for a shutdown, the ''command'' PSO will let the contractor know when activities can re-commence. Additional PSOs may be employed during periods of low or obstructed visibility to ensure the entirety of the shutdown zones are monitored. A marine mammal monitoring plan has been submitted to NMFS for approval.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving activities, or 60 days prior to a requested date of issuance of any future IHAs for the project, or other projects at the same location, whichever comes first. A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of receipt of the draft report, the report shall be considered final. All draft and final monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *itp.taylor@noaa.gov.* The marine mammal monitoring report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report will include:

• Dates and times (begin and end) of all marine mammal monitoring;

• Construction activities occurring during each daily observation period, including: (a) How many and what type of piles were driven or removed and the method (*i.e.,* impact or vibratory); and (b) the total duration of time for each pile (vibratory driving) number of strikes for each pile (impact driving);

• PSO locations during marine mammal monitoring; and

• Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

PSOs will record all incidents of marine mammal occurrence, regardless of distance from activity, and will document any behavioral reactions in concert with distance from piles being driven or removed. Specifically, PSOs will record the following:

• Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;

• Time of sighting;

• Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;

• Distance and location of each observed marine mammal relative to the pile being driven or hole being drilled for each sighting;

• Estimated number of animals (min/max/best estimate);

• Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*);

• Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching).

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Navy will report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the West Coast regional stranding network (866–767–6114) as soon as feasible. If the death or injury was clearly caused by the specified activity, the Navy will immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHAs. The Navy will not resume their activities until notified by NMFS.

The report will include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

2. Species identification (if known) or description of the animal(s) involved;

3. Condition of the animal(s) (including carcass condition if the animal is dead);

4. Observed behaviors of the animal(s), if alive;

5. If available, photographs or video footage of the animal(s); and

6. General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating

this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 1, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Level A harassment is extremely unlikely given the small size of the Level A harassment isopleths and the required mitigation measures designed to minimize the possibility of injury to marine mammals. No mortality is anticipated given the nature of the activity.

Pile installation and removal activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level A and Level B harassment from underwater sounds generated from impact and vibratory pile installation, and vibratory pile removal activities. Potential takes could occur if individuals move into the ensonified zones when these activities are underway.

The takes from Level B harassment will be due to potential behavioral disturbance. No serious injury or mortality is anticipated for any stocks presented in this analysis given the nature of the activity and mitigation measures designed to minimize the possibility of injury. The potential for harassment is minimized through construction methods and the implementation of planned mitigation strategies (see Mitigation section).

Take will occur within a limited, confined area of each stock's range. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take authorized is extremely small when compared to stock abundance.

No marine mammal stocks for which incidental take authorization is authorized are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. The relatively low marine mammal occurrences in the area, small shutdown zones, and planned monitoring make injury takes of marine mammals unlikely. The shutdown zones will be thoroughly monitored before the vibratory pile installation and removal begins, and construction activities will be postponed if a marine mammal is sighted within the shutdown zone. There is a high likelihood that marine mammals will be detected by trained observers under environmental conditions described for the project. Limiting construction activities to daylight hours will also increase detectability of marine mammals in the area. Therefore, the mitigation and monitoring measures are expected to eliminate the potential for injury and Level A harassment as well as reduce the amount and intensity for Level B behavioral harassment. Furthermore, the pile installation and removal activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations which have occurred with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

Anticipated and authorized takes are expected to be limited to short-term Level B harassment (behavioral disturbance) as construction activities will occur over the course of 32 weeks. Effects on individuals taken by Level B harassment, based upon reports in the literature as well as monitoring from other similar activities, may include increased swimming speeds, increased surfacing time, or decreased foraging (*e.g.,* Thorson and Reyff, 2006; NAVFAC SW, 2018b). Individual animals, even if taken multiple times, will likely move away from the sound source and be temporarily displaced from the area due to elevated noise level during pile removal. Marine mammals could also experience TTS if they move into the Level B monitoring zone. TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours. Thus, it is not considered an injury. While TTS could occur, it is not considered a likely outcome of this activity. Repeated exposures of individuals to levels of sounds that could cause Level B harassment are unlikely to considerably significantly disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals. In all, there will be no adverse impacts to the stock as a whole.

The project is not expected to have significant adverse effects on marine mammal habitat. There are no Biologically Important Areas or ESA-designated critical habitat within the project area, and the activities will not permanently modify existing marine mammal habitat. The activities may cause fish to leave the area temporarily. This could impact marine mammals' foraging opportunities in a limited portion of the foraging range, however, due to the short duration of activities and the relatively small area of affected habitat, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities would have only minor, short-term effects on individuals. The specified activities are not expected to impact reproduction or survival of any individual marine mammals, much less affect rates of recruitment or survival and would therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality or Level A harassment is anticipated or authorized;
- The specified activity and associated ensonified areas are very small relative to the overall habitat ranges of all species;
- Biologically important areas or critical habitat have not been identified within the project area;
- The lack of anticipated significant or long-term effects to marine mammal habitat;
- The Navy is required to implement mitigation measures to minimize impacts, such as PSO observation and shutdown zones of 20 m (66 ft); and,
- Monitoring reports from similar work in San Diego Bay have documented little to no effect on individuals of the same species impacted by the specified activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the authorized

activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS has authorized is below one-third of the estimated stock abundances for all seven species (refer back to Table 8). For most requested species, the authorized take of individuals is less than 1 percent of the abundance of the affected stock (with exception for bottlenose dolphins at 7.1 percent). This is likely a conservative estimate because it assumes all takes are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs will count them as separate takes if they cannot be individually identified.

Based on the analysis contained herein of the authorized activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to the U.S. Navy for the potential harassment of small numbers of six marine mammal species incidental to construction activities associated with the Naval Base Point Loma Pier 302 Replacement Project in San Diego, California., provided the previously mentioned mitigation, monitoring, and reporting requirements are followed.

Dated: January 27, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–02107 Filed 1–31–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2023–SCC–0024]

Agency Information Collection Activities; Comment Request; Borrower Defense to Loan Repayment Universal Forms

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 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–2023–SCC–0024. 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, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, 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, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection

requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Borrower Defense to Loan Repayment Universal Forms.

OMB Control Number: 1845–0163.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Individuals or Households; Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 303,200.

Total Estimated Number of Annual Burden Hours: 150,534.

Abstract: The Department of Education (the Department) amends the William D. Ford Federal Direct Loan (Direct Loan) Program regulations issued under the Higher Education Act of 1965, as amended (HEA), to implement a new regulation in § 685.400 *et seq.*—Borrower Defense to Repayment. These final regulations are a result of negotiated rulemaking and will add new requirements to the current regulations. These final regulations require the collection of this information from borrowers who believe they qualify for a borrower defense to repayment discharge, as permitted under Section 455(h) of the HEA. This request is to revise the currently approved information collection 1845–0163 to incorporate the new regulatory requirements and forms.

Dated: January 26, 2023.

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. 2023–02005 Filed 1–31–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0146]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; ARP HCY SEA and LEA National Study Survey

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before March 3, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact John Mclaughlin, 202–401–0962.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: ARP HCY SEA and LEA National Study Survey.

OMB Control Number: 1810–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 3,936.

Total Estimated Number of Annual Burden Hours: 2,290.

Abstract: The American Rescue Plan Act of 2021 (ARP) included an unprecedented $800 million to support the specific needs of homeless children and youth via the American Rescue Plan Elementary and Secondary School Emergency Relief—Homeless Children and Youth (ARP–HCY) Fund. State educational agencies (SEAs) and local educational agencies (LEAs) must use ARP–HCY funds within the three-year funding period, to identify and serve children and youth experiencing homelessness with wrap-around services addressing challenges related to COVID–19, to enable them to attend school and fully participate in school activities. As a one-time grant program with three years of funding administered as part of the American Rescue Plan, this new data collection for the U.S. Department of Education (the Department) seeks to understand how funds under this grant program are being used.

Specifically, the Department is seeking to learn about the distribution of ARP–HCY funds by SEAs, the characteristics of LEAs receiving funds, and the characteristics of LEAs who chose not to participate in the distribution of funds in each state. Additionally, the Department would like to gather information on how SEAs are using the funds that were set aside at the State level of the program and how LEAs are using funds received from this program.

This is a request for a new collection, the ARP–HCY National Study, which will utilize a survey of all SEAs (ARP–HCY SEA Survey) and a representative sample of state and national LEAs (ARP–HCY LEA Survey) to answer evaluation research questions.

Dated: January 26, 2023.

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. 2023–01994 Filed 1–31–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. 22–167–LNG]

Mexico Pacific Limited LLC; Application for Additional Long-Term, Multi-Contract Authorization To Export U.S.-Sourced Natural Gas to Mexico and To Re-Export Liquefied Natural Gas From Mexico to Non-Free Trade Agreement Countries

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy and Carbon Management (FECM) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on December 28, 2022, by Mexico Pacific Limited LLC (MPL). MPL requests authority to engage in additional long-term, multi-contract exports of U.S.-sourced natural gas by pipeline to Mexico and to re-export such natural gas as liquefied natural gas (LNG) from its proposed liquefaction and export facility, the MPL Facility, to be located in the State of Sonora, Mexico, in a volume equivalent to 291.22 billion cubic feet per year (Bcf/yr), to non-free trade agreement (non-FTA) countries. MPL filed the Application under section 3 of the Natural Gas Act (NGA).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed electronically as detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, April 3, 2023.

ADDRESSES: *Electronic Filing by email: fergas@hq.doe.gov.*

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, DOE has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid-19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Office of Resource Sustainability staff at (202) 586–4749 or (202) 586–7893 to discuss the need for alternative arrangements. Once the Covid-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

FOR FURTHER INFORMATION CONTACT: Jennifer Wade or Peri Ulrey, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–4749 or (202) 586–7893, *jennifer.wade@hq.doe.gov* or *peri.ulrey@hq.doe.gov*

Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Energy Delivery and Resilience, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793, *cassandra.bernstein@hq.doe.gov*

SUPPLEMENTARY INFORMATION: Currently, in separate Docket No. 18–70–LNG, Order No. 4312,[1] as amended, MPL is authorized to export U.S.-sourced natural gas by pipeline from the United States to Mexico for liquefaction in Mexico and re-export the natural gas in the form of LNG in a volume equivalent to 621 Bcf/yr of natural gas to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries), through December 31, 2050, pursuant to NGA section 3(a), 15 U.S.C. 717b(a).[2] MPL is authorized to re-export this LNG from the proposed MPL Facility, to be located on the Gulf of California adjacent to Puerto Libertad, Mexico, approximately 160 miles south of the United States-Mexico border.

In this Application filed in Docket No. 22–167–LNG, MPL states that it has determined through improvements to the design of the MPL Facility's three liquefaction trains it will be capable of producing an additional volume of LNG for re-export. In light of this design increase, MPL asks DOE to authorize the re-export of an additional 291.22 Bcf/yr of natural gas in the form of LNG from the MPL Facility to non-FTA countries.[3] MPL states that this Application, if granted, would increase its non-FTA exports from the MPL Facility from a total of 621 Bcf/yr to 912.22 Bcf/yr of natural gas, the aggregate capacity of the three trains.

MPL seeks the authorization on its own behalf and as agent for other entities that will hold title to the natural gas or LNG at the point of export or re-export, respectively. MPL requests the authorization for a term to commence on the date of first export following the commencement of commercial operation of the MPL Facility, and to extend through December 31, 2050.

Additional details can be found in MPL's Application, posted on the DOE website at: *www.energy.gov/sites/default/files/2023-01/22-167-LNG_0.pdf.*

DOE Evaluation

In reviewing the Application, DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[4] and DOE's response to public comments received on that Study.[5]

Additionally, DOE will consider the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014);[6]
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014);[7] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied*

[1] *Mexico Pacific Limited LLC,* DOE/FE Order No. 4312, Docket No. 18–70–LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export U.S.-Sourced Natural Gas by Pipeline to Mexico for Liquefaction and Re-Export in the Form of Liquefied Natural Gas to Non-Free Trade Agreement Countries (Dec. 14, 2018), *amended by* DOE/FECM Order No. 4312–A (Jun. 3, 2022) (extending export term).

[2] MPL notes that, in Docket No. 18–70–LNG, it is authorized to export LNG from the MPL Facility to FTA countries in a volume equivalent to 621 Bcf/yr of natural gas. MPL's FTA exports are not at issue here.

[3] DOE will review MPL's request for additional volumes to its existing FTA export authorization, as well as its request for an additional amount for use as fuel for pipeline transportation or liquefaction in Mexico, separately pursuant to section 3(c) of the NGA, 15 U.S.C. 717b(c).

[4] *See* NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), *available at: www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.*

[5] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

[6] The Addendum and related documents are available at: *https://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[7] The 2014 Life Cycle Greenhouse Gas Report is available at: *https://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

Natural Gas From the United States: 2019 Update, 84 FR 49278 (Sept. 19, 2019), and DOE's response to public comments received on that study.[8]

Parties that may oppose this Application should address these issues and documents in their comments and protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to this proceeding evaluating MPL's Application, must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590, including the service requirements.

As noted, DOE is only accepting electronic submissions at this time. Please email the filing to *fergas@hq.doe.gov.* All filings must include a reference to ''Docket No. 22–167–LNG'' or ''Mexico Pacific Limited Application'' in the title line.

Please Note: Please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner.

The Application and any filed protests, motions to intervene, notices of interventions, and comments will also be available electronically by going to the following DOE Web address: *www.energy.gov/fecm/regulation.*

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

Signed in Washington, DC, on January 26, 2023.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability.

[FR Doc. 2023–02044 Filed 1–31–23; 8:45 am]

BILLING CODE 6450–01–P

[8] U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update—Response to Comments, 85 FR 72 (Jan. 2, 2020). The 2019 Update and related documents are available at: *https://fossil.energy.gov/app/docketindex/docket/index/21.*

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, March 2, 2023; 6 p.m.–8 p.m. ET.

ADDRESSES: The Ohio State University, Endeavor Center, 1862 Shyville Road, Room 165, Piketon, OH 45661.

Attendees should check with the Board Support Manager (below) for any meeting format changes due to COVID–19 protocols.

FOR FURTHER INFORMATION CONTACT: Eric Roberts, Board Support Manager, by Phone: (270) 554–3004 or Email: *eric@pgdpcab.org.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Review of Agenda
- Presentation
- Administrative Issues
- Public Comments

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Eric Roberts as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Comments received by no later than 5 p.m. ET on Monday, February 27, 2023, will be read aloud during the meeting. Comments will also be accepted after the meeting, by no later than 5 p.m. ET on Friday, March 10, 2023. Please submit comments to Eric Roberts at the aforementioned email address. Please put ''Public Comment'' in the subject line. Individuals who wish to make oral statements pertaining to agenda items should contact Eric Roberts at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Portsmouth, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Eric Roberts, Board Support Manager, Emerging Technology Center, Room 221, 4810 Alben Barkley Drive, Paducah, KY 42001; Phone: (270) 554–3004. Minutes will also be available at the following website: *https://www.energy.gov/pppo/ports-ssab/listings/meeting-materials.*

Signed in Washington, DC, on January 27, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–02072 Filed 1–31–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–371–000.
Applicants: Eastern Gas Transmission and Storage, Inc.
Description: § 4(d) Rate Filing: EGTS—January 26, 2023 Negotiated Rate Agreement to be effective 2/1/2023.
Filed Date: 1/26/23.
Accession Number: 20230126–5014.
Comment Date: 5 p.m. ET 2/7/23.

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.

Filings in Existing Proceedings

Docket Numbers: RP21–441–008.
Applicants: Florida Gas Transmission Company, LLC.
Description: Compliance filing: RP21–441 Settlement-Aggregation of Public Agencies RS FTS–WD and FTS–WD–2 to be effective 2/25/2023.
Filed Date: 1/25/23.
Accession Number: 20230125–5084.
Comment Date: 5 p.m. ET 2/6/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/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: January 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–02092 Filed 1–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8961–004]

Lowline Rapids, LLC, Twin Falls Canal Company; Notice of Transfer of Exemption

1. On November 30, 2022, Lowline Rapids, LLC, exemptee for the 2,800-kilowatt Lower Low Line Hydroelectric Project No. 8961, filed a letter notifying the Commission that the project was transferred from Lowline Rapids, LLC to Twin Falls Canal Company. The exemption from licensing was originally issued on April 16, 1986.[1] The project is located on the Low Line Canal, Twin Falls County, Idaho. The transfer of an exemption does not require Commission approval.

2. The Twin Falls Canal Company is now the exemptee of the Lower Low Line Hydroelectric Project No. 8961. All correspondence must be forwarded to Mr. Jay Barlogi, General Manager, Twin Falls Canal Company, 357 6th Avenue West, P.O. Box 326, Twin Falls, Idaho 83303, Phone: (208) 733–6731, Email: *jbarlogi@tfcanal.com.*

Dated: January 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–02090 Filed 1–31–23; 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 rate filings:

Docket Numbers: ER10–2974–001.
Applicants: Just Energy (U.S.) Corp.
Description: Compliance filing: JEUS Notice of Change in Status to be effective N/A.
Filed Date: 1/26/23.
Accession Number: 20230126–5067.
Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER13–1081–001.
Applicants: Just Energy New York Corp.
Description: Compliance filing: JENY Notice of Change in Status and Revisions to MBR Tariff to be effective 1/27/2023.
Filed Date: 1/26/23.
Accession Number: 20230126–5070.
Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER13–1104–001.
Applicants: Just Energy Illinois Corp.
Description: Compliance filing: JEI Notice of Change in Status and Revisions to MBR Tariff to be effective 1/27/2023.
Filed Date: 1/26/23.
Accession Number: 20230126–5069.
Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER17–1378–003.
Applicants: Commerce Energy, Inc.
Description: Compliance filing: Just Energy Solutions Inc. submits tariff filing per 35: JES Notice of Change in Status to be effective N/A.
Filed Date: 1/26/23.
Accession Number: 20230126–5073.
Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER17–2427–001.
Applicants: Hudson Energy Services, LLC.
Description: Compliance filing: HES Notice of Change in Status and Revisions to MBR Tariff to be effective 1/27/2023.
Filed Date: 1/26/23.
Accession Number: 20230126–5068.
Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER17–2428–001.
Applicants: Just Energy Pennsylvania Corp.
Description: Compliance filing: JEP Notice of Change in Status and Revisions to MBR Tariff to be effective 1/27/2023.
Filed Date: 1/26/23.
Accession Number: 20230126–5071.
Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER17–2429–001.
Applicants: Just Energy Texas I Corp.
Description: Compliance filing: JET Notice of Change in Status and Revisions to MBR Tariff to be effective 1/27/2023.
Filed Date: 1/26/23.
Accession Number: 20230126–5072.
Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER19–1575–008; ER10–2488–025; ER10–3050–011; ER10–3053–011; ER13–1586–020; ER14–2871–019; ER15–463–018; ER15–621–018; ER15–622–018; ER16–72–014; ER16–182–014; ER16–902–011; ER17–47–011; ER17–48–012; ER18–47–011; ER18–2240–007; ER18–2241–007; ER19–426–007; ER19–427–007; ER19–1660–007; ER19–1662–007; ER19–1667–007; ER20–71–007; ER20–72–007;

[1] *Twin Falls Canal Company,* 35 FERC ¶ 62,104 (1986). By a Notice of Transfer of Exemption issued May 19, 2015, the project was transferred to Lowline Rapids, LLC.

ER20–75–007; ER20–76–009; ER20–77–007; ER20–79–007; ER21–1368–003; ER21–2782–003; ER22–149–003; ER22–1439–004; ER22–1440–004; ER22–1441–004; ER22–1442–002.

Applicants: EdSan 1B Group 3, LLC, EdSan 1B Group 2, LLC, EdSan 1B Group 1 Sanborn, LLC, EdSan 1B Group 1 Edwards, LLC, Sagebrush Line, LLC, Sagebrush ESS, LLC, Valley Center ESS, LLC, Voyager Wind IV Expansion, LLC, Painted Hills Wind Holdings, LLC, Tehachapi Plains Wind, LLC, Oasis Alta, LLC, Coachella Wind Holdings, LLC, Coachella Hills Wind, LLC, Terra-Gen VG Wind, LLC, Mojave 16/17/18 LLC, Mojave 3/4/5 LLC, LUZ Solar Partners IX, Ltd., LUZ Solar Partners VIII, Ltd., Garnet Wind, LLC, Yavi Energy, LLC, Voyager Wind II, LLC, Terra-Gen Mojave Windfarms, LLC, DifWind Farms LTD VI, Voyager Wind I, LLC, Cameron Ridge II, LLC, San Gorgonio Westwinds II—Windustries, LLC, Ridgetop Energy, LLC, Pacific Crest Power, LLC, San Gorgonio Westwinds II, LLC, Cameron Ridge, LLC, TGP Energy Management, LLC, Whitewater Hill Wind Partners, LLC, Cabazon Wind Partners, LLC, Oasis Power Partners, LLC, Alta Oak Realty, LLC.

Description: Notice of Non-Material Change in Status of Alta Oak Realty, LLC, et al.

Filed Date: 1/24/23.

Accession Number: 20230124–5168.

Comment Date: 5 p.m. ET 2/14/23.

Docket Numbers: ER22–745–000.

Applicants: Cove Mountain Solar, LLC.

Description: Refund Report: Cove Mountain Solar Refund Report Under docket ER22–745 to be effective N/A.

Filed Date: 1/26/23.

Accession Number: 20230126–5020.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER22–746–000.

Applicants: Cove Mountain Solar 2, LLC.

Description: Refund Report: Cove Mtn Solar 2 Refund Report Under Docket ER22–746–000 to be effective N/A.

Filed Date: 1/26/23.

Accession Number: 20230126–5023.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER22–2044–002.

Applicants: Just Energy Limited.

Description: Compliance filing: JEL Notice of Change in Status and Revisions to MBR Tariff to be effective 1/27/2023.

Filed Date: 1/26/23.

Accession Number: 20230126–5074.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER22–2556–001.

Applicants: Rainbow Energy Marketing Corporation.

Description: Compliance filing: Rainbow Energy Marketing Corp Amended Change in Status to be effective 7/30/2022.

Filed Date: 1/26/23.

Accession Number: 20230126–5103.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER22–2736–001.

Applicants: Moss Landing Energy Storage 3, LLC.

Description: Compliance filing: MLES3 Notice of Change in Status and Revisions to MBR Tariff to be effective 1/27/2023.

Filed Date: 1/26/23.

Accession Number: 20230126–5047.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER23–317–001.

Applicants: Riverstart Solar Park LLC.

Description: Tariff Amendment: Response to Deficiency Letter Under Docket ER23–317 to be effective 11/2/2022.

Filed Date: 1/26/23.

Accession Number: 20230126–5080.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER23–417–001.

Applicants: Public Service Company of Colorado.

Description: Tariff Amendment: 2023–01–26 Response to Deficiency Letter—ER23–417–000 to be effective 11/12/2022.

Filed Date: 1/26/23.

Accession Number: 20230126–5093.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER23–551–001.

Applicants: Arizona Public Service Company.

Description: Tariff Amendment: Rate Schedule No. 314, Amendment No. 1 to be effective 2/22/2023.

Filed Date: 1/26/23.

Accession Number: 20230126–5105.

Comment Date: 5 p.m. ET 2/6/23.

Docket Numbers: ER23–861–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2023–01–17 Revision to TCA—Adding Citizens S-Line Transmission to be effective 4/15/2023.

Filed Date: 1/17/23.

Accession Number: 20230117–5226.

Comment Date: 5 p.m. ET 2/7/23.

Docket Numbers: ER23–919–001.

Applicants: Tampa Electric Company.

Description: Tariff Amendment: Amended Section 205—OATT Administrator Contact Information to be effective 2/1/2023.

Filed Date: 1/26/23.

Accession Number: 20230126–5083.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER23–928–000.

Applicants: The Empire District Electric Company.

Description: Request for Waiver, et al. of The Empire District Electric Company.

Filed Date: 1/23/23.

Accession Number: 20230123–5196.

Comment Date: 5 p.m. ET 2/13/23.

Docket Numbers: ER23–933–000.

Applicants: Idaho Power Company.

Description: § 205(d) Rate Filing: Revisions to Attachment M Section 3—Interconnection Requests to be effective 3/24/2023.

Filed Date: 1/26/23.

Accession Number: 20230126–5001.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER23–934–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 4825; Queue No. AC2–168/AD1–135 to be effective 12/31/9998.

Filed Date: 1/26/23.

Accession Number: 20230126–5013.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER23–935–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–01–26_SA 3975 Union Electric-Winfield Solar I FSA (J1268) to be effective 3/28/2023.

Filed Date: 1/26/23.

Accession Number: 20230126–5024.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER23–936–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2562R12 Kansas Municipal Energy Agency NITSA and NOA to be effective 1/1/2023.

Filed Date: 1/26/23.

Accession Number: 20230126–5034.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER23–937–000.

Applicants: Chevelon Butte RE LLC.

Description: Baseline eTariff Filing: Chevelon Butte RE LLC MBR Tariff to be effective 1/27/2023.

Filed Date: 1/26/23.

Accession Number: 20230126–5039.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER23–938–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3334R2 Associated Electric Cooperative NITSA and NOA to be effective 4/1/2023.

Filed Date: 1/26/23.

Accession Number: 20230126–5043.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER23–939–000.

Applicants: West Penn Power Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: West Penn Power Company submits tariff filing per 35.13(a)(2)(iii: WPP submits Borderline Service Agreement, SA No. 6623 with Penn Power to be effective 3/29/2023.

Filed Date: 1/26/23.

Accession Number: 20230126–5057.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER23–940–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 5294; Queue No. AC2–120 to be effective 12/31/9998.

Filed Date: 1/26/23.

Accession Number: 20230126–5065.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER23–941–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2023–01–26 Interconnection Process Enhancements—Phase 2 to be effective 3/28/2023.

Filed Date: 1/26/23.

Accession Number: 20230126–5075.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER23–942–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Section 205 filing to add NP&S to WDT3 Model to be effective 3/28/2023.

Filed Date: 1/26/23.

Accession Number: 20230126–5076.

Comment Date: 5 p.m. ET 2/16/23.

Docket Numbers: ER23–943–000.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Amendment: Termination of Malaga Power, LLC (TO SA 57) to be effective 1/3/2023.

Filed Date: 1/26/23.

Accession Number: 20230126–5085.

Comment Date: 5 p.m. ET 2/16/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene 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: January 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–02086 Filed 1–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14421–004]

Freedom Falls, LLC; TLK Real Estate Holdings, LLC; Notice of Transfer of Exemption

1. On January 3, 2023, Freedom Falls, LLC, exemptee for the 50-kilowatt Freedom Falls Hydroelectric Project No. 14421, filed a letter notifying the Commission that the project was transferred from Freedom Falls, LLC to TLK Real Estate Holdings, LLC. The exemption from licensing was originally issued on March 25, 2013.[1] The project is located on Sandy Stream, Waldo County, Maine. The transfer of an exemption does not require Commission approval.

2. TLK Real Estate Holdings, LLC is now the exemptee of the Freedom Falls Hydroelectric Project No. 14421. All correspondence must be forwarded to Mr. Michael Dutton, Member, TLK Real Estate Holdings, LLC, 22 Mill Street, Freedom, ME 04941, Phone: 646–696–0302, Email: *michael@findthelostkitchen.com.*

Dated: January 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–02088 Filed 1–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2397–033]

Green Mountain Power Corporation; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment.

b. *Project No:* P–2397–033.

c. *Date Filed:* November 22, 2022.

d. *Applicant:* Green Mountain Power Corporation.

e. *Name of Project:* Gage Project.

f. *Location:* The project is located on the Passumpsic River, near the town of St. Johnsbury, Caledonia County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Will Brown, Green Mountain Power Corporation, 2152 Post Road, Rutland, Vermont 05701, (802) 598–6402.

i. *FERC Contact:* Zeena Aljibury, (202) 502–6065, *zeena.aljibury@ferc.gov*.

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2397–033. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant requests a license amendment

[1] *Freedom Falls, LLC,* 142 FERC ¶ 62,243 (2013).

to replace the existing 6-foot-high wooden flashboards on the 176-feet long north section of spillway, which has a crest elevation of 534.2 feet, with an inflatable crest gate system. The proposal would result in a top crest elevation of 534.2 feet and the top of the inflatable crest gate, when fully raised, would be 539.9 feet (same as existing impoundment elevation). During construction, the applicant requests to temporarily draw down the impoundment (normal pond elevation at 539.9 feet NGVD29) to install a cofferdam on the upstream face of the dam to facilitate safe work conditions. The applicant proposes to draw down the impoundment from June 29 to July 20, 2023 by approximately 1.2 feet to install the cofferdam. Then the applicant would install the cofferdam and begin phase 1 construction from July 21 to mid-September, and during this phase proposes to maintain the water level at the dam crest elevation. Phase 2 construction would last from mid-September to November 23, and no draw down below the dam crest is anticipated during the transition from the phase 1 to phase 2. Finally, the cofferdam removal draw down is anticipated to last approximately 1 week, from November 23 to December 2, 2023 (water levels would be drawn down to elevation 533.0 ft or approximately 1.2 feet below the dam crest). During construction, the applicant proposes to continue to operate the project in a run-of-river mode and would maintain minimum flow requirements during and after construction.

l. *Locations of the Application:* This filing 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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–02091 Filed 1–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15270–000]

Premium Energy Holdings, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 31, 2022, Premium Energy Holdings, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Santa Margarita Pumped Storage Hydro Project to be located approximately 10 miles southeast of Lan Luis Obispo, California in San Luis Obispo County. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) an existing upper reservoir (Santa Margarita Lake) at an elevation of 1,300 feet above average mean sea level, with a surface area of 1,100 acres and a total storage capacity of 23,840 acre-feet; (2) an existing lower reservoir (Lopez Lake) at an elevation of 560 feet above average mean sea level, with a surface area of 950 acres and a storage capacity of 49,900 acre-feet; (3) 0.84-mile-long headrace tunnel, 0.19-mile-long vertical shaft, 5.86-mile-long horizontal tunnel, 0.09-mile-long penstock, and 1.22-mile-long tailrace tunnel to connect the powerhouse to the reservoirs; (4) a new powerhouse that would house 4 new pump-turbines rated at 150 megawatts each; (5) a new substation constructed in the western shore of Lake Lopez near the powerhouse, interconnected to the regional electrical utility network with either; (6) a new 2.5-mile-long 500-kilovolt (kV) transmission line from the powerhouse to a new switchyard located 1.3 miles south of the Lopez dam that will connect with PG&E's 500-kV line, or a new 4.5-mile-long 500-kV line that will connect the powerhouse to PG&E's 500-kV line at a new switchyard located 0.5 miles from Talley Vineyard using Lopez road as an existing right-of-way; and (7) appurtenant facilities. The estimated annual power generation at the Santa Margarita Pumped Storage Project would be 1,200,000 megawatt-hours.

Applicant Contact: Victor M. Rojas, Managing Director, Premium Energy Holdings, LLC, 355 South Lemon Ave., Suite A, Walnut, California 91789; phone: (909) 595–5314; *victor.rojas@pehllc.net.*

FERC Contact: Benjamin Mann; email: *benjamin.mann@ferc.gov;* phone: (202) 502–8127.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at

the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15270.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–15270) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–02087 Filed 1–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11286–028]

City of Abbeville; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process (TLP).

b. *Project No.:* 11286–028.

c. *Dated Filed:* November 29, 2022.

d. *Submitted By:* City of Abbeville.

e. *Name of Project:* Abbeville Hydroelectric Project.

f. *Location:* On the Rocky River in Abbeville and Anderson Counties, South Carolina. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* Tim Hall, Director of Public Utilities, City of Abbeville, 306 Cambridge Street, Abbeville, SC 29620; Phone: (864) 366–5058, Email: *thall@abbevillecitysc.com.*

i. *FERC Contact:* Kristine Sillett at (202) 502–6575 or *kristine.sillett@ferc.gov.*

j. The City of Abbeville filed its request to use the TLP on November 29, 2022. The City of Abbeville provided public notice of its request on November 30, 2022. In a letter dated January 26, 2023, the Director of the Division of Hydropower Licensing approved the City of Abbeville's request to use the TLP.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the South Carolina State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the City of Abbeville as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. The City of Abbeville filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 11286. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 30, 2025.

p. Register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: January 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–02089 Filed 1–31–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0750; FRL–10527–01–OCSPP]

Pesticide Registration Review; Proposed Decisions for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed interim and final registration review decisions and opens a 60-day public comment period on the proposed decisions for the following pesticides: coat protein gene of plum pox virus, dioctyl sodium sulfosuccinate, isopropyl myristate, polymeric betaine, undecylenic acid.

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

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2017–0750, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0701; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at: *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed proposed interim or final decisions for all pesticides listed in Table 1 in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table 1 in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed interim or final registration review decisions for the pesticides shown in Table 1 and opens a 60-day public comment period on the proposed interim and proposed final registration review decisions.

TABLE 1—PROPOSED INTERIM AND PROPOSED FINAL DECISIONS

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Coat Protein Gene of Plum Pox Virus, Case Number 6601.	EPA–HQ–OPP–2022–0410	Michael Glikes, *glikes.michael@epa.gov*, (703) 231–6499.
Dioctyl sodium sulfosuccinate, Case 4095.	EPA–HQ–OPP–2022–0550	Robert Little, *little.robert@epa.gov*, (202) 566–2234.
Isopropyl Myristate, Case Number 6315.	EPA–HQ–OPP–2022–0842	Hannah Dean, *dean.hannah@epa.gov*, (202) 566–2969.
Polymeric betaine, Case Number 5116.	EPA–HQ–OPP–2013–0374	Erin Dandridge, *dandridge.erin@epa.gov*, (202) 566–0635.
Undecylenic acid, Case 4095	EPA–HQ–OPP–2022–0549	Robert Little, *little.robert@epa.gov*, (202) 566–2234.

The registration review docket for a pesticide includes earlier documents related to the registration review case. For example, the review opened with a Preliminary Work Plan, for public comment. A Final Work Plan was placed in the docket following public comment on the Preliminary Work Plan.

The documents in the dockets describe EPA's rationales for conducting additional risk assessments for the registration review of the pesticides included in Table 1 in Unit IV, as well as the Agency's subsequent risk findings and consideration of possible risk mitigation measures. These proposed interim and proposed final registration review decisions are supported by the rationales included in those documents. Following public comment, the Agency will issue interim or final registration review decisions for the pesticides listed in Table 1 in Unit IV.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed decision. All comments should be

submitted using the methods in **ADDRESSES** and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the Tables in Unit IV. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and may provide a ''Response to Comments Memorandum'' in the docket. The interim or final registration review decision will explain the effect that any comments had on the decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *https://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 23, 2023.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2023–02078 Filed 1–31–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2022–0116; FRL–9412–18–OCSPP]

Certain New Chemicals or Significant New Uses; Statements of Findings for October and November 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of certain TSCA submissions when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA. This document presents statements of findings made by EPA on such submissions during the period from October 1, 2022 to November 30, 2022.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2022–0116, is available online at *https://www.regulations.gov* or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Rebecca Edelstein, New Chemical Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1667 email address: *edelstein.rebecca@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action provides information that is directed to the public in general.

B. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of submissions under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the reporting period.

C. What is the Agency's authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a submission under TSCA section 5(a) and make one of several specific findings pertaining to whether the substance may present unreasonable risk of injury to health or the environment. Among those potential findings is that the chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment per TSCA Section 5(a)(3)(C).

TSCA section 5(g) requires EPA to publish in the **Federal Register** a statement of its findings after its review of a submission under TSCA section 5(a) when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

II. Statements of Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

The following list provides the EPA case number assigned to the TSCA section 5(a) submission and the chemical identity (generic name if the specific name is claimed as CBI).

- J–22–0017, J–22–0018, Microorganisms transformed to express an enzyme (Generic Name).
- J–22–0021, Genetically modified microorganism for the production of a chemical substance (Generic Name).
- P–21–0174, Carbonic acid, ester, polymer with alkanediol (C=4,5) (Generic Name).

To access EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C), look up the specific case number at *https://www.epa.gov/new-chemicals-under-toxic-substances-*

control-act-tsca/chemicals-determined-not-likely.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: January 25, 2023.

Madison Le,

Director, New Chemicals Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2023–02100 Filed 1–31–23; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Board of Directors Meeting

SUMMARY: Notice of the forthcoming regular meeting of the Board of Directors of the Farm Credit System Insurance Corporation (FCSIC), is hereby given in accordance with the provisions of the Bylaws of the FCSIC.

DATES: 10 a.m., Wednesday, February 8, 2023.

ADDRESSES: You may observe the open portions of this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually. If you would like to virtually attend, at least 24 hours in advance, visit *FCSIC.gov,* select ''News & Events,'' then select ''Board Meetings.'' From there, access the linked ''Instructions for board meeting visitors'' and complete the described registration process.

FOR FURTHER INFORMATION CONTACT: If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

SUPPLEMENTARY INFORMATION: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public. The following matters will be considered:

Portions Open to the Public

- Approval of December 7, 2022, Minutes
- Review and Setting of Insurance Premium Accrual Rates

Portions Closed to the Public

- Annual Report on Contracts
- Annual Report on Whistleblower Activity

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2023–02004 Filed 1–31–23; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 16–185; DA 23–72; FR ID 125216]

World Radiocommunication Conference Advisory Committee Schedules Its Seventh Meeting on April 11, 2023

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the seventh meeting of the World Radiocommunication Conference Advisory Committee (WAC or Advisory Committee) will be held on April 11, 2023 at the Federal Communications Commission (FCC). The meeting is open to the public. This seventh Advisory Committee meeting will consider status reports and recommendations from its Informal Working Groups (IWG–1, IWG–2, IWG–3, and IWG–4) concerning preparation for the 2023 World Radiocommunication Conference (WRC–23). The Commission's WRC–23 website (*www.fcc.gov/wrc-23*) contains the latest information on the IWG and WAC meeting agendas and audience participation information, all scheduled meeting dates and updates, and Advisory Committee matters. Comments may be presented at the Advisory Committee meeting or in advance of the meeting by email to: *WRC-23@fcc.gov.*

DATES: Tuesday, April 11, 2023 at 11 a.m.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Room 1.200, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Dante Ibarra, Designated Federal Official, World Radiocommunication Conference Advisory Committee, FCC International Bureau, Global Strategy and Negotiation Division, at *Dante.Ibarra@fcc.gov,* (202)–418–0610 or *WRC-23@fcc.gov.*

SUPPLEMENTARY INFORMATION: The FCC established the Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2023 World Radiocommunication Conference (WRC–23).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the seventh meeting of the Advisory Committee. The Commission's WRC–23 website (*www.fcc.gov/wrc-23*) contains the latest information on the IWG and WAC meeting agendas and audience participation information, all scheduled meeting dates and updates, and WRC–23 Advisory Committee matters. The seventh Advisory Committee meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.* There will be audience participation available; send live questions to *livequestions@fcc.gov* only during this meeting. Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need and tell us how to contact you if we need more information. Make your request as early as possible. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *FCC504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice).

The proposed agenda for the seventh WAC meeting is as follows:

Agenda

Seventh Meeting of the World Radiocommunication Conference Advisory Committee

Federal Communications Commission

Tuesday, April 11, 2023; 11 a.m.

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Sixth Meeting
4. IWG Reports and Consideration Documents
5. Future Meetings
6. Other Business

Federal Communications Commission.

Nese Guendelsberger,

Deputy Bureau Chief, International Bureau.

[FR Doc. 2023–02111 Filed 1–31–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 12–108; DA 23–66; FR ID 124910]

Closed Captioning Display Settings Proposal

AGENCY: Federal Communications Commission.

ACTION: Notice, request for comments.

SUMMARY: In this document, the Media Bureau of the Federal Communications Commission (Commission) seeks comment on a proposal in the record of this proceeding that when the Commission is determining whether specific closed captioning display

settings are readily accessible, it should consider the following factors: proximity, discoverability, previewability, and consistency and persistence.

DATES: Comments are due on or before March 3, 2023; reply comments are due on or before March 20, 2023.

ADDRESSES: You may submit comments, identified by MB Docket No. 12–108, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, public notice, DA 20–304 (March 19, 2020).

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, DA 23–66, released on January 24, 2023. The full text of this document is available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat via ECFS and at *https://www.fcc.gov/document/media-bureau-seeks-comment-captioning-display-settings-proposal.*

In 2015, the Commission proposed rules that would require manufacturers of covered apparatus and multichannel video programming distributors (MVPDs) to make closed captioning display settings readily accessible to individuals who are deaf and hard of hearing.[1] In January 2022, the Media Bureau released a public notice seeking to refresh the record on the proposals contained in the Second Notice of Proposed Rulemaking (*Second FNPRM*).[2] Comments were due February 17, 2022, and reply comments were due March 4, 2022. In response to the *Closed Captioning Display Settings PN,* a coalition of consumer groups proposed that the Commission should require closed captioning display settings to be proximate, discoverable, previewable, and consistent and persistent. The Consumer Technology Association (CTA) expressed concern about the proposed factors, and asserted that further public comment was necessary. We believe that the Commission would benefit from further comment in this instance, and accordingly, this public notice seeks further comment on the 2022 proposal of the Consumer Groups in their comments to rely on these four factors to evaluate whether closed captioning display settings are readily accessible.

Interested parties should focus their comments on the specific issue of whether, if the Commission adopts rules governing the accessibility of closed captioning display settings, it should consider the four factors proposed by the Consumer Groups in 2022—proximity, discoverability, previewability, and consistency and persistence—in determining whether closed captioning display settings are readily accessible.[3] Should the four factors have the meanings the Consumer Groups proposed in 2022? Should the factors be non-exhaustive, such that the Commission may consider additional factors as particular situations warrant? Commenters should provide any other information relevant to the Commission's determination of how to proceed on this issue.

Initial Regulatory Flexibility Analysis. The *Second FNPRM* included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603, exploring the potential impact on small entities of the Commission's proposals. The Media Bureau invites parties to file comments on the IRFA in light of this request for further comment.

Ex Parte Rules. This matter shall continue to be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize

[1] *Accessibility of User Interfaces, and Video Programming Guides and Menus,* 81 FR 5971 (Feb. 4, 2016) (*Second FNPRM*).

[2] *See Accessibility Rules for Closed Captioning Display Settings,* 87 FR 2607 (Jan. 18, 2022) (*Closed Captioning Display Settings PN*).

[3] As proposed by Consumer Groups, ''proximity'' would involve consideration of the number of steps required to access closed captioning display settings, as well as whether closed captioning display settings are available on the same device as the video programming; ''discoverability'' would involve consideration of whether it is simple and intuitive for viewers to find closed captioning display settings; ''previewability'' would involve consideration of whether viewers can preview the appearance of closed captions on programming on their screen while changing the closed captioning display settings; and ''consistency and persistence'' would involve consideration of whether access to closed captioning display settings is ''consistent . . . across devices and video platforms and across different applications on the same device'' and persistent over time.

themselves with the Commission's ex parte rules.

Filing Requirements. All filings responsive to the public notice must reference MB Docket No. 12–108. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

[FR Doc. 2023–02116 Filed 1–31–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate Receiverships

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for the institutions listed below, intends to terminate its receivership for said institutions.

NOTICE OF INTENT TO TERMINATE RECEIVERSHIPS

Fund	Receivership name	City	State	Date of appointment of receiver
10013	Silver State Bank	Henderson	NV	09/05/2008
10025	First Georgia Community Bank	Jackson	GA	12/05/2008
10027	Haven Trust Bank	Duluth	GA	12/12/2008
10029	Bank of Clark County	Vancouver	WA	01/16/2009
10032	Ocala National Bank	Ocala	FL	01/30/2009
10050	New Frontier Bank	Greeley	CO	04/10/2009
10055	First Bank of Idaho, FSB	Ketchum	ID	04/24/2009
10056	Michigan Heritage Bank	Farmington Hills	MI	04/24/2009
10058	Citizens Community Bank	Ridgewood	NJ	05/01/2009
10060	Westsound Bank	Bremerton	WA	05/08/2009
10068	Community Bank of West Georgia	Villa Rica	GA	06/26/2009
10095	Integrity Bank	Jupiter	FL	07/31/2009
10102	Union Bank, NA	Gilbert	AZ	08/14/2009
10329	Enterprise Banking Co	McDonough	GA	01/21/2011
10333	First Community Bank	Taos	NM	01/28/2011
10366	First Georgia Banking Co	Franklin	GA	05/20/2011
10378	One Georgia Bank	Atlanta	GA	07/15/2011
10387	Bank of Whitman	Colfax	WA	08/05/2011
10427	Home Savings of America	Little Falls	MN	02/24/2012
10428	Global Commerce Bank	Doraville	GA	03/02/2012

The liquidation of the assets for each receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receiverships will serve no useful purpose. Consequently, notice is given that the receiverships shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of any of the receiverships, such comment must be made in writing, identify the receivership to which the comment pertains, and be sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Section, 600 North Pearl, Suite 700, Dallas, TX 75201.

No comments concerning the termination of the above-mentioned receiverships will be considered which are not sent within this timeframe.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on January 27, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–02115 Filed 1–31–23; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (''PRA''), the Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget (''OMB'') clearance for information collection requirements in its Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising (''Franchise Rule'' or ''Rule''). That clearance expires on November 30, 2023.

DATES: Comments must be filed by April 3, 2023.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Franchise Rule, PRA Comment, FTC File No. P094400,'' 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, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Christine M. Todaro, Attorney, Division of Marketing Practices, Bureau of

Consumer Protection, 600 Pennsylvania Ave. NW, CC–8548, Washington, DC 20580, (202) 326–3711, *ctodaro@ftc.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Franchise Rule, 16 CFR part 436.

OMB Control Number: 3084–0107.

Type of Review: Extension without change of currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 22,480.

Estimated Annual Labor Costs: $8,386,800.

Estimated Annual Non-Labor Costs: $4,800,000.

Abstract: The Franchise Rule ensures that consumers who are considering a franchise investment have access to the material information they need to make an informed investment decision and compare different franchise offerings. The Rule requires franchisors to furnish prospective purchasers with a Franchise Disclosure Document (''FDD'') that provides information relating to the franchisor, its business, the nature of the proposed franchise, and any representations by the franchisor about financial performance regarding actual or potential sales, income, or profits. The Rule also requires that franchisors maintain records to facilitate enforcement of the Rule.[1] The franchisor must preserve materially different copies of its FDD for 3 years, as well as information that provides a reasonable basis for any financial performance representation it elects to make.

Under the PRA, 44 U.S.C. 3501—3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. *See* 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Franchise Rule, 16 CFR part 436 (OMB Control No. 3084–0107).

[1] The Rule was amended in 2007 to conform its disclosure requirements with the disclosure format accepted by states that have franchise registration or disclosure laws. *See* 72 FR 15444 (Mar. 30, 2007). The amended Rule has significantly minimized any compliance burden beyond what is required by state law.

Burden Statement

Estimated Annual Hours Burden: 22,480.

FTC staff estimates that there are approximately 4,000 sellers of franchises covered by the Rule, with approximately 6% (240) of that total reflecting an equal amount of new and departing business entrants.[2] FTC staff estimates that the average annual disclosure burden for established franchisors to update existing disclosure documents will be three hours per seller for a total of 11,280 hours (3,760 franchisors × 3 hours). For new sellers of franchise opportunities, FTC staff estimates that the preparation of disclosure documents will require approximately 30 hours for a total of 7,200 hours (240 new franchisors × 30 hours).

Covered franchisors also may need to maintain an alternative version of the FDD for use in non-registration states, which may differ from FDDs used in registration states. FTC staff estimates that this recordkeeping obligation would require approximately one hour per year. This results in an additional burden of 4,000 hours (4,000 franchisors × 1 hour). Under the Rule, a franchisor is also required to retain copies of receipts of disclosure documents, as well as materially different versions of its disclosure documents. Such recordkeeping requirements, however, are consistent with, or less burdensome than, those imposed by the states that have franchise registration and disclosure laws. Accordingly, FTC staff believes that incremental recordkeeping burden, if any, would be de minimis.

Estimated Annual Labor Costs: $8,386,800.

Labor costs are derived by applying estimated hourly cost figures to the burden hours described above. FTC staff anticipates that an attorney will prepare required disclosure documents at an estimated hourly attorney rate of $450.[3] For established franchisors, FTC staff estimates the following annual labor costs: $1,350 per established franchisor (3 hours × $450) for a total annual cost burden of $5,076,000 ($1,350 × 3,760 established franchisors). For new franchisors, this yields an annual cost of $13,500 per new franchisor (30 hours × $450) for a total annual cost burden of $3,240,000 for new franchisors ($13,500 × 240 new franchisors).

Additionally, FTC staff anticipates that recordkeeping under the Rule will be performed by clerical staff at approximately $17.70 per hour.[4] Thus, based on the 4,000 hours of recordkeeping burden per year for all covered franchisors, this will amount to a total annual labor cost of $70,800 ($17.70 × 4,000 hours).

Estimated Annual Non-Labor Costs: $4,800,000.

FTC staff estimates that the non-labor burden incurred by franchisors differs based on the length of the disclosure document, the number produced, and the method of distribution employed by franchisors. FTC staff estimates that the estimated 4,000 sellers of franchise opportunities distribute approximately 100 disclosure documents each annually for a total of 400,000 disclosure documents. FTC staff estimates that 80% of these disclosure documents (320,000) are distributed electronically at a cost of $5 per electronic disclosure. This results in a total estimated $1,600,000 (320,000 × $5) in non-labor costs for electronic disclosure. FTC staff estimates that the remaining 20% of disclosure documents (80,000) are distributed in hard copy at a cost of $40 each for printing and mailing costs. This results in a total estimated non-labor cost burden associated with printing and mailing disclosure documents of $3,200,000 (80,000 × $40).

Request for Comment

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure and recordkeeping requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (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, 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.

For the FTC to consider a comment, we must receive it on or before April 3, 2023. Your comment, including your name and your state, will be placed on

[2] Some franchise offerings may qualify for the exemptions listed in 16 CFR 436.8. Thus, this estimate may overestimate the number of franchisors subject to the Rule.

[3] It is staff's understanding that franchisors often hire outside counsel to prepare the required disclosures, and outside counsel is typically compensated at a higher rate than in-house attorneys.

[4] Based on Bureau and Labor Statistics' Occupational Employment and Wages, May 2021, National Estimates for File Clerks, *available at https://www.bls.gov/oes/current/oes434071.htm.*

the public record of this proceeding, including the *https://www.regulations.gov* website.

You can file a comment online or on paper. Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you file your comment on paper, write ''Franchise Rule, PRA Comment, FTC File No. P094400,'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any 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 that your comment does not include any 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, in particular, 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 (1) be filed in paper form, (2) be clearly labeled ''Confidential,'' and (3) 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 publicly at *www.regulations.gov,* we cannot redact or remove your comment 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.

The FTC Act and other laws that 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 April 3, 2023. 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.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2023–01997 Filed 1–31–23; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10242]

Agency Information Collection Activities: Proposed Collection; Comment Request; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice; correction.

SUMMARY: On January 27, 2023, CMS published a notice in the **Federal Register** that sought comment on a collection of information concerning CMS–10242 (OMB control number 0938–1049) entitled ''Emergency Ambulance Transports and Beneficiary Signature.'' The telephone number for the point of contact for policy questions is incorrect. This document corrects the error.

FOR FURTHER INFORMATION CONTACT: William N. Parham, III, (410) 786–4669.

SUPPLEMENTARY INFORMATION:

I. Background

In the January 27, 2023, issue of the **Federal Register** (87 FR 5360), we published a Paperwork Reduction Act notice requesting a 60-day public comment period for the information collection request identified under CMS–10242, OMB control number 0938–1049, and titled ''Emergency Ambulance Transports and Beneficiary Signature.''

II. Explanation of Error

In the January 27, 2023, notice, the telephone number listed for the point contact for policy questions is incorrect. The incorrect language is on page 5361, in the third column, in the first paragraph, beginning on line 7 with ''(For policy'' and ending at the end of line 10. This notice provides the correct telephone number.

III. Correction of Error

In the **Federal Register** of January 27, 2023, in FR Doc. 2023–01718 on page 5361, in the third column, in the first paragraph, lines 7–10, beginning with the ''(For policy'' through the end of line 10 is corrected to ''(For policy questions regarding this collection contact Sabrina Teferi at 404–562–7251.)''

Dated: January 27, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–02119 Filed 1–31–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9139–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—October Through December 2022

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from April through June 2022, relating to the Medicare and Medicaid programs and other programs administered by CMS.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need.

Consequently, we are providing contact persons to answer general questions concerning each of the addenda published in this notice.

Addenda	Contact	Phone No.
I CMS Manual Instructions	Ismael Torres	(410) 786–1864
II Regulation Documents Published in the **Federal Register**	Terri Plumb	(410) 786–4481
III CMS Rulings	Tiffany Lafferty	(410) 786–7548
IV Medicare National Coverage Determinations	Wanda Belle, MPA	(410) 786–7491
V FDA-Approved Category B IDEs	John Manlove	(410) 786–6877
VI Collections of Information	William Parham	(410) 786–4669
VII Medicare-Approved Carotid Stent Facilities	Sarah Fulton, MHS	(410) 786–2749
VIII American College of Cardiology—National Cardiovascular Data Registry Sites.	Sarah Fulton, MHS	(410) 786–2749
IX Medicare's Active Coverage-Related Guidance Documents	JoAnna Baldwin, MS	(410) 786–7205
X One-time Notices Regarding National Coverage Provisions	JoAnna Baldwin, MS	(410) 786–7205
XI National Oncologic Positron Emission Tomography Registry Sites	David Dolan, MBA	(410) 786–3365
XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities.	David Dolan, MBA	(410) 786–3365
XIII Medicare-Approved Lung Volume Reduction Surgery Facilities	Sarah Fulton, MHS	(410) 786–2749
XIV Medicare-Approved Bariatric Surgery Facilities	Sarah Fulton, MHS	(410) 786–2749
XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials	David Dolan, MBA	(410) 786–3365
All Other Information	Annette Brewer	(410) 786–6580

SUPPLEMENTARY INFORMATION:

I. Background

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, state governments, state Medicaid agencies, state survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners (NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS website or the appropriate data registries that are used as our resources. This is the most current up-to-date information and will be available earlier than we publish our quarterly notice. We believe the website list provides more timely access for beneficiaries, providers, and suppliers. We also believe the website offers a more convenient tool for the public to find the full list of qualified providers for these specific services and offers more flexibility and ''real time'' accessibility. In addition, many of the websites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the website. These listservs avoid the need to check the website, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a website proves to be difficult, the contact person listed can provide information.

III. How to Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at *http://www.cms.gov/manuals.*

The Director of the Office of Strategic Operations and Regulatory Affairs of the Centers for Medicare & Medicaid Services (CMS), Kathleen Cantwell, having reviewed and approved this document, authorizes Trenesha Fultz-Mimms, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: January 26, 2023.

Trenesha Fultz-Mimms,

Federal Register Liaison, Department of Health and Human Services.

BILLING CODE 4120–01–P

Publication Dates for the Previous Four Quarterly Notices

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: February 9, 2022 (87 FR 7458), May 13, 2022 (87 FR 29327), August 4, 2022 (87 FR 47751) and November 14, 2022 (87 FR 68161). We are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the website to access this information and a contact person for questions or additional information.

Addendum I: Medicare and Medicaid Manual Instructions (October through December 2022)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: http://cms.gov/manuals.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at http://www.gpo.gov/libraries/

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the manual for National Coverage Determination (NCD) 200.3 - Monoclonal Antibodies Directed Against Amyloid for the Treatment of Alzheimer's Disease (AD) (CMS-Pub. 100-03) Transmittal No. 11692.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual.

Fee-For Service Transmittal Numbers

Please Note: Beginning Friday, March 20, 2020, there will be the following change regarding the Advance Notice of Instructions due to a CMS internal process change. Fee-For Service Transmittal Numbers will no longer be determined by Publication. The Transmittal numbers will be issued by a single numerical sequence beginning with Transmittal Number 10000.

For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our website at www.cms.gov/Manuals.

Transmittal Number	Manual/Subject/Publication Number
Medicare General Information (CMS-Pub. 100-01)	
11641	Update to Medicare Deductible, Coinsurance and Premium Rates for Calendar Year (CY) 2023 Basis for Determining the Part A Coinsurance Amounts Part B Annual Deductible Part B Premium
11646	New Medicare Part B Immunosuppressant Drug Benefit (PBID) – Implementation
11672	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
Medicare Benefit Policy (CMS-Pub. 100-02)	
11646	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
11678	Implementation of Changes in the End-Stage Renal Disease (ESRD) Prospective Payment System (PPS) and Payment for Dialysis Furnished for Acute Kidney Injury (AKI) in ESRD Facilities for Calendar Year (CY) 2023

11693	International Classification of Disease (ICD-10) Code Update for Coverage of Intravenous Immune Globulin (IVIG) Treatment of Primary Immune Deficiency Diseases in the Home-
11764	New Medicare Part B Immunosuppressant Drug Benefit (PBID) – Implementation
11767	Implementation of Changes in the End-Stage Renal Disease (ESRD) Prospective Payment System (PPS) and Payment for Dialysis Furnished for Acute Kidney Injury (AKI) in ESRD Facilities for Calendar Year (CY) 2023
11769	Manual Update Pub. 100-02 Medicare Benefit Policy, Chapter 15, Section 110.8 Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Benefit Category Determinations
11771	Internet-Only Manual (IOM) Updates for Nurse Practitioners (NPs) and Clinical Nurse Specialists (CNSs) Nurse Practitioner (NP) Services Clinical Nurse Specialist (CNS) Services
Medicare National Coverage Determination (CMS-Pub. 100-03)	
11692	National Coverage Determination (NCD) 200.3 - Monoclonal Antibodies Directed Against Amyloid for the Treatment of Alzheimer's Disease (AD)
Medicare Claims Processing (CMS-Pub. 100-04)	
11625	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
11626	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
11627	Quarterly Update to Home Health (HH) Grouper
11628	Shared System Support Hours for Application Programming Interfaces (APIs)
11630	Instructions to the Fiscal Intermediary Shared System [FISS] to Add Additional Multiple Procedure Indicators 6 and 7 Into the Physician Fee Schedule Payment Policy Indicator File Record Layout
11632	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11633	New Fiscal Intermediary Shared System (FISS) Consistency Edit to Validate Attending Physician National Provider Identifier (NPI)
11634	Home Health Claims - New Grouper Return Code Edits and Informational Unsolicited Response HH Grouper Program HH Grouper Input/Output Record Layout HH Grouper Decision Logic and Updates
11639	Provider Specific File (PSF) changes for Direct Medical Education (DME), Direct Graduate Medical Education (DGME), Organ Acquisition Cost (OAC) and Kidney Acquisition Costs (KAC)
11640	Calendar Year (CY) 2023 Participation Enrollment and Medicare Participating Physicians and Suppliers Directory (MEDPARD) Procedures
11642	Ambulance Inflation Factor (AIF) for Calendar Year (CY) 2023 and Productivity Adjustment Ambulance Inflation Factor (AIF)
11644	Home Health Claims - New Grouper Return Code Edits and Informational Unsolicited Response HH Grouper Program HH Grouper Input/Output Record Layout HH Grouper Decision Logic and Updates
11646	New Medicare Part B Immunosuppressant Drug Benefit (PBID) – Implementation Payment Rules for Drugs and Biologicals Billing for Immunosuppressive Drugs
11647	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11654	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11657	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11658	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11661	October 2022 Update of the Ambulatory Surgical Center (ASC) Payment System
11662	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11663	Instructions for Retrieving the 2023 Pricing and Healthcare Common Procedure Coding System (HCPCS) Data Files through CMS' Mainframe Telecommunications Systems
11664	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
11665	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11666	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11669	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11670	File Conversions Related to the Spanish Translation of the Healthcare Common Procedure Coding System (HCPCS) Descriptions
11671	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11673	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11675	Calendar Year (CY) 2023 Participation Enrollment and Medicare Participating Physicians and Suppliers Directory (MEDPARD) Procedures
11677	Update to the Federally Qualified Health Center (FQHC) Prospective Payment System (PPS) for Calendar Year (CY) 2023
11685	Billing for Hospital Part B Inpatient Services Editing Of Hospital Part B Inpatient Services: Reasonable and Necessary Part A Hospital Inpatient Denials
11687	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11690	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11691	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11699	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11700	Changes to the Laboratory National Coverage Determination (NCD) Edit Software for January 2023
11702	Home Health Prospective Payment System (HH PPS) Rate Update for Calendar Year (CY) 2023
11703	Implement Operating Rules - Phase III Electronic Remittance Advice (ERA) Electronic Funds Transfer (EFT): Committee on Operating Rules for Information Exchange (CORE) 360 Uniform Use of Claim Adjustment Reason Codes (CARC), Remittance Advice Remark Codes (RARC) and Claim Adjustment Group Code (CAGC) Rule - Update from Council for Affordable Quality Healthcare (CAQH) CORE
11704	Combined Common Edits/Enhancements Modules (CCEM) Code Set Update
11706	Quarterly Update to the National Correct Coding Initiative (NCCI) Procedure-to-Procedure (PTP) Edits, Version 29.1, Effective April 2023
11707	Correction to Stem Cell Transplantation Instructions in Chapter Section 90.3

11708	Summary of Policies in the Calendar Year (CY) 2023 Medicare Physician Fee Schedule (MPFS) Final Rule, Telehealth Originating Site Facility Fee Payment Amount and Telehealth Services List, CT Modifier Reduction List, and Preventive Services List
11711	April 2023 Healthcare Common Procedure Coding System (HCPCS) Quarterly Update Reminder
11714	Home Health Claims - New Grouper Return Code Edits and Informational Unsolicited Response HH Grouper Program HH Grouper Input/Output Record Layout HH Grouper Decision Logic and Updates
11716	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11717	New Waived Tests
11718	Update to Rural Health Clinic (RHC) All Inclusive Rate (AIR) Payment Limit for Calendar Year (CY) 2023
11721	National Coverage Determination (NCD 110.24): Chimeric Antigen Receptor (CAR) T-cell Therapy
11722	Calendar Year 2023 Update for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule Chimeric Antigen Receptor (CAR) T-cell Therapy Coverage Requirements Billing Requirements A/B MAC Billing HCPCS/CPT Codes A/B MAC (B) Places of Service (POS) Billing Information for Professional Claims Payment Requirements Claim Adjustment Reason Codes (CARCs), Remittance Advice Remark Codes (RARCs), Group Codes, and Medicare Summary Notice (MSN) Messages Claims Editing
11723	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11727	Fiscal Year (FY) 2023 Inpatient Prospective Payment System (IPPS) and Long Term Care Hospital (LTCH) PPS Changes
11729	Implementation of Rural Emergency Hospital (REH) Provider Type
11731	Update to the Internet Only Manual (IOM) Publication (Pub.) 100-04, Chapter 1, Section 90, to include Critical Access Hospitals (CAHs) for a Portion of a Medicare Advantage (MA) Billing Period
11732	Billing Instructions for Home or Residence Services Home or Residence Services (Codes 99341 – 99350) Home or Residence Services (99341 – 99350) When Performed in Place of Service 12 (Home)
11733	Calendar Year (CY) 2023 Annual Update for Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment
11734	Changes to the Laboratory National Coverage Determination (NCD) Edit Software for April 2023
11735	Healthcare Common Procedure Coding System (HCPCS) Codes Subject to and Excluded from Clinical Laboratory Improvement Amendments (CLIA) Edits
11736	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
11737	January 2023 Update of the Hospital Outpatient Prospective Payment System (OPPS)
11738	January 2023 Integrated Outpatient Code Editor (I/OCE) Specifications Version 24.0
11742	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11746	April 2023 Update to the Medicare Severity – Diagnosis Related Group (MS-DRG) Grouper and Medicare Code Editor (MCE) Version 40.1 for the International Classification of Diseases, Tenth Revision (ICD-10) Diagnosis Codes for Collection of Health-Related Social Needs (HRSNs) and New ICD-10 Procedure Coding System (PCS) Codes
11747	Quarterly Update to Home Health (HH) Grouper
11748	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11752	April 2023 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing Files
11758	File Conversions Related to the Spanish Translation of the Healthcare Common Procedure Coding System (HCPCS) Descriptions
11759	Update to the Internet Only Manual (IOM) Publication (Pub.) 100-04, Chapter 18 Section 170.1 and Chapter 32 Section 270.2 due to the National Coverage Determinations (NCDs) April 2023 Change Request (CR) 12960 Healthcare Common Procedure Coding System (HCPCS) Codes for Screening for STIs and HIBC to Prevent STIs Billing Requirements for Patients Enrolled in a Data Collection System
11760	Manual Update to Pub. 100-04, Chapter 20, Pre-Discharge Delivery of DMEPOS for Fitting and Training, Section 110.3
11761	Instructions for Downloading the Medicare ZIP Code File for April 2023 Files
11762	January 2023 Update of the Ambulatory Surgical Center [ASC] Payment System
11764	New Medicare Part B Immunosuppressant Drug Benefit (PBID) – Implementation Payment Rules for Drugs and Biologicals Billing for Immunosuppressive Drugs
11766	Instructions for Retrieving the 2023 Pricing and Healthcare Common Procedure Coding System (HCPCS) Data Files through CMS' Mainframe Telecommunications Systems
11768	Remittance Advice Remark Code (RARC), Claims Adjustment Reason Code (CARC), Medicare Remit Easy Print (MREP) and PC Print Update
11770	Quarterly Update for the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP) - April 2023
11774	National Coverage Determination (NCD 110.24): Chimeric Antigen Receptor (CAR) T-cell Therapy Chimeric Antigen Receptor (CAR) T-cell Therapy Coverage Requirements Billing Requirements A/B MAC (A) Revenue Code A/B MAC (B) Places of Service (POS) Billing Information for Professional Claims Payment Requirements Claim Adjustment Reason Codes (CARCs), Remittance Advice Remark Codes (RARCs), Group Codes, and Medicare Summary Notice (MSN) Messages Claims Editing
Medicare Secondary Payer (CMS-Pub. 100-05)	
11741	Automation of the Medicare Duplicate Primary Payment (DPP) Process
11754	Electronic Correspondence Referral System (ECRS) Restoration of Patient Relationship Code 18, Update to Medicare Secondary Payer (MSP) Inquiry Transactions for Deceased Beneficiaries, and Clarification of Existing ECRS User Guide Policy Based on the Medicare Administrative Contractors

	Feedback
11755	Significant Updates to Internet Only Manual (IOM) Publication (Pub.) 100-05 Medicare Secondary Payer (MSP) Manual, Chapters 1 and 2
11756	Deleting Internet Only Manuals (IOM) Pub. 100-05, Chapter 4 and Chapter 8
11775	Automation of the Medicare Duplicate Primary Payment (DPP) Process
Medicare Financial Management (CMS-Pub. 100-06)	
11643	Notice of New Interest Rate for Medicare Overpayments and Underpayments – 1st Qtr Notification for FY 2023
11757	The Fiscal Intermediary Shared System (FISS) Submission of Copybook Files to the Provider and Statistical Reimbursement (PS&R) System
Medicare State Operations Manual (CMS-Pub. 100-07)	
208	Revisions to State Operation Manual (SOM), Appendix PP Guidance to Surveyors for Long Term Care Facilities Management of Complaints and Incidents General Intake Process ASPEN Complaints/Incident Tracking System (ACTS) Data Entry Reports Priority Assignment for Nursing Homes, Deemed and Non-Deemed Non-Long Term Care Providers/Suppliers, and EMTALA Immediate Jeopardy (for Nursing Homes, Deemed and Non-Deemed Non-Long Term Care Providers/Suppliers, and EMTALA Non-Immediate Jeopardy-High Priority (for Nursing Homes and Deemed and Non-Deemed Non-Long Term Care Providers/Suppliers, and EMTALA) Non-Immediate Jeopardy-Medium Priority (for Nursing Homes and Deemed and Non-Deemed Non-Long Term Care Providers/Suppliers) Non-Immediate Jeopardy-Low Priority (for Nursing Homes Deemed and Non-Deemed Non-Long Term Care Provider/Suppliers Referral-Immediate (for Nursing Homes, Deemed and Non-Deemed Non-Long Term Care Providers/Suppliers, and EMTALA No Action Necessary (for Nursing Homes, Deemed and Non-Deemed Non-Long Term Care Providers/Suppliers, and EMTALA) Maximum Time Frames Related to the Federal Onsite Investigation of Complaints/Incidents Report to Complainant Exit Conference Action on Allegations of Resident Neglect and Abuse, and Misappropriation of Resident Property for Nursing Homes Written Procedures Review and Triage of Allegations Immediate Jeopardy Priority Chapter 5/5330/Reporting Abuse to Law Enforcement and the Medicaid Fraud Control Unit for Nursing Homes ACTS Required Fields Sample Form for Facility Reported Incidents Follow-up Investigation Report
209	Revisions to Appendix I – Survey Procedures for Life Safety Code Surveys
Medicare Program Integrity (CMS-Pub. 100-08)	
11637	Provider Enrollment Appeals and Rebuttals - Revised Instructions and Model Letters Deactivation Rebuttals Medicare Contractor Duties Acknowledgement Letters Revocation Letters Deactivation Model Letter Rebuttal Model Letters Model Opt-out Letters Revalidation Notification Letters
11638	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11652	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11653	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11658	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11682	Seventh General Update to Provider Enrollment Instructions in Chapter 10 of CMS Publication (Pub.) 100-08
11683	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11694	Medicare Enrollment of Rural Emergency Hospitals (REHs)
11696	Updates to Chapter 4 of Publication (Pub.) 100-08, to Include the Addition of a Congressional Inquiries Section, Updates to the Vetting Leads with CMS Process, and Various Other Updates Durable Medical Equipment Medicare Administrative Contractor Fraud Functions Vetting Leads with CMS Production of Medical Records and Documentation for an Appeals Case File Congressional Inquiries Administrative Actions Civil Monetary Penalties Delegated to CMS
11697	Update to Process and Responsibility for Tracking Medicare Contractors' Prepayment and Post Payment Reviews in the RAC Data Warehouse (RACDW) Tracking Medicare Contractors' Prepayment and Postpayment Reviews
11701	Incorporation of Recent Provider Enrollment Regulatory Changes into Chapter 10 of CMS Publication (Pub.) 100-08 Definitions Skilled Nursing Facilities (SNFs) Denial Reasons Revocation Reasons Risk-Based Screening Miscellaneous Enrollment Topics
11715	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
11739	Incorporation of Recent Provider Enrollment Regulatory Changes into Chapter 10 of CMS Publication (Pub.) 100-08
11745	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11749	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
11771	Internet-Only Manual (IOM) Updates for Nurse Practitioners (NPs) and Clinical Nurse Specialists (CNSs)
11773	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)	
	None
Medicare Quality Improvement Organization (CMS- Pub. 100-10)	
	None
Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14)	
	None
Medicaid Program Integrity Disease Network Organizations (CMS Pub 100-15)	

	None
Medicare Managed Care (CMS-Pub. 100-16)	
	None
Medicare Business Partners Systems Security (CMS-Pub. 100-17)	
	None
Medicare Prescription Drug Benefit (CMS-Pub. 100-18)	
	None
Demonstrations (CMS-Pub. 100-19)	
11665	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
11674	Modification to Value-Based Insurance Design (VBID) Model Change Requests (CRs)
11750	Intravenous Immune Globulin (IVIG) Demonstration: Payment Update for 2023
One Time Notification (CMS-Pub. 100-20)	
11624	Mobile Personal Identity Verification (PIV) Station
11629	User CR: Fiscal Intermediary Shared System (FISS) Enhancement to View All Changes for All Adjustment Types
11631	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
11635	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
11636	International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determinations (NCDs)--January 2023 Update--2 of 2
11645	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
11648	Instructions for Durable Medical Equipment (DME) Medicare Administrative Contractors (MACs) to Print and Mail Previously Undeliverable Medicare Summary Notices (MSNs)
11649	User Enhancement Change Request (UECR): Fiscal Intermediary Shared System (FISS) - Skilled Nursing Facility (SNF) Patient Driven Payment Model (PDPM) Reason Code 31849
11650	Enhancements to Patient Driven Payment Model (PDPM) Claim Edits to Improve Claim Processing
11651	Shared System Support Hours for Application Programming Interfaces (APIs) - April 2023
11656	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
11659	Updates to the Common Working File (CWF) for Editing and Claims Processing to Allow Medicare Fee-For-Service (FFS) Coverage of Kidney Acquisition Costs for Medicare Advantage (MA) Beneficiaries Provided by Maryland Waiver (MW) Hospitals
11660	Extensions of Certain Temporary Changes to the Low-Volume Hospital Payment Adjustment and the Medicare Dependent Hospital (MDH) Program under the Inpatient Prospective Payment System (IPPS) provided by the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023
11667	User Enhancement Change Request (UECR): Update the Multi-Carrier System (MCS) to Display the Current Location of a History Claim on the Related History Line and the MCS Desktop Tool (MCSDT) Related History Window
11676	International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determinations (NCDs)--April 2023 Update
11679	User Enhancement Change Request (UECR): Enhance the Multi-Carrier System (MCS) Related Procedures Diagnosis Segments Screen
11680	Enhancement Change Request (UECR): Update the Multi-Carrier System (MCS) to Include Additional Options for Requesting Duplicate Remittance Advices
11681	User Enhancement Change Request (UECR): Update the Multi-Carrier System (MCS) Edit/Audit/Procedure Processing Criteria Report H99RBSCC
11684	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
11686	User Enhancement Change Request (UECR): ViPS Medicare System (VMS) - Reset Beneficiary and Provider Healthcare Integrated General Ledger Accounting System (HIGLAS) Flags
11689	User Enhancement Change Request (UECR): Add the Common Working File (CWF) Disposition Code to the Multi-Carrier System (MCS) Medicare Secondary Payer (MSP) 'I' Records Detail Screens, MCS Desk Top Tool (MCSDT) and the MSP CWF Transaction
11695	New State Codes for North Carolina
11698	Modern Solution to SuperOp Claim Counter Maximum Implementation
11709	User Enhancement Change Request (UECR): Update the Multi-Carrier System (MCS) Comment Screen
11710	Implementation of a National Fee Schedule for Medicare Part B Vaccine Administration CMS
11719	Update the Common Working File (CWF) to Apply Error Code 7282 to all Applicable Detail Lines of a Claim
11720	MAC Use of Jira and Confluence
11724	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
11725	User Enhancement Change Request (UECR): Update the Multi-Carrier System (MCS) Edit/Audit/Procedure Processing Criteria Report H99RBSCC
11728	Medicare Administrative Contractors (MACs) Updating Their Systems to Integrate with Call Center Post-Transaction Feedback Collection from Providers – Implementation
11730	Implementation of the Award for the Jurisdiction M (J-M) Part A and Part B Medicare Administrative Contractor (JM A/B MAC)
11740	Extensions of Certain Temporary Changes to the Low-Volume Hospital Payment Adjustment and the Medicare Dependent Hospital (MDH) Program under the Inpatient Prospective Payment System (IPPS) provided by the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023
11743	Implementation of the Award for the National Provider Enrollment (Medicare and Medicaid) Eastern Region (NPEAST) and Western Region (NPWEST) Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Enrollment Contractors
11744	Phase two: Undeliverable Medicare Summary Notices (UMSNs) – Beneficiary Do Not Forward Process
11751	Updating Calendar Year (CY) 2023 Medicare Diabetes Prevention Program (MDPP) Payment Rates
11753	Provider Education for Prior Authorization (PA) Process for Facet Joint Interventions in the Hospital Outpatient Department (OPD) Setting
11772	Changes to Beneficiary Coinsurance for Additional Procedures Furnished During the Same Clinical Encounter As Certain Colorectal Cancer Screening Tests
Medicare Quality Reporting Incentive Programs (CMS- Pub. 100-22)	
	None
State Payment of Medicare Premiums (CMS-Pub.100-24)	

	None
Information Security Acceptable Risk Safeguards (CMS-Pub. 100-25)	
	None

Addendum II: Regulation Documents Published in the Federal Register (October through December 2022)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal Register,** contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at http://www.gpoaccess.gov/fr/index.html. The following website http://www.archives.gov/federal-register/ provides information on how to access electronic editions, printed editions, and reference copies.

This information is available on our website at: https://www.cms.gov/files/document/regs4q22qpu.pdf

For questions or additional information, contact Terri Plumb (410-786-4481).

Addendum III: CMS Rulings (October through December 2022)

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters.

The rulings can be accessed at http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings. For questions or additional information, contact Tiffany Lafferty (410-786-7548).

Addendum IV: Medicare National Coverage Determinations (October through December 2022)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS website. For the purposes of this quarterly notice, we are providing only the specific updates to national coverage determinations (NCDs), or reconsiderations of completed NCDs published in the 3-month period. This information is available at: www.cms.gov/medicare-coverage-database/. For questions or additional information, contact Wanda Belle, MPA (410-786-7491).

Title	NCDM Section	Transmittal Number	Issue Date	Effective Date
Monoclonal Antibodies Directed Against Amyloid for the Treatment of Alzheimer's Disease (AD)	NCD 200.3	R11692	11/09/2022	04/07/2022
National Coverage Determination (NCD 110.24): Chimeric Antigen Receptor (CAR) T-cell Therapy	NCD 110.24	R11774	12/30/2022	01/01/2023

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (October through December 2022)

(Inclusion of this addenda is under discussion internally.)

Addendum VI: Approval Numbers for Collections of Information (October through December 2022)

All approval numbers are available to the public at Reginfo.gov. Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain. For questions or additional information, contact William Parham (410-786-4669).

Addendum VII: Medicare-Approved Carotid Stent Facilities (October through December 2022)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued

our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available at: http://www.cms.gov/MedicareApprovedFacilitie/CASF/list.asp#TopOfPage For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Facility	Provider Number	Date Approved	State
The following facilities are new listings for this quarter.			
Community Hospital of the Monterey Peninsula 23625 Holman Highway Monterey, CA 93940	050145	11/01/2022	CA
Methodist Hospital Stone Oak 1139 E. Sonterra Boulevard San Antonio, TX 78258	670055	11/29/2022	TX
Memorial Medical Center 2450 S. Telshor Boulevard Las Cruces, NM 88011	320018	12/13/2022	NM

Addendum VIII: American College of Cardiology's National Cardiovascular Data Registry Sites (October through December 2022)

The initial data collection requirement through the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) has served to develop and improve the evidence base for the use of ICDs in certain Medicare beneficiaries. The data collection requirement ended with the posting of the final decision memo for Implantable Cardioverter Defibrillators on February 15, 2018.

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum IX: Active CMS Coverage-Related Guidance Documents (October through December 2022)

CMS issued a guidance document on November 20, 2014 titled "Guidance for the Public, Industry, and CMS Staff: Coverage with Evidence Development Document". Although CMS has several policy vehicles relating to evidence development activities including the investigational device exemption (IDE), the clinical trial policy, national coverage determinations and local coverage determinations, this guidance document is principally intended to help the public understand CMS's implementation of coverage with evidence development (CED) through the national coverage determination process. The document is available at http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=27. There are no additional Active CMS Coverage-Related Guidance Documents for the 3-month period. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

Addendum X: List of Special One-Time Notices Regarding National Coverage Provisions (October through December 2022)

There were no special one-time notices regarding national coverage provisions published in the 3-month period. This information is available at http://www.cms.gov . For questions or additional information, contact JoAnna Baldwin, MS (410-786 7205).

Addendum XI: National Oncologic PET Registry (NOPR) (October through December 2022)

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry. There were no additions, deletions, or editorial changes to the listing of National Oncologic Positron Emission Tomography Registry (NOPR) in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/NOPR/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA (410-786-3365).

Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (October through December 2022)

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used

as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates to the list of Medicare-approved facilities that meet our standards that have occurred in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/VAD/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA, (410-786-3365).

Facility	Provider Number	Date of Initial Certification	Date of Re-certification	State
The following facilities have editorial changes (in bold).				
Ascension Saint Thomas Hospital 4220 Harding Road Nashville, TN 37205 Other information: Joint Commission ID # 7891 Previous Re-certification Dates: 06/22/2010; 06/22/2012; 05/20/2014; 07/13/2016; 01/14/2021	440082	06/22/2010	**09/03/2022**	TN
University Hospitals Cleveland Medical Center 11100 Euclid Avenue Cleveland, OH 44106 Other information: Joint Commission ID # 7017 Previous Re-certification Dates: 02/09/2010; 01/24/2012; 01/30/2014; 02/23/2016; 02/09/2018; 01/21/2021	360137	02/09/2010	**08/17/2022**	OH
Sunrise Hospital & Medical Center 3186 S. Maryland Parkway Las Vegas, NV 89109 Other information: DNV ID #: C556920 Previous Re-certification Dates: 09/10/2019	290003	09/10/2019	**09/10/2022**	NV
Froedtert Memorial Lutheran Hospital, Inc 9200 West Wisconsin Avenue Milwaukee, WI 53226 Other information: Joint Commission ID # 7718 Previous Re-certification Dates: 07/31/2012; 07/08/2014; 08/09/2016; 01/07/2021	520177	07/31/2012	**09/14/2022**	WI
Swedish Health Services d/b/a Swedish Medical Center – Cherry Hill 500 17th Ave. Seattle, WA 98122 Other information: DNV ID #: C574335 Previous Re-certification Dates: 04/05/2011; 4/09/2013; 04/21/2015; 06/06/2017; 10/14/2019	50-0025	04/05/2011	**10/15/2022**	WA
Rush University Medical Center 1653 W. Congress Pkwy Chicago, IL 60612 Other information: DNV ID # C574309 Previous Re-certification Dates: 07/19/2013; 12/18/2014; 09/25/2019	140119	07/19/2013	**09/25/2022**	IL

University of Iowa Hospitals and Clinics 200 Hawkins Drive Iowa City, IA 52242 Other information: Joint Commission ID # 8266 Previous Re-certification Dates: 06/22/2010; 07/26/2012; 07/29/2014; 08/02/2016; 7/11/2018; 4/8/2021	160058	06/22/2010	**10/14/2022**	IA
University of Minnesota Medical Center, Fairview 2450 Riverside Avenue Minneapolis, MN 55454 Other information: JHACO ID #: 2908 Previous Re-certification Dates: 03/26/2009; 08/26/2011; 10/10/2013; 11/03/2015; 12/05/2017; 9/11/2020	240080	03/26/2009	**09/21/2022**	MN
University of Colorado Hospital Authority 12605 E 16th Ave Aurora, CO 80045 Other information: Joint Commission ID # 9384 Previous Re-certification Dates: 07/22/2008; 08/17/2010; 08/10/2012; 07/22/2014; 07/26/2016; 03/10/2021	060024	07/22/2008	**10/12/2022**	CO
Barnes-Jewish Hospital 1 Barnes Jewish Plaza Saint Louis, MO 63110 Other information: JHACO ID #: 8387 Previous Re-certification Dates: 08/21/2008; 07/27/2010; 07/17/2012; 08/05/2014; 09/13/2016; 11/10/2017; 10/22/2020	260032	08/21/2008	**10/05/2022**	MO

Addendum XIII: Lung Volume Reduction Surgery (LVRS)
(October through December 2022)

OSF Saint Francis Medical Center 530 NE Glen Oak Avenue Peoria, IL 61637 Other information: DNV ID #: C569934 Previous Re-certification Dates: 08/31/2009; 11/22/2011; 10/10/2019	14-0067	08/31/2009	**10/10/2022**	IL
The Methodist Hospital d/b/a Houston Methodist Hospital 6565 Fannin Street Houston, TX 77030 Other information: DNV ID #: C578138 Previous Re-certification Dates: 11/03/2003; 10/29/2008; 12/06/2016; 11/06/2019	450358	11/03/2003	**11/06/2022**	TX
University of California, Davis Medical Center 2315 Stockton Boulevard Sacramento, CA 95817 Other information: Joint Commission ID # 10055 Previous Re-certification Dates: 10/06/2015; 02/06/2018; 12/10/2020	050599	10/06/2015	**09/14/2022**	CA
Lutheran Hospital of Indiana 7950 West Jefferson Boulevard Fort Wayne, IN 46804 Other information: JHACO ID #: 7157 Previous Re-certification Dates: 09/14/2010; 10/24/2012; 10/21/2014; 11/01/2016; 05/05/2021	150017	09/14/2010	**09/22/2022**	IN

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. For the purposes of this quarterly notice, there were no additions, deletions, or editorial changes to a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. This information is available at www.cms.gov/MedicareApprovedFacilitie/LVRS/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XIV: Medicare-Approved Bariatric Surgery Facilities (October through December 2022)

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

There were no additions, deletions, or editorial changes to Medicare-approved facilities that meet CMS' minimum facility standards for bariatric surgery that have been certified by ACS and/or ASMBS in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/BSF/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (October through December 2022)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the 3-month period.

This information is available on our website at www.cms.gov/MedicareApprovedFacilitie/PETDT/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA (410-786-3365).

[FR Doc. 2023–02002 Filed 1–31–23; 8:45 am]
BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Administration for Children and Families Congressionally Directed Community Projects—Universal Project Description

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting approval of the ACF Congressionally Directed Community Projects—Universal Project Description (CDCP–UPD). This new information collection is proposed to collect information from recipients of ACF Congressionally Directed funds. Congressional Directive is an authorization act or appropriations act that requires ACF to make an award(s) to a named recipient(s) for a particular program, project, activity, or geographic area(s).

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.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: CDCP recipients are identified annually by Congress through Appropriations for ACF. The CDCP–UPD will provide standard language and sections available for use by ACF program offices to solicit the required project description and project budget information from recipients of CDCP projects. Applications are required for CDCP as prescribed by HHS regulations 45 CFR 75.203. In addition to the information required by regulation, the CDCP–UPD will provide a selection of text options for the program offices to communicate the application requirements to the recipients, as required by 45 CFR 75.203.

The CDCP–UPD gathers information regarding the CDCP recipients' identified outcomes, project activities, timeline, organizational capacity, and budget and budget justification. The CDCP–UPD ensures sufficient information is obtained to assess risk, identify needs for technical assistance and monitoring, and address other requirements of Congress, ACF, the Department of Health and Human Services, the Office of Management and Budget, and funding and statutory regulation.

Respondents: The CDCP recipients are identified annually for funding under a Congressional Directive. In Fiscal Year 2022, there were 39 CDCP recipients identified for ACF funding. It is estimated that 200 CDCP recipients will be identified annually in future ACF appropriations.

Annual Burden Estimates

Note that since publication of a previous notice inviting public comment on this information collection (87 FR 74153), the agency has updated burden estimates to reflect updated information related to the number of recipients and number of responses over the approval period. The burden table has been updated accordingly. Estimated time per response has not changed.

Information instrument	Total number of respondents	Total number of responses per respondent	Average burden per response (in hours)	Average total burden (in hours)	Average annual burden (in hours)
Congressionally Directed Community Project—Uniform Project Description (CDCP–UPD)	600	1.5	30	27,000	9,000

Authority: Social Security Act section 1110 [42 U.S.C. 1310]

John M. Sweet Jr,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–02070 Filed 1–31–23; 8:45 am]

BILLING CODE 4184–78–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Availability of Program Application Instructions for the State Health Insurance Assistance Program (SHIP) Base Grant for the Commonwealth of the Northern Mariana Islands

Title: State Health Insurance Assistance Program: Base Grant Application for the Commonwealth of the Northern Mariana Islands.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2020–ACL–CIP–SAPG–0363.

Statutory Authority: Section 4360 of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 1395b–4) and Title II of the Consolidated Appropriations Act, 2014.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.324.

DATES: The deadline date for the submission of the application is 11:59 p.m. ET on April 3, 2023.

I. Funding Opportunity Description

The SHIP mission is to empower, educate, and assist Medicare-eligible individuals, their families, and caregivers through objective outreach, counseling, and training, to make informed health insurance decisions that optimize access to care and benefits. The purpose of the SHIP Base Grant is to strengthen the capability of states and territories to support a community-based, local network of SHIP offices that provide personalized counseling, education, and outreach to help achieve the program's mission.

The applicant of this funding opportunity must demonstrate how the funds will be used to enhance the SHIP program structure through counselor development, training activities, outreach efforts, and partnership building so that the states Medicare Beneficiaries are served. Funds are to be used to support locally accessible counseling services and efforts to meet the below identified SHIP Strategic Program Themes and objectives.

The SHIP vision is to be the known and trusted community resource for Medicare information. Four strategic themes provide support for that vision. They are: (1) Service Excellence, (2) Capacity Building, (3) Operational Excellence, and (4) Innovation. Within each theme are a series of goals and objectives that can be used to achieve the overall vision for the project.

There are currently 54 active SHIP grants; one in every state, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands. The funds awarded through this application are for the Commonwealth of the Northern Mariana Islands to establish and implement the SHIP program. The project period will run April 1, 2023 through March 31, 2025. Eligible applicants include the State Office of Insurance, the State Medicaid Office, or the State Department on Aging as designated by the Commonwealth of the Northern Mariana Islands, who demonstrate their ability and commitment to providing SHIP services statewide.

II. Award Information

1. Funding Instrument Type

This award will be made in the form of a cooperative agreement.

2. Anticipated Total Funding per Budget Period

Funding will be distributed through a formula as identified in the statute. The amounts allocated are based upon factors defined in the statute and will be distributed based on the formula. ACL will fund a project period of up to two (2) years contingent upon the availability of federal funds. The applicant for the Commonwealth of the Northern Mariana Islands is eligible for $50,000 for the first budget period of this project.

III. Eligibility Criteria and Other Requirements

1. *Eligible Applicants:* Eligible applicants include State Units on Aging (SUA), State Departments of Insurance (DOI), or the State Medicaid Agency, as directed by the state Governor.

2. Cost Sharing or Matching is not required.

3. *Unique Entity ID:* All grant applicants must obtain and keep current a Unique Entity ID (UEI). On April 4, 2022, the unique entity identifier used across the federal government changed from the DUNS Number to the Unique Entity ID (generated by *SAM.gov*). The Unique Entity ID is a 12-character alphanumeric ID assigned to an entity by *SAM.gov.* The UEI is viewable in your *SAM.gov* entity registration record.

4. *Intergovernmental Review:* Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

IV. Submission Information

1. Application Instructions

Application Instructions are available via email. Contact Margaret Flowers at *Margaret.flowers@acl.hhs.gov.*

2. Submission Dates and Times

To receive consideration, applications must be submitted by 11:59 p.m. Eastern Time on April 3, 2023 via email to Margaret Flowers at *Margaret.flowers@acl.hhs.gov.*

VII. Agency Contacts

Direct inquiries regarding programmatic issues to: Margaret Flowers, Phone: 202.795.7315, Email: *Margaret.Flowers@acl.hhs.gov.*

Dated: January 26, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023–02017 Filed 1–31–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

[OMB Control No. 0985–0033]

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; of the State Councils on Developmental Disabilities

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to the State Councils on Developmental Disabilities (Councils) OMB control number 0985–0033.

DATES: Submit written comments on the collection of information by March 3, 2023.

ADDRESSES: Submit written comments and recommendations for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Sara Newell-Perez, phone: 202–795–7413 or E-Mail: *Sara.Newell-Perez@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, The Administration for Community Living (ACL) has submitted the following proposed collection of information to OMB for review and clearance. ACL is requesting approval to collect data for the State Councils on Developmental Disabilities (Councils) OMB control number 0985–0033.

The State Councils on Developmental Disabilities (Councils) are authorized by Subtitle B, of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act), as amended, [42 U.S.C. 15001 *et seq.*] (The DD Act). The DD Act requires them to submit an annual Program Performance Report. Section 125(c)(7) 42 U.S.C. 15025 states that: *Beginning in fiscal year 2002, the Council shall annually prepare and transmit to the Secretary a report. Each report shall be in a form prescribed by the Secretary by regulation under section 104(b). Each report shall contain information about the progress made by the Council in achieving the goals of the Council as specified in section 124(c)(4)).*

This is a revision of a currently approved information collection. While the DDC PPR remains the same and is consistent with performance measures previously approved in the State Plan template, the revisions include items for collecting information from Councils on their use of CDC funds to expand vaccine access and Public Health Workforce funds (PHWF) to strengthen the public health workforce.

The information collected from the DD Councils is used for multiple purposes:

(1) To develop and submit at least every two years a report to the President, Congress, and the National Council on Disability that describes the goals and outcomes of programs supported under the DD Act.

(2) As a tool for DD Councils to measure and report on progress in reaching goals and identify areas for which revisions are indicated;

(3) To enhance the Federal project officers' monitoring of DD Council

progress in reaching projected outcomes;

(4) As a set of performance measures to comply with the GPRA Modernization Act of 2010 (GPRAMA) that will yield a national portrait of DD Council program impact; and

(5) For making funding and appropriation decisions about the DD Council program.

This IC revision adds items to ensure ACL is gathering the necessary and relevant demographic information in support of Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government and the Executive Order on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals. The National Academies of Science, Engineering, and Medicine (NASEM) recently published a report on Measuring Sex, Gender Identity, and Sexual Orientation for the National Institutes of Health. This report represents the culmination of years of work within HHS to develop sexual orientation and gender identity (SOGI) data collection methodology. This IC includes the recommended NASEM SOGI questions in the Council PPR.

Comments in Response to the 60-Day Federal Register Notice

A notice published in the **Federal Register** *87 FR 58356 on September 26, 2022.* There were five comments received during the 60-day FRN. ACL's responses to these comments are included below.

Data collection form	Comment	ACL response
PPR (Commenters 1, 3, 4, 5) ...	Burden hours do not accurately reflect the work of the Council and should be increased.	Burden calculation was based on the average data entry estimates shared by a sample size of Councils. While Councils range in staffing size, number of goals and activities they provide response to in the PPR. Past workgroups comprised of DD Council staff developed the existing PPR tool after much consensus building conversations and a thorough vetting process. ACL will continue to have conversations on areas for potential streamlining as part of our continuous quality improvement efforts. Areas where the reporting platform can assist in streamlining will be taken under consideration.
PPR (Commenters 1, 3, 4, 5) ...	Some of the performance measure calculations are too distinct to accurately collect information from sub-grantees. The performance measures, designed to standardize data collection, often seem to render it meaningless in that it is difficult to begin to assess whether another Council's initiative might be considered here. The policy environments in which Councils operate make it unclear whether the data collection has practical utility to the public. At present, there is no public-facing easily digestible summary of the data for public review. The current PPR has no practical utility beyond ACL staff.	ACL continues to work with Councils to not only meet the federal data reporting requirement needs, be informed of program progress, but to also understand Council's use of the PPR as they share annual reports with citizens and stakeholders in their state/territory. T/TA guidance on ways to best collect and utilize performance measures data will be provided.
PPR (Commenter 1)	There should be a different strategy to collect and compile stories from DD Councils that would be more useful to ACL. Including it in PPR narrative reporting does not seem to address ongoing story needs.	ACL will explore ways to gather grantee stories that meet the needs of the agency and outside stakeholders in a real-time, realistic way that does not increase overall burden.
PPR (Commenter 2)	The PPR only allows for narrative addressing ICF and HCBS updates. Councils should be able to import initial Comprehensive Review and Analysis on these issues from the 5-year state plan and any subsequent update from state plan PPRs during the five-year reporting cycle.	ACL will explore expanding the narrative space available in the reporting platform to help Councils and ACL better measure Council projects and activities that impact systems change efforts across the five-year planning cycle.
PPR (Commenter 2)	There is often a wide discrepancy between the number of people with I/DD and their family members who participate in Council supported activities and the number of people with I/DD and their family members who respond to a survey impacting the validity of Outcome and Sub-Outcome Measures.	Through T/TA efforts, Councils will be provided with additional strategies for capturing quantitative performance of sub-grantees, particularly in a virtual format, improving overall response rates of activity participants.
PPR (Commenter 5)	It is difficult to address how to collect data about SOGI without knowing what the federal data subcommittee is recommending. We also have state Data Privacy Laws that must be considered once we receive more information about implementation of these Executive Orders. State law may prohibit collection of certain data.	ACL continues to review all Federal requirements for SOGI and will work to ensure T/TA is provided to clarify expectations and address concerns.

Estimated Program Burden: Based on the Council reporting experience, current data and reporting efforts constitute approximately 172 burden hours per grantee for a total of 9,632 annual burden hours. Councils worked with the technical assistance (TA) provider to establish burden reporting estimates for Centers for Disease Control (CDC) and Public Health Workforce (PHWF) reporting for a total of 4,874 hours. It should be noted that not all Councils chose to accept CDC and PHWF funds. The total addition of burden for the CDC and PHWF reporting totals 4,874 annual burden hours. The overall estimated total annual burden hours factoring in all three reports is: 14,506.

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
PPR	56	1	172	9,632
CDC	53	1	76	4,028
PHWF	47	1	18	846
Total	.....	.....	.....	14,506

Dated: January 26, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023–02016 Filed 1–31–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

[OMB Control No. 0985–0030]

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; of the National Network of University Centers for Excellence in Developmental Disabilities Education, Research, and Service

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995. This 30-day notice collects comments on the information collection requirements related to the National Network of University Centers for Excellence in Developmental Disabilities Education, Research, and Service (UCEDDs) OMB control number 0985–0030.

DATES: Submit written comments on the collection of information by March 3, 2023.

ADDRESSES: Submit written comments and recommendations for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Pamela O'Brien, 202–795–7417 or *pamela.obrien@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, The Administration for Community Living (ACL) has submitted the following proposed collection of information to OMB for review and clearance. ACL is requesting approval of revisions to the National Network of University Centers for Excellence in Developmental Disabilities Education, Research, and Service OMB control number 0985–0030. The National Network of University Centers for Excellence in Developmental Disabilities Education, Research, and Service (UCEDDs) is a discretionary grant program that supports the operation and administration of UCEDDs which are interdisciplinary education, research, and public service units of universities or public or not-for-profit entities associated with universities that engage in core functions.

This IC revision adds items to ensure ACL is gathering the necessary and relevant demographic information in support of Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government and the Executive Order on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals. The National Academies of Science, Engineering, and Medicine (NASEM) recently published a report on Measuring Sex, Gender Identity, and Sexual Orientation for the National Institutes of Health. This report represents the culmination of years of work within HHS to develop sexual orientation and gender identity (SOGI) data collection methodology. This IC includes the recommended NASEM SOGI questions.

This IC revision also includes data elements needed to account for the activities supported by funding from the Centers for Disease Control and Prevention (CDC) to support access to vaccines for people with disabilities as well as the funds awarded under the American Rescue Plan to increase the Public Health Workforce (PHWF). All other elements of the template remain consistent with the currently approved UCEDD annual report.

Section 104(a) (42 U.S.C. 15004) of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act) directs the Secretary of Health and Human Services to develop and implement a system of program accountability to monitor the grantees funded under the DD Act of 2000. The program accountability system must include UCEDDs authorized under Part D of the DD Act of 2000. Section 154(e) (42 U.S.C. 15064) of the DD Act of 2000 includes requirements for a UCEDD Annual Report. The UCEDD Annual Report should contain information on progress made in achieving the projected goals of the Center for the previous year, including:

(1) The extent to which the goals were achieved;

(2) A description of the strategies that contributed to achieving the goals;

(3) The extent goals were not achieved, a description of factors that impeded the achievement; and

(4) An accounting of the manner in which funds paid to the Center under this subtitle for a fiscal year were expended.

In addition, the DD requires information on proposed revisions to the goals and a description of successful efforts to leverage funds, other than funds made available under the DD Act.

The DD Act also states grantees must report on:

(1) Consumer satisfaction with the advocacy, capacity building, and systemic change activities of the UCEDD;

(2) The extent to which the UCEDD's advocacy, capacity building, and systemic change activities resulted in improvements; and

(3) The extent to which collaboration was achieved in the areas of advocacy, capacity building, and systemic change.

Currently, UCEDDs engage in four broad tasks: conducting interdisciplinary training, promoting exemplary community service programs and providing technical assistance at all levels from local service delivery to community and state governments, conducting research, and disseminating information to the field. There are 67 UCEDDs throughout the United States with at least one or more in every State and Territory, as mandated.

The information derived from data collection activities will be used for multiple purposes:

(1) As a tool for UCEDD grantees to measure and report on progress in reaching goals and identify areas for which revisions are indicated;

(2) To enhance the Federal project officers' monitoring of UCEDD progress in reaching projected outcomes;

(3) To provide a set of standardized performance measures that will yield a national portrait of UCEDD program impact; and

(4) For making funding and appropriation decisions about the UCEDD program.

The information provided in the Annual Reports from the UCEDDs is combined with information reported by the State Developmental Disabilities Councils and Protection and Advocacy agencies to develop a biennial report. The report describes the goals and outcomes of programs supported under the DD Act and is submitted to the President, Congress, and the National Council on Disability. The

Administration on Disabilities (AoD) within ACL collects data via the National Information Reporting System (NIRS) a web-based system developed by the Association for University Centers on Disabilities (AUCD). The instrument guides the development of items to be included in NIRS for reporting purposes.

Comments in Response to the 60-Day Federal Register Notice

A notice published in the **Federal Register** *Vol 87 FR 58354 on September 26, 2022.* There were zero public comments were received during the 60-day FRN.

Estimated Program Burden: ACL estimates the burden of this collection of information as follows: Based on UCEDD reporting experience, current data and reporting efforts constitute approximately 1,462 burden hours per grantee for a total of 97,954 annual burden hours.

UCEDDs also worked with the technical assistance provider to establish burden reporting estimates for Centers for Disease Control (CDC) and Public Health Workforce (PHWF) reporting. It should be noted that not all UCEDDs chose to accept CDC and PHWF funds. The CDC and PHWF reporting totals 6,298 annual burden hours. The overall estimated total annual burden hours factoring in all three reports is: 104,252.

Estimated Total Annual Burden Hours: 104,252.

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
UCEDD Annual Report	67	1	1,462	97,954
UCEDD CDC Report	67	1	76	5,092
UCEDD PHWF Report	67	1	18	1,206
Total				104,252

Dated: January 26, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023–02018 Filed 1–31–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1894]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Yale-Mayo Clinic Centers of Excellence in Regulatory Science and Innovation B12 Pediatric Device Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by March 3, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The title of this information collection is ''Yale-Mayo Clinic Centers of Excellence in Regulatory Science and Innovation B12 Pediatric Device Survey.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Yale-Mayo Clinic Centers of Excellence in Regulatory Science and Innovation (CERSI) B12 Pediatric Device Survey

OMB Control Number 0910–NEW

Despite numerous legislative, regulatory, and scientific efforts, there has been little change in the number of devices approved for use in pediatric patients. This has often led to devices being adapted for use in children without an appropriate level of evidence, exposing them to inconsistent benefit risk profiles. This health inequity highlights the need for devices that are designed, evaluated, and labelled for pediatric patients. To address these challenges, this collection is being done to survey industry and other key stakeholders in the medical device ecosystem to identify the barriers that prevent product developers from entering the pediatric device market as well as the proper incentives that would motivate them to innovate and sustain within this market.

This survey is a followup to the public meeting that FDA held in August 2018, entitled ''Pediatric Medical Device Development.'' As mandated by section 502(d) of the FDA Reauthorization Act of 2017 (Pub. L. 115–52), the meeting was convened to address several topics, including consideration of ways to: (1) increase FDA assistance to medical device manufacturers in developing devices for pediatric populations that are approved or cleared, and labeled, for their use and (2) identify current barriers to pediatric device development and incentives to address such barriers.

Feedback from this meeting clarified the need to better understand factors influencing suboptimal engagement and participation by diverse innovators in the pediatric medical device space. Information garnered from this survey may help inform strategic plans to optimize existing programs for the needs of pediatric medical device innovators and develop new programs that will support sustained development in this space.

In the **Federal Register** of September 23, 2022 (87 FR 58106), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [2]
Phone Survey	17	1	17	0.5 (30 minutes)	9
Online Survey	56	1	56	1	56
Total					65

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Rounded to the nearest hour.

The targeted groups for this collection of information include representatives from the medical device industry, academia, recipients of funding under section 305 of the Pediatric Medical Device Safety and Improvement Act of 2007 (Pub. L. 110–85; 42 U.S.C. 282 note), and trade organizations, medical provider organizations, organizations and individuals involved with financing and reimbursement associated with medical devices, pediatric healthcare leaders, clinicians who regularly use medical devices in caring for children, and organizations and individuals representing patients and consumers.

Phone survey: Respondents participating in the phone survey will be executives from companies either producing products in pediatrics or from companies that produce products that could be used in pediatrics. Executives will be invited to engage in the 30-minute phone survey.

Online survey: The 1-hour online survey will be administered to leaders within pediatric companies and key decision makers in the pediatric medical device industry (*e.g.,* venture capitalists, banking investors, leaders in children's hospitals and research networks, and pediatric patient advocates).

Dated: January 26, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02057 Filed 1–31–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0246]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Vaccines and Related Biological Products Advisory Committee (VRBPAC). The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on February 28, 2023, from 8:30 a.m. to 5:10 p.m. Eastern Time and on March 1, 2023, from 9 a.m. to 3:50 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. The online web conference meeting will be available at the following links: on February 28, 2023, at: *https://youtu.be/ffmIyeXNOfk;* on March 1, 2023, at: *https://youtu.be/sPbrzgkny3w.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2023–N–0246. The docket will close on February 27, 2023. Either electronic or written comments on this public meeting must be submitted by February 27, 2023. 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 February 27, 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.

Comments received on or before February 20, 2023, will be provided to the committee. Comments received after February 20, 2023, and by February 27, 2023, will be taken into consideration by FDA. In the event that the meeting is canceled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–0246 for ''Vaccines and Related Biological Products Advisory Committee (VRBPAC); Notice of Meeting; Establishment of a Public

Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT: Sussan Paydar or Prabhakara Atreya, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD 20993–0002, 240–506–4946, *CBERVRBPAC@fda.hhs.gov;* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. On February 28, 2023, under Topic 1, the committee will meet in open session to discuss and make recommendations on the safety and effectiveness of ABRYSVO (Respiratory Syncytial Virus Vaccine), manufactured by Pfizer Inc., with a requested indication, in Biologics License Application (BLA) 125769 (STN 125769/0), for active immunization for the prevention of acute respiratory disease and lower respiratory tract disease (LRTD) caused by respiratory syncytial virus in adults 60 years of age and older. On March 1, 2023, under Topic 2, the committee will meet in open session to discuss and make recommendations on the safety and effectiveness of AREXVY (Respiratory Syncytial Virus Vaccine, Recombinant, Adjuvanted), manufactured by GSK, with a requested indication, in BLA 125775 (STN 125775/0), for active immunization for the prevention of LRTD caused by respiratory syncytial virus RSV–A and RSV–B subtypes in adults 60 years of age and older.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the time of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Dockets (see **ADDRESSES**) on or before February 20, 2023, will be provided to the committee. Comments received after February 20, 2023, and by February 27, 2023, will be taken into consideration by FDA. Oral presentations from the public will be scheduled approximately between 1:10 p.m. and 2:10 p.m. Eastern Time on February 28, 2023, and approximately between 12:30 and 1:30 p.m. Eastern Time on March 1, 2023. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, along with their names, email addresses, and direct contact phone numbers of proposed participants, on or before 12 p.m. Eastern Time on February 15, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by 6 p.m. Eastern Time on February 22, 2023.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Sussan Paydar or Prabhakara Atreya (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02096 Filed 1–31–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–P–1785]

Determination That LOTENSIN (Benazepril Hydrochloride) Tablets, 5 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that LOTENSIN (benazepril hydrochloride) tablets, 5 milligrams (mg), were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Nisha Shah, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6222, Silver Spring, MD 20993–0002, 301–796–4455, *Nisha.Shah@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

LOTENSIN (benazepril hydrochloride) tablets, 5 mg, are the subject of NDA 019851, held by Validus Pharmaceuticals LLC, and initially approved on June 25, 1991. LOTENSIN is indicated for the treatment of hypertension to lower blood pressure.

LOTENSIN (benazepril hydrochloride) tablets, 5 mg, are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Aurobindo Pharma Ltd. submitted a citizen petition dated August 3, 2022 (Docket No. FDA–2022–P–1785), under 21 CFR 10.30, requesting that the Agency determine whether LOTENSIN (benazepril hydrochloride) tablets, 5 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that LOTENSIN (benazepril hydrochloride) tablets, 5 mg, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that LOTENSIN (benazepril hydrochloride) tablets, 5 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of LOTENSIN (benazepril hydrochloride) tablets, 5 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list LOTENSIN (benazepril hydrochloride) tablets, 5 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: January 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02101 Filed 1–31–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–2983]

Considerations for the Design and Conduct of Externally Controlled Trials for Drug and Biological Products; 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 ''Considerations for the Design and Conduct of Externally Controlled Trials for Drug and Biological Products.'' FDA is issuing this draft guidance as part of a series of guidance documents under its Real-World Evidence (RWE) Program and to satisfy, in part, a mandate under the Federal Food, Drug, and Cosmetic Act (FD&C Act) to issue guidance about the use of RWE in regulatory decision-making. This draft guidance includes recommendations to sponsors and investigators considering the use of externally controlled trials to provide evidence of the safety and effectiveness of a drug product. The draft guidance also describes considerations related to communicating with FDA and ensuring access by the Agency to data from an externally controlled trial.

DATES: Submit either electronic or written comments on the draft guidance by May 2, 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–2983 for ''Considerations for the Design and Conduct of Externally Controlled Trials for Drug and Biological Products.'' 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 to 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: John Concato, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6346, Silver Spring, MD 20993–0002, 301–796–2500, *john.concato@fda.hhs.gov;* or Diane Maloney, 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 ''Considerations for the Design and Conduct of Externally Controlled Trials for Drug and Biological Products.'' This draft guidance provides recommendations to sponsors and investigators considering the use of externally controlled trials to provide evidence of the safety and effectiveness of a drug product. In an externally controlled trial, outcomes in participants receiving the test treatment according to a protocol are compared to outcomes in a group of people external to the trial who had not received the same treatment.

The draft guidance addresses considerations for the design and analysis of externally controlled trials to study the effectiveness and safety of drugs, including discussion of threats to the validity of trial results from potential bias. Although various sources of data can serve as the control arm in an externally controlled trial, this draft guidance focuses on the use of patient-level data from other clinical trials or from real-world data (RWD) sources, such as registries as well as electronic health records and medical claims. The draft guidance also describes considerations related to communicating with FDA and ensuring access by the Agency to data from an externally controlled trial.

This draft guidance does not address other types of external controls, such as using summary-level estimates instead of patient-level data. This draft guidance does not discuss details of the design and analysis of a natural history study, nor the reliability and relevance of various sources of RWD that could be used in an externally controlled trial. Finally, this draft guidance also does not discuss considerations for using external control data to supplement a control arm in a traditional randomized controlled clinical trial.

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 ''Considerations for the Design and Conduct of Externally Controlled Trials for Drug and Biological Products.'' 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 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; and the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain an electronic version of the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: January 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02094 Filed 1–31–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–0093]

M13A Bioequivalence for Immediate-Release Solid Oral Dosage Forms; International Council for Harmonisation; 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 ''M13A Bioequivalence for Immediate-Release Solid Oral Dosage Forms.'' The draft guidance was prepared under the auspices of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH). The draft guidance describes the scientific and technical aspects of study design and data analysis to support bioequivalence (BE) assessment for orally administered immediate-release solid oral dosage forms, such as tablets, capsules, and granules/powders for oral suspension. The draft guidance is intended to provide globally harmonized scientific recommendations for conducting BE studies during both development and postapproval phases for these products.

DATES: Submit either electronic or written comments on the draft guidance by April 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–2023–D–0093 for ''M13A Bioequivalence for Immediate-Release Solid Oral Dosage Forms.'' 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 (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 draft 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 guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Lei K. Zhang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4724, Silver Spring, MD 20993–0002, 301–796–1635, *Leik.Zhang@fda.hhs.gov.*

Regarding the ICH: Jill Adleberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6364, Silver Spring, MD 20993–0002, 301–796–5259, *Jill.Adleberg@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''M13A Bioequivalence for Immediate-Release Solid Oral Dosage Forms.'' The draft guidance was prepared under the auspices of ICH. ICH has the mission of achieving greater regulatory harmonization worldwide to ensure that safe, effective, high-quality medicines are developed, registered, and maintained in the most resource-efficient manner. By harmonizing the regulatory requirements in regions around the world, ICH guidelines have substantially reduced duplicative clinical studies, prevented unnecessary animal studies, standardized the reporting of important safety information, standardized marketing application submissions, and made many other improvements in the quality of global drug development and manufacturing and the products available to patients.

The six Founding Members of ICH are FDA; the Pharmaceutical Research and Manufacturers of America; the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; and the Japanese Pharmaceutical Manufacturers Association. The Standing Members of the ICH Association include Health Canada and Swissmedic. Additionally, the Membership of ICH has expanded to include other regulatory authorities and industry associations from around the world (refer to *https://www.ich.org/*).

ICH works by involving technical experts from both regulators and industry parties in detailed technical harmonization work and the application of a science-based approach to harmonization through a consensus-driven process that results in the development of ICH guidelines. The regulators around the world are committed to consistently adopting these consensus-based guidelines, realizing the benefits for patients and for industry.

As a Founding Regulatory Member of ICH, FDA plays a major role in the development of each ICH guideline, which FDA then adopts and issues as guidance for industry. FDA's guidance documents do not establish legally enforceable responsibilities. Instead, they describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited.

On December 20, 2022, the ICH Assembly endorsed the draft guideline entitled ''M13A Bioequivalence for Immediate-Release Solid Oral Dosage Forms'' and agreed that the guideline should be made available for public comment. The draft guideline is the product of the Multidisciplinary Expert Working Group (M13) of ICH. Comments about this draft will be considered by FDA and the M13 Expert Working Group.

The draft guidance describes the scientific and technical aspects of study design and data analysis to support BE assessment for orally administered immediate-release solid oral dosage forms such as tablets, capsules, and granules/powders for oral suspension. The draft guidance is intended to provide globally harmonized scientific recommendations for conducting BE studies during both development and postapproval phases that can increase the efficiency of drug development and accelerate the availability of safe and effective orally administered immediate-release solid oral dosage forms.

This draft guidance has been left in the original ICH format. The final guidance will be reformatted and edited to conform with FDA's good guidance practices regulation (21 CFR 10.115) and style before publication. The draft guidance, when finalized, will represent the current thinking of FDA on ''M13A Bioequivalence for Immediate-Release Solid Oral Dosage Forms.'' 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 314.94 for content and format for BE studies submitted under abbreviated new drug applications have been approved under OMB control number 0910–0001. The collections of information for the implementation of improved quality and integrity of the study data approaches pertaining to good clinical practice have been approved under OMB control number 0910–0843.

III. Electronic Access

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

Dated: January 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02106 Filed 1–31–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0109]

Revocation of Four Authorizations of Emergency Use of In Vitro Diagnostic Devices for Detection and/or Diagnosis of COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorizations (EUAs) (the Authorizations) issued to Mammoth Biosciences, Inc. for the SARS–CoV–2 DETECTR Reagent Kit and DETECTR

BOOST SARS–CoV–2 Reagent Kit, to the University of Arizona Genetics Core for Clinical Services for the COVID–19 ELISA pan-Ig Antibody Test, and to ChromaCode, Inc. for the HDPCR SARS–CoV–2 Assay. FDA revoked these Authorizations under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The revocations, which include an explanation of the reasons for each revocation, are reprinted in this document.

DATES: The Authorizations for the SARS–CoV–2 DETECTR Reagent Kit and DETECTR BOOST SARS–CoV–2 Reagent Kit are revoked as of December 15, 2022. The Authorization for the COVID–19 ELISA pan-Ig Antibody Test is revoked as of December 16, 2022. The Authorization for the HDPCR SARS–CoV–2 Assay is revoked as of January 3, 2023.

ADDRESSES: Submit written requests for a single copy of the revocations to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the revocations may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocations.

FOR FURTHER INFORMATION CONTACT: Jennifer Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On August 31, 2020, FDA issued an EUA to Mammoth Biosciences, Inc. for the SARS–CoV–2 DETECTR Reagent Kit, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on November 20, 2020 (85 FR 74346), as required by section 564(h)(1) of the FD&C Act. On January 21, 2022, FDA issued an EUA to Mammoth Biosciences, Inc. for the DETECTR BOOST SARS–CoV–2 Reagent Kit, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on March 22, 2022 (87 FR 16196), as required by section 564(h)(1) of the FD&C Act. On August 31, 2020, FDA issued an EUA to the University of Arizona Genetics Core for Clinical Services for the COVID–19 ELISA pan-Ig Antibody Test, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on November 20, 2020 (85 FR 74346), as required by section 564(h)(1) of the FD&C Act. On June 9, 2020, FDA issued an EUA to ChromaCode, Inc. for the HDPCR SARS–CoV–2 Assay, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on November 20, 2020 (85 FR 74346), as required by section 564(h)(1) of the FD&C Act. Subsequent revisions to the Authorizations were made available on FDA's website. The authorization of a device for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. EUA Revocation Requests

On October 20, 2022, FDA received requests from Mammoth Biosciences, Inc. for the withdrawal of, and on December 15, 2022, FDA revoked, the Authorizations for the SARS–CoV–2 DETECTR Reagent Kit and DETECTR BOOST SARS–CoV–2 Reagent Kit. Because Mammoth Biosciences, Inc. requested FDA withdraw the EUAs for the SARS–CoV–2 DETECTR Reagent Kit and DETECTR BOOST SARS–CoV–2 Reagent Kit, FDA has determined that it is appropriate to protect the public health or safety to revoke these Authorizations. On December 14, 2022, FDA received a request from the University of Arizona Genetics Core for Clinical Services for the withdrawal of, and on December 16, 2022, FDA revoked, the Authorization for the COVID–19 ELISA pan-Ig Antibody Test. Because the University of Arizona Genetics Core for Clinical Services requested FDA withdraw the EUA for the COVID–19 ELISA pan-Ig Antibody Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization. On December 2, 2022, FDA received a request from ChromaCode, Inc., for the revocation of, and on January 3, 2023, FDA revoked, the Authorization for the HDPCR SARS–CoV–2 Assay. Because ChromaCode, Inc. requested FDA revoke the EUA for the HDPCR SARS–CoV–2 Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

III. Electronic Access

An electronic version of this document and the full text of the revocations are available on the internet at *https://www.regulations.gov/*.

IV. The Revocations

Having concluded that the criteria for revocation of the Authorizations under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUAs for Mammoth Biosciences, Inc.'s SARS–CoV–2 DETECTR Reagent Kit and DETECTR BOOST SARS–CoV–2 Reagent Kit, the University of Arizona Genetics Core for Clinical Services's COVID–19 ELISA pan-Ig Antibody Test, and ChromaCode, Inc.'s HDPCR SARS–CoV–2 Assay. The revocations in their entirety follow and provide an explanation of the reasons for each revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

U.S. FOOD & DRUG ADMINISTRATION

December 15, 2022

Janice Chen, PhD
Co-Founder & CTO
Mammoth Biosciences, Inc.
1000 Marina Blvd., Suite 600
Brisbane, CA 94005

Re: Revocation of EUA202365

Dear Dr. Chen:

This letter is in response to the request from Mammoth Biosciences, Inc., received via email on October 20, 2022, that the U.S. Food and Drug Administration (FDA) withdraw the EUA for the SARS-CoV-2 DETECTR Reagent Kit issued on August 31, 2020, and amended on July 7, 2021, and September 23, 2021. Mammoth Biosciences, Inc. indicated that there is no longer a viable market for this SARS-CoV-2 reagent kit and requested that the EUA be withdrawn. FDA understands that as of the date of this letter there will no longer be any SARS-CoV-2 DETECTR Reagent Kits remaining in distribution in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Mammoth Biosciences, Inc. has requested FDA withdraw the EUA for the SARS-CoV-2 DETECTR Reagent Kit, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA202365 for the SARS-CoV-2 DETECTR Reagent Kit, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the SARS-CoV-2 DETECTR Reagent Kit is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Namandjé N. Bumpus, Ph.D.
Chief Scientist
Food and Drug Administration

Cc: Timothy Patno, Mammoth Biosciences, Inc.

December 15, 2022

Janice Chen, PhD
Co-Founder & CTO
Mammoth Biosciences, Inc.
1000 Marina Blvd., Suite 600
Brisbane, CA 94005

Re: Revocation of EUA210625

Dear Dr. Chen:

This letter is in response to the request from Mammoth Biosciences, Inc., received via email on October 20, 2022, that the U.S. Food and Drug Administration (FDA) withdraw the EUA for the DETECTR BOOST SARS-CoV-2 Reagent Kit issued on January 21, 2022. Mammoth Biosciences, Inc. indicated that there is no longer a viable market for this SARS-CoV-2 reagent kit and requested that the EUA be withdrawn. FDA understands that as of the date of this letter there will no longer be any DETECTR BOOST SARS-CoV-2 Reagent Kits remaining in distribution in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Mammoth Biosciences, Inc. has requested FDA withdraw the EUA for the DETECTR BOOST SARS-CoV-2 Reagent Kit, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA210625 for the DETECTR BOOST SARS-CoV-2 Reagent Kit, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the SARS-CoV-2 DETECTR Reagent Kit is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Namandjé N. Bumpus, Ph.D.
Chief Scientist
Food and Drug Administration

Cc: Timothy Patno, Mammoth Biosciences, Inc.

U.S. FOOD & DRUG ADMINISTRATION

December 16, 2022

Taylor Edwards, MSc, Ph.D.
Associate Staff Scientist, Clinical Laboratory Manager
University of Arizona Genetics Core for Clinical Services
Keating Bioresearch Building
1657 E. Helen Street Room 111H
Tucson, AZ 85721

Re: Revocation of EUA201116

Dear Dr. Edwards:

This letter is in response to the request from the University of Arizona Genetics Core for Clinical Services, received via email on December 14, 2022, that the U.S. Food and Drug Administration (FDA) withdraw the EUA for the COVID-19 ELISA pan-Ig Antibody Test issued on August 31, 2020, and amended September 23, 2021. The University of Arizona Genetics Core for Clinical Services indicated that they are no longer offering this as a clinical test service, and it has been removed from their activity menu.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because the University of Arizona Genetics Core for Clinical Services has requested FDA withdraw the EUA for the COVID-19 ELISA pan-Ig Antibody Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA201116 for the COVID-19 ELISA pan-Ig Antibody Test, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the COVID-19 ELISA pan-Ig Antibody Test is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Namandjé N. Bumpus, Ph.D.
Chief Scientist
Food and Drug Administration

January 3, 2023

Vincent Jacquemin
Associate Director of Quality
ChromaCode Inc.
2330 Faraday Avenue Suite 100
Carlsbad, CA 92008

Re: Revocation of EUA200707

Dear Mr. Jacquemin:

This letter is in response to the request from ChromaCode Inc., received via email on December 2, 2022, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the HDPCR SARS-CoV-2 Assay issued on June 9, 2020, amended on September 12, 2020, and September 23, 2021, and reissued on February 14, 2022. ChromaCode Inc. indicated that they are discontinuing the HDPCR SARS-CoV-2 Assay and requested that the EUA be revoked. FDA understands that as of the date of this letter there will no longer be any viable HDPCR SARS-CoV-2 Assay reagents remaining in distribution in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because ChromaCode Inc. has requested FDA revoke the EUA for the HDPCR SARS-CoV-2 Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA200707 for the HDPCR SARS-CoV-2 Assay, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the HDPCR SARS-CoV-2 Assay is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Namandjé N. Bumpus, Ph.D.
Chief Scientist
Food and Drug Administration

Dated: January 26, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02074 Filed 1–31–23; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0908]

Agency Information Collection Activities; Proposed Collection; Comment Request; Submission of Petitions: Food Additive, Color Additive (Including Labeling), Submission of Information to a Master File in Support of Petitions; and Electronic Submission Using Food and Drug Administration Form 3503

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's regulations for submission of petitions, including food and color additive petitions (FAPs and CAPs) (including labeling), submission of information to a master file in support of petitions, and electronic submission using Form FDA 3503.

DATES: Either electronic or written comments on the collection of information must be submitted by April 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 April 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–2020–N–0908 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Submission of Petitions: Food Additive, Color Additive (Including Labeling), Submission of Information to a Master File in Support of Petitions; and Electronic Submission Using Food and Drug Administration Form 3503.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Submission of Petitions: Food Additive, Color Additive (Including Labeling), Submission of Information to a Master File in Support of Petitions; and Electronic Submission Using Form

FDA 3503—21 CFR 70.25, 71.1, and 171.1 and 21 CFR Parts 172, 173, 179, and 180

OMB Control Number 0910–0016—Extension

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 348(a)) provides that a food additive shall be deemed to be unsafe, unless: (1) the additive and its use, or intended use, are in conformity with a regulation issued under section 409 that describes the condition(s) under which the additive may be safely used; (2) the additive and its use, or intended use, conform to the terms of an exemption for investigational use; or (3) a food contact notification submitted under section 409(h) is effective. FAPs are submitted by individuals or companies to obtain approval of a new food additive or to amend the conditions of use permitted under an existing food additive regulation. Section 171.1 of FDA's regulations (21 CFR 171.1) specifies the information that a petitioner must submit in order to establish that the proposed use of a food additive is safe and to secure the publication of a food additive regulation describing the conditions under which the additive may be safely used. Parts 172, 173, 179, and 180 (21 CFR parts 172, 173, 179, and 180) contain labeling requirements for certain food additives to ensure their safe use.

Section 721(a) of the FD&C Act (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f). CAPs are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is already approved. Section 71.1 of the Agency's regulations (21 CFR 71.1) specifies the information that a petitioner must submit to establish the safety of a color additive and to secure the issuance of a regulation permitting its use. FDA's color additive labeling requirements in § 70.25 (21 CFR 70.25) require that color additives that are to be used in food, drugs, cosmetics, or medical devices be labeled with sufficient information to ensure their safe use.

FDA scientific personnel review FAPs to ensure the safety of the intended use of the additive in or on food, or that may be present in food as a result of its use in articles that contact food. Likewise, FDA personnel review CAPs to ensure the safety of the color additive prior to its use in food, drugs, cosmetics, or medical devices.

Respondents may transmit FAP or CAP regulatory submissions in electronic format or paper format to the Office of Food Additive Safety in the Center for Food Safety and Applied Nutrition (CFSAN) using Form FDA 3503. Form FDA 3503 helps the respondent organize their submission to focus on the information needed for FDA's safety review. Form FDA 3503 can also be used to organize information within a master file submitted in support of petitions according to the items listed on the form. Master files can be used as repositories for information that can be referenced in multiple submissions to the Agency, thus minimizing paperwork burden for food and color additive approvals.

We improved the information collection by using the CFSAN Online Submission Module (COSM). COSM provides a real-time user interface process that assists respondents in preparing and making submissions to CFSAN. COSM is a web-based tool that supports electronic submissions, thereby eliminating the need for printing and mailing of paper submissions. COSM is available 24 hours a day and 7 days a week. Further information about COSM, including user instruction, is available on the internet at: *https://www.fda.gov/food/registration-food-facilities-and-other-submissions/cfsan-online-submission-module-cosm.*

Description of Respondents: Respondents are businesses engaged in the manufacture or sale of food, food ingredients, color additives, or substances used in materials that come into contact with food.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR section; or FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours	Total operating and maintenance costs
Submission of Petitions: Color Additive Including Labeling—70.25 and 71.1	2	1	2	1,337	2,674	$5,600
Submission of Petitions: Food Additive Including Labeling—171.1	3	1	3	7,093	21,279	0
Form FDA 3503 [2]	5	1	5	1	5	0
Total	.....	.....	.....	.....	23,958	$5,600

[1] There are no capital costs associated with this collection of information.
[2] Form FDA 3503 is used for both CAPs and FAPs.

We have adjusted our burden estimate, which has resulted in a decrease to the currently approved burden by 1 hour. Our estimate of burden attributable to food additive or color additive petitions is based on our

experience with the information collection, which has not changed since our last review, and reflects the average number of petitions we have received annually over a period of 10 years. The attendant burden we estimate also reflects an industry average, although burden associated with individual petitions may vary depending on the complexity of the petition, and the amount and type of data needed for scientific analysis.

Color additive petitions are subject to fees. The listing fee for a CAP ranges from $1,600 to $3,000, depending on the intended use of the color additive and the scope of the requested amendment. A complete schedule of fees is set forth in 21 CFR 70.19. An average of one Category A and one Category B CAP is expected per year. The maximum CAP fee for a Category A petition is $2,600, and the maximum CAP fee for a Category B petition is $3,000. Because an average of two CAPs are expected per calendar year, the estimated total annual cost burden to petitioners for this startup cost would be less than or equal to $5,600 ((1 × $2,600) + (1 × $3,000) listing fees). There are no capital costs associated with CAPs.

The labeling requirements for food and color additives were designed to specify the minimum information needed for labeling in order that food and color manufacturers may comply with all applicable provisions of the FD&C Act and other specific labeling Acts administered by FDA. Label information does not require any additional information gathering beyond what is already required to assure conformance with all specifications and limitations in any given food or color additive regulation. Label information does not have any specific recordkeeping requirements unique to preparing the label. Therefore, because labeling requirements under § 70.25 for a particular color additive involve information required as part of the CAP safety review process, the estimate for number of respondents is the same for §§ 70.25 and 71.1, and the burden hours for labeling are included in the estimate for § 71.1. Also, because labeling requirements under parts 172, 173, 179, and 180 for particular food additives involve information required as part of the FAP safety review process under § 171.1, the burden hours for labeling are included in the estimate for § 171.1.

Dated: January 25, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02046 Filed 1–31–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–2315]

Early Lyme Disease as Manifested by Erythema Migrans: Developing Drugs for Treatment; 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 ''Early Lyme Disease as Manifested by Erythema Migrans: Developing Drugs for Treatment.'' The purpose of this draft guidance is to assist sponsors in the clinical development of drugs for the treatment of early Lyme disease as manifested by erythema migrans (EM).

DATES: Submit either electronic or written comments on the draft guidance by April 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–2315 for ''Early Lyme Disease as Manifested by Erythema Migrans: Developing Drugs for Treatment.'' 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. 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: Shabnam Naseer, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Avenue, Bldg. 22, Rm. 6239, Silver Spring, MD 20993, 301–796–8539.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Early Lyme Disease as Manifested by Erythema Migrans: Developing Drugs for Treatment.''

The purpose of this draft guidance is to assist sponsors in the clinical development of drugs for the treatment of early Lyme disease as manifested by EM. Specifically, this guidance addresses FDA's current thinking regarding clinical trial design considerations such as trial populations, efficacy endpoints and clinical microbiology considerations.

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 ''Early Lyme Disease as Manifested by Erythema Migrans: Developing Drugs for Treatment.'' 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 contained in 21 CFR part 312 relating to investigational new drug applications have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 relating to new drug applications have been approved under OMB control number 0910–0001. The collections of information contained in 21 CFR part 601 relating to biologics license applications have been approved under OMB control number 0910–0338. The collections of information in 21 CFR part 201 relating to prescription product labeling requirements have been approved under OMB control number 0910–0572.

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/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: January 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02103 Filed 1–31–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0879]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Procedures for the Safe Processing and Importing of Fish and Fishery Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by March 3, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0354. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Procedures for the Safe Processing and Importing of Fish and Fishery Products—21 CFR Part 123

OMB Control Number 0910–0354—Extension

This information collection supports regulations in part 123 (21 CFR part 123), which mandate the application of hazard analysis and critical control point (HACCP) principles to the processing of seafood. HACCP is a preventive system of hazard control designed to help ensure the safety of foods. The regulations were issued under FDA's statutory authority to regulate food safety, including section 402(a)(1) and (4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(1) and (4)). Certain provisions in part 123 require that processors and importers of seafood collect and record information.

The HACCP records compiled and maintained by a seafood processor primarily consist of the periodic observations recorded at selected monitoring points during processing and packaging operations, as called for in a processor's HACCP plan (*e.g.,* the values for processing times, temperatures, acidity, etc., as observed at critical control points). The primary purpose of HACCP records is to permit a processor to verify that products have been produced within carefully established processing parameters (critical limits) that ensure that hazards have been avoided.

HACCP records are normally reviewed by appropriately trained

employees at the end of a production lot or at the end of a day or week of production to verify that control limits have been maintained, or that appropriate corrective actions were taken if the critical limits were not maintained. Such verification activities are essential to ensure that the HACCP system is working as planned. A review of these records during the conduct of periodic plant inspections also permits FDA to determine whether the products have been consistently processed in conformance with appropriate HACCP food safety controls.

Section 123.12 (21 CFR 123.12) requires that importers of seafood products take affirmative steps and maintain records that verify that the fish and fishery products they offer for import into the United States were processed in accordance with the HACCP and sanitation provisions set forth in part 123. These records are also to be made available for review by FDA as provided in § 123.12(c).

The time and costs of these recordkeeping activities will vary considerably among processors and importers of fish and fishery products, depending on the type and number of products involved, and on the nature of the equipment or instruments required to monitor critical control points. The burden estimate in table 1 includes only those collections of information under the seafood HACCP regulations that are not already required under other statutes and regulations. The estimate also does not include collections of information that are a usual and customary part of businesses' normal activities. For example, the tagging and labeling of molluscan shellfish (§ 1240.60 (21 CFR 1240.60)) is a customary and usual practice among seafood processors. Consequently, the estimates in table 1 account only for information collection and recording requirements attributable to part 123.

Description of Respondents: Respondents to this collection of information include processors and importers of seafood.

In the **Federal Register** of August 2, 2022 (87 FR 47214), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section; [2] activity	Number of recordkeepers	Number of records per recordkeeper [3]	Total annual records	Average burden per recordkeeping [4]	Total hours
123.6(a), (b), and (c); Prepare hazard analysis and HACCP plan	50	1	50	16	800
123.6(c)(5); Undertake and prepare records of corrective actions	15,000	4	60,000	0.30 (18 minutes)	18,000
123.8(a)(1) and (c); Reassess hazard analysis and HACCP plan	15,000	1	15,000	4	60,000
123.12(a)(2)(ii); Verify compliance of imports and prepare records of verification activities.	4,100	80	328,000	0.20 (12 minutes)	65,600
123.6(c)(7); Document monitoring of critical control points	15,000	280	4,200,000	0.30 (18 minutes)	1,260,000
123.7(d); Undertake and prepare records of corrective actions due to a deviation from a critical limit.	6,000	4	24,000	0.10 (6 minutes)	2,400
123.8(d); Maintain records of the calibration of process-monitoring instruments and the performing of any periodic end-product and in-process testing.	15,000	47	705,000	0.10 (6 minutes)	70,500
123.11(c); Maintain sanitation control records	15,000	280	4,200,000	0.10 (6 minutes)	420,000
123.12(c); Maintain records that verify that the fish and fishery products they offer for import into the United States were processed in accordance with the HACCP and sanitation provisions set forth in part 123.	4,100	80	328,000	0.10 (6 minutes)	32,800
123.12(a)(2); Prepare new written verification procedures to verify compliance of imports.	41	1	41	4	164
Total					1,930,264

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] These estimates include the information collection requirements in the following sections:
§ 123.16—Smoked Fish—process controls (see § 123.6(b));
§ 123.28(a)—Source Controls—molluscan shellfish (see § 123.6(b));
§ 123.28(c) and (d)—Records—molluscan shellfish (see § 123.6(c)(7)).
[3] Based on an estimated 280 working days per year.
[4] Estimated average time per 8-hour workday unless one-time response.

Based on a review of the information collection since our last OMB approval, we have made no adjustments to our burden estimate. We base this hour burden estimate on our experience with the application of HACCP principles in food processing. Further, the burdens have been estimated using typical small seafood processing firms as a model because these firms represent a significant proportion of the industry. The hour burden of HACCP recordkeeping activities will vary considerably among processors and importers of fish and fishery products, depending on the size of the facility and complexity of the HACCP control scheme (*i.e.,* the number of products and the number of hazards controlled); the daily frequency that control points are monitored and values recorded; and also on the extent that data recording time and cost are minimized by the use of automated data logging technology. The burden estimate does not include burden hours for activities that are a usual and customary part of businesses' normal activities. For example, the tagging and labeling of molluscan shellfish (§ 1240.60) is a customary and usual practice among seafood processors.

Dated: January 26, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02051 Filed 1–31–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0217]

Science Advisory Board to the National Center for Toxicological Research Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Science Advisory Board to the National Center for Toxicological Research. The general function of the committee is to provide advice and recommendations to the Agency on research being conducted at the National Center for Toxicological Research (NCTR). At least one portion of the meeting will be closed to the public.

DATES: The meeting will be held on April 4, 2023, from 9 a.m. to 6:55 p.m. Eastern Time and April 5, 2023, from 9 a.m. to 12:30 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.* The meeting will be webcast both days and will be available at the following link. *https://fda.zoomgov.com/j/1608491479?pwd=cStKYmZUdDB5RjR1YWZCTW1kcDY2dz09.* Passcode: v0W1q#.

FOR FURTHER INFORMATION CONTACT: Donna Mendrick, National Center for Toxicological Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 2208, Silver Spring, MD 20993–0002, 301–796–8892, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATON:

Agenda: On April 4, 2023, the Science Advisory Board Chair will welcome the participants, and the NCTR Director will provide a Center-wide update on scientific initiatives and accomplishments during the past year. The Science Advisory Board will be presented with an overview of the Science Advisory Board Subcommittee Site Visit Report and a response to this review. The Center for Biologics Evaluation and Research, Center for Drug Evaluation and Research, Center for Devices and Radiological Health, Center for Food Safety and Applied Nutrition, Center for Tobacco Products, and the Office of Regulatory Affairs will each briefly discuss their specific research strategic needs and potential areas of collaboration.

On April 5, 2023, there will be updates from the NCTR Research Divisions and a public comment session. Following an open discussion of all the information presented, the open session of the meeting will close so the Science Advisory Board members can discuss personnel issues at NCTR.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: On April 4, 2023, from 9 a.m. to 6:55 p.m. Eastern Time and April 5, 2023, from 9 a.m. to 12:30 p.m. Eastern Time, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 28, 2023. Oral presentations from the public will be scheduled between approximately 2 p.m. to 3 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 20, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 21, 2023.

Closed Committee Deliberations: On April 5, 2023, from 2 p.m. to 3 p.m. Eastern Time, the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). This portion of the meeting will be closed to permit discussion of information concerning individuals associated with the research programs at NCTR.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Donna Mendrick at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02095 Filed 1–31–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0476]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before March 3, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 264–0041, or *PRA@HHS.GOV*. When submitting comments or requesting information, please include the document identifier 0990–0476–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: ASPA COVID–19 Public Education Campaign Market Research.

Type of Collection: Revision.

OMB No. 0990–0476.

Abstract:

The Department of Health and Human Services, Office of the Assistant Secretary for Public Affairs. This submission contains five parts: 1. COVID–19 Current Events Tracker; 2. Foundational Focus Groups/Interviews/Dyads; 3. Copy Testing Surveys; 4. Message Matrix Surveys; and 5. Creative Testing Surveys and Experiments. The original package included items 1–3. We are submitting this revision to add items 4 (Message Matrix Surveys) and 5 (Creative Testing Surveys and Experiments) to this collection. All data collection will be from individuals.

Current Events Tracker: The primary purpose of the COVID–19 Current Events Tracker (CET) survey is to continuously track key metrics of importance to the Campaign, including vaccine confidence, familiarity with and trust in HHS, and the impact of external events on key attitudes and behaviors among U.S. adults. The CET involves weekly data collection over 3 years.

Foundational Focus Groups, Interviews, and/or Dyads: The primary purpose is to collect information to inform the Campaign about audience risk knowledge, perceptions, current behaviors, and barriers and motivators to healthy behaviors (including COVID–19 vaccination), to inform the development of Campaign messages and strategy. Over 3 years, we will conduct up to 20 rounds of data collection.

Copy Testing Surveys: Prior to placing Campaign advertisements in market, ASPA will conduct copy testing surveys to ensure the final Campaign messages have the intended effect on target attitudes and behaviors. The copy testing survey will field for a maximum of 36 waves over 3 years.

Message Matrix Surveys: The purpose of the Messaging Matrix surveys is to evaluate, validate, and prioritize Campaign messages for various target audiences. Findings from these surveys will be used to inform the development of Campaign messages and strategy. ASPA will conduct up to 9 Messaging Matrix survey under this package.

Creative Testing Surveys and Experiments: The purpose of the Creative Testing Surveys and Experiments is to assess participant reactions to various Campaign materials to inform the selection and development of creative concepts, messages, or material format used for campaign outreach to key audiences. ASPA will conduct up to 6 waves of data collection under this package.

Estimated Annualized Burden Table

Current Events Tracker

For the CET we estimate that 1,000 complete respondents × 0.12 hours per complete survey submission = approximately 120 burden hours associated with completing this survey each wave. No separate screening of participants will be required because Ipsos stores panel variables that determine the eligibility of each panel member without the need for a screener instrument. Only eligible panel members will be invited to take the survey. Over 138 total waves, the total burden is estimated to be approximately 16,560 total burden hours.

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Survey Completes: Adults 18+	1,000	1	0.12	120
Total, all Waves (138)	138,000	1	0.12	16,560

Foundational Focus Groups, Interviews, and/or Dyads

For the foundational focus groups, we estimate screening a maximum of 2,500 potential respondents × .09 hours (5 minutes) = 225 hours associated with screening participants during each round. In addition, each round will include a maximum of 108 respondents × 1.5 hours per focus group = 162 burden hours associated with the discussion for each round of focus groups. (Note that the exact burden hours will vary depending on the type of study conducted; these estimates serve as a maximum number of participants/hours because in-depth interviews or dyads would involve fewer participants). Over the course of the Campaign, this will amount to a maximum of 20 rounds of qualitative research, for a total of 7,740 burden hours.

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
FG Screening: Individuals in the reference audience	1,250	1	0.09	112.5

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
FG Screening: Individuals in priority populations	1,250	1	0.09	112.5
FG Participants: Individuals in the reference audience	54	1	1.5	81
FG Participants: Individuals in priority populations	54	1	1.5	81
Total, per round	2,500	1	.155	387.5
Total, all rounds (20)	50,000	1	.155	7,750

Focus group participants are also included in the focus group screening, so are only counted once toward the total number of respondents.
.1548 is approximately 9.3 minutes; it is the weighted average over the screener and interview for all participants.

Copy Testing Surveys

For the copy testing survey, we estimate screening 15,000 potential respondents × .03 hours (2 minutes) = 450 hours associated with screening survey participants during each wave. Note that this is a maximum estimate that may be necessary to find members of particularly small audiences of interest. In addition, we will obtain 1,500 respondents × .33 hours (20 minutes) per submission = 495 hours associated with completed surveys in each wave of Campaign message testing. Over the course of the Campaign, this will amount to a maximum of 36 Waves, for a total of 34,020 burden hours.

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Survey Screener	15,000	1	0.03	450
Survey Completes	1,500	1	0.33	495
Total, one Wave	15,000	1	0.063	945
Total, all Waves (36)	540,000	1	0.063	34,020

Survey completes are also included in the survey screener, so are only counted once toward the total number of respondents.
.063 is approximately 3.8 minutes; it is the weighted average over the screener and survey for all participants.

Message Matrices

Each Message Matrix survey will recruit up to 4,000 respondents. We estimate screening 42,000 potential respondents × 0.03 hours (2 minutes) = 1,400 hours associated with screening survey participants. Note that this is a maximum estimate that may be necessary to find members of particularly small audiences of interest. In addition, we will obtain survey responses from up to 4,000 respondents: 4,000 × 0.33 hours (20 minutes) = 1,333 hours associated with survey completion. Over the course of the Campaign, this will amount to a maximum of 9 rounds of data collection, for a total of 24,600 burden hours.

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Survey Screener	42,000	1	0.03	1,400
Survey Completes: Adults 18+	4,000	1	0.33	1,333
Total, per round	42,000	1	0.065	2,733
Total, all rounds (9)	378,000	1	0.065	24,600

Survey completes are also included in the survey screener, so are only counted once toward the total number of respondents.
.065 is approximately 3.9 minutes; it is the weighted average over the screener and survey for all participants.

Creative Testing Surveys and Experiments

Each Creative Testing Survey or Experiment will recruit up to 3,000 respondents. We estimate screening 42,000 potential respondents × 0.03 hours (2 minutes) = 1,400 hours associated with screening survey participants. Note that this is a maximum estimate that may be necessary to find members of particularly small audiences of interest. In addition, we will obtain survey responses from up to 3,000 respondents: 3,000 × 0.33 hours (20 minutes) = 1,000 hours associated with survey completion. Over the course of the Campaign, this will amount to a maximum of 6 rounds of data collection, for a total of 14,400 burden hours.

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Survey Screener	42,000	1	0.03	1,400
Survey Completes: Adults 18+	3,000	1	0.33	1,000
Total, per round	42,000	1	0.057	2,400
Total, all rounds (6)	252,000	1	0.057	14,400

Survey completes are also included in the survey screener, so are only counted once toward the total number of respondents.
.057 is approximately 3.4 minutes; it is the weighted average over the screener and survey for all participants.

Sum of All Studies

Total Respondents: 1,358,000.

Total Burden Hours: 97,330.

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2023–02108 Filed 1–31–23; 8:45 am]

BILLING CODE 4150–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the Pediatrics Study Section.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Pediatrics Study Section.

Date: March 9, 2023.

Closed: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute, of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2137B, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joanna Kubler-Kielb, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, Bethesda, MD 20892, 301–435–6916, *kielbj@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.nichd.nih.gov/about/org/der/srb,* where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: January 26, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02063 Filed 1–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 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: Genes, Genomes, and Genetics Integrated Review Group; Maximizing Investigators' Research Award A Study Section.

Date: February 27–28, 2023.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesdan Hotel, Tapestry Collection by Hilton, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Mollie Kim Manier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0510, *mollie.manier@nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Neurological, Mental and Behavioral Health Study Section.

Date: February 27–28, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.

Contact Person: Allison Kurti, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007J, Bethesda, MD 20892, (301) 594–1814, *kurtian@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Imaging Technology Development Study Section.

Date: February 27–28, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, (301) 237–9870, *xuguofen@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Promotion in Communities Study Section.

Date: February 27–28, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aubrey Spriggs Madkour, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000C, Bethesda, MD 20892, (301) 594–6891, *madkouras@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Clinical Oncology Study Section.

Date: February 27–28, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Laura Asnaghi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockville Drive, Room 6200, MSC 7804, Bethesda, MD 20892, (301) 443–1196, *laura.asnaghi@nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Molecular Cancer Diagnosis and Classification Study Section.

Date: February 27–28, 2023.

Time: 9:15 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lawrence Ka-Yun Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–435–1719, *ngkl@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetics of Health and Disease Study Section.

Date: February 27–28, 2023.

Time: 9:30 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Christopher Payne, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 2208, Bethesda, MD 20892, 301–402–3702, *christopher.payne@nih.gov*.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Biochemical and Cellular Oncogenesis Study Section.

Date: February 27–28, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jian Cao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (301) 827–5902, *caojn@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–22–056: Research Resource for Human Organs and Tissues.

Date: February 27, 2023.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 26, 2023.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02062 Filed 1–31–23; 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)

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anastasia Marie Donovan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2023–02013 Filed 1–31–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0047]

Port Access Route Study: Approaches to Maine, New Hampshire, and Massachusetts

Correction

In notice document 2022–28482 appearing on pages 83–85 in the issue of Tuesday, January 3, 2023, make the following correction:

1. On page 84, in the first column, in the **DATES** section, in the 5th line, ''February 2, 2022'' should read ''February 2, 2023''.

[FR Doc. C1–2022–28482 Filed 1–31–23; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0095]

National Offshore Safety Advisory Committee; March 2023 Meeting

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The National Offshore Safety Advisory Committee (Committee) will meet to discuss matters relating to activities directly involved with, or in support of, the exploration of offshore mineral and energy resources, to the extent that such matters are within the jurisdiction of the United States Coast Guard. The meeting will be open to the public.

DATES:

Meeting: The Committee will hold a meeting Wednesday, March 1, 2023, from 8 a.m. until 5 p.m. Central Standard Time (CST). Please note the meeting may close early if the Committee has completed its business.

Comments and supporting documents: To ensure your comments are reviewed by Committee members before the meeting, submit your written comments no later than February 15, 2023.

ADDRESSES: The meeting will be held at the Safety Management Systems' conference facility located at 2916 North University Avenue, Lafayette, LA 70507.

Attendees will be required to follow COVID–19 safety guidelines promulgated by the Centers for Disease Control and Prevention (CDC), which may include the need to wear masks. CDC guidance on COVID protocols can be found here: *https://www.cdc.gov/coronavirus/2019-ncov/communication/guidance.html.*

The National Offshore Safety Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodations due to a disability to fully participate, please email Lieutenant Commander Kimberly Gates at *Kimberly.M.Gates@uscg.mil* or call (202) 372–1455 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meeting as time permits, but if you want Committee members to review your comment before the meeting, please submit your comments no later than February 15, 2023. We are particularly interested in comments regarding the topics in the ''Agenda'' section below. We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number [USCG–2023–0095]. Comments received will be posted without alteration at *https://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy and Security notice available on the homepage of *https://www.regulations.gov.* For more about the privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions.

Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Kimberly Gates, Alternate Designated Federal Officer of the National Offshore Safety Advisory Committee, 2703 Martin Luther King Jr Ave. SE, Stop 7509, Washington, DC 20593–7509, telephone 202–372–1455 or *Kimberly.M.Gates@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the *Federal Advisory Committee Act,* (5. U.S.C. 10). The National Offshore Safety Advisory Committee was established on December 4, 2018, by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (Pub. L. 115–282, 132 Stat. 4192), and amended by section 8331 of the *Elijah E. Cummings Coast Guard Authorization Act of 2022* (Pub. L. 116–283). That authority is codified in 46 U.S.C. 15106. The Committee operate under the provisions of the *Federal Advisory Committee Act,* (5 U.S.C. 10), and 46 U.S.C. 15109. The Committee provides advice and recommendations to the Secretary of Homeland Security on matters relating to activities directly involved with, or in support of, the exploration of offshore mineral and energy resources, to the extent that such matters are within the jurisdiction of the United States Coast Guard.

Agenda

The agenda for the March 1, 2023 meeting is as follows:

(1) Call to Order.

(2) Roll call and determination of quorum.

(3) Adoption of previous meeting minutes and agenda.

(4) Installation of new member.

(5) Opening Remarks.

(6) Update from the Shell AUGER Subcommittee.

(7) Update from the Assistance Towing Subcommittee.

(8) New Business.

(9) Public Comment period.

(10) Closing remarks/plans for next meeting.

(11) Adjournment of meeting.

A copy of all meeting documentation will be available at: *https://homeport.uscg.mil/missions/ports-and-waterways/safety-advisory-committees/nosac/organization* no later than February 15, 2023. Alternatively, you may contact Lieutenant Commander Kimberly Gates as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

During the March 1, 2023 meeting, a public comment period will be held from approximately 4:30 p.m. to 5 p.m. Speakers are requested to limit their comments to 3 minutes. Please note that this public comment period may start before 4:30 p.m. if all other agenda items have been covered and may end before 5 p.m. if all of those wishing to comment have done so.

Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to register as a speaker.

Dated: January 25, 2023.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2023–02097 Filed 1–31–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[Docket No. ICEB–2022–0012]

RIN 1653–ZA32

Employment Authorization for Ethiopian F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Crisis in Ethiopia

Correction

In Notice document 2022–26874, appearing on page 76068–76073, in the issue of Monday, December 12, 2022, make the following corrections:

1. On page 76068, in the third column, in the twenty-first line, the text entry ''[DATE]'' is corrected to read ''June 12''.

2. On the same page, in the same column, in the tenth line of footnote 1, the text entry ''[DATE]'' is corrected to read ''June 12''.

3. On page 76070, in the second column, in the tenth line of footnote 17, the text entry ''[date]'' is corrected to read ''June 12''.

4. On page 76071, second column, in the tenth line of footnote 19, the text entry ''[date]'' is corrected to read ''June 12''.

5. On page 76072, second column, in the tenth line of footnote 25, the text entry ''[date]'' is corrected to read ''June 12''.

6. On the same page, in the third column, in the forty-first line, the text entry ''[DATE]'' is corrected to read ''June 12''.

7. On page 76073, in the second column, in the forty-third line, the text entry ''[DATE]'' is corrected to read ''June 12''.

8. On the same page, in the same column, in the tenth line of footnote 31, the text entry ''[date]'' is corrected to read ''June 12''.

[FR Doc. C1–2022–26874 Filed 1–31–23; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6376–N–01]

Announcement of the Housing Counseling Federal Advisory Committee; Notice of Public Meeting

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of Housing Counseling Federal Advisory Committee public meeting.

SUMMARY: This gives notice of a Housing Counseling Federal Advisory Committee (HCFAC) meeting and sets forth the proposed agenda. The HCFAC meeting will be held on Thursday, March 15, 2023. The meeting is open to the public and is accessible to individuals with disabilities.

DATES: The hybrid meeting (virtual and in-person meeting) will be held on Wednesday, March 15, 2023, starting at 1 p.m. Eastern Standard Time (EST).

FOR FURTHER INFORMATION CONTACT: Virginia F. Holman, Housing Program Technical Specialist, Office of Housing Counseling, U.S. Department of Housing and Urban Development, 600 East Broad Street, Richmond, VA 23219; telephone number 540–894–7790 (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.* Individuals may also email *HCFACCommittee@hud.gov* for information.

SUPPLEMENTARY INFORMATION: HUD is convening a hybrid meeting (virtual and in-person meeting) of the HCFAC on Wednesday, March 15, 2023 from 1:00 p.m. to 4:00 p.m. EST. The virtual meeting will be held via ZOOM. The in-person meeting will be held at HUD Headquarters, 451 7th Street SW, Washington, DC 20410. This meeting notice is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. App. 10(a)(2).

Draft Agenda—Housing Counseling Federal Advisory Committee Meeting

Wednesday, March 15, 2023

I. Welcome
II. Presentations and HCFAC Member Discussion
III. Public Comment
IV. Next Steps
V. Adjourn

Registration

The public is invited to attend this 3-hour hybrid meeting (virtual and in-person meeting) using ZOOM for the virtual meeting. Advance registration is required to attend. To register, please visit *https://us06web.zoom.us/webinar/register/WN_z0ICicjkR8Go5vgJAvW_3A* and complete the registration form no later than March 9, 2023. Registration will be closed after March 9, 2023. After submitting the registration form, registrants for the virtual meeting will receive a confirmation email with the meeting link and passcode needed to attend. Registrants asking to attend in-person will receive details about the meeting location and how to access the building If you have any questions about registration, please email *HCFACCommittee@ajantaconsulting.com.*

Public Comments

The public will have an opportunity to give written and oral comments relative to agenda topics for the HCFAC's consideration. Written comments can be provided on the registration form or by emailing *HCFACCommittee@ajantaconsulting.com.* All written comments must be provided by March 9, 2023. Please note, written comments will not be read during the meeting, but will be provided to the HCFAC members for their review.

Oral comments may be provided during the meeting. Comments from the public will be received at the end of the meeting to ensure all agenda items can be completed. Each person providing oral comments will be allocated two minutes. This time will be allocated on a first-come first-served basis by HUD. The meeting registration confirmation will contain additional instructions for providing oral comments, virtually or in-person. The HCFAC will not respond to individual written or oral statements during the meeting but will take all public comments into account in its deliberations.

Meeting Records

Records and documents discussed during the meeting, as well as other information about the work of the HCFAC, will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzvQAAQ.*

Information on the Committee is also available on *hud.gov* at *https://www.hud.gov/program_offices/housing/sfh/hcc* and on HUD Exchange at *https://www.hudexchange.info/programs/housing-counseling/federal-advisory-committee/.*

Julia R. Gordon,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2023–02098 Filed 1–31–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK940000.L14100000. BX0000.223.LXSS001L0100]

Filing of Plats of Survey: Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Official Filing.

SUMMARY: The plats of survey of lands described in this notice are scheduled to be officially filed in the Bureau of Land Management (BLM), Alaska State Office, Anchorage, Alaska. These surveys were executed at the request of the BLM, are necessary for the management of these lands.

DATES: The BLM must receive protests by March 3, 2023.

ADDRESSES: You may buy a copy of the plats from the BLM Alaska Public Information Center, 222 W 7th Avenue, Mailstop 13, Anchorage, AK 99513. Please use this address when filing written protests. You may also view the plats at the BLM Alaska Public Information Center, Fitzgerald Federal Building, 222 W 8th Avenue, Anchorage, Alaska, at no cost.

FOR FURTHER INFORMATION CONTACT: Thomas O'Toole, Chief, Branch of Cadastral Survey, Alaska State Office, Bureau of Land Management, 222 W 7th Avenue, Anchorage, AK 99513; 907–271–4231; *totoole@blm.gov.* People who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the BLM during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands surveyed are:

Copper River Meridian, Alaska

U.S. Survey No. 14550, accepted October 27, 2022, situated in T. 19 S., R. 17 E.
U.S. Survey No. 14551, accepted October 27, 2022, situated in T. 20 S., R. 19 E.
U.S. Survey No. 14555, accepted October 27, 2022, situated in T. 19 S., R. 17 E.

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the State Director for the BLM in Alaska. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. You must file the notice of protest before the scheduled date of official filing for the plat(s) of survey being protested. The BLM will not consider any notice of protest filed after the scheduled date of official filing. A notice of protest is considered filed on the date it is received by the State Director for the BLM in Alaska during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the State Director for the BLM in Alaska within 30 calendar days after the notice of protest is filed.

If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personally identifiable information in a notice of protest or statement of reasons, you should be aware that the documents you submit, including your personally identifiable information, may be made publicly available in their entirety at any time. While you can ask the BLM to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Thomas O'Toole,

Chief Cadastral Surveyor, Alaska.

[FR Doc. 2023–01995 Filed 1–31–23; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035228; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Eastern Washington University, Cheney, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Eastern Washington University has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Eastern Washington University. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Eastern Washington University at the address in this notice by March 3, 2023.

FOR FURTHER INFORMATION CONTACT: Kate Valdez, NAGPRA Coordinator, Eastern Washington University, 214 Showalter Hall, Cheney, WA 99004, telephone (509) 359–3116, email *vvaldez6@ewu.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Eastern Washington University, Cheney, WA. The human remains were removed from Okanogan, Stevens, and Ferry Counties, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Eastern Washington University professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Colville Reservation (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

In 1908, human remains representing, at minimum, two individuals were removed from the town of Winthrop in Okanogan County, WA, by Captain Frank Lord. In 1910, the Burke Museum received the human remains from Captain Lord and accessioned them (Burke Accession #242). In 1992, these human remains were transferred to Eastern Washington University (EWU). In 2007, EWU determined that these

human remains are Native American, based on the identification provided by the donor and most of the osteological evidence identified by physical anthropologists. Human remains belonging to other individuals from this site were published in a **Federal Register** Notice of Inventory Completion on March 15, 2007 and have been repatriated under NAGPRA. According to ethnographic documentation, the Methow Tribe aboriginally occupied the Winthrop area (Miller 1998; Mooney 1896; Ray 1936; Spier 1936). The Methow Tribe is a constituent member of the Confederated Tribes of the Colville Reservation. No known individuals were identified. No associated funerary objects are present.

Possibly in the 1930s, human remains representing, at minimum, one individual were removed from the town of Marcus, near Kettle Falls, in Stevens County, WA, by either the Ball and Dodd Cemetery Relocation Project or the Columbia Basin Archaeological Survey project. The human remains most likely were removed during the construction of Grand Coulee Dam or during several local construction projects in the Marcus vicinity prior and during the Dam's construction. Initially, these human remains were accessioned by the Eastern Washington State Historical Society (EWSHS). On April 3, 1987, they were transferred to EWU. Based on geographical documentation, the human remains of this individual are Native American. Historically, Kettle Falls and the nearby town of Marcus served as an important fishing and trading center for Native Americans (Ruby and Brown 1986:36). Based on expert information presented by a representative of the Confederated Tribes of the Colville Reservation, this site lies within that Indian Tribe's traditional territory. The sx̌ʷýʔłpx (Colville) lived around the Columbia River northward from the mouth of the Spokane River, reaching past Christina Lake in British Columbia. To the east, the sx̌ʷýʔłpx occupied the Colville River Valley, and in the west, their boundaries extended to the Frosty Meadows area. Ethnographic sources identify Kettle Falls as an area associated with either the Colville or the Lakes Tribes or Bands (Kennedy and Bouchard 1998; Mooney 1896; Ray 1936; Spier 1936; Swanton 1952), both of which are among the 12 constituent Tribes that comprise the Confederated Tribes of the Colville Reservation. No known individual was identified. No associated funerary objects are present.

Sometime prior to 1961, human remains representing, at minimum, one individual were removed from the city of Oroville in Okanogan County, WA. Based on a letter found with the human remains, University of Washington Assistant Professor, Dr. Robert Greengo, received the human remains from Mrs. John Harper, an Oroville resident, who had found the human remains in an ash level at least four feet below the surface of the ground. At some unknown date, though likely when Dr. Greengo became curator at the Burke Museum, the human remains were brought to the Burke Museum. In 1992, they were transferred to EWU. Based on geographical documentation and dentition condition, the human remains of this individual are Native American. Ethnographic documentation identifies the Okanogan as aboriginally occupying the drainage system of the Okanogan River in north central Washington and now-adjacent British Columbia (Spier 1938). The Okanogan Tribe is a constituent member of the Confederated Tribes of the Colville Reservation. No known individual was identified. No associated funerary objects are present.

Between 1939 and 1940, human remains representing, at minimum, 15 individuals were removed from multiple sites in the upper Columbia River in Ferry County, WA, by Donald Collier, Alfred E. Hudson, and Arlo Ford as part of an archeological project conducted during the construction of the Grand Coulee Dam and the resulting reservoir, Lake Roosevelt. That project, known variously as ''The Columbia Basin Archaeological Survey'' or the Collier, Hudson, and Ford Project (CHF), was a multi-institutional venture of the EWSHS (now the Northwest Museum of Arts & Culture), the University of Washington, and the State College of Washington (now Washington State University). Multiple federal agencies also were involved, including the Bureau of Reclamation, Bureau of Indian Affairs, Civilian Conservation Corps, and the Works Project Administration (including the National Youth Administration). In 1940, the Eastern Washington State Historical Society became the repository for the project's collections (Accn. 1027). Collier, Hudson, and Ford's work was published by the University of Washington Press, in cooperation with EWSHS and the State College of Washington, in 1942. On April 3, 1987, these human remains were transferred to EWU. Based on the geographical, ethnographic, archeological, and oral traditional information, these human remains are Native American. Ethnographic sources identify the Upper Columbia as an area associated with the Colville and the Lakes Tribes (Kennedy and Bouchard 1998; Mooney 1896; Ray 1936; Spier 1936; Swanton 1952). The Upper Columbia region has been occupied for a millennium, during which the sxʷýʔłpx (Colville) lived on the Columbia River from the mouth of the Spokane River northward to present-day British Columbia. In the east, the sxʷýʔłpx occupied the Colville River Valley, and in the west their boundaries extended to the Frosty Meadows area. The sńʕaýckstx (Lakes) territory centered around the upper Columbia River, possibly reaching as far north as the ''Big Bend'' of the Columbia, north of Revelstoke in British Columbia. The sńʕaýckstx territory also extended east to Trout Lake and the western edge of Kootenay Lake. The southern limit of the sńʕaýckstx land is found near Northport, though many also fished at Kettle Falls. The Colville and the Lakes Tribes are constituent members of the Confederated Tribes of the Colville Reservation. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Eastern Washington University

Officials of the Eastern Washington University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 19 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Colville Reservation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Kate Valdez, NAGPRA Coordinator, Eastern Washington University, 214 Showalter Hall, Cheney, WA 99004, telephone (509) 359–3116, email *vvaldez6@ewu.edu,* by March 3, 2023. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Confederated Tribes of the Colville Reservation may proceed.

Eastern Washington University is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: January 25, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–02060 Filed 1–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035222; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Army Corps of Engineers, Omaha District, Omaha, NE, and the University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Army Corps of Engineers, Omaha District, and the University of Tennessee, Department of Anthropology, have completed an inventory of human remains and have determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Corson County, SD.

DATES: Repatriation of the human remains in this notice may occur on or after March 3, 2023.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO–PMA–C, 1616 Capitol Avenue, Omaha, NE 68102, telephone (402) 995–2674, email *sandra.v.barnum@usace.army.mil* and Dr. Robert Hinde, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2445, email *rhinde@utk.edu* and *vpaa@utk.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the U.S. Army Corps of Engineers, Omaha District. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the U.S. Army Corps of Engineers, Omaha District.

Description

Human remains representing, at minimum, two individuals were removed from Corson County, SD. The human remains were recovered between 1966–1968 at Fort Manuel (39CO5). The site is multicomponent, representing Extended Coalescent, historic trading post, and historic Sioux occupations. No known individuals were identified. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, historical, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the U.S. Army Corps of Engineers, Omaha District, has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Standing Rock Sioux Tribe of North & South Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after March 3, 2023. If competing requests for repatriation are received, the U.S. Army Corps of Engineers, Omaha District, must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The U.S. Army Corps of Engineers, Omaha District, is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: January 25, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–02056 Filed 1–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035224; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Army Corps of Engineers, Omaha District, Omaha, NE, and the University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Army Corps of Engineers, Omaha District, and the University of Tennessee, Department of Anthropology, have completed an inventory of human remains and associated funerary objects and have determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Buffalo County, SD.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after March 3, 2023.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO–PMA–C, 1616 Capitol Avenue, Omaha, NE 68102, telephone (402) 995–2674, email *sandra.v.barnum@usace.army.mil* and Dr. Robert Hinde, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2445, email *rhinde@utk.edu* and *vpaa@utk.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the

National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the U.S. Army Corps of Engineers, Omaha District. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the U.S. Army Corps of Engineers, Omaha District.

Description

Human remains representing, at minimum, five individuals were removed from Buffalo County, SD. The human remains were recovered in 1961 from Sitting Crow Mounds (39BF225), a Woodland and Historic site, likely by Robert Neuman of the Smithsonian's River Basin Survey. No known individuals were identified. The one associated funerary object is one lot of faunal remains.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, historical, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the U.S. Army Corps of Engineers, Omaha District, has determined that:

- The human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- The one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after March 3, 2023. If competing requests for repatriation are received, the U.S. Army Corps of Engineers, Omaha District, must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The U.S. Army Corps of Engineers, Omaha District, is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: January 25, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–02059 Filed 1–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035226; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: San Francisco State University NAGPRA Program, San Francisco, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the San Francisco State University NAGPRA Program intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Sacramento County, CA.

DATES: Repatriation of the cultural items in this notice may occur on or after March 3, 2023.

ADDRESSES: Zay D. Latt, San Francisco State University, 1600 Holloway Avenue, Administration Building 5th Floor, ADM 562C, San Francisco, CA 94132, telephone (415) 405–3545, email *nagpra@sfsu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the San Francisco State University NAGPRA Program. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the San Francisco State University NAGPRA Program.

Description

In 1953, cultural items were removed from archeological site CA–SAC–189 in Sacramento County, CA, by Leonard R. Butler and Harry T. Jones as part of archeological site documentation in an area along the American River. Noting evidence of earlier pothunting and disturbance due to cutting by the American River, during site documentation, Butler and Jones collected material cultural items from these disturbed areas. The items were stored in the San Francisco State College Anthropology Collection and subsequently became a part of the Treganza Anthropology Museum's (TAM) archeological collections at San Francisco State University. At an unknown date, a single test unit of unknown size was excavated at site CA–SAC–189, and in 1959, the material cultural items removed during the excavation were recorded and stored as part of the TAM archeological collections. Upon closure of the TAM in 2012, the items were transferred to the San Francisco State University NAGPRA Program. The 15 unassociated funerary objects are one lot each of green, yellow, brown, and blue tinted glass, one lot of glass fragments, one porcelain vessel fragment, one lot of ''ironstone'' vessel fragments, one lot of earthenware fragments with blue underglaze, one utility ware fragment with black glaze, one lot of square nails, one copper or brass chain, one lot of fancy glass vessel fragments, one pestle,

one cooking rock, and one lot of obsidian.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological information, geographical information, oral tradition, and tribal expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the San Francisco State University NAGPRA Program has determined that:

- The 15 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Chicken Ranch Rancheria of Me-Wuk Indians of California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

If no additional requests are received, repatriation of the cultural items in this notice to Wilton Rancheria may occur on or after March 3, 2023. If competing requests for repatriation are received, the San Francisco State University NAGPRA Program must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The San Francisco State University NAGPRA Program is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR § 10.8, § 10.10, and § 10.14.

Dated: January 25, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–02067 Filed 1–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035225; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Army Corps of Engineers, Omaha District, Omaha, NE, and the University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Army Corps of Engineers, Omaha District and the University of Tennessee, Department of Anthropology (UTK) have completed an inventory of human remains and associated funerary objects and have determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Sioux County, ND and Buffalo, Campbell, Corson, Dewey, Gregory, Hughes, Lyman, Potter, Sully, Stanley, and Walworth Counties, SD.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after March 3, 2023.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO–PMA–C, 1616 Capitol Avenue, Omaha, NE 68102, telephone (402) 995–2674, email *sandra.v.barnum@usace.army.mil* and Dr. Robert Hinde, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2445, email *rhinde@utk.edu* and *vpaa@utk.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the U.S. Army Corps of Engineers, Omaha District. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the U.S. Army Corps of Engineers, Omaha District.

Description

Human remains representing, at minimum, two individuals were removed from Sioux County, ND. In 1947, the University of North Dakota and the State Historical Society of North Dakota co-sponsored archeological work in the upper limits of the Oahe Reservoir, a U.S. Army Corps of Engineers reservoir in North Dakota. Test excavations at the Paul Brave site, also known as the Fort Yates site (32SI4), were included in the work done during this project. The site was investigated a second time in 1955, under the sponsorship of the State Historical Society of North Dakota. The human remains and associated funerary objects removed from the Paul Brave site are currently housed at the University of Tennessee, Knoxville. No known individuals were identified. The one associated funerary object is one lot of burial soil.

Human remains representing, at minimum, one individual were removed from Buffalo County, SD. The human remains were removed from a cache pit at the Twin or Lillian All Arounds Village, 39BF206, in 1986 by the Archeology Lab-Augustana College personnel during improvements to the Jennessee Road. The human remains were initially curated at the South Dakota State Historical Society-Archaeological Research Center (SARC) but are now located at the University of Tennessee, Knoxville (UTK). No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Campbell County, SD. In 1979, human remains belonging to two individuals were found eroding from a cutbank at site 39CA117, the Stranded Squirrel site. Upon discovery, the human remains were removed from the site by Robert Pepperl and transferred to the University of Nebraska, Lincoln. In

1986, they were transferred to SARC, and in 1987 they went to UTK to be inventoried. While UTK returned most of the human remains to SARC that same year, human remains representing one individual were left at UTK. The site was a multi-component site. Ceramic fragments found at the site establish occupation between 1500 CE and 1675 CE. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from site 39WW89 in Walworth County, SD. They were housed at SARC until 1987, when they were transferred to UTK for examination. The human remains of this individual and one lot of burial soil were retained by UTK. Site 39WW89 consists of both Middle Missouri (1000–1500 CE) and Extended Coalescent variants (1500–1675 CE). No known individual was identified. The one associated funerary object is one lot of burial soil.

Human remains representing, at minimum, one individual were removed from Campbell County, SD. The human remains were removed on June 16, 1967, by surface collection at 39CA201, the Locke Creek site. William Bass most likely took the human remains of this individual to UTK when he began working in the Department of Anthropology in 1971. The site dates to ~1500–1675 CE. No known individual was identified. The five associated funerary objects are one lot faunal bone, one lot of ceramics, one lot lithics, one lot shell, and one lot botanicals.

Human remains representing, at minimum, one individual were removed from Corson County, SD. The human remains were removed from the Jake White Bull site (39CO6) and housed at SARC before being transferred to the Department of Anthropology at UTK for inventory sometime between 1987 and 1988. The human remains of this individual and an associated soil sample were retained by UTK. The site dates to ~1217–1297 CE. No known individual was identified. The one associated funerary object is one lot of soil.

Human remains representing, at minimum, two individuals were removed from Corson County, SD. The two individuals were likely part of a commingled burial removed from the Potts Village site (39CO19) in the late 1980s and subsequently stored at South Dakota's State Archaeological Research Center (SARC). In 1988, these human remains were transferred by SARC to UTK for inventory and were retained by UTK. The site is a fortified earth lodge village dating to the Extended Coalescent Period, between 1550 CE and 1675 CE. No known individuals were identified. The 13 associated funerary objects are two lots of burial soil, one lot of lithics, two lots of miscellaneous stone, one lot of ceramics, one lot of botanicals, one lot of worked bone, and five lots of faunal remains.

Human remains representing, at minimum, one individual were removed from Corson County, SD. The human remains were removed from 39CO34, the Red Horse Hawk site, by Timothy Nowak, a Corps of Engineers South Dakota field archeologist, after they reportedly were eroding from the shore. The site was a fortified earth lodge village dating to 1650–1886 CE. This individual was recovered. The human remains of this individual were among a group of human remains from the W. H. Over Museum collection that was transferred to UTK for examination prior to reinterment in 1985. That examination was led by Douglas Owsley, then at LSU, and William Bass of UTK. The human remains of this individual were not returned after examination. No known individual was identified. Six lots of objects salvaged from the site between 1968 and 1970 were housed at UTK. The six associated funerary objects are one lot of ceramics, one lot of lithics, one lot of worked bone, one lot of faunal remains, one lot of shell, and one lot of metal.

Human remains representing, at minimum, five individuals were removed from site 39CO213, the Travis I site, in Corson County, SD. The human remains were housed at SARC before being transferred to UTK for inventory sometime between 1987 and 1988. The human remains of these individuals were retained by UTK. The Travis I site is an earth lodge village located on the left bank of the Missouri River. Radiocarbon dates from the site place occupation between 1069 CE and 1387 CE. No known individuals were identified. The two associated funerary objects are two lots of soil.

Human remains representing, at minimum, two individuals were removed from Dewey County, SD. The human remains were removed from the Molstad Village site (39DW234) in the summer of 1969 by William Bass (Bass was at the University of Kansas at the time). This burial was found eroding from a riverbank 250–300 yards southeast of Molstad Village. The human remains were likely housed at KU until Bass transferred them to UTK in 1971, when he began working in the Department of Anthropology. The site was a fortified earth lodge site whose occupation is thought to date to the mid-1500s CE, or the Extended Coalescent Phase of the Middle Missouri taxonomy. No known individuals were identified. The two associated funerary objects are one lot of lithics and one lot of bone.

Human remains representing, at minimum, one individual were removed from the Scalp Creek site, 39GR1, in Gregory County, SD. These human remains were donated by a South Dakota game warden after having washed out of an area situated about 400.0 feet WNW of the site of earlier excavations conducted in 1941 and 1951. This burial was among a group of Smithsonian Institution River Basin Survey burials the State Historical Society of North Dakota sent to William Bass for examination sometime prior to 1971 (while Bass was still at KU). The site was a stockaded village. Scalp Creek consists of both Late Woodland (800–1200 CE) and Extended Coalescent (1500–1675 CE) components. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the McClure site (39HU7) in Hughes County, SD. (The human remains were marked ''MacClure site,'' but McClure is considered the more likely identification.) These human remains were transferred to UTK, most likely through William Bass (either he transferred them from KU to UTK or he received them after he moved to UTK in 1971). Occupation at the McClure site was considered brief, between approximately 1690 and 1700 CE. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, eight individuals were removed from Hughes County, SD. In 1931, Alfred Bowers removed eleven burials from a previously looted mound at the Bleached Bone site (39HU48) during investigations sponsored by the Logan Museum. Additional investigations were conducted by the Missouri River Basin Project (MRBP) in 1962, during which field crew 10, directed by William Bass, removed an additional 13 burials. Burial and cultural materials obtained by MRBP crews were transferred to the University of Nebraska, Lincoln (UNL) by the end of 1962. The site included stone circles, mounds, and other configurations. Woodland Period (~500 BCE–1000 CE) pottery was reportedly found during the 1962 season. In addition, the presence of a metallic projectile point suggested possible occupation during the Historic Period. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Lyman County, SD. Oscar L. Mallory removed the human remains from 39LM34 in 1964 after they were discovered eroding from the riverbank following flooding of the Fort Randall Reservoir. These human remains were housed at the Midwest Archaeological Center in Lincoln, NE, until they were transferred to SARC in 1986, and then to UTK for analysis in 1987. The human remains of this individual were retained by the UTK Department of Anthropology. Based on the types of objects collected from the site, occupation was dated to the Post-Contact Coalescent variant, between 1675 and 1780 CE. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Iron Nation Village site (39LM222) in Lyman County, SD. In 1967, Donald J. Lehmer, with the Smithsonian River Basin Surveys Project, made a visit to the site following a report that the skeletal remains of one individual had been excavated. These human remains were stored at SARC in Rapid City before being transferred to UTK for inventory sometime between 1987 and 1988. The human remains of this individual were retained by UTK. The site was a large, fortified earth lodge village belonging to the Extended Coalescent period (~1500–1675 CE). No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from Lyman County, SD. In 1961, the human remains were removed from the Pretty Head site (39LM232) by W. W. Caldwell. William Bass likely took them to UTK when he began working in the Department of Anthropology. The Pretty Head site was a fortified village on the west bank of the Missouri River. Occupation at the site was assigned to two phases—sometime between 1100 CE and 1300 CE, during the Grand Detour Phase of the Middle Missouri Tradition, and from 903 CE to 1185 CE, based on a 2-sigma probability range of values. No known individuals were identified. The five associated funerary objects are five lots of faunal remains.

Human remains representing, at minimum, five individuals were removed from Potter County, SD. In the fall of 1962, Richard Weeks of Pierre, SD, excavated and removed the human remains from the Hosterman site (39PO7) after the burials were discovered eroding from the eastern side of the Oahe Reservoir. That same year, Weeks shipped the human remains to William Bass at KU. Bass, in turn, took the human remains to UTK when he began working in the Department of Anthropology in 1971. The village site had a stockade and a fortification ditch and is dated to ~1643 CE, with a 2-sigma probability range of dates from 1450 to 1676 CE. No known individuals were identified. The two associated funerary objects are two lots of faunal remains.

Human remains representing, at minimum, 109 individuals were removed from Sully County, SD. The human remains were removed from 39SL4, the Sully site, by William Bass and crews from the Smithsonian Institution River Surveys (in 1957, 1958, and 1961) and KU (in 1962). Following excavation, the burial remains were transferred to the Smithsonian Institution and examined by Bass, who served as physical anthropologist for the RBS. The human remains of these individuals were obtained by Bass either while he was at the Smithsonian or later, when he was at KU. Bass transferred the human remains to UTK when he began working in the Department of Anthropology in 1971. The Sully site was one of the largest identified Arikara villages and contained four distinct cemeteries. The site dates to 1477–1678 CE. No known individuals were identified. The two associated funerary objects are two lots of faunal remains.

Human remains representing, at minimum, two individuals were removed from the H.P. Thomas site (39ST12) in Stanley County, SD. These human remains could have been removed during investigations in the 1940s and 1950s. Test excavations were undertaken at the site in the summer of 1948 by crews with the Missouri River Basins Survey Project, with subsequent investigations performed by Richard P. Wheeler in 1958. These human remains were sent to William Bass at KU for examination. The only information provided with the transfer was that they were miscellaneous bones from a cache found in a house wall. Bass likely took the human remains of these individuals to UTK when he began working in the Department of Anthropology in 1971. Artifacts recovered from the site date between 950 CE and 1850 CE. No known individuals were identified. The one associated funerary object is one lot of faunal remains.

Human remains representing, at minimum, one individual were removed from Stanley County, SD. The human remains were removed from the Buffalo Pasture Cemetery site (39ST216), likely in 1955 by Vern Willaford. Burials of several individuals were uncovered during fill dirt removal in 1955 and given by Vern Willaford (in charge of the earth moving activity) to Richard P. Wheeler of the Smithsonian Institution's Missouri River Basin Project (RBS). In 1957, William Bass examined the burials from 39ST216, and the human remains of this individual likely belonged to one of the disturbed burials removed by Willaford of the RBS in 1955. Although there is no record concerning a transfer of these human remains to or from UTK, the presence of this individual in the UTK Department of Anthropology collections is likely attributable to Bass. The site was a medium-sized fortified village believed to be dated to the 18th century. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from Walworth County, SD. Between 1979 and 1982, the University of Nebraska, Lincoln, and Augustana College of Sioux Falls, SD, removed human remains from 39WW89, an unnamed site. By 1984, all recovered individuals were stored at SARC. In 1987, they were transferred to UTK for examination. The human remains of these individuals were retained by UTK. The site had considerable time depth (1400–1560 CE) consisting of both Middle Missouri and Extended Coalescent variants of the Plains Village Tradition. No known individuals were identified. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from Walworth County, SD. Between 1970 and 1972. the human remains were removed from 39WW203, the Walth Bay site. The principal investigator was W. Raymond Wood, and the excavations were directed by Carl R. Falk and Stanley A. Ahler under contract to the National Park Service. Sometime after 1970, these human remains were transferred to William Bass. No known individuals were identified. No associated funerary objects are present.

Cultural affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological,

archeological, geographical, historical, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the U.S. Army Corps of Engineers, Omaha District has determined that:

- The human remains described in this notice represent the physical remains of 152 individuals of Native American ancestry.
- The 41 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after March 3, 2023. If competing requests for repatriation are received, the U.S. Army Corps of Engineers, Omaha District must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The U.S. Army Corps of Engineers, Omaha District is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: January 25, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–02066 Filed 1–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035229; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Oregon State University NAGPRA Office, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Oregon State University NAGPRA Office (acting in place of the Oregon State University Anthropology Department) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Benton, Clatsop, and Linn Counties in Oregon.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after March 3, 2023.

ADDRESSES: Dawn Marie Alapisco, Oregon State University NAGPRA Office, 106 Gilkey Hall, Corvallis, OR 97331, telephone (541) 737–4075, email *dawnmarie.alapisco@oregonstate.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Oregon State University NAGPRA Office. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Oregon State University NAGPRA Office.

Description

In 1970, human remains representing, at minimum, one individual were removed from Benton County, OR, by Oregon State University (OSU) field crews under the supervision of Dr. Wilbur A. Davis, prior to destruction due to a creek channel clearing project. No known individual was identified. No associated funerary objects are present.

In 1973 and 1974, human remains representing, at minimum, two individuals were removed from Benton County, OR. The Flat Creek site was excavated for the Natural Resources Conservation Service (NRCS) in 1973, and for Linn-Benton Community College (as a field school led by Ina Fargher) in 1974. No known individuals were identified. The 12 associated funerary objects are two lots of lithics, eight beads, one digging stick handle, and one ball.

In the early 1990s, human remains representing, at minimum, one individual were removed from Benton County, OR. A farmer in the Kings Valley area was digging a watering pond when he encountered what appeared to be ancient animal bones. An OSU archeologist was contacted to examine the bones. A mastodon vertebra yielded a radiocarbon date of approximately 11,000 BP. Subsequent work at the site encountered a partial human humerus. No known individual was identified. No associated funerary objects are present.

In the late 1970s, human remains representing, at minimum, two individuals were removed from the Palmrose site near Seaside, in Clatsop County, OR, by an unnamed instructor at Clatsop Community College (CCC). The instructor has long since left the employ of CCC, and CCC no longer has any record of the excavation. The project encountered a burial. Initially, the OSU Anthropology Department took custody of the human skeletal remains. Subsequently, it took control of the human remains. No known individuals were identified. No associated funerary objects are present.

In 1979, human remains representing, at minimum, five individuals were removed from Linn County, OR. Marty Rosenson, an archeology instructor at Linn Benton Community College (LBCC), performed an archeological survey at a Kalapuya mound on private property near Tangent at the request of the landowner. When Rosenson left the college in 1988, he took all his field notes and documentation with him. In April of 1990, LBCC transferred control of the items removed by Rosenson to OSU Anthropology. No known individuals were identified. The 327 associated funerary objects are 177 lots of lithic material, 126 lots of faunal bone, 14 projectile points, four bird points, one lot of charcoal, one stone, one pestle, one ceramic fragment, one worked bone, and one shell fragment.

In 1973, human remains representing, at minimum, four individuals were

removed from Davidson, Little Muddy Creek, in Linn County, OR, by Dr. Wilbur A. Davis of Oregon State University, and C. Melvin Aikens and Otto E. Henrickson of the University of Oregon under a contract with the U.S. Department of the Interior. No known individuals were identified. The eight associated funerary objects are one dentalia purse, one bone whistle, one awl, one awl fragment, one spoon and handle, one bone tool, one animal claw, and one clay marble lot.

In 1972, human remains representing, at minimum, four individuals were removed from a site near Scio in Linn County, OR, by the OSU Anthropology Department. The burials were excavated at the request of the private landowner. One of the burials had been vandalized by the backhoe crew, but the other burials were intact and were excavated under controlled conditions. An estimated burial date sometime between A.D. 1845 and 1853 is based on associated burial objects and documented Euro-American settlement in the Scio area. Some of the items taken by the backhoe crew were transferred to the OSU Anthropology Department. No known individuals were identified. The 27 associated funerary objects are three lots of dentalia beads, two lots of shell fragments, two lots of metal fragments, two lots of copper tubes, one lot of decorated hide strips, one screw, one lot of metal bucket scraps, one gunflint, one metal hoop, one lot of glass beads, one lot of lithic flakes, one lithic core, one lot of nail fragments, one worked wood wedge, one lot of flat triangular copper pendants, one ran pendant, one ran, one lot of musket balls, one lot of wood firearm fragments, one lot of cloth and hide fragments, one lot of wax casts from burials, and one lot of buttons.

In June of 1955, human remains representing, at minimum, two individuals were removed from a site near Tangent in Linn County, OR, by amateur excavators. At an unknown date the human remains were transferred to the Oregon State Police (OSP), along with information concerning the approximate date and location of the excavations. In September of 1989, the OSU Anthropology Department received the ancestral human remains from the Oregon State Police. No known individuals were identified. The one associated funerary object is an obsidian flake.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, biological, geographical, historical, kinship, and linguistic.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Oregon State University NAGPRA Office has determined that:

- The human remains described in this notice represent the physical remains of 21 individuals of Native American ancestry.
- The 375 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Confederated Tribes of Siletz Indians of Oregon (*previously* listed as Confederated Tribes of the Siletz Reservation) and the Confederated Tribes of the Grand Ronde Community of Oregon.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES.** Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after March 3, 2023. If competing requests for repatriation are received, the Oregon State University NAGPRA Office must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Oregon State University NAGPRA Office is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: January 25, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–02065 Filed 1–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035227; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: San Francisco State University NAGPRA Program, San Francisco, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the San Francisco State University NAGPRA Program intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Colusa County, CA.

DATES: Repatriation of the cultural items in this notice may occur on or after March 3, 2023.

ADDRESSES: Zay D. Latt, San Francisco State University NAGPRA Program, 1600 Holloway Avenue, Administration Building 5th Floor, ADM 562C, San Francisco, CA 94132, telephone (415) 405–3545, email *nagpra@sfsu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the San Francisco State University NAGPRA Program. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the San Francisco State University NAGPRA Program.

Description

In 1963, one cultural item was removed from archeological site CA–COL–25 in Colusa County, CA, by San Francisco State College archeologists. The site was documented by Dr. Adan E. Treganza of San Francisco State College as part of a broader survey project undertaken during 1963–1965, prior to construction of the Tehama-Colusa Canal. The cultural item was housed at San Francisco State College, which is now San Francisco State University, following completion of the survey project. The object of cultural patrimony is a limestone or basalt core.

Also in 1963, as part of the same Tehama-Colusa Canal survey project, one cultural item was removed from archeological site CA–COL–27 in Colusa County, CA. The object of cultural patrimony is one lot of obsidian items.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, geographical, and tribal expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the San Francisco State University NAGPRA Program has determined that:

- The two cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Yocha Dehe Wintun Nation, California (*previously* listed as Rumsey Indian Rancheria of Wintun Indians of California).

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after March 3, 2023. If competing requests for repatriation are received, the San Francisco State University NAGPRA Program must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The San Francisco State University NAGPRA Program is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: January 25, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–02058 Filed 1–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035219; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the American Museum of Natural History (''AMNH'' or ''Museum'') has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from: an unknown locale in NJ; Bergen County, NJ; Gloucester County, NJ; Middlesex County, NJ; Morris County, NJ; either Bergen County, NJ or Rockland County, NY; Bronx County, NY; either Bronx County or Westchester County, NY; Dutchess County, NY; New York County, NY; Orange County, NY; Ulster County, NY; and Westchester County, NY.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after March 3, 2023.

ADDRESSES: Nell Murphy, American Museum of Natural History, 200 Central Park West, New York, NY 10024, telephone (212) 769–5837, email *nmurphy@amnh.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the AMNH. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the AMNH.

Description

In an unknown year, human remains with an embedded arrowhead representing, at minimum, one individual were removed from an unknown locale in New Jersey by an unknown collector. In 1941, the Museum acquired these human remains from Albert L. Lane as a gift and accessioned them that same year.

On June 21, 1936, human remains representing, at minimum, one individual were removed from Bergen County, NJ, by C.K. Nicholas. In 1937, the Museum acquired these human remains as a gift from Mr. Harvey O. Havermeyer and accessioned them that same year.

In possibly 1880 or 1888, human remains representing, at minimum, one individual were removed from Gloucester County, NJ, by Herbert G. Chase. In 1938, the Museum acquired these human remains as a gift from Mr. A. LA Motte and accessioned them that same year.

In 1907, human remains representing, at minimum, one individual were removed from Middlesex County, NJ, by Alanson B. Skinner as part of an expedition. The Museum accessioned these human remains that same year.

Around 1904, human remains representing, at minimum, one individual were removed from Morris County, NJ, by Mr. C. L. Jellinghaus, who gifted them to the Museum in 1944. The Museum accessioned these human remains that same year.

In an unknown year, human remains representing, at minimum, one individual were removed from either Bergen County, NJ or Rockland County, NY, by Works Progress Administration (WPA) workers. In 1938, the Museum acquired these human remains as a gift from an anonymous source and accessioned them that same year.

In an unknown year, human remains representing, at minimum, four individuals were removed from Bronx County, NY, possibly by Mr. J.B. James, Jr. In 1895, the Museum acquired these human remains and accessioned them that same year. The four associated funerary objects are four animal bone fragments.

Likely in 1916, human remains representing, at minimum, one individual were removed from either Bronx County or Westchester County, NY, by Mr. Grant Madison who gifted them to the Museum in 1916. The Museum accessioned these human remains that same year.

On an unknown date, human remains representing, at minimum, one individual were removed from Bronx County, NY, by an unknown collector. In 1923, the Museum acquired these human remains as a gift from Mr. Frank S. Parker and accessioned them that same year.

In 1882, human remains representing, at minimum, 12 individuals were removed from Dutchess County, NY, by Mr. Henry Booth. In 1908, the Museum acquired these human remains as a gift from Mr. Henry Booth and accessioned them that same year.

In an unknown year, human remains representing, at minimum, four individuals were removed from Dutchess County, NJ, by an unknown collector. In 1908, the Museum acquired these human remains as a gift from Mr. Henry Booth and accessioned them that same year.

In either 1907 or 1908, human remains representing, at minimum, one individual were removed from New York County, NY, by Mr. Reginald P. Bolton. In 1910, the Museum purchased these human remains from Mr. Bolton and accessioned them that same year.

In either 1907 or 1908, human remains representing, at minimum, one individual were removed from New York County, NY, by Mr. Reginald P. Bolton and W.L. Calver. In 1910, the Museum purchased these human remains from Mr. Bolton and accessioned them that same year.

In an unknown year, human remains representing, at minimum, one individual were removed from New York County, NY, by an unknown collector. The museum acquired these human remains on an unknown date.

On an unknown date, human remains representing, at minimum, one individual were removed from New York County, NY, by an unknown collector. In 1935, the Museum acquired these human remains as a gift from Mr. John King and accessioned them that same year.

On an unknown date, human remains representing, at minimum, two individuals were removed from New York County, NY, by an unknown collector. In 1919, the Museum acquired these human remains as a gift from Mr. Alex Johnson and accessioned them that same year.

In June of 1962, human remains representing, at minimum, two individuals were removed from Orange County, NY, by Mr. Ben Johnson. In 1962, the Museum acquired these human remains from Mr. Johnson as a gift and accessioned them that same year.

On an unknown date, human remains representing, at minimum, two individuals were removed from Orange County, NY, by Mr. P.R. Sleight. In 1881, the Museum acquired these human remains from Mr. Sleight as a gift and accessioned them that same year.

In 1899, human remains representing, at minimum, one individual were removed from Ulster County, NY, by Mr. J.O. Martin, who gave them to Mr. Henry Booth that same year. In 1908, the Museum acquired these human remains as a gift from Mr. Booth and accessioned them that same year.

In 1899, human remains representing, at minimum, one individual were removed from Westchester County, NY, by Mr. M. Raymond Harrington. In 1899, the Museum acquired these human remains as a gift and accessioned them that same year. The six associated funerary objects are one lot of animal bones, one piece of deer antler, one flint scraper, one lot of oyster shells, one cut bone piece, and one lot of charcoal and nut pieces.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, geographical, and historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the AMNH has determined that:

- The human remains described in this notice represent the physical remains of 40 individuals of Native American ancestry.
- The 10 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after March 3, 2023. If competing requests for repatriation are received, the AMNH must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The AMNH is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: January 25, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–02064 Filed 1–31–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–388–389 and 391 and 731–TA–817, 818, and 821 (Fourth Review)]

Cut-to-Length Carbon-Quality Steel Plate (CTL plate) From India, Indonesia, and South Korea; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing duty orders and antidumping duty orders on CTL plate from India, Indonesia, and South Korea 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 February 1, 2023. To be assured of consideration, the deadline for responses is March 3, 2023. Comments on the adequacy of responses may be filed with the Commission by April 13, 2023.

FOR FURTHER INFORMATION CONTACT: Tyler Berard (202–205–3354), 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 10, 2000, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of CTL plate from India, Indonesia, and Korea (65 FR 6585 and 6587). Following first five-year reviews by Commerce and the Commission, effective December 6, 2005, Commerce issued a continuation of the antidumping and countervailing duty orders on CTL plate from India, Indonesia, and Korea (70 FR 72607). Following the second five-year reviews by Commerce and the Commission, effective January 4, 2012, Commerce issued a continuation of the antidumping and countervailing duty orders on imports of CTL plate from India, Indonesia, and Korea (77 FR 264). Following the third five-year reviews by Commerce and the Commission, effective March 12, 2018 (83 FR 10672), Commerce issued a continuation of the antidumping and countervailing duty orders on CTL plate from India, Indonesia, and South Korea. 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 reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are India, Indonesia, and South Korea.

(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, full first, expedited second, and full third five-year review determinations, the Commission defined the *Domestic Like Product* as all domestically produced CTL plate that were coextensive with Commerce's scope description, including grade X–70 plate, micro-alloy steel plate, and plate cut from coils.

(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, full first, expedited second, and full third five-year review determinations, the Commission defined the Domestic Industry as all producers of CTL plate, including processors.

(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 March 3, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is April 13, 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. 23–5–556, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/investigations/import_injury,* where one can ''Access responses to Notice of Institution (NOI) worksheets for five-year reviews (for active investigations)'' 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 these proceedings by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty orders and the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in 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* 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 2022, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022(report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 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: January 27, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–02080 Filed 1–31–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–461 (Fifth Review)]

Gray Portland Cement and Cement Clinker From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on gray portland cement and cement clinker from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

States within a reasonably foreseeable time.

Background

The Commission instituted this review on June 1, 2022 (87 FR 33210) and determined on September 6, 2022, that it would conduct an expedited review (87 FR 78995, December 23, 2022).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on January 26, 2023. The views of the Commission are contained in USITC Publication 5401 (January 2023), entitled *Gray Portland Cement and Cement Clinker from Japan: Investigation No. 731–TA–461 (Fifth Review).*

By order of the Commission.

Issued: January 26, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–02008 Filed 1–31–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–895 (Fourth Review)]

Pure Granular Magnesium From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on pure granular magnesium 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 February 1, 2023. To be assured of consideration, the deadline for responses is March 3, 2023. Comments on the adequacy of responses may be filed with the Commission by April 13, 2023.

FOR FURTHER INFORMATION CONTACT: Ahdia Bavari (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 19, 2001, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of pure magnesium in granular form from China (66 FR 57396). Following the first five-year reviews by Commerce and the Commission, effective March 26, 2007, Commerce issued a continuation of the antidumping duty order on imports of pure magnesium in granular form from China (72 FR 14076). Following the second five-year reviews by Commerce and the Commission, effective October 17, 2012, Commerce issued a continuation of the antidumping duty order on imports of pure magnesium in granular form from China (77 FR 63787). Following the third five-year reviews by Commerce and the Commission, effective March 12, 2018, Commerce issued a continuation of the antidumping duty order on imports of pure magnesium in granular form from China (83 FR 10676). The Commission is now conducting a fourth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)) to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined one *Domestic Like Product*—pure magnesium that included both granular magnesium and magnesium ingot. Two Commissioners defined the *Domestic Like Product* differently in the original determination. They found two *Domestic Like Products* corresponding to granular pure magnesium and pure magnesium ingot. In its expedited first, second, and third five-year review determinations, the Commission found one *Domestic Like Product* to include primary and secondary pure and alloy magnesium whether in ingot or granular form. One Commissioner defined the *Domestic Like Product* differently in the expedited first five-year review, instead finding that pure magnesium and alloy magnesium (including secondary magnesium) were separate *Domestic Like Products.* For purposes of responding to the items requested in this notice, please provide information based on the single *Domestic Like Product* the Commission defined in the prior five-year review: pure and alloy magnesium, including primary and secondary magnesium and cast and granular magnesium.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of pure magnesium, including grinding operations. One Commissioner defined the *Domestic Industry* differently in the original determination (*i.e.,* not including grinders), and two Commissioners defined two separate *Domestic Industries* (*i.e.,* domestic producers of granular pure magnesium and domestic producers of pure magnesium ingot, including grinders). The Commission also found that appropriate circumstances existed to exclude one firm from the *Domestic Industry*. In its expedited first, second, and third five-year review determinations, the Commission defined the *Domestic Industry* as domestic producers of pure and alloy magnesium, including primary and secondary magnesium, and magnesium in ingot and granular form. The Commission also included grinders in the *Domestic Industry* producing

magnesium in its first, second, and third five-year review determinations. One Commissioner defined the *Domestic Industry* differently in the first five-year review, instead finding that grinders were not included in the *Domestic Industry.* Another Commissioner defined the *Domestic Industry* differently in the first five-year review, instead finding that there was one *Domestic Industry* composed of the domestic producers of pure magnesium whether in ingot or granular form, including grinders. For purposes of responding to the items requested in this notice, please provide information based on the single *Domestic Industry* the Commission defined in the prior five-year review: all domestic producers, including grinders, of pure and alloy magnesium, including primary and secondary magnesium, and magnesium in ingot and granular form.

(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 March 3, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is April 13, 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. 23–5–559, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b))

in making its determination in the review.

Information to be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/investigations/import_injury,* where one can ''Access responses to Notice of Institution (NOI) worksheets for five-year reviews (for active investigations)'' and download and complete the ''NOI worksheet'' Excel form, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 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 2022, except as noted (report quantity data in metric tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in metric tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in metric tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in 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 2022, 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: January 27, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–02079 Filed 1–31–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–442 and 731–TA–1095–1096 (Third Review)]

Lined Paper School Supplies From China and India; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing duty order and the antidumping duty orders on lined paper school supplies from China and India 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 February 1, 2023. To be assured of consideration, the deadline for responses is March 3, 2023. Comments on the adequacy of responses may be filed with the Commission by April 13, 2023.

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 proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 28, 2006, the Department of Commerce (''Commerce'') issued a countervailing duty order on certain lined paper school supplies from India and antidumping duty orders on certain lined paper school supplies from China and India (71 FR 56949). On April 14, 2011, Commerce amended in part the antidumping duty order on subject imports from India (76 FR 20954). Following the first five-year reviews by Commerce and the Commission, effective August 31, 2012, Commerce issued a continuation of the countervailing duty order on imports of certain lined paper school supplies from India and the antidumping duty orders on imports of certain lined paper school supplies from China and India (77 FR 53172). Following the second five-year reviews by Commerce and the Commission, effective March 6, 2018, Commerce issued a continuation of the countervailing duty order on imports of certain lined paper school supplies from India and the antidumping duty orders on imports of certain lined paper school supplies from China and India (83 FR 9479). The Commission is now conducting third 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 reviews 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 review, as defined Commerce.

(2) The *Subject Countries* in these reviews are China and India.

(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, and expedited second five-year reviews, the Commission found one *Domestic Like Product* consisting of all lined paper products, regardless of dimension.

(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 full first five-year reviews, the Commission found one *Domestic Industry* consisting of all domestic producers of lined paper products. The Commission also found during the original investigations that circumstances were appropriate to exclude two domestic producers, American Scholar and CPP, from the *Domestic Industry* under the related parties provision. In the full first five-year reviews and second expedited reviews, the Commission found that appropriate circumstances did not exist to exclude U.S. producers from the *Domestic Industry.*

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including

industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 3, 2023. 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 April 13, 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. 23–5–558, 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 at *https://usitc.gov/investigations/import_injury,* where one can ''Access responses to Notice of Institution (NOI) worksheets for five-year reviews (for active investigations)'' and download and complete the ''NOI worksheet'' Excel form, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty order and the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2016.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in pieces 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 2022 (report quantity data in pieces 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 2022 (report quantity data in pieces 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: January 27, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–02082 Filed 1–31–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–579–580 and 731–TA–1369–1372 (Review)]

Fine Denier Polyester Staple Fiber From China, India, South Korea, and Taiwan; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing duty orders and the antidumping duty orders on fine denier polyester staple fiber (PSF) from China, India, South Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted February 1, 2023. To be assured of consideration, the deadline for responses is March 3, 2023. Comments on the adequacy of responses may be filed with the Commission by April 13, 2023.

FOR FURTHER INFORMATION CONTACT: Charles Cummings (202–708–1666), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On March 16, 2018, the Department of Commerce (''Commerce'') issued countervailing duty orders on imports of fine denier polyester staple fiber from China and India (83 FR 11681). On July 20, 2018, the Department of Commerce (''Commerce'') issued antidumping duty orders on imports of fine denier polyester staple fiber from China, India, South Korea, and Taiwan (83 FR 34545). The Commission is conducting these 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 reviews or expedited reviews. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China, India, South Korea, and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined the *Domestic Like Product* as all domestically produced fine denier polyester staple fiber that corresponds to Commerce's scope description.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of fine denier PSF.

(5) The *Order Date* is the date that the countervailing duty orders under review became effective and the antidumping duty orders under review became effective. In these reviews, the countervailing duty orders *Order Date* is March 16, 2018, while the antidumping duty orders *Order Date* is July 20, 2018.

(6) 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 March 3, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is April 13, 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. 23–5–557, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/investigations/import_injury,* where one can ''Access responses to Notice of Institution (NOI) worksheets for five-year reviews (for active investigations)'' 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 countervailing duty orders and the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in

§ 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(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 2022, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping 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 2022 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping 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* since the *Order Date,* 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: January 27, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–02081 Filed 1–31–23; 8:45 am]

BILLING CODE 7020–02–P

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Account; Notice of Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the Actuarial Advisory Committee will hold a virtual meeting on February 24, 2023, at 11:30 a.m. (Central Standard Time),

on the conduct of the 29th Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the assumptions to be used in the 29th Actuarial Valuation. A report containing recommended assumptions and the experience on which the recommendations are based will have been sent by the Chief Actuary to the Committee before the meeting.

The virtual meeting will be open to the public. Persons wishing to submit written statements, make oral presentations, or attend the meeting should address their communications or notices to Patricia Pruitt (*Patricia.Pruitt@rrb.gov*) so that information on how to join the virtual meeting can be provided.

Dated: January 27, 2023.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2023–02077 Filed 1–31–23; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34821]

Notice of Applications for Deregistration

January 27, 2023.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of January 2023. A copy of each application may be obtained via the Commission's website by searching for the applicable file number listed below, or for an applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on February 21, 2023, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

BNY Mellon Alcentra Opportunistic Global Credit Income Fund [File No. 811–23651]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On November 28, 2022, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $1,500 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Date: The application was filed on December 2, 2022.

Applicant's Address: c/o BNY Mellon Investment Adviser, Inc., 240 Greenwich Street, New York, New York 10286.

Emles Trust [File No. 811–23431]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 28, 2022, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $73,420 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Dates: The application was filed on December 27, 2022.

Applicant's Address: Kimberly.Versace@thompsonhine.com.

Invested Portfolios [File No. 811–10431]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 7, 2022, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $14,603 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on December 29, 2022.

Applicant's Address: ebrody@stradley.com, jkopcsik@stradley.com.

Western Asset Middle Market Income Fund Inc. [File No. 811–22582]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 21, 2022, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $37,500 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on December 28, 2022.

Applicant's Address: George.hoyt@franklintempleton.com.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–02110 Filed 1–31–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96753; File No. SR–NYSE–2023–07]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Rule 4120

January 26, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 24, 2023, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 4120 (Regulatory Notification and Business Curtailment) to correct a cross-reference in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

subsections (a)(1)(C) and (c)(1)(C). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 4120 to correct a cross-reference in subsections (a)(1)(C) and (c)(1)(C).

NYSE Rules 4120(a)(1)(C) and 4120(c)(1)(C) require member organizations to notify the Exchange if its net capital falls below the level specified in Securities Exchange Act (''SEA'') Rule 17a–11(c)(2). The correct cross reference in both rules should be to SEA Rule 17a–11(b)(2). A recent amendment to SEA Rule 17a–11 resulted in a numbering change, and so what was previously SEA Rule 17a–11(c)(2) is now SEA 17a–11(b)(2).[3] The Exchange accordingly proposes to correct the cross-reference in NYSE Rules 4120(a)(1)(C) and 4120(c)(1)(C) by replacing SEA Rule 17a–11(c)(2) with SEA Rule 17a–11(b)(2).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[4] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change to NYSE Rules 4120(a)(1)(C) and 4120(c)(1)(C) to correct a cross-reference to a previously renumbered subsection would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed change is designed to update an external rule reference. The Exchange believes that member organizations would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules. The Exchange further believes that the proposed amendment would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[5] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather concerned with making a correction to Exchange rules. Since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to correct promptly its rule numbering in order to alleviate potential investor or market participant confusion and add clarity to its rules. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

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[3] *See* Securities Exchange Act Release No. 87005, 84 FR 68550 (December 16, 2019) (Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(8).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2023–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2023–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2023–07 and should be submitted on or before February 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96752; File No. SR–MIAX–2023–01]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 518, Complex Orders

January 26, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 19, 2023, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 518, Complex Orders.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 518, Complex Orders, to (i) adopt definitions for the terms ''conforming ratio,'' and ''non-conforming ratio;'' (ii) amend the current definition of a complex order to incorporate the proposed conforming and non-conforming ratio definitions; (iii) adopt new subsection (v) to Exchange Rule 518(c)(1) to describe the processing of a complex order with a non-conforming ratio; (iv) amend Exchange Rule 518(c)(2)(ii) to distinguish icMBBO protection for complex orders with conforming ratios and complex orders with non-conforming ratios; and (v) make minor clarifying edits throughout Exchange Rule 518 to distinguish order handling of complex orders with conforming ratios. Additionally, the Exchange proposes to amend Rule 515A, MIAX Price Improvement Mechanism (''PRIME'') and PRIME Solicitation Mechanism, to describe new scenarios which will cause a cPRIME Auction[5] to terminate prior to the end of the RFR period. Finally, the Exchange proposes to update Exchange Rule 515 and Rule 516 to correct internal cross references that have changed as a result of this proposal.

Background

Currently the Exchange defines a ''complex order'' as any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the ''legs'' or ''components'' of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the

[14] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Members may use PRIME to execute complex orders at a net price. ''cPRIME'' is the process by which a Member may electronically submit a cPRIME Order (as defined in Rule 518(b)(7)) it represents as agent (a ''cPRIME Agency Order'') against principal or solicited interest for execution (a ''cPRIME Auction''). *See* Exchange Rule 515A, Interpretations and Policies .12(a).

Exchange and communicated to Members [6] via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing.

Proposal

Currently the Exchange will accept a complex order comprised solely of option components in a ratio that is equal to or greater than one-to-three (.333) or less than or equal to three-to-one (3.00).[7] The Exchange now proposes to accept complex orders comprised solely of options with ratios larger than three-to-one or smaller than one-to-three. To support its proposal the Exchange proposes to adopt a definition for a ''conforming ratio'' to refer to complex orders where the ratio between the sizes of the components of a complex order comprised solely of options is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00).[8] Additionally, the Exchange proposes to adopt a definition for a ''non-conforming ratio'' to refer to complex orders where the ratio between the sizes of the components of a complex order comprised solely of options is greater than three-to-one (3.00) or less than one-to-three (.333).[9]

Subsequently, the Exchange proposes to amend Exchange Rule 518(c)(1)(iii) and (c)(1)(iv) to insert the phrase, ''with a conforming ratio,'' to provide additional detail and clarity to the rule text. Specifically, current Rule 518(c)(1)(iii) provides that, ''[i]f any component of a complex strategy would be executed at a price that is equal to a Priority Customer [10] bid or offer on the Simple Order Book, at least one other option component of the complex strategy must trade at a price that is better than the corresponding MBBO.'' [11] The Exchange now proposes to amend this rule to provide that, ''[i]f any component of a complex strategy with a conforming ratio would be executed at a price that is equal to a Priority Customer bid or offer on the Simple Order Book, at least one other option component of the complex strategy must trade at a price that is better than the corresponding MBBO.''

Similarly, current Rule 518(c)(1)(iv) provides that, ''[a] complex order will not be executed at a net price that would cause any option component of the complex strategy to be executed: (A) at a price of zero; or (B) ahead of a Priority Customer Order [12] on the Simple Order Book [13] without improving the MBBO of at least one option component of the complex strategy.'' The Exchange now propose to amend this rule to provide that, ''[a] complex order with a conforming ratio will not be executed at a net price that would cause any option component of the complex strategy to be executed: (A) at a price of zero; or (B) ahead of a Priority Customer Order on the Simple Order Book without improving the MBBO of at least one option component of the complex strategy.'' The proposed changes to Rule 518(c)(1)(iii) and (c)(1)(iv) will make clear that existing complex priority provisions apply only to complex orders with conforming ratios.

The Exchange proposes to renumber current paragraph (c)(1)(v) to new paragraph (c)(1)(vi) and to adopt new paragraph (v) to provide that, ''[a] complex order with a non-conforming ratio will not be executed at a net price that would cause any option component of the complex strategy to be executed: (A) at a price of zero; (B) ahead of a Priority Customer Order at the MBBO on the Simple Order Book; or (C) at a price that is through the NBBO.'' [14] Therefore, a complex order with any ratio less than one-to-three or greater than three-to-one may be executed at a net price only if each leg of the complex order betters the corresponding bid (offer) of a Priority Customer Order(s) on the Simple Order Book, and is not at a price that is through the NBBO. These requirements are consistent with the rules of other option exchanges that process complex orders in the same ratios.[15]

In addition, icMBBO [16] protection will apply to both conforming and non-conforming strategies as executions of complex orders (with either conforming or non-conforming ratios) must comply with Exchange Rule 518(c)(2)(ii).[17] Accordingly, the Exchange proposes to amend Rule 518(c)(2)(ii) to provide additional detail related to pricing for conforming and non-conforming strategies. Specifically, the Exchange proposes to add a clarifying parenthetical statement to the first sentence to clearly differentiate the rules that apply to executions of complex orders with conforming ratios and complex orders with non-conforming rations when there is Priority Customer interest at the MBBO. Specifically, the proposed sentence will state, ''Incoming complex orders and quotes will be executed by the System in accordance with the provisions set forth herein, and will not be executed at prices inferior to the icMBBO or at a price that is equal to the icMBBO when there is a Priority Customer Order (as defined in Rule 100) at the best icMBBO price (complex orders with conforming ratios will be executed in accordance with Rule 518(c)(1)(iv) and complex orders with non-conforming ratios will be executed in accordance with Rule 518(c)(1)(v).'' With this amendment the Exchange represents that the complex order priority rules will protect Priority Customer interest on the Simple Order Book.

The Exchange does not propose to extend the complex order priority afforded to complex orders with conforming ratios to those with non-conforming ratios. Execution of complex orders with conforming ratios will be unchanged under the Exchange's proposal and these orders will continue to not be executed at a net price that would cause any option component of the complex strategy to be executed: (A) at a price of zero; or (B) ahead of a Priority Customer Order on the Simple Order Book without improving the MBBO of at least one option component of the complex strategy.

The Exchange also proposes to amend the current definition of a complex order as described in Rule 518(a)(5) to include the terms conforming or non-conforming ratios as those terms are defined in the Rule.

[6] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[7] *See* Exchange Rule 518(a)(5).

[8] *See* proposed Rule 518(a)(8).

[9] *See* proposed Exchange Rule 518(a)(16).

[10] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 100.

[11] The term ''MBBO'' means the best bid or offer on the Exchange. *See* Exchange Rule 100.

[12] The term ''Priority Customer Order'' means an order for the account of a Priority Customer. *See* Exchange Rule 100.

[13] The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

[14] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[15] *See* Cboe Exchange Rule 5.33(f)(2)(A)(iv)(b), and BOX Options Rule 7240(b)(2)(iii).

[16] The Implied Complex MIAX Best Bid or Offer (''icMBBO'') is a calculation that uses the best price from the Simple Order Book for each component of a complex strategy including displayed and non-displayed trading interest. *See* Exchange Rule 518(a)(11).

[17] Exchange Rule 518(c)(2)(ii) provides that incoming complex orders and quotes will be executed by the System in accordance with the provisions set forth in Exchange Rule 518, and will not be executed at prices inferior to the icMBBO or at a price that is equal to the icMBBO when there is a Priority Customer Order (as defined in Rule 100) at the best icMBBO price.

The Exchange also proposes to amend Interpretations and Policies .12(d) of Exchange Rule 515A, MIAX Price Improvement Mechanism (''PRIME'') and PRIME Solicitation Mechanism to adopt two new paragraphs which will describe new scenarios that arise as a result of the Exchange processing complex orders with non-conforming ratios, which will cause a cPRIME Auction to terminate prior to the end of the RFR period.

Currently Interpretations and Policies .12(d) of Exchange Rule 515A, provides that, a cPRIME Auction shall conclude at the sooner of (i) [18] through (vii) as listed in the Rule below with the cPRIME Agency Order executing pursuant to Rule 515A(2)(iii). The Exchange proposes to describe two new scenarios that will terminate a cPRIME Auction prior to the conclusion of the RFR period as subparagraphs (viii) and (ix), as described more fully below. Consequently, the Exchange proposes to amend the first sentence of Interpretations and Policies .12(d) of Exchange Rule 515A to account for the addition of these scenarios. As proposed, the new sentence would provide that, ''[a] cPRIME Auction shall conclude at the sooner of (i) through (ix) below with the cPRIME Agency Order executing pursuant to Rule 515A(2)(iii) below:''

The Exchange proposes to adopt paragraph (viii) to Interpretations and Policies .12(d) of Rule 515A to provide that, ''a Priority Customer Order, eligible to rest on the Simple Order Book, is received on either side of the market as the cPRIME Agency Order with a non-conforming ratio, and causes any component of the cPRIME Agency Order to lock or cross a Priority Customer Order at (A) the best price opposite the cPRIME Agency Order; or (B) the initiating price.'' The Exchange also proposes to adopt paragraph (ix) to provide that, ''the NBBO for a component of a cPRIME Agency Order with a non-conforming ratio updates to a price that would cause any option component of the cPRIME Agency Order to be executed at a price through the NBBO for that series.''

These provisions ensure that a cPRIME Agency Order will always receive the best price on the Exchange while simultaneously preserving the integrity of the simple market by preventing a component of an order with a non-conforming ratio from trading ahead of Priority Customer interest or trading through the NBBO.

[18] The end of the RFR Period. *See* Interpretations and Policies .12(d)(i) of Exchange Rule 515A.

Example 1

A Priority Customer Order in a component of the strategy, eligible to rest on the Simple Order Book, is received on the same side of the market as the cPRIME Agency Order with a non-conforming ratio, and causes a component of the cPRIME Agency Order to lock a Priority Customer Order at the best price opposite the cPRIME Agency Order.

MIAX—LMM [19] Sep 50 Call 1.81–1.82 (10 × 10)

MIAX—LMM Sep 55 Call 1.29–1.30 (10 × 10)

MIAX—Priority Customer Sep 55 Call order to sell 10 at 1.30 [20]

Strategy: Buy 1 Sep 50 Call, Sell 1 Sep 55 Call

The icMBBO [21] is 0.51 debit bid and 0.53 credit offer

The Exchange receives a cPRIME Order with a non-conforming ratio with the cPRIME Agency Order representing the purchase of the Strategy at a net debit of 0.52, (Buy Sep 50 Call at 1.82, Sell Sep 55 Call at 1.30) 500 times. (Auto-match is not enabled and there are no orders for the Strategy on the Strategy Book.)

Since the order price is at least $0.01 better than (inside) the icMBBO and the best net price of any order for the Strategy on the Strategy Book, a cPRIME Auction can begin.[22]

A Request for Responses (''RFR'') is broadcast to all subscribers and the RFR period is started.

[19] The term ''Lead Market Maker'' means a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of these Rules with respect to Lead Market Makers. When a Lead Market Maker is appointed to act in the capacity of a Primary Lead Market Maker, the additional rights and responsibilities of a Primary Lead Market Maker specified in Chapter VI of these Rules will apply. *See* Exchange Rule 100.

[20] A leg of a non-conforming strategy may not execute ahead of a Priority Customer Order at the MBBO on the Simple Order Book, therefore while there is a Priority Customer Order priced at 1.30 for the Sep 55 Call, the price used for this leg to establish the net price will be 1.29. *See* proposed Exchange Rule 518(c)(1)(v). (The Auction starts as the net price of 0.52 may still be achieved if the other leg in the strategy (Sep 50 Call) can be executed at 1.81.)

[21] The Implied Complex MIAX Best Bid or Offer (''icMBBO'') is a calculation that uses the best price from the Simple Order Book for each component of a complex strategy including displayed and non-displayed trading interest. *See* Exchange Rule 518(a)(11).

[22] The initiating price for a cPRIME Agency Order must be better than (inside) the icMBBO for the strategy and any other complex orders on the Strategy Book. The System will reject cPRIME Agency Orders submitted with an initiating price that is equal to or worse than (outside) the icMBBO or any other complex orders on the Strategy Book. *See* Interpretations and Policies .12(a)(i) of Exchange Rule 515A.

The following responses are received:

- @70 milliseconds MM1 response, cAOC eQuote @0.52 credit sell of 100 arrives

The cPRIME Auction process will continue until the Response Time Interval ends or an event eligible to cause the cPRIME Auction to end sooner occurs.

- @85 milliseconds a Priority Customer simple order bid to pay 1.81 for 10 Sep 50 Calls arrives

Since the pre-existing simple order to sell at 1.30 is Priority Customer, the tradable component prices of the cPRIME Order are 1.81 for the Sep 50 Call and 1.29 for the Sep 55 Call, for a net debit price of 0.52.

However, because the new order to buy at 1.81 is also Priority Customer and causes a tradable component of the cPRIME Agency Order (Sep 50 Call) to lock a Priority Customer Order at the best price opposite the cPRIME Agency Order, the cPRIME Auction will terminate.

The cPRIME Auction is concluded prior to the end of the Response Time Interval to prevent the cPRIME Agency Order from trading ahead of a Priority Customer in any component of the cPRIME Agency Order.

The cPRIME Auction process will trade the cPRIME Agency Order with the best priced responses. The cPRIME Agency order will be filled as follows:

- The cPRIME Agency Order buys 400 from the Contra side @0.52
- The cPRIME Agency Order buys 100 from MM1 @0.52

Example 2

A Priority Customer Order in a component of the strategy, eligible to rest on the Simple Order Book, is received on the opposite side of the market from the cPRIME Agency Order with a non-conforming ratio, and causes a component of the cPRIME Agency Order to lock a Priority Customer at the initiating price.

MIAX—LMM Sep 50 Call 1.81–1.82 (10 × 10)

MIAX—LMM Sep 55 Call 1.29–1.30 (10 × 10)

MIAX—Priority Customer Sep 55 Call order to buy 10 at 1.29

Strategy: Buy 1 Sep 50 Call, Sell 1 Sep 55 Call

The icMBBO is 0.51 debit bid and 0.53 credit offer

The Exchange receives a cPRIME Order with a non-conforming ratio with the cPRIME Agency Order representing the purchase of the Strategy at a net debit of 0.52, (Buy Sep 50 Call at 1.82, Sell Sep 55 Call at 1.30), 500 times.

(Auto-match is not enabled and there are no orders for the Strategy on the Strategy Book.)

Since the order price is at least $0.01 better than (inside) the icMBBO and the best net price of any order for the Strategy on the Strategy Book, a cPRIME Auction can begin.

A Request for Responses (''RFR'') is broadcast to all subscribers and the RFR period is started.

The following responses are received:

- @70 milliseconds MM1 response, cAOC eQuote @0.52 credit sell of 100 arrives

The cPRIME Auction process will continue until the Response Time Interval ends or an event eligible to cause the cPRIME Auction to end sooner occurs.

- @85 milliseconds a Priority Customer simple order offer to sell at 1.82 for 10 Sep 50 Calls arrives

Since the pre-existing simple order to buy Sep 55 Call at 1.29 is Priority Customer, the tradable component prices of the cPRIME Order are 1.82 for the Sep 50 Call and 1.30 for the Sep 55 Call, for a net debit price of 0.52.

However, because the new order to sell at 1.82 is also Priority Customer and causes a tradable component of the cPRIME Agency Order (Sep 50 Call) to lock a Priority Customer Order at the initiating price; the cPRIME Auction will terminate.

The cPRIME Auction is concluded prior to the end of the Response Time Interval to prevent the cPRIME Agency Order from trading ahead of a Priority Customer in any component of the cPRIME Agency Order.

The cPRIME Auction process will trade the cPRIME Agency Order with the best priced responses. The cPRIME Agency order will be filled as follows:

- The cPRIME Agency Order buys 400 from the Contra side @0.52
- The cPRIME Agency Order buys 100 from MM1 @0.52

Example 3

The NBBO for a component of a cPRIME Agency Order with a non-conforming ratio updates to a price that would cause a component to trade through the NBBO.

MIAX—LMM Sep 50 Call 1.81–1.82 (10 × 10)

MIAX—LMM Sep 55 Call 1.29–1.30 (10 × 10)

MIAX—Priority Customer Sep 55 Call order to buy 10 at 1.29

Strategy: Buy 1 Sep 50 Call, Sell 1 Sep 55 Call

The icMBBO is 0.51 debit bid and 0.53 credit offer

The Exchange receives a cPRIME Order with a non-conforming ratio with the cPRIME Agency Order representing the purchase of the Strategy at a net debit of 0.52, (Buy Sep 50 Call at 1.82, Sell Sep 55 Call at 1.30), 500 times. (Auto-match is not enabled and there are no orders for the Strategy on the Strategy Book.)

Since the order price is at least $0.01 better than (inside) the icMBBO and the best net price of any order for the Strategy on the Strategy Book, a cPRIME Auction can begin.

A Request for Responses (''RFR'') is broadcast to all subscribers and the RFR period is started.

The following responses are received:

- @70 milliseconds MM1 response, cAOC eQuote @0.52 credit sell of 100 arrives

The cPRIME Auction process will continue until the Response Time Interval ends or an event eligible to cause the cPRIME Auction to end sooner occurs.

The ABBO updates to 1.80–1.81 (10×10) for the Sep 50 Call

Since the pre-existing simple order to buy Sep 55 Call at 1.29 is Priority Customer, the tradable component prices of the cPRIME order are 1.82 for the Sep 50 Call and 1.30 for the Sep 55 Call, for a net debit price of 0.52.

However, because the ABBO update to sell Sep 50 Call at 1.81 is better than the local best offer (1.82), this causes the tradable price to be through the NBBO for that component and is no longer tradable.

The cPRIME Auction is concluded prior to the end of the Response Time Interval to prevent the non-conforming strategy trading through any component NBBO.

The cPRIME Auction process will trade the cPRIME Agency Order with the best priced responses. The cPRIME Agency order will be filled as follows:

- The cPRIME Agency Order buys 400 from the Contra side @0.52
- The cPRIME Agency Order buys 100 from MM1 @0.52

The Exchange also proposes to allow bids and offers on complex orders, quotes and RFR Responses for complex strategies having only option components and a non-conforming ratio to be expressed in $0.01 increments, and the component(s) of such a complex order may be executed in $0.01 increments, regardless of the minimum increments otherwise applicable to individual components of the complex order. The Exchange notes that electronic trading of complex orders with non-conforming ratios in one cent increments was recently established on another exchange.[23] Further, the Exchange notes that complex orders with conforming ratios are currently traded in one cent increments on the Exchange[24] and the proposed change will allow trading of complex orders in one cent increments for all complex orders on the Exchange.

The Exchange understands that there may be some concerns that if the ratios of complex orders, where each component leg is allowed to trade in one cent increments, are too greatly expanded, market participants will, for example, enter complex orders with non-conforming ratios designed primarily to trade orders in a class in pennies that cannot otherwise execute as simple orders in that class in pennies. The Exchange believes it is highly unlikely that market participants will submit non-bona-fide trading strategies with larger ratios just to trade in penny increments. Adding a single leg to a larger order just to obtain penny pricing may further reduce execution opportunities for such an order because it may be less likely that sufficient contracts in the appropriate ratio would be available and because it is unlikely that other market participants would be willing to execute against an order that is not a bona-fide trading strategy. Further, the Exchange notes that all option series traded on the Exchange can currently trade in penny increments in the Exchange's Price Improvement Mechanism (''PRIME'') regardless of the minimum increment otherwise applicable.[25] Lastly, the Exchange notes that pursuant to Exchange Rule 301, no Member shall engage in acts or practices inconsistent with just and equitable principles of trade, and entering orders for non-bona-fide trading strategies may constitute acts or practices inconsistent with just and equitable principles of trade.

Finally, the Exchange proposes to make non-substantive edits to Exchange Rule 515 and Rule 516, to update internal cross references to the location of certain definitions that have changed as a result of this proposal.

Implementation

The Exchange will announce the implementation of complex orders with non-conforming strategies by Regulatory Circular at least 48 hours prior to implementation of this functionality, as

[23] *See* Securities Exchange Act Release No. 94204 (February 9, 2022), 87 FR 8625 (February 15, 2022) (SR–CBOE–2021–046) and Cboe Rule 5.4(b); *see also* BOX Options Rule 7240(b)(1).

[24] *See* Exchange Rule 518(c)(1)(i).

[25] *See* Exchange Rule 515A(a)(2)(i)(F).

the Exchange believes that 48 hours of notice is adequate for Members.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act,[26] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section (6)(b)(5)[27] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange currently only processes complex orders that fit within the proposed definition of a conforming ratio, that is complex orders with a ratio between the sizes of the option components equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy.[28]

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and benefit investors, because it will allow market participants to execute complex strategies with option components only in ratios greater than three-to-one or less than one-to-three (''non-conforming ratios'' as proposed herein). The proposed rule change will further remove impediments to and perfect the mechanism of a free and open market and a national market system, as other options exchanges permit the trading of complex orders with any ratio.[29]

The proposed change rule change will continue to protect Priority Customer Order interest on the Simple Order Book in the same manner as it does today, as all complex orders with a conforming ratio will continue to be executed on the Exchange without change. The proposed rule change has no impact on the priority of complex orders with a conforming ratio, as complex orders with a conforming ratio will continue to be required to improve the price of a leg of the complex order for which a Priority Customer Order is resting at the BBO in the Simple Order Book,[30] and thus will continue to protect Priority Customer Orders in the Simple Order Book. Additionally, the Exchange will not allow any component of a complex order with a non-conforming strategy to execute ahead of a Priority Customer resting at the BBO in the Simple Order Book.[31]

Additionally, the Exchange believes the proposed amendment to revise Exchange Rule 518(c)(2) to indicate icMBBO protection for complex orders with conforming ratios will require those orders to be executed in accordance with Rule 518(c)(1)(iv) and complex orders with non-conforming ratios to be executed in accordance with Rule 518(c)(1)(v) will clarify the operation of the icMBBO protection for complex orders with a conforming ratio and complex orders with a non-conforming ratio. This change benefits investors and the public as it clarifies that the complex order priority rules will continue to protect Priority Customer interest on the Simple Order Book.

The Exchange believes the proposed changes will increase opportunities for execution of complex orders and lead to tighter spreads on the Exchange, which will benefit all investors. The Exchange also believes that the proposed rule change is designed to not permit unfair discrimination among market participants, as all market participants may trade complex orders, and the priority and eligibility requirements apply to complex orders of all market participants.

Additionally, the Exchange believes that including additional scenarios which will terminate a cPRIME Auction promotes just and equitable principles of trade and removes impediments to a free and open market by providing greater transparency concerning the operation of Exchange functionality. These provisions ensure that a cPRIME Agency Order will always receive the best price on the Exchange while simultaneously preserving the integrity of the simple market.

The Exchange believes that its proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free an open market and a national market system, and, in general to protect investors and the public interest, by enhancing its System[32] and rules governing complex orders. The Exchange's proposal should provide market participants with trading opportunities more closely aligned with their investment or risk management strategies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that its proposed rule change will impose any burden on intra-market competition as the Rules of the Exchange apply equally to all Members of the Exchange and all Members may submit complex orders. Therefore, any Member of the Exchange may submit a complex order with a conforming or non-conforming ratio and the order will be handled in a uniform fashion by the System.

The Exchange does not believe that its proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, rather the Exchange believes that its proposal will promote inter-market competition. The Exchange notes that other options exchanges provide for the electronic trading of complex orders with only option components with ratios that are less than one-to-three and greater than three-to-one, and allow these orders to be priced and executed in one cent increments.[33] As such, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed amendment to clarify icMBBO protections imposes any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. Complex orders submitted by Members with conforming ratios will continue to be handled by the System without change. Complex orders submitted by Members with non-conforming ratios will be handled uniformly by the System as described in this proposal. The Exchange does not believe that this proposed change imposes any burden on inter-market competition as the

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78(f)(b)(5).

[28] *See* Exchange Rule 518(a)(5).

[29] *See* Cboe Exchange Rules 1.1 (Complex Order) and 5.33; *see also* BOX Exchange Rule 7240(a)(10), (b)(1) and (b)(2)(iii).

[30] *See* Exchange Rule 518(c)(3).

[31] *See* proposed Rule 518(c)(1)(v).

[32] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[33] *See* Cboe Exchange Rule 5.4(b); *see also* BOX Exchange Rule 7240(b)(1).

icMBBO protection is designed to protect Priority Customer priority on the Exchange's Book and is not a change made for competitive reasons.

Additionally, the Exchange does not believe that its new proposed scenarios to terminate a cPRIME Auction imposes any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed changes are designed to add additional detail to the rules to further clarify the operation of Exchange functionality and to minimize the potential for confusion. The Exchange does not believe that this proposed change imposes any burden on inter-market competition as this change is designed to protect Priority Customer priority on the Exchange's Book and is not a change made for competitive reasons.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (a) significantly affect the protection of investors or the public interest; (b) impose any significant burden on competition; and (c) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [34] and Rule 19b–4(f)(6) thereunder.[35]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[36] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. As noted above, other options exchanges currently allow complex orders with a ratio less than one-to-three or greater than three-to-one to trade electronically in $0.01 increments.[37] Under the proposal, no component leg of a complex order with a non-conforming ratio will execute (A) at a price of zero; (B) ahead of a Priority Customer Order at the MBBO on the Simple Order Book; or (C) at a price that is through the NBBO.[38] Accordingly, the Exchange states that a non-conforming ratio complex order may be executed at a net price only if each leg of the complex order betters the corresponding bid (offer) of a Priority Customer Order(s) on the Simple Order Book, and is not at a price that is through the NBBO. The Exchange states that waiver of the operative delay will allow the Exchange to immediately offer market participants the choice of another execution venue for the electronic trading of complex orders with non-conforming ratios. The Exchange further states that market participants may benefit from competition between exchanges, may find the trade execution services and fees on one exchange more favorable than another, or may find it more convenient to access on exchange over another. Accordingly, the Exchange believes that waiving the operative delay will allow the Exchange to immediately make a competitive offering to market participants.

The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposal will provide investors with an additional venue for electronically trading complex orders with a ratio less than one-to-three or greater than three-to-one. The Commission believes that proposal does not raise new or novel regulatory issues because other options exchanges currently provide for the electronic trading of complex orders with a ratio less than one-to-three or greater than three-to-one.[39] The proposal protects the priority of resting Priority Customer orders by providing that no component leg of a non-conforming ratio complex order will be executed ahead of a Priority Customer Order at the MBBO on the Simple Order Book.[40] This requirement is consistent with the rules of other options exchanges that provide for the electronic trading of complex orders with a ratio less than one-to-three or greater than three-to-one.[41] As described above, the proposal also revises Exchange Rule 515A, Interpretation and Policy .12(d) to provide that a cPRIME Auction for a non-conforming ratio cPRIME Agency Order will terminate early when a single-leg Priority Customer Order arrives and causes any component of the cPRIME Agency Order to lock or cross a Priority Customer Order at the best price opposite the cPRIME Agency Order or the initiating price.[42] A cPRIME Auction for a non-conforming ratio cPRIME Agency Order also will terminate early when the NBBO for a component of the cPRIME Agency Order updates to a price that would cause any component of the cPRIME Agency Order to be executed at a price that is through the NBBO for that series.[43] The Exchange states that these provisions ensure that a cPRIME Agency Order will always receive the best price on the Exchange while preserving the integrity of the simple market by preventing a component of a non-conforming ratio complex order from trading ahead of Priority Customer interest or trading through the NBBO. In addition, as discussed above, the Exchange believes it is highly unlikely that market participants will submit non-bona-fide trading strategies with larger ratios solely for the purpose of trading in penny increments. The Exchange states that adding a single leg to a larger order to obtain penny pricing could reduce execution opportunities for such an order because it may be less likely that sufficient contracts in the appropriate ratio would be available and because it is unlikely that other market participants would be willing to execute against an order that is not a bona-fide trading strategy. Further, the Exchange notes that all option series traded on the Exchange can currently trade in penny increments in the Exchange's PRIME auction, regardless of the minimum increment otherwise applicable.[44] The Exchange also states that entering orders for non-bona-fide trading strategies could constitute an act or practice inconsistent with just and equitable principles of trade, in violation of

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[36] 17 CFR 240.19b–4(f)(6)(iii).

[37] *See* BOX Rules 7240(a)(10); 7240(b)(1); and 7240(b)(2)(iii); and Cboe Rules 1.1 (stating, in the definition of complex order, that ''the Exchange determines on a class-by-class basis whether complex orders with ratios less than one-to-three (.333) or greater than three-to-one (3.00) (except for Index Combo orders) are eligible for electronic processing'')); 5.4(b); and 5.33(f)(2)(A)(iv)(b).

[38] *See* proposed Exchange Rule 518(c)(1)(v).

[39] *See* footnote 37, *supra.*

[40] *See* proposed Exchange Rule 518(c)(1)(v). In addition, the proposal revises Exchange Rule 518(c)(2)(ii), which provides that complex orders will not be executed at prices inferior to the icMBBO or at a price that is equal to the icMBBO when there is a Priority Customer Order at the best icMBBO price, to indicate that complex orders with non-conforming ratios will be executed in accordance with proposed Exchange Rule 518(c)(1)(v).

[41] *See* BOX Rule 7240(b)(2)(iii); and Cboe Rule 5.33(f)(2)(iv)(b).

[42] *See* proposed Exchange Rule 515A, Interpretation and Policy .12(d)(viii).

[43] *See* proposed Exchange Rule 515A, Interpretation and Policy .12(d)(ix).

[44] *See* Exchange Rule 515A(a)(2)(i)(F).

Exchange Rule 301. For these reasons, the Commission designates the proposal operative upon filing.[45]

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–MIAX–2023–01.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2023–01. 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–MIAX–2023–01, and should be submitted on or before February 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–01998 Filed 1–31–23; 8:45 am]

BILLING CODE 8011–01–P

[45] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[46] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 11984]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces meetings of the U.S. State Department's Overseas Security Advisory Council on February 28, June 7, and November 14, 2023. Pursuant to Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. 1009(d)), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meetings will be closed to the public. The meetings will focus on an examination of corporate security policies and procedures, will involve extensive discussion of trade secrets and proprietary commercial information that is privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agendas will include updated committee reports, global threat overviews, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Ellen Tannor, Overseas Security Advisory Council, U.S. Department of State, Washington, DC 20522–2008, phone: 571–345–2223.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2023–02069 Filed 1–31–23; 8:45 am]

BILLING CODE 4710–43–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1321X]

Ohi-Rail Corporation—Discontinuance of Service Exemption—in Perry and Muskingum Counties, Ohio

Ohi-Rail Corporation (Ohi-Rail) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service and terminate its lease operations over approximately 14.8 miles of rail line owned by the Ohio Rail Development Commission, including the Fultonham Running Track from milepost 0.0 to milepost 3.1 (Glass Rock-East) and Z&W Industrial Track from milepost 45.8 to milepost 57.5 (Glass Rock-West), in Perry and Muskingum Counties, Ohio (the Line).[1] The Line traverses U.S. Postal Service Zip Codes 43701, 43735, 43739, 43760, 43777, and 43791.

Ohi-Rail has certified that: (1) it has not moved any local traffic over the Line for at least two years; (2) it has not moved any overhead traffic over the Line for at least two years, and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service on the Line is either pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) [2] to subsidize

[1] Ohi-Rail was authorized to lease and operate the Line in *Ohi-Rail Corp.—Lease & Operation Exemption—Ohio Department of Transportation,* FD 30986 (ICC served Feb. 27, 1987).

[2] Persons interested in submitting an OFA to subsidize continued rail service must first file a formal expression of intent to file an offer, indicating the intent to file an OFA for subsidy and

Continued

continued rail service has been received, this exemption will be effective on March 3, 2023, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues must be filed by February 10, 2023, and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2)[3] must be filed by February 13, 2023.[4] Petitions for reconsideration must be filed by February 21, 2023.

All pleadings, referring to Docket No. AB 1321X, must be filed with the Surface Transportation Board via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading filed with the Board must be sent to Ohi-Rail's representative, Crystal M. Zorbaugh, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW, Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available at *www.stb.gov.*

Decided: January 27, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2023–02075 Filed 1–31–23; 8:45 am]

BILLING CODE 4915–01–P

demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[3] The filing fee for OFAs can be found at 49 CFR 1002.2(f)(25).

[4] Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate in this docket. However, as explained in *Ohio Rail Development Commission—Petition for Declaratory Order,* FD 36387, slip op. at 6–7 (STB served Dec. 22, 2020), once Ohi-Rail is authorized to discontinue service on the Line, requests for issuance of a certificate of interim trail use or abandonment for the Line's right-of-way may be filed by a potential trail sponsor in the abandonment docket, *Conrail Abandonment of Lines in Zanesville Ohio,* Docket No. AB 167 (Sub-No. 445N). In addition, because the Line has already been authorized for abandonment, this discontinuance does not require an environmental review.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–0234]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Bird/Other Wildlife Strike 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 collection involves voluntary reporting of bird/other wildlife strike information following a wildlife strike incident with aircraft. This data becomes part of the publicly available National Wildlife Strike Database. Strike reports provide critical information that allows the FAA to determine high-risk species, track national trends, evaluate the FAA's wildlife hazard management program, and provide scientific foundation for regulatory guidance. Additionally, this essential information allows engine and airframe manufacturers to evaluate the effectiveness of aircraft components. It also helps airports identify and mitigate hazardous species and the location of wildlife attractants, affords a better understanding of strike dynamics, and provides key metrics for an airport to evaluate the effectiveness of its wildlife management program.

DATES: Written comments should be submitted by April 3, 2023.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: John Weller, 800 Independence Avenue SW, AAS–300, Washington, DC 20591.

By fax: (202) 493–1416.

FOR FURTHER INFORMATION CONTACT: John Weller by email at: *john.weller@faa.gov;* phone: (202) 267–3778.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0045.

Title: Bird/Other Wildlife Strike Report.

Form Numbers: 5200–7.

Type of Review: This is a renewal of an information collection.

Background: 14 CFR 139.337, Wildlife Hazard Management, requires the FAA to collect wildlife strike data to develop standards and monitor hazards to aviation. Data identify wildlife strike control requirements and provide in-service data on aircraft component failure. Pilots, airport operations staff, aircraft and airport maintenance personnel, air traffic controllers, wildlife biologists, and anyone else having knowledge of a strike can report incidents to the FAA, primarily using the online version of FAA Form 5200–7. The data becomes part of the publicly available National Wildlife Strike Database used to enhance safety by airports, airlines, engine and airframe manufacturers, and the FAA. Overall, the number of strikes annually reported to the FAA has increased from 1,850 in 1990 to more than 15,556 in 2021.

Respondents: Approximately 14,868 pilots, airport operations staff, aircraft and airport maintenance personnel, air traffic controllers, wildlife biologists, and others with knowledge of a strike.

Frequency: As needed.

Estimated Average Burden per Response: 5 minutes.

Estimated Total Annual Burden: 1,239 hours.

Issued in Washington, DC, on January 26, 2023.

John Weller,

National Wildlife Biologist, Airport Safety and Operations Division, Office of Airports Safety and Standards.

[FR Doc. 2023–02014 Filed 1–31–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Compatibility Program for San Diego International Airport, San Diego County, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of approval of noise compatibility program.

SUMMARY: The Federal Aviation Administration (FAA) announces its

findings on the noise compatibility program submitted by the San Diego County Regional Airport Authority. These findings are made in recognition of the description of Federal and nonfederal responsibilities. On September 1, 2022, the FAA determined that the noise exposure maps submitted by the San Diego County Regional Airport Authority were in compliance with applicable requirements. On January 11, 2023, the FAA approved the San Diego International Airport noise compatibility program. Most of the recommendations of the program were approved.

DATES: The effective date of the FAA's approval of the San Diego International Airport noise compatibility program is January 11, 2023.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, AICP, Regional Environmental Protection Specialist, 777 South Aviation Boulevard, El Segundo, California 90045, Telephone: 424–405–7315. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces FAA's approval of the noise compatibility program (NCP) for San Diego International Airport, effective on January 11, 2023. Per United States Code section 47504 (49 U.S.C. 47504) and Title 14, Code of the Federal Regulations (CFR) part 150, an airport sponsor who previously submitted a noise exposure map (NEM) may submit to the FAA, a noise compatibility program which sets forth the measures taken or proposed by the airport sponsor for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the NEMs. As required by 49 U.S.C. 47504, such programs must be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and the FAA. The FAA does not substitute its judgment for that of the airport sponsor with respect to which measures should be recommended for action. The FAA approval or disapproval of an airports recommendations in their noise compatibility program are made in accordance with the requirements and standards pursuant to 49 U.S.C. 47504 and 14 CFR part 150, which is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of 14 CFR 150.23;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in 14 CFR 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the NCP are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests must be submitted to the FAA Los Angeles Airports District Office in El Segundo, California.

On May 6, 2022, the San Diego County Regional Airport Authority submitted the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from October 22, 2018 through May 6, 2022 to the FAA. The FAA determined the NEMs for San Diego International Airport complied with 14 CFR part 150, effective on September 1, 2022. This determination was published in the **Federal Register** on September 8, 2022, (87 FR 55074).

The San Diego International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from May 6, 2022 to the year 2026. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in 49 U.S.C 47504. The FAA began its review of the program on September 1, 2022, and was required by a provision of 49 U.S.C 47504 to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 17 proposed actions for noise mitigation, noise abatement, land use planning, and program management. The FAA completed its review and determined that the procedural and substantive requirements of the 49 U.S.C. 47504 and part 150 have been satisfied. The overall program, therefore, was approved by the FAA effective January 11, 2023.

Outright approval was granted for 16 of the 17 specific program elements. The proposed Facility Management measure to utilize Ground Based Augmentation System (GBAS) was disapproved because the NCP did not demonstrate the measure is reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses. The following measures were approved: Noise Abatement Measure: Voluntary Noise Abatement Departure Profile. Remedial Land Use Measures: Sound Attenuation of Eligible Non-Residential Noise Sensitive Buildings; Sound Attenuation of Eligible Residential Units.

Land Use Planning Measures: Prevent New Non-Compatible Land Use Development; San Diego County Airport Land Use Commission; Support Compatible Planning Process.

Program Management Measures: Continue Aircraft Noise Office and Program Manager; continue use of the Airport Noise and Operations Monitoring System; Portable Noise Monitoring; continue the Fly Quiet Program; continue the Airport Noise Advisory Committee; continue to Communicate Noise Issues with Airlines; continue to Administer Airport Use Regulations; continue to author and submit California Quarterly Noise Reports; Update Noise Exposure Maps; and Update the Noise Compatibility Program.

These determinations are set forth in detail in a Record of Approval signed by the Western-Pacific Regional Airports Division Director on January 11, 2023. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA

office listed above and at the administrative offices of the San Diego County Regional Airport Authority. The Record of Approval also will be available on-line at *http://www.faa.gov/airports/environmental/airport_noise/part_150/states/* and at San Diego County Regional Airport Authority's website, *https://www.san.org/Aircraft-Noise/FAR-Part-150*.

Issued in El Segundo, California, on January 26, 2023.

Mark A. McClardy,

Director, Airports, Division, Western-Pacific Region, AWP–600.

[FR Doc. 2023–02019 Filed 1–31–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Teterboro Airport (TEB) Noise Compatibility Program; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of approval of the Teterboro Airport (TEB) noise compatibility program; correction.

SUMMARY: The Federal Aviation Administration published a document in the **Federal Register** of January 17, 2023, notifying the public of the approval of the noise compatibility program at Teterboro Airport (TEB). The document contained references to an incorrect airport.

FOR FURTHER INFORMATION CONTACT: Andrew Brooks, Regional Environmental Program Manager, Airports Division, Federal Aviation Administration, 1 Aviation Plaza, Room 516, Jamaica, NY 11434. Phone Number: 718–553–2511.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of January 17, 2023, in Vol. 88 No. 10, on page 2751, in the first and second columns, correct the **SUMMARY** caption to read:

SUMMARY: The Federal Aviation Administration (FAA) announces its findings for the noise compatibility program submitted by TEB, see supplementary information for details. On June 15, 2017, the FAA determined that the noise exposure maps submitted by TEB were in compliance with applicable requirements. On July 15, 2022, the FAA determined that the noise compatibility program submitted by TEB would be initiating final review for approval or disapproval. On January 10, 2023, the FAA approved the TEB noise compatibility program. The noise compatibility program contained 33 recommended measures, including 16 noise abatement measures, four land use measures, and 13 program management measures. Of the measures proposed, 23 were approved, four were approved as voluntary, three were disapproved, and three were determined to have no FAA action as continuations of existing mandatory practices at TEB. Six of the 16 noise abatement procedures proposed at TEB are related to new or revised flight procedures.

Correction

In the **Federal Register** of January 17, 2023, in Vol. 88 No. 10, on page 2751, in the second column, correct the **DATES** caption to read:

DATES: The effective date of the FAA's approval of the TEB noise compatibility program is January 10, 2023.

Issued in Jamaica, NY, on January 27, 2023.

David A. Fish,

Director, Airports Division, Eastern Region.

[FR Doc. 2023–02068 Filed 1–31–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0245]

Parts and Accessories Necessary for Safe Operation; Exemption Application From Meiborg Brothers, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on Meiborg Brothers, Inc.'s (Meiborg) application for an exemption from the requirement that lighting devices be steady burning. The exemption would allow the company to operate commercial motor vehicles (CMVs) equipped with a module manufactured by Intellistop, Inc. (Intellistop) which pulses the rear clearance, identification, and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied. FMCSA requests public comment on the applicant's request for exemption.

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

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2022–0245 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *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 or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2022–0245) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, 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.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14–FDMS, which can be reviewed at *https://www.transportation.gov/privacy,* the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA, at (202) 366–5541, or by email at *jose.cestero@dot.gov.*

If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2022–0245), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number ''FMCSA–2022–0245'' 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.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Meiborg's Request

Meiborg seeks an exemption from the requirement in 49 CFR 393.25(e) that all exterior lamps (both required lamps and any additional lamps) be steady-burning, except for turn signal lamps, hazard warning signal lamps, school bus warning lamps, amber warning lamps or flashing warning lamps on tow trucks and CMVs transporting oversized loads, and warning lamps on emergency and service vehicles authorized by State or local authorities.

Meiborg asserts that using the Intellistop module, which pulses the rear clearance, identification, and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied rather than providing steady burning lamps during the first 2 seconds, would enhance rear signal systems. Meiborg submits that pulsing the rear brake lamps of a CMV may significantly increase visibility and reduce the frequency of rear-end crashes, and thus would maintain a level of safety that is equivalent to, or greater than, the level that the CMV would achieve without the requested exemption.

On October 7, 2022 (87 FR 61133), FMCSA denied Intellistop's application for an industry-wide exemption to allow all motor carriers to operate commercial motor vehicles (CMVs) equipped with Intellistop's module. FMCSA noted that the decision did not preclude individual motor carriers from seeking an exemption from 49 CFR 393.25(e) to purchase, install, and use Intellistop's device subject to terms and conditions to allow sufficient monitoring of the use of the device. Therefore, consistent with the October 7, 2022, decision, the Agency seeks public comment on Meiborg's carrier-specific exemption application.

A copy of Meiborg's application is included in the docket referenced at the beginning of this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Meiborg's application for a five-year exemption from 49 CFR 393.25(e) to allow the company it to operate CMVs equipped with Intellistop's module which pulses rear clearance, identification and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and may be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–02048 Filed 1–31–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0243]

Parts and Accessories Necessary for Safe Operation; Exemption Application From Gemini Motor Transport

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on Gemini Motor Transport's (Gemini) application for an exemption from the requirement that lighting devices be steady burning. The exemption would allow the company to operate commercial motor vehicles (CMVs) equipped with a module manufactured by Intellistop, Inc. (Intellistop) which pulses the rear clearance, identification, and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied. FMCSA requests public comment on the applicant's request for exemption.

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

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2022–0243 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.

- *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 or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2022–0243) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, 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.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14–FDMS, which can be reviewed at *https://www.transportation.gov/privacy,* the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA, at (202) 366–5541, or by email at *jose.cestero@dot.gov.*

If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2022–0243), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number ''FMCSA–2022–0243'' 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.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Gemini's Request

Gemini seeks an exemption from the requirement in 49 CFR 393.25(e) that all exterior lamps (both required lamps and any additional lamps) be steady-burning, except for turn signal lamps, hazard warning signal lamps, school bus warning lamps, amber warning lamps or flashing warning lamps on tow trucks and CMVs transporting oversized loads, and warning lamps on emergency and service vehicles authorized by State or local authorities.

Gemini asserts that using the Intellistop module, which pulses the rear clearance, identification, and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied rather than providing steady burning lamps during the first 2 seconds, would enhance rear signal systems. Gemini submits that pulsing the rear brake lamps of a CMV may significantly increase visibility and reduce the frequency of rear-end crashes, and thus would maintain a level of safety that is equivalent to, or greater than, the level that the CMV would achieve without the requested exemption.

On October 7, 2022 (87 FR 61133), FMCSA denied Intellistop's application for an industry-wide exemption to allow all motor carriers to operate commercial motor vehicles (CMVs) equipped with Intellistop's module. FMCSA noted that the decision did not preclude individual motor carriers from seeking an exemption from 49 CFR 393.25(e) to purchase, install, and use Intellistop's device subject to terms and conditions to allow sufficient monitoring of the use of the device. Therefore, consistent with the October 7, 2022, decision, the Agency seeks public comment on Gemini's carrier-specific exemption application.

A copy of Gemini's application is included in the docket referenced at the beginning of this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Gemini's application for a five-year exemption from 49 CFR 393.25(e) to allow the company to operate CMVs equipped with Intellistop's module which pulses the rear clearance, identification and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied.

All comments received before the close of business on the comment closing date will be considered and will

be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and may be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–02053 Filed 1–31–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0241]

Parts and Accessories Necessary for Safe Operation; Exemption Application From DJS Fundraising, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on DJS Fundraising, Inc.'s (DJS) application for an exemption from the requirement that lighting devices be steady burning. The exemption would allow the company to operate commercial motor vehicles (CMVs) equipped with a module manufactured by Intellistop, Inc. (Intellistop) which pulses the rear clearance, identification, and brake lamps from a low-level of lighting intensity to a high-level of lighting intensity 4 times in 2 seconds when the brakes are applied. FMCSA requests public comment on the applicant's request for exemption.

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

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2022–0241 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *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 or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2022–0241) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, 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.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14–FDMS, which can be reviewed at *https://www.transportation.gov/privacy,* the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA, at (202) 366–5541, or by email at *jose.cestero@dot.gov.*

If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2022–0241), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number ''FMCSA–2022–0241'' 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.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. DJS' Request

DJS seeks an exemption from the requirement in 49 CFR 393.25(e) that all exterior lamps (both required lamps and any additional lamps) be steady-

burning, except for turn signal lamps, hazard warning signal lamps, school bus warning lamps, amber warning lamps or flashing warning lamps on tow trucks and CMVs transporting oversized loads, and warning lamps on emergency and service vehicles authorized by State or local authorities.

DJS asserts that using the Intellistop module, which pulses the rear clearance, identification, and brake lamps from a low-level of lighting intensity to a high-level of lighting intensity 4 times in 2 seconds when the brakes are applied rather than providing steady burning lamps during the first 2 seconds, would enhance rear signal systems. DJS submits that pulsing the rear brake lamps of a CMV may significantly increase visibility and reduce the frequency of rear-end crashes, and thus would maintain a level of safety that is equivalent to, or greater than, the level that the CMV would achieve without the requested exemption.

On October 7, 2022 (87 FR 61133), FMCSA denied Intellistop's application for an industry-wide exemption to allow all motor carriers to operate commercial motor vehicles (CMVs) equipped with Intellistop's module. FMCSA noted that the decision did not preclude individual motor carriers from seeking an exemption from 49 CFR 393.25(e) to purchase, install, and use Intellistop's device subject to terms and conditions to allow sufficient monitoring of the use of the device. Therefore, consistent with the October 7, 2022, decision, the Agency seeks public comment on DJS' carrier-specific exemption application.

A copy of DJS Fundraising's application is included in the docket referenced at the beginning of this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on DJS' application for a five-year exemption from 49 CFR 393.25(e) to allow it to operate CMVs equipped with Intellistop's module which pulses the rear clearance, identification and brake lamps from a low-level of lighting intensity to a high-level of lighting intensity 4 times in 2 seconds when the brakes are applied.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and may be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–02049 Filed 1–31–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0244]

Parts and Accessories Necessary for Safe Operation; Exemption Application From JM Bozeman Enterprises, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on JM Bozeman Enterprises, Inc.'s (Bozeman) application for an exemption from the requirement that lighting devices be steady burning. The exemption would allow the company to operate commercial motor vehicles (CMVs) equipped with a module manufactured by Intellistop, Inc. (Intellistop) which pulses the rear clearance, identification, and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied. FMCSA requests public comment on the applicant's request for exemption.

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

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2022–0244 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *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 or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2022–0244) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, 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.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14–FDMS, which can be reviewed at *https://www.transportation.gov/privacy,* the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA, at (202) 366–5541, or by email at *jose.cestero@dot.gov.*

If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2022–0244), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number ''FMCSA–2022–0244'' 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.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Bozeman's Request

Bozeman seeks an exemption from the requirement in 49 CFR 393.25(e) that all exterior lamps (both required lamps and any additional lamps) be steady-burning, except for turn signal lamps, hazard warning signal lamps, school bus warning lamps, amber warning lamps or flashing warning lamps on tow trucks and CMVs transporting oversized loads, and warning lamps on emergency and service vehicles authorized by State or local authorities.

Bozeman asserts that using the Intellistop module, which pulses the rear clearance, identification, and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied rather than providing steady burning lamps during the first 2 seconds, would enhance rear signal systems. Bozeman submits that pulsing the rear brake lamps of a CMV may significantly increase visibility and reduce the frequency of rear-end crashes, and thus would maintain a level of safety that is equivalent to, or greater than, the level that the CMV would achieve without the requested exemption.

On October 7, 2022 (87 FR 61133), FMCSA denied Intellistop's application for an industry-wide exemption to allow all motor carriers to operate commercial motor vehicles (CMVs) equipped with Intellistop's module. FMCSA noted that the decision did not preclude individual motor carriers from seeking an exemption from 49 CFR 393.25(e) to purchase, install, and use Intellistop's device subject to terms and conditions to allow sufficient monitoring of the use of the device. Therefore, consistent with the October 7, 2022, decision, the Agency seeks public comment on Bozeman's carrier-specific exemption application.

A copy of Bozeman's application is included in the docket referenced at the beginning of this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Bozeman's application for a five-year exemption from 49 CFR 393.25(e) to allow the company to operate CMVs equipped with Intellistop's module which pulses the rear clearance, identification and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and may be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–02054 Filed 1–31–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0246]

Parts and Accessories Necessary for Safe Operation; Exemption Application From Polytech Plastic Molding, Inc

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on Polytech Plastic Molding's (Polytech) application for an exemption from the requirement that lighting devices be steady burning. The exemption would allow the company to operate commercial motor vehicles (CMVs) equipped with a module manufactured by Intellistop, Inc. (Intellistop) which pulses the rear clearance, identification, and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied. FMCSA requests public comment on the applicant's request for exemption.

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

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2022–0246 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *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 or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2022–0246) for this notice. Note that DOT posts all comments received without change to

www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, 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.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14–FDMS, which can be reviewed at *https://www.transportation.gov/privacy,* the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA, at (202) 366–5541, or by email at *jose.cestero@dot.gov.*

If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2022–0246), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number ''FMCSA–2022–0246'' 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.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Polytech's Request

Polytech seeks an exemption from the requirement in 49 CFR 393.25(e) that all exterior lamps (both required lamps and any additional lamps) be steady-burning, except for turn signal lamps, hazard warning signal lamps, school bus warning lamps, amber warning lamps or flashing warning lamps on tow trucks and CMVs transporting oversized loads, and warning lamps on emergency and service vehicles authorized by State or local authorities.

Polytech asserts that using the Intellistop module, which pulses the rear clearance, identification, and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied rather than providing steady burning lamps during the first 2 seconds, would enhance rear signal systems. Polytech submits that pulsing the rear brake lamps of a CMV may significantly increase visibility and reduce the frequency of rear-end crashes, and thus would maintain a level of safety that is equivalent to, or greater than, the level that the CMV would achieve without the requested exemption.

On October 7, 2022 (87 FR 61133), FMCSA denied Intellistop's application for an industry-wide exemption to allow all motor carriers to operate commercial motor vehicles (CMVs) equipped with Intellistop's module. FMCSA noted that the decision did not preclude individual motor carriers from seeking an exemption from 49 CFR 393.25(e) to purchase, install, and use Intellistop's device subject to terms and conditions to allow sufficient monitoring of the use of the device. Therefore, consistent with the October 7, 2022, decision, the Agency seeks public comment on Polytech's carrier-specific exemption application.

A copy of Polytech's application is included in the docket referenced at the beginning of this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Polytech's application for a five-year exemption from 49 CFR 393.25(e) to allow the company to operate CMV's, including flatbed trailers and straight trucks, equipped with Intellistop's module which pulses the rear clearance, identification and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and may be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested

persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–02050 Filed 1–31–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0240]

Parts and Accessories Necessary for Safe Operation; Exemption Application From Brent Higgins Trucking, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on Brent Higgins Trucking, Inc.'s (Higgins) application for an exemption from the requirement that lighting devices be steady burning. The exemption would allow the company to operate commercial motor vehicles (CMVs) equipped with a module manufactured by Intellistop, Inc. (Intellistop) which pulses the rear clearance, identification, and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied. FMCSA requests public comment on the applicant's request for exemption.

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

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2022–0240 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *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 or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2022–0240) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, 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.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14–FDMS, which can be reviewed at *https://www.transportation.gov/privacy,* the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA, at (202) 366–5541, or by email at *jose.cestero@dot.gov.*

If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2022–0240), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number ''FMCSA–2022–0240'' 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.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Higgins' Request

Higgins seeks an exemption from the requirement in 49 CFR 393.25(e) that all exterior lamps (both required lamps and any additional lamps) be steady-burning, except for turn signal lamps, hazard warning signal lamps, school bus warning lamps, amber warning lamps or flashing warning lamps on tow trucks and CMVs transporting oversized loads, and warning lamps on emergency and service vehicles authorized by State or local authorities.

Higgins asserts that using the Intellistop module, which pulses the rear clearance, identification, and brake

lamps from a low-level lighting intensity to a high-level lighting intensity 4 times in 2 seconds when the brakes are applied rather than providing steady burning lamps during the first 2 seconds, would enhance rear signal systems. Higgins submits that pulsing the rear brake lamps of a CMV may significantly increase visibility and reduce the frequency of rear-end crashes, and thus would maintain a level of safety that is equivalent to, or greater than, the level that the CMV would achieve without the requested exemption.

On October 7, 2022 (87 FR 61133), FMCSA denied Intellistop's application for an industry-wide exemption to allow all motor carriers to operate commercial motor vehicles (CMVs) equipped with Intellistop's module. FMCSA noted that the decision did not preclude individual motor carriers from seeking an exemption from 49 CFR 393.25(e) to purchase, install, and use Intellistop's device subject to terms and conditions to allow sufficient monitoring of the use of the device. Therefore, consistent with the October 7, 2022, decision, the Agency seeks public comment on Higgins' carrier-specific exemption application.

A copy of Higgins' application is included in the docket referenced at the beginning of this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Higgins' application for a five-year exemption from 49 CFR 393.25(e) to allow it to operate CMVs equipped with Intellistop's module which pulses the rear clearance, identification and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and may be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–02052 Filed 1–31–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice of prompt payment interest rate; Contract Disputes Act.

SUMMARY: For the period beginning January 1, 2023, and ending on June 30, 2023, the prompt payment interest rate is 4⅝ per centum per annum.

DATES: Applicable January 1, 2023, to June 30, 2023.

ADDRESSES: Comments or inquiries may be mailed to: E-Commerce Division, Bureau of the Fiscal Service, 401 14th Street SW, Room 306F, Washington, DC 20227. Comments or inquiries may also be emailed to *PromptPayment@fiscal.treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas M. Burnum, E-Commerce Division, (202) 874–6430; or Thomas Kearns, Senior Counsel, Office of the Chief Counsel, (202) 874–7036.

SUPPLEMENTARY INFORMATION: An agency that has acquired property or service from a business concern and has failed to pay for the complete delivery of property or service by the required payment date shall pay the business concern an interest penalty. 31 U.S.C. 3902(a). The Contract Disputes Act of 1978, Sec. 12, Public Law 95–563, 92 Stat. 2389, and the Prompt Payment Act, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at the rate established by the Secretary of the Treasury.

The Secretary of the Treasury has the authority to specify the rate by which the interest shall be computed for interest payments under section 12 of the Contract Disputes Act of 1978 and under the Prompt Payment Act. Under the Prompt Payment Act, if an interest penalty is owed to a business concern, the penalty shall be paid regardless of whether the business concern requested payment of such penalty. 31 U.S.C. 3902(c)(1). Agencies must pay the interest penalty calculated with the interest rate, which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty. 31 U.S.C. 3902(a). ''The interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made.'' 31 U.S.C. 3902(b).

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable for the period beginning January 1, 2023, and ending on June 30, 2023, is 4⅝ per centum per annum.

Timothy E. Gribben,

Commissioner, Bureau of the Fiscal Service.

[FR Doc. 2023–02104 Filed 1–31–23; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On January 26, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. CARTES JARA, Horacio Manuel (a.k.a. CARTES, Horacio; a.k.a. VIVEROS CARTES, Horacio), Paraguay; DOB 05 Jul 1956; POB Asuncion, Paraguay; nationality Paraguay; Gender Male; Passport P486167 (Paraguay) issued 09 Nov 2018 expires 09 Nov 2023; National ID No. 492599 (Paraguay) (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(B)(1) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,'' 82 FR 60839 (Dec. 26, 2017) (E.O. 13818) for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

2. VELAZQUEZ MORENO, Hugo Adalberto, Asuncion, Paraguay; DOB 03 Sep 1967; POB Itacurubi del Rosario, Paraguay; nationality Paraguay; Gender Male; Passport D15449 (Paraguay) issued 20 Nov 2018 expires 20 Nov 2023 (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

Entities

1. BEBIDAS USA INC., 4500 William Penn Highway, Easton, PA 18045, United States; Organization Established Date 13 Jan 2011; Business Registration Number 4927052 (Delaware) (United States); alt. Business Registration Number 4065904 (Pennsylvania) (United States) [GLOMAG].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, CARTES JARA, Horacio Manuel, a person whose property and interests in property are blocked pursuant to this order.

2. DOMINICANA ACQUISITION S.A., Calle 29 de Setiembre entre Nicolas Arguello y Rudy Torga Numero 1624, Lambare, Central, Paraguay; Organization Established Date 12 Nov 2018; Paraguayan tax identification number 80105176–2 (Paraguay) [GLOMAG].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, CARTES JARA, Horacio Manuel, a person whose property and interests in property are blocked pursuant to this order.

3. FRIGORIFICO CHAJHA S.A.E. (Latin: FRIGORÍFICO CHAJHA S.A.E.), Carretera Ruta 9 Dr. Carlos Antonio Lopez, Km 26.5, Villa Hayes, Presidente Hayes, Paraguay; Organization Established Date 10 Jun 2020; Paraguayan tax identification number 80112472–7 (Paraguay) [GLOMAG].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, CARTES JARA, Horacio Manuel, a person whose property and interests in property are blocked pursuant to this order.

4. TABACOS USA INC., 4500 William Penn Highway, Easton, PA 18045, United States; 3815 Bethman Road, Easton, PA 18045, United States; Organization Established Date 08 Jun 2004; Business Registration Number 3811964 (Delaware) (United States); alt. Business Registration Number 0101044929 (New Jersey) (United States); alt. Business Registration Number 0005657373 (North Dakota) (United States); alt. Business Registration Number 3331739 (Pennsylvania) (United States); alt. Business Registration Number 7686966–0143 (Utah) (United States); alt. Business Registration Number 270084 (West Virginia) (United States) [GLOMAG].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, CARTES JARA, Horacio Manuel, a person whose property and interests in property are blocked pursuant to this order.

Dated: January 26, 2023.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–02071 Filed 1–31–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Gasohol; Compressed Natural Gas and Gasoline Excise Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning gasohol; compressed natural gas and gasoline excise tax.

DATES: Written comments should be received on or before April 3, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include 1545–1270 or TD 8609, Gasohol; Compressed Natural Gas; and Gasoline Excise Tax.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Gasohol; Compressed Natural Gas; and Gasoline Excise Tax.

OMB Number: 1545–1270.

Regulation Project Number: PS–66–93 (TD 8609) and PS–120–90 (TD 8241).

Abstract: TD 8609: This regulation relates to gasohol blending and the tax on compressed natural gas (CNG). The sections relating to gasohol blending affect certain blenders, enterers, refiners, and through putters. The sections relating to CMG affect persons that sell or buy CNG for use as a fuel in a motor vehicle or motorboat. TD 8421: This regulation relates to the federal excise tax on gasoline. It affects refiners, importers, and distributors of gasoline and provides guidance relating to taxable transactions, persons liable for tax, gasoline blendstocks, and gasohol.

Current Actions: The IRS is removing the burden associated with section 48.4081–6(c)(1)(ii). See Public Law 108–357, Title III, § 301(c)(7), Oct. 22, 2004, 118 Stat. 1461. There are no other changes in the paperwork burden previously approved by OMB; IRS is making this submission to renew the OMB approval.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, Not-for-profit institutions, Farms and State, Local or Tribal Governments.

Estimated Number of Respondents: 2,210.

Estimated Time per Respondent: 9 minutes.

Estimated Total Annual Burden Hours: 246.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection

of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 25, 2023.

Molly J. Stasko,

Senior Tax Analyst.

[FR Doc. 2023–02011 Filed 1–31–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1128

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 1128, Application to Adopt, Change, or Retain a Tax Year.

DATES: Written comments should be received on or before April 3, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include 1545–0134 or Form 1128, Application to Adopt, Change, or Retain a Tax Year.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application to Adopt, Change, or Retain a Tax Year.

OMB Number: 1545–0134.

Form Number: 1128.

Abstract: Section 442 of the Internal Revenue Code requires that a change in a taxpayer's annual accounting period be approved by the Secretary. Under regulation section 1.442–1(b), a taxpayer must file Form 1128 to secure prior approval unless the taxpayer can automatically make the change. The IRS uses the information on the form to determine whether the application should be approved.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Individuals, Not-for-profit institutions, and Farms.

Estimated Number of Respondents: 9,788.

Estimated Time per Respondent: 23 hours, 43 minutes.

Estimated Total Annual Burden Hours: 232,066.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 25, 2023.

Molly J Stasko,

Senior Tax Analyst.

[FR Doc. 2023–02000 Filed 1–31–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Geriatric and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. 10, that a meeting of the Geriatric and Gerontology Advisory Committee will be held in person or virtually on Wednesday, April 26, 2023, from 8 a.m. to 4 p.m. and Thursday, April 27, 2023, from 8 a.m. to 12 noon (Eastern Daylight Time). This meeting will be held at the American Health Care Association, 1201 L St. NW, Washington, DC 20005, as well as virtually via WebEx and is open to the public.

The purpose of the Committee is to provide advice to the Secretary of VA and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology. The Committee assesses the capability of VA health care facilities and programs to meet the medical, psychological, and social needs of older Veterans, and evaluates VA programs designated as Geriatric Research, Education, and Clinical Centers.

Although no time will be allocated for receiving oral presentations from the public, members of the public may submit written statements for review by the Committee to:

Marianne Shaughnessy, Ph.D., AGPCNP–BC, GS–C, FAAN., Designated Federal Officer, Veterans Health Administration by email at *Marianne.Shaughnessy@va.gov.* Comments will be accepted until close of business on April 12, 2023. In the communication, the writers must identify themselves and state the organization, association of person(s) they represent.

Any member of the public wishing to attend either in person or virtually or

seeking additional information should email *Marianne.Shaughnessy@va.gov* or call 202–407–6798, no later than close of business on April 12, 2023, to provide their name, professional affiliation, email address and phone number. For anyone wishing to attend virtually, they may use the WebEx link for April 26, 2023: *https://veteransaffairs.webex.com/wbxmjs/joinservice/sites/veteransaffairs/meeting/download/3d96cf4fe3e9405084a5a341ffae8141?siteurl=veteransaffairs&MTID=md964764d3ba8bc06bdf938795c994181,* meeting number (access code): 2762 478 0332, meeting password: dPY72GJZh2* or April 27, 2023: *https://veteransaffairs.webex.com/wbxmjs/joinservice/sites/veteransaffairs/meeting/download/e1808b96cd0d404f85d53985d51448aa?siteurl=veteransaffairs&MTID=m5fce08c53294118afba3ba1e7c0897f8* meeting number (access code): 2760 340 5269, meeting password: KKihSmj*658, or to join by phone either day: 1–404–397–1596.

Dated: January 27, 2023.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–02099 Filed 1–31–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0820]

Agency Information Collection Activity Under OMB Review: Adaptive Sport Grant Application

AGENCY: National Veterans Sports Programs and Special Events, Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the National Veterans Sports Programs and Special Events (NVSPSE), Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0820''.

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. 2900–0820'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 521A.

Title: Application for Adaptive Sports Grant, VA Form 10096.

OMB Control Number: 2900–820.

Type of Review: Recertification.

Abstract: Legal authority for this data collection is found under 38 U.S.C. 521A that authorizes and mandates the collection of data during the grant application, implementation to include quarterly and annual reporting, and closeout phases of the adaptive sports grant. Mandated collection of data allows measurement and evaluation of the adaptive sports grant program, the goal of which is providing adaptive sport opportunities for disabled veterans and members of the Armed Forces.

The information will be used by VA to evaluate multiple criteria to confirm grantee eligibility, to score grantee proposals according to application criteria, and to ensure program efficacy and appropriate use of grant funds. The application information will indicate whether and to what extent a grant program is likely to be successful in meeting the program's intent for providing adaptive sports opportunities for disabled veterans and members of the Armed Forces.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 223 on November 21, 2022, pages 70906 and 70907.

Affected Public: Private sector non-profit.

Estimated Annual Burden: 83 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Annual.

Estimated Number of Respondents: 250.

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. 2023–02015 Filed 1–31–23; 8:45 am]

BILLING CODE 8320–01–P

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Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2014–BT–STD–0005]

RIN 1904–AD15

Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products

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

ACTION: Supplemental notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including consumer conventional cooking products. EPCA also requires the U.S. Department of Energy (''DOE'') to periodically determine whether more-stringent standards would be technologically feasible and economically justified, and would result in significant energy savings. In this supplemental notice of proposed rulemaking (''SNOPR''), DOE proposes new and amended energy conservation standards for consumer conventional cooking products, and also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES:

Meeting: DOE will hold a public meeting via webinar on Tuesday, January 31, 2023, from 1:00 p.m. to 4:00 p.m. See section VII of this document, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this SNOPR no later than April 3, 2023.

Comments regarding the likely competitive impact of the proposed standard should be sent to the Department of Justice contact listed in the **ADDRESSES** section on or before March 3, 2023.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov,* under docket number EERE–2014–BT–STD–0005. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2014–BT–STD–0005, by any of the following methods:

Email: ConventionalCooking Products2014STD0005@ee.doe.gov. Include the docket number EERE–2014–BT–STD–0005 in the subject line of the message.

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.

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 VII of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, 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-2014-BT-STD-0005.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VII of this document for information on how to submit comments through *www.regulations.gov.*

EPCA requires the Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition. The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the Division at *energy.standards@usdoj.gov* on or before the date specified in the **DATES** section. Please indicate in the ''Subject'' line of your email the title and Docket Number of this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Dr. Carl Shapiro, 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) 287–5649. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Melanie Lampton, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Melanie.Lampton@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. Synopsis of the Proposed 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 B of EPCA[2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309). These products include consumer conventional cooking products, the subject of this rulemaking.

Pursuant to 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)). EPCA also provides that not later than six years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)).

In accordance with these and other statutory provisions discussed in this document, DOE proposes new and amended energy conservation standards for consumer conventional cooking products. Per its authority in 42 U.S.C. 6295(h)(2), DOE proposes to remove the existing prescriptive standard for gas cooking tops prohibiting a constant burning pilot light. Instead, for conventional cooking tops, DOE proposes performance standards only, shown in Table I.1 which are the maximum allowable integrated annual energy consumption (''IAEC'') and expressed in kilowatt-hours per year (''kWh/year'') for electric cooking tops and thousand British thermal units per year (''kBtu/year'') for gas cooking tops. The IAEC includes active mode, standby mode, and off mode energy use. These proposed standards for conventional cooking tops, if adopted, would apply to all product classes listed in Table I.1 and manufactured in, or imported into, the United States starting on the date three years after the publication of any final rule for this rulemaking. DOE notes that constant burning pilot lights, which are currently prohibited under the existing prescriptive standard for gas cooking tops, 10 CFR 430.32(j), consume approximately 2,000 kBtu/year. While DOE's proposal would remove this prescriptive requirement from its regulations, DOE notes that, based on its review of the existing prescriptive standard prohibiting constant burning pilots for gas cooking tops, the proposed

[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.

performance standards of 1,204 kBtu per year for gas cooking tops would not be achievable by products if they were to incorporate a constant burning pilot.

TABLE I.1—PROPOSED ENERGY CONSERVATION PERFORMANCE STANDARDS FOR CONVENTIONAL COOKING TOPS

Product class	Maximum integrated annual energy consumption (IAEC)
Electric Open (Coil) Element Cooking Tops	199 *kWh/year*.
Electric Smooth Element Cooking Tops	207 *kWh/year*.
Gas Cooking Tops	1,204 *kBtu/year*.

For conventional ovens, the proposed standard is a prescriptive design requirement for the control system of the oven. Conventional ovens shall not be equipped with a control system that uses a linear power supply. (*See* Table I.2). These proposed standards, if adopted, would apply to all conventional ovens manufactured in, or imported into, the United States starting on the date three years after the publication of the final rule for this rulemaking. DOE also notes that the current prescriptive standards for conventional gas ovens prohibiting constant burning pilot lights would continue to be applicable. (10 CFR 430.32(j)). Table I.2 provides a summary of the proposed standards for conventional ovens.

TABLE I.2—PROPOSED PRESCRIPTIVE ENERGY CONSERVATION STANDARDS FOR CONVENTIONAL OVENS

Product class	Current standard	Current SNOPR proposed standards
Electric Standard, Freestanding Electric Standard, Built-In/Slide-In. Electric Self-Clean, Freestanding. Electric Self-Clean, Built-In/Slide-In.	None	Shall not be equipped with a control system that uses linear power supply.*
Gas Standard, Freestanding Gas Standard, Built-In/Slide-In. Gas Self-Clean, Freestanding. Gas Self-Clean, Built-In/Slide-In.	No constant burning pilot light	The control system for gas ovens shall: (1) Not be equipped with a constant burning pilot light; and (2) Not be equipped with a linear power supply.*

* A linear power supply produces unregulated as well as regulated power. The unregulated portion of a linear power supply typically consists of a transformer that steps alternating current (''AC'') line voltage down, a voltage rectifier circuit for AC to direct current (''DC'') conversion, and a capacitor to produce unregulated, direct current output. Linear power supplies are described in section IV.C.1.b of this SNOPR.

A. Benefits and Costs to Consumers

Table I.3 presents DOE's evaluation of the economic impacts of the proposed standards, represented by trial standard level (''TSL'') 2, on consumers of conventional cooking products, as measured by the average life-cycle cost (''LCC'') savings and the simple payback period (''PBP'').[3] The shipment-weighted average LCC savings are positive for all product classes, and the shipment-weighted PBP is less than the average lifetime of consumer conventional cooking products, which is estimated to be 16.8 years for electric cooking products and 14.5 years for gas cooking products (*see* section IV.F.6 of this document).

TABLE I.3—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF CONVENTIONAL COOKING PRODUCTS

Product class	Average LCC savings (2021$)	Simple payback period (years)
Electric Open (Coil) Element Cooking Tops*	$0.00	n.a.
Electric Smooth Element Cooking Tops	13.29	0.6
Gas Cooking Tops	21.89	5.0
Electric Standard Ovens, Freestanding	0.99	1.7
Electric Standard Ovens, Built-In/Slide-In	0.95	1.8
Electric Self-Clean Ovens, Freestanding	1.02	1.7
Electric Self-Clean Ovens, Built-In/Slide-In	1.01	1.8
Gas Standard Ovens, Freestanding	0.65	1.9
Gas Standard Ovens, Built-In/Slide-In	0.59	2.0
Gas Self-Clean Ovens, Freestanding	0.70	1.9
Gas Self-Clean Ovens, Built-In/Slide-In	0.60	2.0
Shipment-weighted Average**	6.75	2.0

* The entry ''n.a.'' means not applicable because the standard at the proposed TSL is the baseline.
** Results are weighted by projected shipments of the compliance year (2027).

[3] The average LCC savings refer to consumers that are affected by a standard and are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of new or amended standards (*see* section IV.F.9 of this document). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (*see* section IV.C of this document).

DOE's analysis of the impacts of the proposed standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers

The industry net present value (''INPV'') is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2022–2056). Using a real discount rate of 9.1 percent, DOE estimates that the INPV for manufacturers of consumer conventional cooking products in the case without new and amended standards is $1,607 million in 2021 dollars. Under the proposed standards, the change in INPV is estimated to range from –9.6 percent to –9.4 percent, which is approximately −$154.8 million to −$150.4 million. In order to bring products into compliance with new and amended standards, it is estimated that the industry would incur total conversion costs of $183.4 million.

DOE's analysis of the impacts of the proposed standards on manufacturers is described in section IV.J of this document. The analytic results of the manufacturer impact analysis (''MIA'') are presented in section V.B.2 of this document.

C. National Benefits and Costs [4]

DOE's analyses indicate that the proposed energy conservation standards for consumer conventional cooking products would save a significant amount of energy. Relative to the case without new and amended standards, the lifetime energy savings for consumer conventional cooking products purchased in the 30-year period that begins in the anticipated year of compliance with the new and amended standards (2027–2056) amount to 0.46 quadrillion British thermal units (''Btu''), or quads.[5] This represents a savings of 3.4 percent relative to the energy use of these products in the case without amended standards (referred to as the ''no-new-standards case'').

The cumulative net present value (''NPV'') of total consumer benefits of the proposed standards for consumer conventional cooking products ranges from $0.65 billion (at a 7-percent discount rate) to $1.71 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product and installation costs for consumer conventional cooking products purchased in 2027–2056.

In addition, the proposed standards for consumer conventional cooking products are projected to yield significant environmental benefits. DOE estimates that the proposed standards would result in cumulative emission reductions (over the same period as for energy savings) of 21.9 million metric tons (''Mt'') [6] of carbon dioxide (''CO_2''), 2.2 thousand tons of sulfur dioxide (''SO_2''), 51.8 thousand tons of nitrogen oxides (''NO_X''), 244.9 thousand tons of methane (''CH_4''), 0.1 thousand tons of nitrous oxide (''N_2O''), and 0.01 tons of mercury (''Hg'').[7]

DOE estimates the value of climate benefits from a reduction in greenhouse gases (''GHG'') using four different estimates of the social cost of CO_2 (''SC-CO_2''), the social cost of methane (''SC-CH_4''), and the social cost of nitrous oxide (''SC-N_2O''). Together these represent the social cost of GHG (''SC-GHG'').[8] DOE used interim SC-GHG values developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (''IWG'').[9] The derivation of these values is discussed in section IV.L of this document. For presentational purposes, the climate benefits associated with the average SC-GHG at a 3-percent discount rate are estimated to be $1.17 billion. DOE does not have a single central SC-GHG point estimate and it emphasizes the importance and value of considering the benefits calculated using all four SC-GHG estimates.

DOE estimated the monetary health benefits from SO_2 and NO_X emissions reductions using benefit per ton estimates from the scientific literature, as discussed in section IV.L of this document. DOE estimated the present value of the health benefits would be $0.61 billion using a 7-percent discount rate, and $1.63 billion using a 3-percent discount rate.[10] DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions.

Table I.4 summarizes the economic benefits and costs expected to result from the proposed standards for consumer conventional cooking products. There are other important unquantified effects, including certain unquantified climate benefits, unquantified public health benefits from the reduction of toxic air pollutants, direct $PM_{2.5}$ and other emissions that affect both indoor and outdoor air quality, unquantified energy security benefits, and distributional effects, among others.

[4] All monetary values in this document are expressed in 2021 dollars.

[5] The quantity refers to full-fuel-cycle (''FFC'') energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.1 of this document.

[6] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[7] DOE calculated emissions reductions relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2022* (''*AEO2022*''). *AEO2022* represents current federal and state legislation and final implementation of regulations as of the time of its preparation. See section IV.K of this document for further discussion of *AEO2022* assumptions that effect air pollutant emissions.

[8] 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 the 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. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

[9] See Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990, Washington, DC, February 2021. *www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.*

[10] DOE estimates the economic value of these emissions reductions resulting from the considered TSLs for the purpose of complying with the requirements of Executive Order 12866.

TABLE I.4—SUMMARY OF MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER CONVENTIONAL COOKING PRODUCTS

[TSL 2]

	Billion 2021$
3% discount rate	
Consumer Operating Cost Savings	2.28
Climate Benefits *	1.17
Health Benefits **	1.63
Total Monetized Benefits †	5.08
Consumer Incremental Product Costs ‡	0.56
Net Monetized Benefits	4.51
7% discount rate	
Consumer Operating Cost Savings	0.95
Climate Benefits * (3% discount rate)	1.17
Health Benefits **	0.61
Total Monetized Benefits †	2.74
Consumer Incremental Product Costs ‡	0.31
Net Monetized Benefits	2.43

Note: This table presents the costs and benefits associated with consumer conventional cooking products shipped in 2027—2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027—2056.

* Climate benefits are calculated using four different estimates of the social cost of carbon (SC-CO_2), methane (SC-CH_4), and nitrous oxide (SC-N_2O) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate) (see section IV.L of this document). Together these represent the global SC-GHG. For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 3 percent discount rate are shown, but DOE does not have a single central SC-GHG point estimate. 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. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. See section IV.L of this document for more details.

† Total and net benefits include those consumer, climate, and health benefits that can be quantified and monetized. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC-GHG with 3-percent discount rate, but DOE does not have a single central SC-GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four SC-GHG estimates.

‡ Costs include incremental equipment costs as well as installation costs.

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are (1) the reduced consumer operating costs, minus (2) the increase in product purchase prices and installation costs, plus (3) the value of climate and health benefits of emission reductions, all annualized.[11]

The national operating savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered products and are measured for the lifetime of consumer conventional cooking products shipped in 2027–2056. The benefits associated with reduced emissions achieved as a result of the proposed standards are also calculated based on the lifetime of consumer conventional cooking products shipped in 2027–2056. Total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate. Estimates of SC–GHG are presented for all four discount rates in section IV.L of this document.

Table I.5 presents the total estimated monetized benefits and costs associated with the proposed standard, expressed in terms of annualized values. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced NO_X and SO_2 emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards proposed in this rule is $32.5 million per year in increased equipment costs, while the estimated annual benefits are $100.8 million in reduced equipment operating costs, $67.0 million in climate benefits, and $64.9 million in health benefits. In this case, the net benefit would amount to $200.3 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is $32.2 million per year in increased equipment costs, while the estimated annual benefits are $130.7 million in reduced operating costs, $67.0 million in climate benefits, and $93.8 million in health benefits. In this case, the net benefit would amount to $259.2 million per year.

[11] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2022, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2030), and then discounted the present value from each year to 2022. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

TABLE I.5—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER CONVENTIONAL COOKING PRODUCTS

[TSL 2]

	Million 2021$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	130.7	124.7	137.9
Climate Benefits *	67.0	65.3	68.4
Health Benefits **	93.8	91.4	95.6
Total Monetized Benefits †	291.5	281.4	301.8
Consumer Incremental Product Costs ‡	32.2	36.1	31.4
Net Monetized Benefits	259.2	245.2	270.4
7% discount rate			
Consumer Operating Cost Savings	100.8	96.5	105.8
Climate Benefits * (3% discount rate)	67.0	65.3	68.4
Health Benefits **	64.9	63.4	66.0
Total Monetized Benefits †	232.8	225.3	240.2
Consumer Incremental Product Costs ‡	32.5	35.8	31.8
Net Monetized Benefits	200.3	189.5	208.4

Note: This table presents the costs and benefits associated with consumer conventional cooking products shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the *AEO2022* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.H.3 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC-GHG (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC-GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four SC-GHG estimates. 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. Aa reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. See section IV.L of this document for more details.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC-GHG with 3-percent discount rate, but the Department does not have a single central SC-GHG point estimate.

‡ Costs include incremental equipment costs as well as installation costs.

DOE's analysis of the national impacts of the proposed standards is described in sections IV.H, IV.K and IV.L of this document.

D. Conclusion

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Specifically, with regards to technological feasibility, products achieving these standard levels are already commercially available for all product classes covered by this proposal. As for economic justification, DOE's analysis shows that the benefits of the proposed standard exceed, to a great extent, the burdens of the proposed standards. That conclusion remains true under any reasonable analytical assumption—*i.e.,* the proposed standards are net beneficial under any discount rate (both for climate and non-climate benefits and costs), any cost scenario, and any other scenario DOE analyzed. Moreover, because consumer operating cost savings and health benefits alone greatly exceed costs under all such assumptions and scenarios, DOE noted that this conclusion does not depend on climate benefits (though DOE's estimates of climate benefits remain important and robust).

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the proposed standards for consumer conventional cooking products is $32.5 million per year in increased product costs, while the estimated annual benefits are $100.8 million in reduced product operating costs, $67.0 million in climate benefits and $64.9 million in health benefits. The net monetized benefit amounts to $200.3 million per year.

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.[12] For example, some covered products and equipment have substantial energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with

[12] 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).

relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

As previously mentioned, the standards are projected to result in estimated national energy savings of 0.46 quads FFC, the equivalent of the electricity use of 19 million residential homes in one year. The NPV of consumer benefit for these projected energy savings is $0.65 billion using a discount rate of 7 percent, and $1.71 billion using a discount rate of 3 percent. The cumulative emissions reductions associated with these energy savings are 21.9 Mt of CO_2, 2.2 thousand tons of SO_2, 51.8 thousand tons of NO_X, 0.01 tons of Hg, 244.9 thousand tons of CH_4, and 0.1 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC-GHG at a 3-percent discount rate) is $1.17 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions is $0.61 billion using a 7-percent discount rate and $1.63 billion using a 3-percent discount rate. As such, DOE has initially determined the energy savings from the proposed standard levels are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B). A more detailed discussion of the basis for these tentative conclusions is contained in the remainder of this document and the accompanying technical support document (''TSD'').[13]

DOE also considered more-stringent energy efficiency levels as potential standards, and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more-stringent energy efficiency levels would outweigh the projected benefits.

Based on consideration of the public comments DOE receives in response to this document and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this document that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed rule, as well as some of the relevant historical background related to the establishment of standards for consumer conventional cooking products.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include consumer conventional cooking products, the subject of this document. (42 U.S.C. 6292(a)(10)). EPCA prescribed energy conservation standards for these products (42 U.S.C. 6295(h)(1)), and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(h)(2)). EPCA further provides that, not later than six years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice 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)).

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. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)). 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. 6297(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. 6295(r)). Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) & 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for conventional cooking tops appear at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix I1 (''appendix I1''). There are currently no DOE test procedures for conventional ovens.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including consumer conventional cooking products. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy (''Secretary'') determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) & 42 U.S.C. 6295(o)(3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3))

Moreover, DOE may not prescribe a standard if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(B)). In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)). DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such 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 of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

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

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

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

[13] The TSD is available in the docket for this rulemaking at *www.regulations.gov/docket/EERE-2014-BT-STD-0005/document.*

result from the imposition of the standard;

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

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)).

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)). DOE's current test procedures for conventional cooking tops address standby mode and off mode energy use. In this rulemaking, DOE intends to incorporate such energy use into any amended energy conservation standards for conventional cooking tops that it may adopt. As discussed in section III.C of this document, DOE does not have a current test procedure for conventional ovens. As a result, a performance standard that addresses standby mode and off mode energy use is not feasible for conventional ovens. However, in this SNOPR, DOE is proposing to adopt prescriptive design requirements for the control system of conventional ovens that would address standby mode and off mode energy use.

B. Background

1. Current Standards

In a final rule published on April 8, 2009 (''April 2009 Final Rule''), DOE prescribed the current energy conservation standards for consumer conventional cooking products that prohibits constant burning pilots for all gas cooking products (*i.e.,* gas cooking products both with or without an electrical supply cord) manufactured on and after April 9, 2012. 74 FR 16040. These standards are set forth in DOE's regulations at 10 CFR 430.32(j)(1)–(2).

2. History of Standards Rulemaking for Consumer Conventional Cooking Products

The National Appliance Energy Conservation Act of 1987 (''NAECA''), Public Law 100–12, amended EPCA to establish prescriptive standards for gas cooking products, requiring gas ranges and ovens with an electrical supply cord that are manufactured on or after January 1, 1990, not to be equipped with a constant burning pilot light. (42 U.S.C. 6295(h)(1)). NAECA also directed DOE to conduct two cycles of rulemakings to determine if more stringent or additional standards were justified for kitchen ranges and ovens. (42 U.S.C. 6295(h)(2)).

DOE undertook the first cycle of these rulemakings and published a final rule on September 8, 1998, which found that no standards were justified for conventional electric cooking products at that time. 63 FR 48038. In addition, partially due to the difficulty of conclusively demonstrating at that time that elimination of standing pilots for conventional gas cooking products without an electrical supply cord was economically justified, DOE did not include amended standards for conventional gas cooking products in the final rule. 63 FR 48038, 48039–48040. For the second cycle of rulemakings, DOE published the April 2009 Final Rule amending the energy conservation standards for consumer conventional cooking products to prohibit constant burning pilots for all gas cooking products (*i.e.,* gas cooking products both with or without an electrical supply cord) manufactured on or after April 9, 2012. DOE decided to not adopt energy conservation standards pertaining to the cooking efficiency of conventional electric cooking products because it determined that such standards would not be technologically feasible and economically justified at that time. 74 FR 16040, 16085.[14]

As noted, EPCA requires that, not later than six years after the issuance of a final rule establishing or amending a standard, DOE publish a NOPR proposing new standards or a notification of determination that the existing standards do not need to be amended. (42 U.S.C. 6295(m)(1)). On February 12, 2014, DOE published a request for information (''RFI'') document (''February 2014 RFI'') to initiate the mandatory review process imposed by EPCA. 79 FR 8337. In making this determination, DOE must evaluate whether new or amended standards would (1) yield a significant savings in energy use and (2) be both technologically feasible and economically justified. (42 U.S.C. 6295(m)(1)(B) and 42 U.S.C. 6295(o)(3)(B))

On June 10, 2015, DOE published a NOPR (''June 2015 NOPR'') proposing

[14] As part of the April 2009 Final Rule, DOE decided not to adopt energy conservation standards pertaining to the cooking efficiency of microwave ovens. DOE has since published a final rule on June 17, 2013, adopting energy conservation standards for microwave oven standby mode and off mode. 78 FR 36316. DOE is not considering energy conservation standards for microwave ovens as part of this proposed rule. A separate rulemaking is underway addressing energy conservation standards for microwave ovens. See *www.regulations.gov/docket/EERE-2017-BT-STD-0023/document.*

new and amended energy conservation standards for consumer conventional ovens. 80 FR 33030. In the June 2015 NOPR, DOE noted that it was deferring its decision regarding whether to adopt amended energy conservation standards for conventional cooking tops, pending further study. 80 FR 33030, 33038–33040.

On September 2, 2016, DOE published an SNOPR (''September 2016 SNOPR'') proposing new and amended energy conservation standards for conventional cooking tops based on the amendments to the test procedure as proposed in a test procedure SNOPR published on August 22, 2016 (''August 2016 TP SNOPR;'' 81 FR 57374). 81 FR 60784. In the September 2016 SNOPR, DOE also revised its proposal from the June 2015 NOPR for conventional ovens from a performance-based standard to a prescriptive standard given that DOE had proposed to repeal the test procedure for conventional ovens in the August 2016 TP SNOPR. 81 FR 60784, 60793–60794. (The history of the test procedures for conventional cooking tops and conventional ovens is discussed in greater detail in section III.C of this document.)

On December 14, 2020, DOE published a notification of proposed determination (''NOPD'') proposing not to amend the energy conservation standards for consumer conventional cooking products (''December 2020 NOPD''). 85 FR 80982. In the December 2020 NOPD, DOE initially determined that amended energy conservation standards for consumer conventional cooking products would not be economically justified and would not result in a significant conservation of energy.

DOE held a public meeting on January 28, 2021, to solicit feedback from stakeholders concerning the December 2020 NOPD, and received comments in response to the December 2020 NOPD from the interested parties listed in Table II.1.

TABLE II—DECEMBER 2020 NOPD WRITTEN COMMENTS

Commenter(s)	Abbreviation	Docket No.	Commenter type
Henry Adkins	Adkins	81	Individual.
Association of Home Appliance Manufacturers	AHAM	84	Trade Association.
Lamis Ahmad	Ahmad	82	Individual.
Pacific Gas and Electric Company, San Diego Gas and Electric, Southern California Edison, collectively, the California Investor-Owned Utilities.	CA IOUs	89	Utilities.
GE Appliances	GEA	85	Manufacturer.
Appliance Standards Awareness Project, Consumer Federation of America, Natural Resources Defense Council.	Joint Commenters	87	Energy Organizations.
American Public Gas Association, American Gas Association	Joint Gas Associations.	86	Utility and Trade Association.
Northwest Energy Efficiency Alliance	NEEA	88	Efficiency Organization.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[15] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the January 28, 2021, public meeting, DOE cites the written comments throughout this SNOPR. Any oral comments provided during the webinar that are not substantively addressed by written comments are summarized and cited separately throughout this document.

3. Basis for This Proposed Rule

In the December 2020 NOPD, the tentative determination that amended energy conservation standards for consumer conventional cooking products would not be economically justified and would not result in a significant conservation of energy hinged, in significant part, on DOE's proposal to screen out all identified technology options that would improve the performance of gas cooking tops to efficiencies above the baseline efficiency level. 85 FR 80982, 81003–81004. DOE noted in the December 2020 NOPD that the estimates for energy savings associated with a specific technology option for gas cooking tops, optimized burner and grate design, may vary depending on the test procedure, and thus DOE screened out this technology options from further analysis of gas cooking tops. *Id.* at 85 FR 81004. As discussed in section III.C of this document, at the time of the December 2020 NOPD, DOE had withdrawn its test procedure for conventional cooking tops. However, DOE additionally stated in the December 2020 NOPD that it would reevaluate the energy savings associated with this technology option if it considered performance standards in a future rulemaking. *Id.*

On August 22, 2022, DOE published a final rule (''August 2022 TP Final Rule'') establishing a test procedure for conventional cooking tops, at 10 CFR part 430, subpart B, appendix I1, ''Uniform Test Method for the Measuring the Energy Consumption of Conventional Cooking Products.'' 87 FR 51492. As a result, in this SNOPR, DOE is reevaluating the energy savings associated with the optimized burner and grate design technology option for conventional gas cooking tops and has tentatively found that amended energy conservation standards for consumer conventional cooking products are economically justified and would result in a significant conservation of energy.

As discussed in section III.C of this document, this SNOPR specifically further differs from the September 2016 SNOPR in that the performance standards evaluated for conventional cooking tops are based on the new appendix I1 test procedure, rather than on the now-withdrawn former appendix I.

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), DOE notes that it is deviating from the provision in appendix A regarding the NOPR stage for an energy conservation standard rulemaking. Section 6(f)(2) of appendix A specifies that the length of the public comment period for a NOPR will vary depending upon the circumstances of the particular rulemaking, but will not be less than 75 calendar days. For this SNOPR, DOE has opted to instead

[15] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for consumer conventional cooking products. (Docket NO. EERE–2014–BT–STD–0005, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

provide a 60-day comment period. DOE requested comment in the February 2014 RFI on the technical and economic analyses and provided stakeholders a 60-day comment period, after publishing the comment period extension. Additionally, DOE provided a 30-day comment period for the September 2016 SNOPR with an extension to 60 days, and a 75-day comment period for the December 2020 NOPD. 81 FR 60784, 81 FR 67219, 85 FR 80982. DOE has relied on many of the same analytical assumptions and approaches as used in the September 2016 SNOPR and December 2020 NOPD. As such, DOE believes a 60-day comment period is appropriate and will provide interested parties with a meaningful opportunity to comment on the proposed rule.

III. General Discussion

DOE developed this proposal 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. General Comments

This section summarizes general comments received from interested parties regarding rulemaking timing and process.

GEA supported the comments submitted by AHAM and incorporated them by reference. (GEA, No. 85 at p. 1).

AHAM stated that the 2017 statutory deadline to publish a final rule regarding consumer conventional cooking product energy conservation standards has passed, and that DOE should not hold this rule open and should finalize a determination not to amend the standard. (AHAM, No. 84 at p. 4). AHAM commented that it is disingenuous of other commenters to simultaneously challenge DOE for failing to timely meet an obligation while also urging it to further delay meeting that same obligation. (*Id.*) AHAM added that, should DOE believe energy conservation standards based on measured efficiency could be justified once a reliable test procedure exists, DOE can propose a rule at any time after the publication of the determination not to amend the standard, although AHAM questioned whether such a standard would be justified under EPCA. (*Id.*) AHAM further noted that EPCA requires that DOE re-evaluate its determination not to amend the standard within 3 years of the issuance of that determination. 42 U.S.C. 6295(m)(3)(B). (*Id.*)

GEA commented that DOE's actions on this standard are long past due. (GEA, No. 85 at p. 2).

The CA IOUs urged DOE to consider the implications of the December 2020 NOPD on the Executive Order 13990 and the announcement that the DOE would be re-examining the withdrawal of the cooking top test procedure. (CA IOUs, No. 89 at p. 5)

In the most recent stage of this rulemaking, DOE published the December 2020 NOPD in which it tentatively concluded that new and amended energy conservation standards for consumer conventional cooking products would not be economically justified and would not result in a significant conservation of energy, in part because it was unable to evaluate certain technology options for gas cooking tops in the absence of a test procedure for these products. 85 FR 80982. The test procedure established in the August 2022 TP Final Rule, discussed in more detail in section III.C of this document, provides testing results upon which these SNOPR analyses for conventional cooking tops were based. DOE reevaluated its analyses as quickly as possible once the test procedure was finalized. President Biden's Executive Order 13990, which addresses the social cost of carbon and other greenhouse gases, are discussed in section IV.L of this document.

The Joint Gas Associations agreed with the DOE's tentative determination in the December 2020 NOPD that no new standards are justified. (Joint Gas Associations, No. 86 at pp. 2–3). The Joint Gas Associations further supported the December 2020 NOPD's tentative determination that neither of the February 2020 Process Rule's thresholds for significant energy savings are met for TSL 2 or TSL 1 for consumer conventional cooking products. (*Id.*)

The Joint Commenters expressed concern that DOE indicated it was in the process of revising the Process Rule, yet the Department cited the energy savings thresholds from the February 2020 Process Rule to justify the proposed determination of no amended standards. (Joint Commenters, No. 87 at p. 1). The Joint Commenters added that with billions of consumer savings at risk, DOE should not move forward with this determination until DOE completed the indicated revisions to the Process Rule. (*Id.*) The Joint Commenters further commented that DOE should eliminate the energy savings thresholds as part of the Process Rule revision in order to ensure that critical energy and utility bill savings are not lost. (Joint Commenters, No. 87 at p. 2).

In evaluating the significance of the estimated energy savings for the December 2020 NOPD, DOE applied a two-part numeric threshold test that was then applicable under section 6(b) of appendix A to 10 CFR part 430 subpart C (Jan. 1, 2021 edition).[16] Specifically, the threshold required that an energy conservation standard result in a 0.30 quads reduction in site energy use over a 30-year analysis period or a 10-percent reduction in site energy use over that same period. *See* 85 FR 8626, 8670 (Feb. 14, 2020). In the December 2020 NOPD, DOE stated that the estimated site energy savings at the max-tech level evaluated at that time was 0.57 quads, which exceeded the 0.3-quads threshold, but expressed concern that this TSL might result in the unavailability of certain product types for conventional ovens because there would be significant uncertainty as to whether commercial-style manufacturers would be able to test their products in the absence of a DOE test procedure for conventional ovens. 85 FR 80982, 81053. (*See* section III.C of this document for discussion of the repeal of the conventional oven test procedure.) DOE then evaluated the next lower TSL than max-tech and estimated that it would save an estimated 0.22 quads of site energy over the evaluation period, which would represent a 4.9-percent decrease in the site energy use of the evaluated products. *Id.* That estimated site energy savings would not reach the 0.3 quad-threshold or the 10-percent site energy saving threshold enumerated in section 6(b) of appendix A to 10 CFR part 430 subpart C (Jan. 1, 2021 edition). Accordingly, DOE tentatively determined in the December 2020 NOPD that new or amended energy conservation standards for consumer conventional cooking products would not result in significant conservation of energy and be economically justified. *Id.*

On December 13, 2021, DOE published in the **Federal Register**, a final rule that amended appendix A. 86 FR 70892 (''December 2021 Final Rule''). The December 2021 Final Rule, in part, removed the numeric threshold in section 6(b) of appendix A for determining when the significant energy savings criterion is met, reverting to DOE's prior practice of making such determinations on a case-by-case basis. 86 FR 70892.

Adkins commented that many consumer cooking products are already

[16] DOE established the numeric threshold test in section 6(b) of appendix A to 10 CFR part 430 subpart C in a final rule published on February 14, 2020. 85 FR 8626.

operating at near peak capabilities and added that introducing stronger regulations on consumer cooking products would increase the cost of these products for consumers, lowering consumption with little to no positive environmental impact. (Adkins, No. 81 at p. 1)

Ahmad commented that DOE's tentative determination of no economic justification for cooking products may still be valid because of a lack of significant technological advancements since the September 2016 SNOPR. (Ahmad, No. 82 at p. 1)

AHAM stated that no significant changes have occurred to justify new standards since the April 2009 Final Rule that determined that energy conservation standards for consumer conventional cooking products were not justified. (AHAM, No. 84 at p. 4)

GEA stated that consumer conventional cooking products use little energy compared to other DOE regulated products and therefore DOE's limited resources are better served on products for whom greater energy savings is feasible. (GEA, No. 85 at p. 2) GEA supported DOE's proposed determination not to amend standards. (*Id.*)

The Joint Gas Associations agreed with DOE's tentative determination in the December 2020 NOPD that a potential amended standard based on TSL 3 would result in a negative net present value, a negative INPV range, a potential unavailability of certain product types for conventional ovens, and a loss of certain functions that provide utility to customers, and that a potential standard at TSL 3 is not economically justified. (Joint Gas Associations, No. 86 at p. 3) The Joint Gas Associations further stated that any potential positive impacts from an amended standard at TSL 3 are not outweighed by these estimated negative impacts. (*Id.*)

The Joint Commenters commented that, without the February 2020 Process Rule thresholds, adopting standards at TSL 2 from the December 2020 NOPD could provide full-fuel cycle savings of 0.6 quads and consumer savings of up to $3.7 billion. (Joint Commenters, No. 87 at p. 2) The Joint Commenters added that adopting standards at the TSL 2 from the December 2020 NOPD would provide full-fuel-cycle energy savings of 0.28 quads and NPV savings of up to $2 billion for electric smooth element cooking tops with an incremental cost of only $3, and would achieve full-fuel-cycle energy savings of 0.1 quads and NPV savings of up to $730 million for self-cleaning freestanding conventional electric ovens with an incremental cost of $1. (*Id.* referencing 85 FR 80982, 81049–81050).

NEEA commented that according to the 2015 RECS, while cooking represents a small amount of overall home energy use (1.4 percent in residential electricity use and 2.9 percent in residential gas use), when combined with the potential individual unit savings for cooking tops shown in the December 2020 NOPD and external testing, performance-based standards for cooking tops could lead to significant national energy savings. (NEEA, No. 88 at p. 3) NEEA noted that DOE's testing showed that conventional gas cooking tops with similar average burner input rates can vary in annual energy use by as much as 27 percent, and conventional oven efficiency for units with similar input rates varied by 11 percent and 19 percent for gas and electric units, respectively. (*Id.* referencing 85 FR 80982, 81008–81009) NEEA also noted that DOE found potential energy savings on average of 24 percent for induction electric cooking tops compared to a baseline smooth element electric cooking top. NEEA commented that this is in line with recent testing conducted by the Food Service Technology Center,[17] which found a 23-percent efficiency improvement. (*Id.* referencing 85 FR 80982, 81035) NEEA recommended that DOE proceed with updated standards for cooking tops and conventional ovens once the test procedure has been updated, commenting that this would allow DOE to consider performance-based standards for cooking tops and conventional ovens that harness energy efficiency opportunities, which could not be fully achieved through the prescriptive standards considered in the December 2020 NOPD (*Id.*).

The CA IOUs commented that, given the recent shift in consumer behavior, there is a high likelihood that a reanalysis of the TSL 2 defined in the December 2020 NOPD based on more recent cooking frequency data would lead to site savings greater than 0.3 quads, exceeding the February 2020 Process Rule's significant energy savings threshold. (CA IOUs, No. 89 at pp. 3–4)

EPCA requires that any new or amended energy conservation standards prescribed by DOE for any type (or class) of covered product be designed to achieve the maximum improvement in energy efficiency (or for certain products, water efficiency) which the Secretary determines is technologically feasible and economically justified. Upon the finalization of a new test procedure for consumer conventional cooking products, DOE reevaluated its analysis from the December 2020 NOPD, including its tentative determination at that time to screen out the technology option for improved burner and grate design. DOE is updating its tentative conclusions in this SNOPR to reflect the use of optimized burners and grates on gas cooking tops to achieve higher efficiencies. See section IV.A.2 and section IV.B of this document, as well as chapters 3 and 4 of the TSD for this SNOPR for additional information on this technology option and screening analysis. DOE also updated its information regarding the prevalence of baseline technologies in conventional ovens on the market. See section IV.F.8 of this document and chapter 7 of the TSD for this SNOPR. Pursuant to these updates and others outlined in this SNOPR, DOE revised its analysis regarding the technological feasibility and economic justification of new and amended energy conservation standards for consumer conventional cooking products and presents a summary of the results in section V of this SNOPR.

B. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q))

As discussed in section II.A of this document, 42 U.S.C. 6292(a)(10) of EPCA covers kitchen ranges and ovens, or ''cooking products.'' DOE's regulations define ''cooking products'' as consumer products that are used as the major household cooking appliances. They are designed to cook or heat different types of food by one or more of the following sources of heat: Gas, electricity, or microwave energy. Each product may consist of a horizontal cooking top containing one or more surface units [18] and/or one or more heating compartments. 10 CFR 430.2. DOE is not considering energy

[17] Frontier Energy. *Residential Cooktop Performance and Energy Comparison Study.* July 2019. Page 11. Available at *www.buildingdecarb.org/uploads/3/0/7/3/30734489/induction_report.pdf.*

[18] The term surface unit refers to burners for gas cooking tops and electric resistance heating elements or inductive heating elements for electric cooking tops.

conservation standards for microwave ovens as part of this proposed rulemaking.[19]

DOE defines a combined cooking product as a household cooking appliance that combines a conventional cooking top and/or conventional oven with other appliance functionality, which may or may not include another cooking product (10 CFR part 430, subpart B, appendix I). In this analysis, DOE is not treating combined cooking products as a distinct product category and is not basing its product classes on such a category. Instead, DOE is evaluating energy conservation standards for conventional cooking tops and conventional ovens separately. Because combined cooking products consist, in part, of a cooking top and/or oven, the cooking top and oven standards would continue to apply to the individual components of the combined cooking product.

As part of the 2009 standards rulemaking for consumer conventional cooking products, DOE did not consider energy conservation standards for consumer conventional gas cooking products with higher burner input rates, including products marketed as ''commercial-style'' or ''professional-style,'' due to a lack of available data for determining efficiency characteristics of those products. DOE considered such products to be gas cooking tops with burner input rates greater than 14,000 British thermal units per hour (''Btu/h'') and gas ovens with burner input rates greater than 22,500 Btu/h. 74 FR 16040, 16054 (Apr. 8, 2009); 72 FR 64432, 64444–64445 (Nov. 15, 2007). DOE also stated that the DOE cooking products test procedures at that time may not adequately measure performance of gas cooking tops and ovens with higher burner input rates. 72 FR 64432, 64444–64445 (Nov. 15, 2007).

As part of the February 2014 RFI, DOE stated that it tentatively planned to consider energy conservation standards for all consumer conventional cooking products, including commercial-style gas cooking products with higher burner input rates. In addition, DOE stated that it may consider developing test procedures for these products and determine whether separate product classes are warranted. 79 FR 8337, 8340 (Feb. 12, 2014).

As discussed in section III.C of this document, DOE's new test procedure for conventional cooking tops in appendix I1 measures the energy use of commercial-style gas cooking tops with high burner input rates. DOE also repealed the conventional oven test procedure in a final rule published on December 16, 2016 (''December 2016 TP Final Rule''). 81 FR 91418.

In the December 2020 NOPD, in the absence of Federal test procedures to measure the energy use or energy efficiency of conventional cooking tops and conventional ovens, DOE evaluated prescriptive design requirements for the control system of conventional electric smooth element cooking tops and conventional ovens, including commercial-style ovens with higher burner input rates. 85 FR 80982, 80988. In the December 2020 NOPD, DOE stated that it would maintain the existing prescriptive design requirements for all conventional gas cooking products, noting that the current definitions for ''conventional cooking top'' and ''conventional oven'' in 10 CFR 430.2 already cover commercial-style gas cooking products with higher burner input rates, as these products are household cooking appliances with surface units or compartments intended for the cooking or heating of food by means of a gas flame. *Id.* In the December 2020 NOPD, DOE did not propose a separate product class for gas cooking tops and ovens with higher burner input rates that are marketed as ''commercial-style'' and did not propose separate definitions for these products. *Id.*

Adkins supported higher standards for industrial cooking equipment and stated that the degree of energy saved by an individual consumer is minimal when compared to that of an entire business or corporation. (Adkins, No. 81 at p. 1)

Ahmad commented that microwave ovens should be the subject of amended energy conservation standards due to widespread use in the U.S. (Ahmad, No. 82 at p. 1)

The scope of this rulemaking is limited to cooking products. As defined in 10 CFR 430.2, ''cooking products'' are consumer products that are used as the major household cooking appliances. They are designed to cook or heat different types of food by one or more of the following sources of heat: Gas, electricity, or microwave energy. Each product may consist of a horizontal cooking top containing one or more surface units and/or one or more heating compartments. Industrial cooking equipment and microwave ovens are not in the scope of this proposed rule.

In this SNOPR, DOE is proposing to define a portable conventional cooking top as a conventional cooking top designed to be moved from place to place. Using this definition, DOE is proposing that the proposed standards for conventional cooking tops would apply to portable models according to their means of heating (gas, electric open (coil) element, or electric smooth element).

DOE requests comment on its proposed definition for portable conventional cooking top and DOE's proposal to include portable conventional cooking tops in the existing product classes. DOE also seeks data and information on its initial determination not to differentiate conventional cooking tops on the basis of portability when considering product classes for this SNOPR analysis.

C. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products 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. DOE's current energy conservation standards for consumer conventional cooking products are prescriptive standards that prohibits constant burning pilots for all gas cooking products (*i.e.,* gas cooking products both with or without an electrical supply cord) manufactured on and after April 9, 2012. 74 FR 16040. (*See* 10 CFR 430.32(j)(2).)

DOE established test procedures for consumer conventional cooking products in a final rule published in the **Federal Register** on May 10, 1978. 43 FR 20108, 20120–20128. DOE revised its test procedures for cooking products to more accurately measure their efficiency and energy use, and published the revisions as a final rule in 1997. 62 FR 51976 (Oct. 3, 1997). These test procedure amendments included: (1) A reduction in the annual useful cooking energy; (2) a reduction in the number of self-clean oven cycles per year; and (3) incorporation of portions of International Electrotechnical Commission (''IEC'') Standard 705–1988, ''Methods for measuring the performance of microwave ovens for household and similar purposes,'' and Amendment 2–1993 for the testing of microwave ovens. *Id.* The test procedures for consumer conventional cooking products established provisions for determining estimated annual operating cost, cooking efficiency (defined as the ratio of cooking energy output to cooking energy input), and energy factor (defined as the ratio of annual useful cooking energy output to total annual energy input). 10 CFR 430.23(i); appendix I. These provisions

[19] See *www.regulations.gov/docket/EERE-2017-BT-STD-0023/document.*

for consumer conventional cooking products were not used for compliance with any energy conservation standards because the standards to date have been design requirements; in addition, there is no EnergyGuide [20] labeling program for cooking products.

DOE subsequently conducted a rulemaking to address standby and off mode energy consumption, as well as certain active mode (*i.e.,* fan-only mode) testing provisions, for consumer conventional cooking products, satisfying the EPCA requirement that DOE include measures of standby mode and off mode power in its test procedures for residential products, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)). DOE published a final rule on October 31, 2012 (''October 2012 TP Final Rule''), adopting standby and off mode provisions. 77 FR 65942.

Prior to the June 2015 NOPR, DOE issued two notices requesting comment on the test procedures for cooking products. On January 30, 2013, DOE published a NOPR (''January 2013 TP NOPR'') proposing amendments to the cooking products test procedure in appendix I that would allow for the testing of active mode energy consumption of induction cooking tops; *i.e.,* conventional cooking tops equipped with induction heating technology for one or more surface units on the cooking top. 78 FR 6232. DOE proposed to incorporate induction cooking tops by amending the definition of ''conventional cooking top'' to include induction heating technology. Furthermore, DOE proposed to require for all cooking tops the use of test equipment compatible with induction technology. Specifically, DOE proposed to replace the solid aluminum test blocks specified at that time in the test procedure for cooking tops with hybrid test blocks comprising two separate pieces: an aluminum body and a stainless-steel base. 78 FR 6232, 6234.

On December 3, 2014, DOE issued a second notice requesting comment on the test procedures for cooking products (''December 2014 TP SNOPR''). 79 FR 71894. In the December 2014 TP SNOPR, DOE modified its proposal from the January 2013 TP NOPR in response to comments from interested parties to specify different test equipment that would allow for measuring the energy efficiency of induction cooking tops, and would include an additional test block size for electric surface units with large diameters (both induction and electric resistance). *Id.* In addition, DOE proposed methods to test non-circular electric surface units, electric surface units with flexible concentric cooking zones, and full-surface induction cooking tops. *Id.* In the December 2014 TP SNOPR, DOE also proposed amendments to add a larger test block size to test gas cooking top burners with higher input rates. *Id.*

In the December 2014 TP SNOPR, DOE also proposed methods for measuring conventional oven volume, clarification that the existing oven test block must be used to test all ovens regardless of input rate, and a method to measure the energy consumption and efficiency of conventional ovens equipped with an oven separator. 79 FR 71894.

On July 2, 2015, DOE published a test procedure final rule (''July 2015 TP Final Rule'') adopting the test procedure amendments discussed above for conventional ovens only. 80 FR 37954.

As discussed in the June 2015 NOPR for conventional ovens, DOE received a significant number of comments raising issues with the repeatability and reproducibility of the proposed hybrid test block test method for cooking tops in response to the December 2014 TP SNOPR and in separate interviews conducted with consumer conventional cooking product manufacturers in February and March of 2015. 80 FR 33030, 33039–33040. A number of manufacturers that produce and sell products in Europe supported the use of a water-heating test method and harmonization with IEC Standard 60350–2 Edition 2, ''Household electric appliances—Part 2: Hobs—Method for measuring performance'' [21] (''IEC Standard 60350–2'') for measuring the energy consumption of electric cooking tops. These manufacturers stated that the test methods in IEC Standard 60350–2 are compatible with all electric cooking top types, specify additional cookware diameters to account for the variety of surface unit sizes on the market, and use test loads that represent real-world cooking top loads. Efficiency advocates also recommended that DOE require water-heating test methods to produce a measure of cooking efficiency for conventional cooking tops that is more representative of actual cooking performance than the hybrid test block method. 80 FR 33030, 33039–33040. For these reasons, DOE decided to defer its decision regarding adoption of energy conservation standards for conventional cooking tops until a representative, repeatable and reproducible test method for cooking tops was finalized. 80 FR 33030, 33040.

DOE published an SNOPR on August 22, 2016 (''August 2016 TP SNOPR'') that proposed amendments to the test procedures for conventional cooking tops. 81 FR 57374. Given the feedback from interested parties discussed above and based on the additional testing and analysis conducted for the test procedure rulemaking, in the August 2016 TP SNOPR, DOE withdrew its proposal for testing conventional cooking tops with a hybrid test block. Instead, DOE proposed to amend its test procedure to incorporate by reference the relevant sections of European Standard EN 60350–2:2013 ''Household electric cooking appliances Part 2: Hobs—Methods for measuring performance'' [22] (''EN 60350–2:2013''), which provide a water-heating test method to measure the energy consumption of electric cooking tops. The test method specifies the quantity of water to be heated in a standardized test vessel whose size is selected based on the diameter of the surface unit under test. The test vessels specified in EN 60350–2:2013 are compatible with all cooking top technologies and surface unit diameters available on the U.S. market. 81 FR 57374, 57381–57384.

DOE also proposed to extend the test methods provided in EN 60530–2:2013 to measure the energy consumption of gas cooking tops by correlating test equipment diameter to burner input rate, including input rates that exceed 14,000 Btu/h. 81 FR 57374, 57385–57386. In addition, DOE also proposed in the August 2016 TP SNOPR to include methods for both electric and gas cooking tops to calculate the annual energy consumption (''AEC'') and integrated annual energy consumption (''IAEC'') to account for the proposed water-heating test method. 81 FR 57374, 57387–57388. In the August 2016 TP SNOPR, DOE proposed to repeal the conventional oven test procedure. DOE determined that the conventional oven test procedure may not accurately represent consumer use as it favors conventional ovens with low thermal mass and does not capture cooking performance-related benefits due to increased thermal mass of the oven cavity. 81 FR 57374, 57378–57379.

[20] For more information on the EnergyGuide labeling program, see: *consumer.ftc.gov/articles/how-use-energyguide-label-shop-home-appliances.*

[21] Hob is the British English term for cooking top.

[22] The test methods in EN 60350–2:2013 are based on the same test methods in the draft version of IEC 60350–2 available at the time of the December 2016 TP Final Rule. As noted in that final rule, based on the few comments received during the development of the draft, DOE expected that the IEC procedure, once finalized, would retain the same basic test method as contained in EN 60350–2:2013. 81 FR 91418, 91421.

As discussed previously, for the September 2016 SNOPR, DOE evaluated its proposed energy conservation standards for conventional cooking tops based on the cooking top test procedure proposed in the August 2016 TP SNOPR. 81 FR 60784, 60797. For conventional ovens, due to the uncertainties in analyzing a performance-based standard using oven testing provisions that DOE proposed to remove from the test procedure, as discussed previously, DOE proposed in the September 2016 SNOPR prescriptive design requirements for the control system of conventional ovens. 81 FR 60784, 60794.

On December 16, 2016, DOE published a final rule repealing the test procedures for conventional ovens, and adopting the test procedure amendments for conventional cooking tops proposed in the August 2016 TP SNOPR, with the following modifications:

- Aligning the test methods for electric surface units with flexible concentric cooking zones (also referred to as multi-ring surface units) with the provisions in EN 60350–2:2013; [23]
- Clarifying the simmering temperature requirements, temperature sensor requirements, and surface unit diameter measurement; and
- Maintaining the existing installation requirements in appendix I. 81 FR 91418.

The Administrative Procedure Act (''APA''), 5 U.S.C. 551 *et seq.,* provides among other things, that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' (5 U.S.C. 553(e)) DOE received a petition from AHAM requesting that DOE reconsider its December 2016 TP Final Rule. In its petition, AHAM requested that DOE undertake a rulemaking to withdraw the test procedure for conventional cooking tops, while maintaining the repeal of the oven test procedure that was part of the December 2016 TP Final Rule. In the interim, AHAM sought an immediate stay of the effectiveness of the December 2016 TP Final Rule, including the requirement that manufacturers use the final test procedure to make energy-related claims. In its petition, AHAM claimed that its analyses showed that the test procedure is not representative for gas cooking tops and, for gas and electric cooking tops, has such a high level of variation it will not produce accurate results for certification and enforcement purposes and will not assist consumers in making purchasing decisions based on energy efficiency. DOE published AHAM's petition on April 25, 2018, and requested comments and information on whether DOE should undertake a rulemaking to consider the proposal contained in the petition. 80 FR 17944.

On August 18, 2020, DOE published a final rule (''August 2020 TP Final Rule'') withdrawing the test procedure for conventional cooking tops after evaluating new information and data produced by AHAM and other interested parties that suggested that the test procedure yields inconsistent results that are indicative of the test not being representative of energy use or efficiency during an average use cycle. 85 FR 50757. Testing conducted by DOE and outside parties using the test procedure yielded inconsistent results. 85 FR 50757, 50763. DOE had not identified the cause of the inconsistencies and noted that its data to date was limited. *Id.* DOE concluded, therefore, that the test procedure was not representative of energy use or efficiency during an average use cycle. *Id.* DOE also determined that it would be unduly burdensome to leave the test procedure in place and require cooking top tests to be conducted using that test method without further study to resolve those inconsistencies. *Id.*

As discussed, DOE published the August 2022 TP Final Rule establishing a test procedure for conventional cooking tops, at 10 CFR part 430, subpart B, appendix I1, ''Uniform Test Method for the Measuring the Energy Consumption of Conventional Cooking Products.'' 87 FR 51492. The test procedure adopted the latest version of the relevant industry standard published by IEC, Standard 60350–2 (Edition 2.0 2017–08), ''Household electric cooking appliances—Part 2: Hobs—Methods for measuring performance'' (''IEC 60350–2:2017''), for electric cooking tops with modifications including adapting the test method to gas cooking tops, normalizing the energy use of each test cycle to a consistent final water temperature, and including a measurement of standby mode and off mode energy use. *Id.*

Under EPCA, any new or amended energy conservation standard must include, where applicable, test procedures prescribed in accordance with the test procedure provisions of the Act (42 U.S.C. 6295(r)). As discussed previously, DOE repealed the conventional oven test procedure and is evaluating new prescriptive design requirements for the control system of conventional ovens, while proposing to maintain the existing prescriptive design requirements for conventional gas ovens. As a result, the prescriptive design requirements would not require manufacturers to test using the DOE test procedure to certify conventional ovens.

Furthermore, since DOE is proposing to adopt prescriptive design requirements that would not require a test procedure for conventional ovens, DOE tentatively concludes that no test procedures for conventional ovens are needed at this time. If finalized, this tentative determination would satisfy the EPCA requirement at 42 U.S.C. 6293(b)(1)(A) that requires the Secretary to review test procedures for all covered products, including conventional ovens, every 7 years and either amend those test procedures or publish in the **Federal Register** of a determination not to amend the test procedure. The last time the conventional ovens test procedure was evaluated was as part of the December 2016 Final Rule, which repealed the existing test procedure for conventional ovens. Therefore, if DOE were to proceed, it would need to finalize its determination by December 16, 2023.

AHAM stated that the absence of a test procedure to measure efficiency for cooking tops and conventional ovens is sufficient grounds upon which to justify a determination not to amend standards beyond the existing design standards (AHAM, No. 84 at pp. 2–3). AHAM added that EPCA does not allow DOE to prescribe amended or new standards without a final test procedure in place (*Id.* referencing 42 U.S.C. 6295(o)(3)).

EPCA's requirement that the Secretary may not prescribe an amended or new standard if a test procedure has not been prescribed does not apply to dishwashers, clothes washers, clothes dryers, and kitchen ranges and ovens, the subject of this rulemaking (42 U.S.C. 6295(o)(3)(A)).

AHAM commented that it was working on a test procedure to measure the efficiency of cooking tops and conventional ovens (AHAM, No. 84 at p. 3). AHAM added that DOE and some efficiency advocates have been included in the task force that is developing the test. (*Id.*) AHAM stated that the goals of its cooking top and conventional oven test procedures are to address the technical issues in the previous cooking top and conventional oven test procedures, which ultimately resulted in their withdrawal, and to develop new test procedures that are accurate, repeatable, and reproducible. (*Id.*) AHAM suggested that DOE would be

[23] EN 60350–2:2013 requires testing of the largest measured diameter of multi-ring surface units only, unless an additional test vessel category is needed to meet the test vessel selection requirements in EN 60350–2:2013. In that case, one of the smaller-diameter settings of the multi-ring surface unit may be tested if it fulfills the test vessel category requirement.

able to adopt both procedures in their entirety in a future rulemaking. (*Id.*)

In response to DOE's notification of the White House Office of Management and Budget (''OMB'') that it would review its withdrawal of the cooking top test procedure, AHAM urged DOE not to consume its resources in considering to reinstate the withdrawn cooking top test procedure and stated that DOE should continue to work with AHAM and efficiency advocates to develop a new collaborative cooking top test procedure which would provide certainty as DOE proceeds with a future standards rulemaking process, shorten the time needed to finalize a test method, and satisfy the goals of Executive Order 13990. (AHAM, No. 84 at p. 3)

GEA supported DOE's proposed determination not to amend standards because there is no current test procedure for consumer conventional cooking products. (GEA, No. 85 at p. 2) GEA stated that the previously withdrawn test procedures were not reliable or reproducible. (*Id.*) GEA stated that it is working closely with the AHAM task force dedicated to developing a reliable, repeatable, and reproducible test procedure for consumer conventional cooking products. (*Id.*)

The Joint Commenters stated that DOE must establish test procedures for cooking products and complete the revision of the Process Rule prior to proceeding with a determination for cooking products standards. (Joint Commenters, No. 87 at p. 1) The Joint Commenters noted that performance-based standards have the potential to achieve significantly greater savings than prescriptive requirements, and that DOE should focus on establishing test procedures rather than use repealed test procedures to evaluate potential standard levels. (*Id.*)

NEEA recommended that DOE conduct further testing as needed and issue updated test procedures for both cooking tops and conventional ovens, given the significant potential energy savings from performance standards for both product categories. (NEEA, No. 88 at pp. 1–2) NEEA recommended that DOE conduct additional testing to resolve the discrepancies found during former testing and develop a revised test procedure for conventional cooking tops as soon as possible. (NEEA, No. 88 at p. 2) NEEA stated that all concerns submitted in AHAM's petition for the withdrawal of the cooking top test procedure (concern over the lack of defined tolerance for staying ''as close as possible'' to 194 degrees Fahrenheit (''°F'') in the test procedure, variability in energy consumption during the simmer phase, and variability in determining the turn down temperature and setting) can be addressed by setting appropriate tolerances on these variables. (*Id.*) NEEA further noted that the test method that was referenced in the 2016 test procedure, EN 60350–2–2013, has been updated since the December 2016 TP Final Rule and the revised test method may serve as an additional resource in developing an updated test procedure that is representative, repeatable, and reproducible. (NEEA, No. 88 at pp. 2–3) NEEA recommended that DOE consider ASTM Standard F1521 in updating the test procedure, which has been used by the Food Service Technology Center to conduct testing on conventional cooking top performance and efficiency and is currently being updated for ASTM Committee F26 on Food Service Equipment. (NEEA, No. 88 at p. 2)

The CA IOUs believe that the withdrawn cooking top test procedure is adequately repeatable and that it should be re-examined. (CA IOUs, No. 89 at p. 2) The CA IOUs stated they believe the discrepancies presented in the AHAM Withdrawal Petition are, in part, due to specific test method employed during AHAM's testing. (*Id.*) The CA IOUs continued that because the test data which was used to withdraw the test procedure did not use the ambient condition [24] specifications of the test procedure in question, DOE should pursue robust round robin testing to uncover the true reproducibility values associated with the test procedure. (*Id.*) In the August 2020 TP Final Rule, DOE cited authority to withdraw the cooking products test procedure under 42 U.S.C. 6293(b)(3), noting that ''DOE has the authority to withdraw a test procedure that is not representative of an average use cycle or period of use and is unduly burdensome to conduct.'' (*Id.*) In response, the CA IOUs commented that they believe the authority to act on an unrepresentative test procedure lies in 42 U.S.C. 6293(b)(2), which only grants DOE the authority to prescribe or amend a test procedure, not to withdraw a test procedure in its entirety. (*Id.*) The CA IOUs requested that DOE consider reinstating the test procedure and using the performance-based analysis therein. (*Id.*)

DOE acknowledges that a test procedure is necessary to evaluate the performance of, and to adopt performance standards for, cooking tops. As discussed previously, since the December 2020 NOPD, DOE has published a test procedure final rule establishing test procedures for cooking tops. In this SNOPR, DOE has analyzed performance-based standards for cooking tops, measured according to new appendix I1.

D. Technological Feasibility

1. 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 products or in working prototypes to be technologically feasible. Sections 6(b)(3)(i) and 7(b)(1) of appendix A.

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. Sections 6(b)(3)(ii)–(v) and 7(b)(2)–(5) of appendix A. Section IV.B of this document discusses the results of the screening analysis for consumer conventional cooking products, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the TSD for this SNOPR.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in

[24] AHAM's petition noted that some of the test labs participating in the round robin testing were unable to meet the ambient conditions of ''±2 °F'' specified in the DOE test procedure, and therefore ran tests at ±5 °F in their laboratories. (EERE–2018–BT–TP–0004–0003) DOE notes that the test procedure finalized in the December 2016 TP Final Rule required ambient conditions of ±2 °Celsius (''°C''), which is equivalent to ±5 °F, the specification used by AHAM.

energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for consumer conventional cooking products, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C of this proposed rule and in chapter 5 of the TSD for this SNOPR.

E. Energy Savings

1. Determination of Savings

For each trial standard level (*i.e.,* TSL), DOE projected energy savings from application of the TSL to consumer conventional cooking products purchased in the 30-year period that begins in the year of compliance with the proposed standards (2027–2056).[25] The savings are measured over the entire lifetime of consumer conventional cooking products purchased in the previous 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of new or amended energy conservation standards.

DOE used its national impact analysis (''NIA'') spreadsheet model to estimate national energy savings (''NES'') from potential amended or new standards for consumer conventional cooking products. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. For natural gas, the primary energy savings are considered to be equal to the site energy savings. DOE also calculates NES in terms of FFC energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[26] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.1 of this document.

2. Significance of Savings

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B))

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.[27] For example, some covered products and equipment have most of their energy consumption occur 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.

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 from the proposed standard levels are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

F. Economic Justification

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)). The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts an MIA, as discussed in section IV.J of this document. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) INPV, which values the industry on the basis of expected future cash flows, (2) cash flows by year, (3) changes in revenue and income, and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and 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.

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 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. (42 U.S.C. 6295(o)(2)(B)(i)(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 expense (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

[25] Each TSL is composed of specific efficiency levels for each product class. The TSLs considered for this SNOPR are described in section V.A of this document. DOE conducted a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[26] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

[27] The numeric threshold for determining the significance of energy savings established in a final rule published on February 14, 2020 (85 FR 8626, 8670), was subsequently eliminated in a final rule published on December 13, 2021 (86 FR 70924).

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 its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products 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's LCC and PBP analysis is discussed in further detail in section IV.F of this document.

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. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.E of this document, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product 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 products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this document would not reduce the utility or performance of the products under consideration in this rulemaking.

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 proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (''DOJ'') provide its determination on this issue. DOE will publish and respond to the Attorney General's determination in the final rule. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

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. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the proposed 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 conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity, as discussed in section IV.M of this document.

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 proposed standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production and use, including in-home emissions reductions experienced by consumers, and their families. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K of this document; the estimated emissions impacts are reported in section V.B.6 of this document. DOE also estimates the economic value of climate and health benefits from certain emissions reductions resulting from the considered TSLs, as discussed in section IV.L of this document.

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. (42 U.S.C. 6295(o)(2)(B)(i)(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.''

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product 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 proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period 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. 6295(o)(2)(B)(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). The rebuttable presumption payback calculation is discussed in section IV.F.9 of this proposed rule.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to consumer conventional cooking products. Separate paragraphs address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards proposed in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments projections and calculates national energy savings and net present value of total consumer

costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (''GRIM''), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE website for this rulemaking: *www.regulations.gov/docket/EERE-2014-BT-STD-0005/document.* Additionally, DOE used output from the latest version of the Energy Information Administration's (''EIA's'') *Annual Energy Outlook* (''*AEO*''), a widely known energy projection for the United States, for the emissions and utility impact analyses.

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 the purpose 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 for this rulemaking 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 consumer conventional cooking products. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the TSD for this SNOPR for further discussion of the market and technology assessment.

1. Product Classes

When evaluating and establishing energy conservation standards, DOE may establish separate standards for a group of covered products (*i.e.,* establish a separate product class) if DOE determines that separate standards are justified based on the type of energy used, or if DOE determines that a product's capacity or other performance-related features that justifies a different standard. (42 U.S.C. 6295(q)) In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE determines are appropriate. (*Id.*)

a. Conventional Cooking Tops

During the previous energy conservation standards rulemaking for cooking products, DOE evaluated product classes for conventional cooking tops based on energy source (*i.e.,* gas or electric). These distinctions initially yielded two conventional cooking top classes: (1) gas cooking tops; and (2) electric cooking tops. For electric cooking tops, DOE determined that the ease of cleaning smooth elements provides enhanced consumer utility over coil elements. Because smooth elements can use more energy than coil elements, DOE defined two separate product classes for electric cooking tops. DOE defined the following product classes for consumer conventional cooking tops in the April 2009 Final Rule TSD (''2009 TSD''): [28]

- Electric cooking tops—low or high wattage open (coil) elements;
- Electric cooking tops—smooth elements; and
- Gas cooking tops—conventional burners.

Induction Heating

In the December 2020 NOPD, DOE proposed to maintain the product classes for conventional cooking tops from the previous standards rulemaking, as discussed. 85 FR 80982, 80995. DOE also proposed to consider induction heating as a technology option for electric smooth element cooking tops rather than as a separate product class. *Id.* DOE noted that induction heating provides the same basic function of cooking or heating food as heating by gas flame or electric resistance, and that the installation options available to consumers are also the same for both cooking products with induction and with electric resistance heating. *Id.* In addition, in considering whether there are any performance-related features that justify a higher energy use standard to establish a separate product class, DOE noted in the September 2016 SNOPR that the utility of speed of cooking, ease of cleaning, and requirements for specific cookware for induction cooking tops do not appear to be uniquely associated with higher energy use compared to other electric smooth element cooking tops with electric resistance heating elements. 81 FR 60784, 60801.

DOE did not receive any comments regarding induction technologies in response to the December 2020 NOPD.

In addition to the reasons presented in the December 2020 NOPD and discussed previously, DOE recognizes that induction cooking tops are only compatible with ferromagnetic cooking vessels. However, DOE does not identify any consumer utility unique to any specific type of cookware that would warrant establishing separate product classes. As discussed in chapter 8 of the TSD for this SNOPR, DOE considered the cost of replacing cookware as part of the LCC analysis. DOE also conducted standby testing on full-surface induction cooking tops. Based on DOE's testing, the sensors required to detect the presence of a pot placed on the cooking surface do not remain active while the product is in standby mode. In addition, DOE notes that the standby power required for the tested model (0.25 watts (''W'')) was below the average standby power for other electric cooking tops in DOE's test sample (2.25 W). For these reasons, DOE is not considering a separate product class for induction cooking products.

Commercial-Style Cooking Tops

Based on DOE's review of conventional gas cooking tops available on the market, DOE determined for December 2020 NOPD that products marketed as commercial-style cannot be distinguished from standard residential-style products based on performance characteristics or consumer utility. 85 FR 80982, 80995. While conventional gas cooking tops marketed as commercial-style have more than one burner rated above 14,000 Btu/h and cast-iron grates, approximately 50 percent of cooking top models marketed as residential-style also have one or more burners rated above 14,000 Btu/h and cast-iron grates. *Id.*

As part of the December 2020 NOPD, DOE considered whether separate product classes for commercial-style gas cooking tops with higher burner input rates are warranted by comparing the test energy consumption of individual surface units in a sample of cooking tops tested by DOE. *Id.* For the September 2016 SNOPR analysis, DOE conducted testing of gas surface units in a sample of twelve gas cooking tops, which included six products marketed as commercial-style, according to the test procedure established in the December 2016 TP Final Rule and determined that there was no statistically significant correlation between burner input rate and the ratio of surface unit energy consumption to

[28] The TSD from the previous residential cooking products standards rulemaking is available at: *www.regulations.gov/docket/EERE-2006-STD-0127/document.*

test load mass [29] for cooking tops marketed as either residential-style or commercial-style. 81 FR 60783, 60801–60802. DOE noted that its testing showed that this efficiency ratio for gas cooking tops is more closely related to burner and grate design rather than input rate. *Id.* at 81 FR 60802.

DOE recognized in the December 2020 NOPD that the presence of certain features, such as heavy cast-iron grates and multiple high-input rate burners (''HIR burners''), may help consumers perceive a difference between commercial-style and residential-style gas cooking top performance. 85 FR 80982, 80996. However, DOE stated that it was not aware of clearly defined and consistent design differences and corresponding utility provided by commercial-style gas cooking tops as compared to residential-style gas cooking tops. *Id.* Although DOE's testing indicated there is a difference in energy consumption between residential-style and commercial-style gas cooking tops, this difference could not be correlated to any specific utility provided to consumers. *Id.* Moreover, DOE stated that it is not aware of an industry test standard that evaluates cooking performance and that would quantify the utility provided by these products. *Id.* While DOE stated in the December 2020 NOPD that it recognizes the presence of certain commercial-style features described by manufacturers may allow consumers to cook with a wide variety of cooking methods, manufacturers have not provided consumer usage data demonstrating that consumers of commercial-style cooking tops and residential-style cooking tops employ significantly different cooking methods during a typical cooking cycle. *Id.* Moreover, DOE also stated that manufacturers have not provided evidence that consumers of commercial-style cooking tops would use more burners on a cooking top during a single cooking cycle than consumers of residential-style cooking tops. *Id.* DOE noted that there are many residential-style cooking tops with one to two HIR burners and continuous cast-iron grates that provide consumers with the ability to sear food at high temperatures and simmer at low temperatures. *Id.* For these reasons, DOE did not propose in the December 2020 NOPD to establish a separate product class for gas cooking tops marketed as commercial-style or conventional gas cooking tops with higher burner input rates. *Id.*

DOE did not receive any comments regarding commercial-style gas cooking tops in response to the December 2020 NOPD.

For this SNOPR analysis, DOE further considered whether separate product classes for commercial-style cooking tops are warranted by comparing the test energy consumption of burners in a sample of cooking tops tested by DOE according to new appendix I1. DOE measured energy consumption of gas burners in a sample of 24 gas cooking tops, which included 11 products marketed as commercial-style. The number of burners per cooking top ranged from four to six.

DOE's testing, as presented in chapter 5 of the TSD for this SNOPR, showed that energy consumption for gas cooking tops continues to be more closely related to burner and grate design rather than input rate, as it was in the September 2016 SNOPR analysis.

Based on both review of the market and comments from manufacturers, DOE recognizes that the presence of certain features, such as heavy cast-iron grates and multiple HIR burners, may help consumers perceive a difference between commercial-style and residential-style gas cooking top performance. However, DOE continues to not be aware of clearly defined, consistent design differences and corresponding utility provided by commercial-style gas cooking tops as compared to residential-style gas cooking tops. Although DOE's testing indicates there is a difference in energy consumption between residential-style and commercial-style gas cooking tops, this difference could not be correlated to any specific utility provided to consumers. In addition, there are many residential-style cooking tops with one to two HIR burners and continuous cast-iron grates that provide consumers with the ability to sear food at high temperatures and simmer at low temperatures. For these reasons, DOE is not evaluating a separate product class for commercial-style gas cooking tops.

However, as discussed in sections IV.B.1.b and IV.C.1.a of this document, DOE conducted its engineering analysis consistent with products currently available on the market and only evaluated efficiency levels for gas cooking tops that maintain the features available in conventional cooking tops marketed as commercial-style (*e.g.,* at least one HIR burners, continuous cast-iron gates, *etc.*) that may be used to differentiate these products in the marketplace.

Downdraft Cooking Tops

DOE is aware of conventional cooking tops, including the cooking top portion of conventional ranges, which incorporate venting systems which draw air, combustion products, steam, smoke, grease, odors, and other cooking emissions across the surface of the cooking top and through a vent ducted to the outdoors (''downdraft venting systems''). The fan in downdraft venting systems may be activated automatically any time the cooking top is being operated, through a control algorithm that determines when the fan should be activated, or by means of consumer selection. Because indoor air quality (''IAQ'') related to cooking emissions is the subject of increasing attention and concern,[30] and because venting systems designed to specifically exhaust the emissions from conventional cooking products have been shown to significantly improve IAQ in homes,[31] building codes in certain local jurisdictions mandate the use of venting systems for conventional cooking products.[32] Although these venting systems may be external to and separate from the conventional cooking product (*i.e.,* a vent hood over a conventional cooking top or a separate downdraft venting unit built into a countertop), venting may also be accomplished by means of a downdraft venting system incorporated integrally in a conventional cooking top. According to DOE's review of products on the market and discussions with manufacturers, the prevalence of conventional cooking tops with integral downdraft venting systems is increasing.

The energy consumption of an integral downdraft venting system, including the fan and, in some cases, a motor to move the inlet duct into position during operation, increases the total annual energy consumption of a conventional cooking top. At this time, DOE does not have information

[29] Because the mass of the test load depends on the input rate of the burner, the test energy consumption must be normalized for comparison. The higher the ratio of test energy consumption to test load mass, the less efficient the surface unit.

[30] See, for example, the discussion and recommendations addressing ''Indoor Air Pollution from Cooking'' by the California Air Resources Board, available at: *ww2.arb.ca.gov/resources/documents/indoor-air-pollution-cooking.*

[31] Militello-Hourigan, R.E. and Miller, S.L., ''The impacts of cooking and an assessment of indoor air quality in Colorado passive and tightly constructed homes,'' *Building and Environment,* October 15, 2018. Vol. 144, pp. 573–582. Research indicated that fine particulate matter ($PM_{2.5}$) concentrations from cooking activity in homes could be reduced by at least 75 percent through the use of a directly exhausting conventional range hood.

[32] See, for example, Section 15.16.020 ''Domestic Range Hoods and Vents'' of the San Clemente, California, Mechanical Code, which requires that ''[k]itchen range hoods shall be installed for cooking facilities with an approved forced-draft system of ventilation vented to the outside of the building.''

regarding the operating patterns or consumer usage of downdraft venting systems in conventional cooking tops that would allow it to characterize representative energy use. Therefore, recognizing the importance of IAQ issues and rapidly evolving market demands, and so as to not impede innovation in this area, DOE has not evaluated the energy consumption of downdraft venting systems nor is proposing to establish separate product classes for conventional cooking tops with downdraft venting systems in this SNOPR. DOE will continue to collect information on such cooking tops and may consider the impacts in a future rulemaking.

Alternatively, DOE could consider specifying an adder to the maximum allowable IAEC value in the energy conservation standards for conventional cooking tops with a downdraft venting system, which would account for the energy consumption of the fan and any motor operation during active mode and any standby mode or off mode power consumption specifically associated with the downdraft venting system.

DOE seeks comment on the impacts of downdraft venting systems on energy consumption and associated data about such impacts. DOE further requests comment on its proposal to not include the energy consumption of any downdraft venting system in the energy conservation standards for conventional cooking tops.

Single-Zone Conventional Cooking Tops

DOE notes that some conventional cooking tops are distributed in commerce with only a single cooking zone with a relatively high input power for electric cooking tops or high burner input rate for gas cooking tops. Single-cooking zone cooking tops do not provide the ability for consumers to cook multiple food loads at the same time and, particularly for gas cooking tops, may not operate over the full range of input rates associated with all typical cooking processes for which a conventional cooking top is used (*e.g.,* boiling, sautéing, simmering, reheating) or accommodate the complete range of typical cookware sizes. To achieve this full functionality, conventional cooking tops with single cooking zones are typically used in conjunction with one or more additional conventional cooking tops to provide the consumer with the choice of the number and type of cooking zones to use. Indeed, DOE observes that manufacturers of single-zone cooking tops that are not portable conventional cooking tops also typically manufacture and market comparable dual-zone cooking tops with similar construction and design features, and consumers may choose to install non-portable single-zone cooking units in combination with one or more of such comparable dual-zone units to achieve full cooking functionality. As a result, DOE expects that evaluating the IAEC of a single-zone non-portable cooking top by itself would not be representative of the average use of the product, and therefore proposes that a more representative value of IAEC would be based on a tested configuration of the typical combination of a single-zone cooking top paired with one or more additional cooking tops, such that the combination of conventional cooking tops in aggregate provides complete functionality to the consumer.

Based on DOE's review of commercially available products, single-zone and dual-zone non-portable cooking tops typically range in width from 12 inches to 15 inches; DOE therefore proposes that the most representative pairing for the tested configuration of a single-zone cooking top would be the combination of one single-zone cooking top and one comparable dual-zone cooking top, because the overall width of the combination would not exceed the width of typical conventional cooking tops with four to six cooking zones (24 inches to 36 inches) and because this is the minimum number of such cooking tops that would ensure complete functionality as previously described. Based on its expectation that consumers will select, to the extent possible, matching products for this combination, DOE proposes to define the tested configuration of a single-zone non-portable cooking top as the single-zone unit along with the same manufacturer's dual-zone non-portable cooking top unit within the same product class and with similar design characteristics (*e.g.,* construction materials, user interface), and use the same heating technology (*i.e.,* gas flame, electric resistive heating, or electric inductive heating) and energy source (*e.g.,* voltage, gas type). DOE expects that these products comprising the test configuration typically would be marketed as being within the same ''product line'' by manufacturers. In instances where the manufacturer's product line contains more than one dual-zone non-portable cooking top unit, DOE proposes that the dual-zone unit with the least energy consumption, as measured using appendix I1, be selected for the tested configuration, which along with the single-zone counterpart, would span the full range of expected per-cooking zone energy efficiency performance.

In the approach DOE is proposing, the representative IAEC of the single-zone non-portable cooking top would factor in the performance of the two additional cooking zones included in the dual-zone cooking top that is part of the tested configuration. That is, the IAEC would be based on the average active mode performance of the three cooking zones comprising the tested configuration. Because the single-zone non-portable cooking top contains one of the three burners, while the comparable dual-zone cooking top contains two, DOE additionally proposes that the IAEC of the single-zone non-portable cooking top unit under consideration be calculated as the weighted average of the measured IAEC of the single-zone cooking top and the IAEC dual-zone cooking top in the tested configuration, using the number of cooking zones as the basis for the weighting factors; *i.e.,* the single-zone IAEC would have a weighting of 1/3 and the dual-zone IAEC would have a weighting of 2/3. Recognizing that the dual-zone cooking top in the tested configuration would already be separately tested to determine its IAEC value for certification purposes, to minimize testing burden associated with this approach, DOE is proposing that the represented IAEC value of the dual-zone cooking top (determined separately) would be used in the calculation of the single-zone cooking top's represented IAEC value (*i.e.,* DOE is not requiring the dual-zone cooking top to be tested again for the purpose of determining the represented IAEC value of the single-zone cooking top). DOE expects that this approach will produce results that are most representative for the tested configuration. Further, DOE proposes that if there is no dual-zone non-portable cooking top within the same product class and with similar construction and design features as the single-zone non-portable cooking top being tested, then consumers are likely to purchase and install the single-zone cooking top for use on its own; in that case, the most representative IAEC of the single-zone cooking top is the IAEC of that product as measured according to appendix I1.

DOE requests comment on its proposed tested configuration and determination of representative IAEC for single-zone non-portable cooking tops.

DOE additionally proposes that a cooking top basic model is an individual cooking top model and does not include any combinations of cooking top models that may be installed together. Accordingly, as part of DOE's proposal, each individual cooking top model that may be installed

in combination must be rated as a separate basic model, and any combination of such cooking top models that are typically installed in combination does not itself need to have a separate representation as its own basic model. In other words, DOE does not expect combinations to be separately represented or certified to the Department as their own basic models. This proposal is consistent with the current definition of a basic model at 10 CFR 430.2, which specifies that basic model includes all units of a given type of covered product (or class thereof) manufactured by one manufacturer; having the same primary energy source; and, which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency. Therefore, DOE believes this clarification is helpful to provide specific context for cooking tops, but DOE is not proposing specific amendments to the basic model definition in this rule.

DOE requests comment on its proposal to not define ''basic model'' with respect to cooking products or cooking tops, and on possible definitions for ''basic model'' with respect to cooking products or cooking tops that could be used if DOE were to determine such a definition is necessary.

b. Conventional Ovens

During the first energy conservation standards rulemaking for cooking products, DOE evaluated product classes for conventional ovens based on energy source (*i.e.,* gas or electric). These distinctions initially yielded two conventional oven product classes: (1) gas ovens; and (2) electric ovens. DOE more recently determined that the type of oven-cleaning system is a utility feature that affects performance. DOE found that standard ovens and ovens using a catalytic continuous-cleaning process use roughly the same amount of energy. On the other hand, self-clean ovens use a pyrolytic process that provides enhanced consumer utility with lower overall energy consumption as compared to either standard or catalytically lined ovens. Therefore, in the April 2009 Final Rule analysis described in the 2009 TSD, DOE defined the following product classes for conventional ovens:

- Electric ovens—standard oven with or without a catalytic line;
- Electric ovens—self-clean oven;
- Gas ovens—standard oven with or without a catalytic line; and
- Gas ovens—self-clean oven.

Self-Cleaning Technology

Based on DOE's review of conventional gas ovens available on the U.S. market, and on manufacturer interviews and testing conducted as part of the engineering analysis, DOE noted in the June 2015 NOPR that the self-cleaning function of a self-clean oven may employ methods other than a high-temperature pyrolytic cycle to perform the cleaning action.[33] 80 FR 33030, 33043. DOE clarified that a conventional self-clean electric or gas oven is an oven that has a user-selectable mode separate from the normal baking mode, not intended to heat or cook food, which is dedicated to cleaning and removing cooking deposits from the oven cavity walls. *Id.* As part of the September 2016 SNOPR, DOE stated that it is not aware of any differences in consumer behavior in terms of the frequency of use of the self-clean function that would be predicated on the *type* of self-cleaning technology rather than on cleaning habits or cooking usage patterns that are not dependent on the type of technology. 81 FR 60784, 60804. As a result, DOE did not consider establishing separate product classes based on the type of self-cleaning technology in the December 2020 NOPD. *Id.*

For the reasons discussed previously, DOE is not considering separate product classes based on the type of self-cleaning technology.

DOE welcomes data on the consumer usage patterns of pyrolytic versus non-pyrolytic self-cleaning functions in conventional ovens, and requests comment on its preliminary determination that self-cleaning technologies do not warrant separate product class considerations.

Commercial-Style Ovens

With regard to gas oven burner input rates, DOE noted in the June 2015 NOPR that based on its review of the consumer conventional gas ovens available on the market, residential-style gas ovens typically have an input rate of 16,000 to 18,000 Btu/h, whereas residential gas ovens marketed as commercial-style typically have burner input rates ranging from 22,500 to 30,000 Btu/h.[34] 80 FR 33030, 33043. Additional review of both the residential-style and commercial-style gas oven cavities indicated that there is significant overlap in oven cavity volume between the two oven types. *Id.* Standard residential-style gas oven cavity volumes range from 2.5 to 5.6 cubic feet (''ft^3'') and gas ovens marketed as commercial-style have cavity volumes ranging from 3.0 to 6.0 ft^3. *Id.* Sixty percent of the commercial-style models surveyed had cavity volumes between 4.0 and 5.0 ft^3, while fifty percent of the standard models had cavity volumes between 4.0 and 5.0 ft^3. *Id.* The primary differentiating factor between the two oven types was burner input rate, which is greater than 22,500 Btu/h for commercial-style gas ovens. *Id.*

DOE conducted testing for the June 2015 NOPR using the version of the test procedure later adopted in the July 2015 TP Final Rule to determine whether commercial-style gas ovens with higher burner input rates warrant establishing a separate product class. DOE evaluated the cooking efficiency of eight conventional gas ovens, including five ovens with burners rated at 18,000 Btu/h or less and the remaining three with burner input rates ranging from 27,000 Btu/h to 30,000 Btu/h. *Id.* DOE's testing showed that the measured cooking efficiencies for ovens with burner input rates above 22,500 Btu/h were lower than for ovens with ratings below 22,500 Btu/h, even after normalizing cooking efficiency to a fixed cavity volume. *Id.* at 80 FR 33044. DOE also noted that the conventional gas ovens with higher burner input rates in its test sample were marketed as commercial-style and had greater total thermal mass, including heavier racks and thicker cavity walls, even after normalizing for cavity volume. *Id.* DOE's testing of a 30,000 Btu/h oven suggested that much of the energy input to commercial-style ovens with higher burner input rates goes to heating the added mass of the cavity, rather than the test load, resulting in relatively lower measured efficiency when measured according to the test procedure adopted in the July 2015 TP Final Rule. *Id.* DOE also investigated the time it took each oven in the test sample to heat the test load to a final test temperature of 234 °F above its initial temperature, as specified in the DOE test procedure in appendix I at the time of the testing. *Id.* at 80 FR 33045. DOE's testing showed that gas ovens with burner input rates greater than 22,500 Btu/h do not heat the test load significantly faster than the

[33] DOE noted that it is aware of a type of self-cleaning oven that uses a proprietary oven coating and water to perform a self-clean cycle with a shorter duration and at a significantly lower temperature setting. The self-cleaning cycle for these ovens, unlike catalytically-lined standard ovens that provide continuous cleaning during normal baking, still have a separate self-cleaning mode that is user-selectable.

[34] However, DOE noted that many gas ranges, while marketed as commercial- or professional-style and having multiple surface units with high input rates, did not have a gas oven with a burner input rate above 22,500 Btu/h.

ovens with lower burner input rates, and two out of the three units with the higher burner input rates took longer than the average time to heat the test load. *Id.* Therefore, DOE concluded in the June 2015 NOPR that there is no unique utility associated with faster cook times that is provided by gas ovens with burner input rates greater than 22,500 Btu/h. *Id.*

Based on DOE's testing, reverse engineering, and additional discussions with manufacturers, DOE posited in the June 2015 NOPR that the major differentiation between conventional gas ovens with lower burner input rates and those with higher input rates, including those marketed as commercial-style, was design and construction related to aesthetics rather than improved cooking performance. *Id.* Further, DOE did not identify any unique utility conferred by commercial-style gas ovens. For the reasons discussed above, DOE did not propose in the June 2015 NOPR to establish a separate product class for conventional gas ovens with higher burner input rates. *Id.*

As part of the September 2016 SNOPR, to further address whether commercial-style ovens provide a unique utility that would warrant establishing a separate product class, DOE conducted additional interviews with manufacturers of commercial-style cooking products and reviewed additional commercial-style test data. 81 FR 60783, 60805–60806. While these data demonstrated a difference in energy consumption between residential-style and commercial-style ovens when measured according to the test procedure adopted in the July 2015 TP Final Rule, this difference could not be correlated to any specific utility provided to consumers. *Id.* at 60806. Moreover, DOE stated that it is not aware of an industry test standard that evaluates cooking performance and that would quantify the utility provided by these products. *Id.* DOE also noted that all conventional ovens, regardless of whether or not the product is marketed as commercial-style, must meet the same safety standards for the construction of the oven. *Id.* American National Standards Institute (''ANSI'') Z21.1 ''Household Cooking Gas Appliances'' (''ANSI Z21.1''), Section 1.21.1, requires that the oven structure, and specifically the baking racks, have sufficient strength to sustain a load of up to 25 pounds depending on the width of the rack. A similar standard (Underwriters Laboratories (''UL'') 858 ''Household Electric Ranges'' (''UL 858'')) exists for electric ovens.

DOE also observed as part of the September 2016 SNOPR that many of the design features identified by manufacturers as unique to commercial-style ovens and that may impact the energy consumption, such as extension racks, convection fans, cooling fans, and hidden bake elements, are also found in residential-style products. 81 FR 60783, 60806. DOE noted that the presence of these features, along with thicker oven cavity walls and higher burner input rates, may help consumers perceive a difference between commercial-style and residential-style ovens. *Id.* However, DOE stated in the September 2016 SNOPR that it was not aware of a clearly defined and consistent design difference and corresponding utility provided by commercial-style ovens as compared to residential-style ovens. *Id.* For these reasons, DOE did not propose in the September 2016 SNOPR, or in the December 2020 NOPD to establish a separate product class for commercial-style ovens. *Id.* at 85 FR 80982, 80998.

DOE did not receive any comments on the December 2020 NOPD regarding commercial-style ovens. Based on DOE's analysis discussed previously, DOE is not evaluating a separate product class for commercial-style ovens in this SNOPR.

Installation Configuration

As discussed in section III.C of this document, in the October 2012 TP Final Rule, DOE amended appendix I to include methods for measuring fan-only mode.[35] Based on DOE's testing of freestanding, built-in, and slide-in conventional gas and electric ovens, DOE observed that all of the built-in and slide-in ovens tested consumed energy in fan-only mode, whereas freestanding ovens did not. The energy consumption in fan-only mode for built-in and slide-in ovens ranged from approximately 1.3 to 37.6 watt-hours (''Wh'') per cycle, which corresponds to 0.25 to 7.6 kWh/year. Based on DOE's reverse engineering analyses, DOE noted that built-in and slide-in products incorporate an additional exhaust fan and vent assembly that is not present in freestanding products. The additional energy required to exhaust air from the oven cavity is necessary for slide-in and built-in installation configurations to meet safety-related temperature requirements because the oven is enclosed in cabinetry. For these reasons, DOE proposed in the June 2015 NOPR, September 2016 SNOPR, and December 2020 NOPD to include separate product classes for freestanding and built-in/slide-in ovens. 80 FR 33030, 33045; 81 FR 60784, 60806; 85 FR 80982, 80998.

DOE did not receive comment on its proposal in the December 2020 NOPD to include separate product classes for built-in/slide-in ovens. For the reasons discussed above, DOE analyzed separate product classes for freestanding and built-in/slide-in ovens for this SNOPR.

c. Evaluated Product Classes

In summary, DOE analyzed the product classes listed in Table IV.1 for this SNOPR.

TABLE IV.1—PRODUCT CLASSES FOR CONSUMER CONVENTIONAL COOKING PRODUCTS

Product class	Product type	Sub-category	Installation type
1	Electric cooking top	Open (coil) elements.	
2		Smooth elements.	
3	Gas cooking top.		
4	Electric oven	Standard with or without a catalytic line	Freestanding.
5			Built-in/Slide-in.
6		Self-clean	Freestanding.
7			Built-in/Slide-in.
8	Gas oven	Standard with or without a catalytic line	Freestanding.
9			Built-in/Slide-in.

[35] Fan-only mode is an active mode that is not user-selectable in which a fan circulates air internally or externally to the cooking product for a finite period of time after the end of the heating function.

TABLE IV.1—PRODUCT CLASSES FOR CONSUMER CONVENTIONAL COOKING PRODUCTS—Continued

Product class	Product type	Sub-category	Installation type
10		Self-clean	Freestanding.
11			Built-in/Slide-in.

DOE seeks comment on the product classes evaluated in this SNOPR.

2. Technology Options

In the preliminary market analysis and technology assessment, DOE identified technology options that would be expected to improve the efficiency of conventional cooking tops and of conventional ovens. Initially, these technologies encompass all those that DOE believes are technologically feasible. Chapter 3 of the TSD for this SNOPR includes the detailed list and descriptions of all technology options identified for consumer conventional cooking products.

AHAM stated that the available technology options have not changed since the April 2009 Final Rule. (AHAM, No. 84 at p. 4)

GEA stated there have been no technology improvements impacting energy efficiency and no meaningful energy savings opportunity in consumer conventional cooking products since the last standards rule and therefore there is no justification for changing the current standards. (GEA, No. 85 at p. 2)

As discussed in chapter 3 of the TSD for this SNOPR, DOE has performed market research and evaluated available consumer conventional cooking products to assess existing technology options. Although DOE has found that there are no specific new technology options that impact energy efficiency available since the April 2009 Final Rule, manufacturers are innovating on aspects of cooking performance that do not relate to efficiency.

a. Conventional Electric Cooking Tops

In response to the September 2016 SNOPR, DOE received comments from AHAM opposing improved contact conductance as a technology option for electric open (coil) element cooking tops. AHAM commented that the test procedure specifies narrow tolerances on the flatness of the test vessel, which AHAM felt were appropriate to reduce variability in test results. AHAM stated that if a consumer does not use pots with comparable flatness, any reduction in energy consumption due to greater flatness of the heating element that would be measured using the test procedure will not be realized in the field. Based on its test data, AHAM asserted that consumers are using warped pans and that improving the flatness of the heating element will not achieve improved contact conductance. AHAM stated, therefore, that the energy savings associated with the improved contact conductance technology option measured under the test procedure is not representative of what consumer will experience in the field and, as a result, this should not be considered as a technology option. (AHAM, No. 64 at pp. 7–10)

DOE agreed that, based on the test data provided by AHAM, improving the flatness of the electric coil heating element may not result in energy savings due to the warping of pots and pans used by consumers. As a result, DOE did not consider improved contact conductance as a technology option for electric open (coil) element cooking tops for the December 2020 NOPD. 85 FR 80982, 80999.

In the December 2020 NOPD, DOE proposed to consider the technology options for conventional electric cooking tops listed in Table IV.2. *Id.* at 85 FR 80999–81000.

TABLE IV.2—DECEMBER 2020 NOPD TECHNOLOGY OPTIONS FOR CONVENTIONAL ELECTRIC COOKING TOPS

Electric Open (Coil) Element Cooking Tops:
1. None.
Electric Smooth Element Cooking Tops:
1. Halogen elements.
2. Induction elements.
3. Low-standby-loss electronic controls.

In response to the December 2020 NOPD, the CA IOUs requested that DOE re-examine its reasoning for no longer considering improved electric coils as a technology option in electric open (coil) element cooking tops. (CA IOUs, No. 89 at p. 5) The CA IOUs acknowledged that pan warping over time is likely to occur, however the CA IOUs do not believe this should preclude DOE from exploring improved electric coils as an energy saving option. (*Id.*) The CA IOUs also expressed doubt that energy savings from improving contact conductance is non-existent due to pan warping, stating that AHAM's own data confirms that pan warping may, in some cases, actually lessen the time it takes for a pot of water to reach 200 °F on an electric open (coil) element cooking top. (*Id.* citing AHAM, No. 64 at p. 9)

DOE agrees that AHAM's data show that pan warping may, in some cases, lessen the time it takes for a pot of water to reach 200 °F on an electric open (coil) element cooking top; however, AHAM's data also demonstrate that in other cases, pan warpage may increase such heating time. Given the inconsistent relationship between pan warpage and heat-up time, and the lack of information regarding how cookware may warp during typical consumer use, manufacturers would be unable to determine whether any modification to the flatness of their coil heating elements would improve contact conductance. Therefore, DOE tentatively concludes that greater flatness of the heating element would not result in energy savings for consumers, and maintains its decision to not consider improved contact conductance as a technology option. DOE is also not aware of any other technology options to improve electric open (coil) element cooking tops.

For electric open (coil) element cooking tops, in this SNOPR, DOE did not identify any technology options for improving efficiency.

DOE seeks comment on any existing technologies that improve the efficiency of electric open (coil) element cooking tops.

For electric smooth element cooking tops, DOE has identified an additional technology option: reduced air gap. Typical radiant element cooking tops have an air gap between the heating element and the ceramic-glass cooking top surface. Energy is expended to heat the air between the heating element and the glass, with that heated air providing minimal heating to the cooking vessel. One approach for increasing the efficiency of a radiant element is to reduce the air gap to reduce the amount of wasted heat.

For electric smooth element cooking tops, in this SNOPR, DOE considered the technologies listed in Table IV.3.

TABLE IV.3—TECHNOLOGY OPTIONS FOR ELECTRIC SMOOTH ELEMENT COOKING TOPS

1. Halogen elements.
2. Induction elements.

TABLE IV.3—TECHNOLOGY OPTIONS FOR ELECTRIC SMOOTH ELEMENT COOKING TOPS—Continued

3. Low-standby-loss electronic controls.
4. Reduced air gap.

b. Conventional Gas Cooking Tops

In the December 2020 NOPD, DOE proposed to consider the technology options for conventional gas cooking tops listed in Table IV.4. 85 FR 80982, 80999–81000.

TABLE IV.4—DECEMBER 2020 NOPD TECHNOLOGY OPTIONS FOR CONVENTIONAL GAS COOKING TOPS

1. Radiant gas burners.
2. Catalytic burners.
3. Reduced excess air at burner.
4. Reflective surfaces.
5. Optimized burner and grate design.

DOE did not receive any comments on the December 2020 NOPD regarding additional technology options for gas cooking tops.

For gas cooking tops, in this SNOPR, DOE considered the technologies listed in Table IV.5.

TABLE IV.5—TECHNOLOGY OPTIONS FOR CONVENTIONAL GAS COOKING TOPS

1. Catalytic burners.
2. Optimized burner and grate design.
3. Radiant gas burners.
4. Reduced excess air at burner.
5. Reflective surfaces.

c. Conventional Ovens

In the December 2020 NOPD, DOE proposed to consider the technology options for conventional ovens listed in Table IV.6. 85 FR 80982, 81003.

TABLE IV.6—DECEMBER 2020 NOPD TECHNOLOGY OPTIONS FOR CONVENTIONAL OVENS

1. Bi-radiant oven (electric only).
2. Forced convection.
3. Halogen lamp oven (electric only).
4. Improved and added insulation (standard ovens only).
5. Improved door seals.
6. Low-standby-loss electronic controls.
7. No oven-door window.
8. Oven separator (electric only).
9. Optimized burner and cavity design (gas only).
10. Reduced vent rate (electric standard ovens only).
11. Reflective surfaces.

Based on review of the additional test data provided by AHAM and GEA in response to the September 2016 SNOPR, in the December 2020 NOPD, DOE agreed that replacing the intermittent glo-bar ignition system with an intermittent/interrupted ignition or intermittent pilot ignition may not achieve energy savings due to the elimination of heat input that the glo-bar contributes to the cavity and food load, which must be offset by additional gas consumption. *Id.* at 85 FR 81001. As a result, DOE did not consider intermittent/interrupted or intermittent pilot ignition systems as a technology option in the December 2020 NOPD. *Id.*

NEEA recommended that DOE conduct its own testing to verify whether or not there is an energy savings opportunity from intermittent pilot ignition systems compared to glo-bar ignition systems. (NEEA, No. 88 at p. 4)

NEEA has not provided any data or information to suggest that intermittent pilot ignition systems provide any energy savings compared to glo-bar ignition systems. DOE continues to agree with AHAM's theoretical assertion that replacing the intermittent glo-bar ignition system with an intermittent pilot ignition would eliminate the heat input that the glo-bar contributes to the cavity and food load, which must be offset by additional gas consumption. Because this theory is supported by AHAM's test data, DOE continues to consider that intermittent pilot ignition systems would not provide energy savings, and is not considering them as a technology option in this SNOPR.

DOE requests information on the potential energy savings associated with intermittent pilot ignition systems.

For gas and electric ovens, in this SNOPR, DOE considered the technologies listed in Table IV.7.

TABLE IV.7—TECHNOLOGY OPTIONS FOR CONVENTIONAL ELECTRIC AND GAS OVENS

1. Bi-radiant oven (electric only).
2. Forced convection.
3. Halogen lamp oven (electric only).
4. Improved and added insulation (standard ovens only).
5. Improved door seals.
6. Low-standby-loss electronic controls.
7. No oven-door window.
8. Optimized burner and cavity design (gas only).
9. Oven separator (electric only).
10. Reduced vent rate (electric standard ovens only).
11. Reflective surfaces.

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 commercially viable, existing prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology 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.* If a technology is determined to have a significant adverse impact on the utility of the product to subgroups of consumers, or 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) *Safety of technologies.* 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 technology has proprietary protection and represents a unique pathway to achieving a given efficiency level, it 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).

In summary, 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. The reasons for eliminating any technology are discussed in the following sections.

The following sections also include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded (''screened out'') based on the screening criteria.

1. Screened-Out Technologies

a. Conventional Electric Cooking Tops

Based on DOE's review of products available on the market and its product teardowns, DOE stated in the December 2020 NOPD that it is not aware of any cooking tops that incorporate halogen heating elements. *Id.* at 85 FR 81004. Because this technology is currently not being used commercially or in working prototypes, DOE stated that it does not believe that it would be practicable to

produce this technology in commercial products on the scale necessary to serve the market by the potential compliance date of the proposed standards. *Id.* As a result, DOE screened out halogen elements from further analysis in the December 2020 NOPD. *Id.*

DOE did not receive any comments on the December 2020 NOPD regarding the screening analysis for conventional electric cooking tops.

In this SNOPR, DOE maintains its tentative determination from the December 2020 NOPD that it would not be practicable to manufacture, install and service halogen heating elements for electric smooth element cooking tops on the scale necessary to serve the relevant market at the time of the effective date of an amended standard, and screened out this technology from further consideration.

In this SNOPR, DOE is additionally screening out a subset of low-standby-loss electronic controls, namely those that use ''automatic power-down'' because this type of low-standby-loss electronic controls may negatively impact product utility. In particular, it may result in a loss in the utility of the continuous clock display for combined cooking products, such as ranges. However, it should be noted that the other low-standby-loss electronic controls such as switch-mode power supplies (''SMPSs'') were still analyzed in this SNOPR.

In this SNOPR, DOE is additionally screening out reduced air gap as a technology option because DOE is aware that the air gaps in commercialized radiant heating elements are currently as small as is practicable to manufacture on the scale necessary to serve the cooking products market. Furthermore, DOE is not aware of the magnitude of potential energy savings from this technology.

DOE requests comment on the magnitude of potential energy savings that could result from the use of a reduced air gap as a technology option.

DOE seeks comment on its screening analysis for conventional electric cooking tops and whether any additional technology options should be screened out on the basis of any of the screening criteria in this SNOPR.

b. Conventional Gas Cooking Tops

For conventional gas cooking tops, in the September 2016 SNOPR and the December 2020 NOPD, DOE screened out radiant gas burners, catalytic burners, reduced excess air at burner, and reflective surfaces. 81 FR 60784, 60810–60811; 85 FR 80982, 81003.

In the September 2016 SNOPR, DOE considered different efficiency levels associated with the optimized burner and grate design technology option that it observed in products available on the market, including a range of commercial-style gas cooking tops that maintain the utilities discussed previously in section IV.A.1.a of this document. 81 FR 60784, 60817. DOE characterized the optimized burner and grate design incremental efficiency levels based on different observed features (*e.g.,* HIR burners, grate types and material). *Id.*

In the December 2020 NOPD, DOE further noted that all gas cooking tops on the market, including those with an optimized burner and grate design, have been certified to applicable safety standards. 85 FR 80982, 81004. However, DOE recognized that the estimates for the energy savings associated with optimized burner and grate design may vary depending on the test procedure, and thus screened out this technology option from further analysis of gas cooking tops in the December 2020 NOPD. *Id.* DOE stated that it would reevaluate the energy savings associated with this technology option if it considered performance standards in a future rulemaking. *Id.*

NEEA recommended that, under an updated test procedure, DOE continue to evaluate screened out technologies such as optimized burner and grate design, because NEEA believes this technology option has the potential to impact efficiency significantly as it affects heat transfer from the burner to the pot or pan. (NEEA, No. 88 at pp. 3–4) NEEA recommended that, under an updated test procedure, DOE continue to evaluate screened out technology options that may improve heat transfer between the burner and the cooking vessel like the Turbo Pot product which according to NEEA can improve efficiency by 50 to 60 percent through a fin design on the pot. (NEEA, No. 88 at p. 4) NEEA recommends that, under an updated test procedure, DOE continue to evaluate screened out technology options that improve transfer efficiency between the burner and the cooking vessel including new burner face materials (such as metal mesh, ceramics, and metal foam) and power burners instead of atmospheric burners. (NEEA, No. 88 at p. 4)

The CA IOUs requested that DOE re-examine its reasoning for screening out optimized grates and burners, because the CA IOUs believe improvements to this technology could ultimately lead to a non-zero savings value for gas cooking tops. (CA IOUs, No. 89 at p. 4) The CA IOUs added that if the withdrawn test procedure is adequate to analyze the efficiency improvements of grate design, and overall performance improvement of other product classes' design features, it should not preclude DOE from considering technologically feasible design improvements that would improve energy efficiency in gas cooking tops. (*Id.*)

As discussed in section III.C of this document, DOE is considering performance standards for cooking tops, based on new appendix I1. Therefore, as discussed in the December 2020 NOPD, DOE is reevaluating the energy savings associated with optimized burner and grate design. As discussed in chapter 5 of the TSD for this SNOPR, DOE testing has confirmed that optimizing the burner and grate system can lead to reduced energy consumption, as measured under appendix I1. Therefore, DOE is no longer screening out optimized burner and grate design from its analysis.

However, DOE is aware of a wide range of optimized burner and grate designs on the market, some of which may reduce the consumer utility associated with HIR burners and continuous cast-iron grates. In this SNOPR, DOE is screening out any optimized burner and grate designs that would reduce consumer utility by only including in its analysis gas cooking tops that include at least one HIR burner and continuous cast-iron grates.

In this SNOPR, DOE is continuing to screen out catalytic burners, radiant gas burners, reduced excess air at burner, and reflective surfaces, for the same reasons as in the December 2020 NOPD.

DOE seeks comment on its screening analysis for conventional gas cooking tops and whether any additional technology options should be screened out on the basis of any of the screening criteria in this SNOPR.

c. Conventional Ovens

For the same reasons discussed in the September 2016 SNOPR, DOE screened out added insulation, bi-radiant oven, halogen lamp oven, no oven door window, reflective surfaces, and optimized burner and cavity design from further analysis for conventional ovens in the December 2020 NOPD. 81 FR 60784, 60811; 85 FR 80982, 81004.

The Joint Commenters stated that DOE's screening analysis was inconsistent. (Joint Commenters, No. 87 at p. 2) In particular, the Joint Commenters noted that technology options like optimized burner and grate design for gas cooking tops were screened out due to the lack of a test procedure whereas other technology options that rely on a test procedure like improved insulation and improved door seals for conventional ovens were kept

in the analysis. (*Id.*) The Joint Commenters added that new test procedures should be established prior to conducting analysis of potential standards. (*Id.*)

As discussed above, DOE is no longer screening out optimized burner and grate design for gas cooking tops, due to the existence of the new appendix I1 test procedure.

DOE agrees with the Joint Commenters and recognizes that the estimates for the energy savings associated with improved insulation, improved door seals and reduced vent rate may vary depending on the test procedure, and thus is screening out these technology options from further analysis of gas cooking tops in this SNOPR. DOE will reevaluate the energy savings associated with this technology option if it considers performance standards in a future rulemaking.

For the same reasons as discussed above for conventional electric cooking tops, DOE is continuing to screen out the use of automatic power-down low-standby-loss electronic controls. DOE is aware that the use of automatic power-down low-standby-loss electronic controls may negatively impact product utility. In particular, the use of automatic power-down low-standby-loss electronic controls may result in a loss in the utility of the continuous clock display for ovens. However, it should be noted that the other low-standby-loss electronic controls such as SMPSs were still analyzed.

Because DOE did not receive any comments opposing the conventional oven technology options screened out in the December 2020 NOPD, for the same reasons discussed in the December 2020 NOPD, DOE is continuing to screen out added insulation, bi-radiant oven, halogen lamp oven, no oven door window, reflective surfaces, and optimized burner and cavity design from further analysis in this SNOPR. DOE continues to seek comment on the technology options screened out in this SNOPR.

DOE seeks comment on its screening analysis for conventional ovens and whether any additional technology options should be screened out on the basis of any of the screening criteria in this SNOPR.

2. Remaining Technologies

Through a review of each technology, DOE tentatively concludes that all of the other identified technologies listed in section IV.A.2 of this document met all five screening criteria to be examined further as design options in DOE's SNOPR analysis. In summary, DOE did not screen out the technology options listed in Table IV.8.

TABLE IV.8—RETAINED DESIGN OPTIONS FOR CONSUMER CONVENTIONAL COOKING PRODUCTS

Electric Open (Coil) Element Cooking Tops:
None.
Electric Smooth Element Cooking Tops:
1. Induction elements.
2. Switch-mode power supply.
Gas Cooking Tops:
1. Optimized burner and grate design.
Conventional Ovens:
1. Forced convection.
2. Switch-mode power supply.
3. Oven separator (electric only).

DOE seeks comment on the retained design options for consumer conventional cooking products.

DOE has initially determined that these technology options are technologically feasible because they are being used or have previously been used in commercially available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety, unique-pathway proprietary technologies). For additional details, see chapter 4 of the TSD for this SNOPR.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of consumer conventional cooking products. 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 baseline cost, as well as the incremental cost for the product at efficiency levels above the baseline. 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).

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using the design option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design option approach to ''gap fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the max-tech level (particularly in cases where the max-tech level exceeds the maximum efficiency level currently available on the market).

In this SNOPR, DOE is adopting a design-option approach supported by testing, supplemented by reverse engineering (physical teardowns and testing of existing products in the market) to identify the incremental cost and efficiency improvement associated with each design option or design option combination. The design-option approach is appropriate for consumer conventional cooking products, given the lack of certification data to determine the market distribution of existing products and to identify efficiency level ''clusters'' that already exist on the market. DOE also conducted interviews with manufacturers of consumer conventional cooking products following the February 2014 RFI to develop a deeper understanding of the various combinations of design options used to increase product efficiency, and their associated manufacturing costs.

DOE conducted testing and reverse engineering teardowns on products available on the market. Because there are no performance-based energy conservation standards or energy reporting requirements for consumer conventional cooking products, DOE selected test units based on performance-related features and technologies advertised in product literature.

For each product/equipment class, DOE generally selects a baseline model

as a reference point for each class, and measures changes resulting from potential energy conservation standards against the baseline. The baseline model in each product class represents the characteristics of a product typical of that class (*e.g.,* capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market.

For each product class for both conventional cooking tops and conventional ovens, DOE analyzed several efficiency levels (''ELs''). As part of DOE's analysis, the maximum available efficiency level is the highest efficiency unit currently available on the market. DOE also defines a ''max-tech'' efficiency level to represent the maximum possible efficiency for a given product.

In response to the September 2016 SNOPR, AHAM commented that the manufacturer interviews in the earlier stages of the rulemaking have little or no meaning under the current proposed test procedure. (AHAM, No. 64 at p. 34–35) AHAM commented that significant changes to DOE's analysis have occurred since the manufacturer interviews, including (a) the proposed repeal of the oven test procedure;(b) the proposal of an entirely different cooking top test procedure; and (c) the entirely different approach taken to both cooking top and oven standards. (*Id.*) AHAM commented that the September 2016 SNOPR was an entirely new proposal, compared to previous proposals, that was based on a totally new test procedure with which manufacturers had very little experience. (*Id.*)

In the December 2020 NOPD, before the publication of the August 2022 TP Final Rule, DOE was following the then-current version of the Process Rule which indicated that a NOPD would be warranted due to the potential energy savings of the economically justified efficiency levels being below the mandatory threshold level. Therefore, at the time of the December 2020 NOPD, DOE did not conduct supplemental manufacturer interviews. Since then, two factors have changed to justify DOE's current SNOPR: first the Process Rule has been amended and no longer includes a mandatory threshold, and second, the publication of the August 2022 TP Final Rule enabled DOE to propose performance standards for conventional cooking tops which have higher energy saving potentials than the design requirement standards considered in the December 2020 NOPD. Accordingly, for this SNOPR, DOE sought updated manufacturer feedback through confidential interviews on issues relating to potential energy conservation standards for both conventional cooking tops and conventional ovens.

a. Conventional Cooking Tops

The December 2020 NOPD was published prior to the August 2022 TP Final Rule establishing appendix I1, which measures the energy consumption of conventional cooking tops. In the absence of a test procedure, the efficiency levels defined in the December 2020 NOPD were based on prescriptive standards. Therefore, the efficiency levels defined in the December 2020 NOPD are no longer relevant.

DOE's test sample for this SNOPR included 14 electric cooking tops, the cooking top portion of 8 electric ranges, 13 gas cooking tops, and the cooking top portion of 8 gas ranges for a total of 43 consumer conventional cooking tops covering all of the product classes considered in this analysis. The test unit characteristics and appendix I1 test results are available in chapter 5 of the TSD for this SNOPR.

Baseline Efficiency Levels

For this SNOPR, DOE developed performance-based baseline efficiency levels for consumer conventional cooking tops using the measured energy consumption of units in the DOE test sample. DOE determined the cooking top IAEC for each cooking top in the test sample based on the water heating test procedure adopted in the August 2022 TP Final Rule.

The baseline cooking top efficiency levels for this SNOPR differ from those presented in the December 2020 NOPD. As discussed, the cooking top efficiency levels for this SNOPR were determined using the test procedure finalized in the August 2022 TP Final Rule, whereas the analysis published in the December 2020 NOPD was based on the test method adopted in the December 2016 TP Final Rule. As part of the August 2022 TP Final Rule, DOE defined IAEC using an average of 418 cooking top cycles per year to represent consumer cooking frequency, as determined using data from the 2015 RECS. By comparison, the December 2016 TP Final Rule used values of 207.5 and 214.5 cooking top cycles per year for electric and gas cooking tops, respectively, based on the 2009 RECS. Primarily due to the updated number of cooking top cycles per year (along with some other minor changes to the test procedure), the baseline IAEC values calculated using the test method finalized in the August 2022 TP Final Rule are higher than the baseline IAEC values presented in the December 2020 NOPD.

To establish the new baseline IAEC values for cooking tops, DOE set the baseline cooking top integrated annual energy consumption (*i.e.,* IAEC) equal to the sum of the maximum cooking top active annual energy consumption (*i.e.,* AEC) observed in the dataset for the analyzed product class and the maximum combined low-power mode annual energy consumption (''E_{TLP}'') observed in the dataset for the analyzed product class. This approach is consistent with the design-option approach used to determine the incremental efficiency levels, as discussed further in chapter 5 of TSD for this SNOPR. The consumer conventional cooking top baseline efficiency levels for this SNOPR, expressed in kWh/year for electric cooking tops and kBtu/year, are presented in Table IV.9.

TABLE IV.9—CONSUMER CONVENTIONAL COOKING TOP BASELINE EFFICIENCY LEVELS

Product class	IAEC
Electric Cooking Tops—Open (Coil) Elements.	199 kWh/year.
Electric Cooking Tops—Smooth Elements.	250 kWh/year.
Gas Cooking Tops	1,775 kBtu/year.

DOE notes that the efficiency levels for gas cooking tops evaluated in this SNOPR would replace the current prescriptive standards for gas cooking tops which prohibits the use of a constant burning pilot light. As such, DOE's proposed standards for gas cooking tops would be only performance standards. DOE notes that constant burning pilot lights consume approximately 2,000 kBtu/year and even the baseline considered efficiency level of 1,775 kBtu per year for gas cooking tops would not be achievable by products if they were to incorporate a constant burning pilot.

DOE seeks comment on the methodology and results for the proposed baseline efficiency levels for conventional cooking tops.

Incremental Efficiency Levels

i. Electric Cooking Tops

For the electric open (coil) element cooking top product class, DOE did not identify any design options for reducing IAEC in this SNOPR and as a result, DOE did not consider any higher efficiency levels above the baseline.

For electric smooth element cooking tops, as discussed, DOE measured the

AEC and E_{TLP} of each cooking top in its test sample for this SNOPR. DOE then reviewed the AEC and E_{TLP} values for the electric smooth element cooking tops in its test sample and identified three higher efficiency levels that can be achieved without sacrificing clock functionality.

DOE defined EL 1 for electric smooth element cooking tops based on the low-standby-loss electronic controls design option. As discussed above, DOE defined the baseline efficiency assuming the highest AEC would be paired with the highest E_{TLP} observed in its test sample. DOE is aware of many methods employed by manufacturers to achieve lower E_{TLP}, including by changing from a linear power supply to an SMPS, by dimming the control screen's default brightness, by allowing the clock functionality to turn off after a period of inactivity, and by removing the clock from the cooking top altogether. DOE defined EL 1 using the lowest measured E_{TLP} among the units in its test sample with clock functionality, paired with the baseline AEC, to avoid any potential loss of utility from setting a standard based on a unit without clock functionality.

DOE defined EL 2 for electric smooth element cooking tops using the lowest measured AEC (highest efficiency) among radiant cooking tops in its sample and the same E_{TLP} as EL 1. DOE notes that, this AEC value can also be reached by units using induction technology.

To determine the highest measured efficiency for electric smooth element cooking tops, ''max tech'' or EL 3, DOE calculated the sum of the lowest measured AEC in its test sample of electric smooth element cooking tops, which represented induction technology, and the same E_{TLP} as EL 1.

DOE seeks comment on the methodology and results for the proposed incremental efficiency levels for electric cooking tops.

ii. Gas Cooking Tops

In the September 2016 SNOPR, DOE considered efficiency levels associated with optimized burner and grate design for conventional gas cooking tops. 81 FR 60783, 60817. DOE's testing at the time showed that energy use was correlated to burner design (*e.g.,* grate weight, flame angle, distance from burner ports to the cooking surface) and could be reduced by optimizing the design of the burner and grate system. DOE reviewed the test data for the conventional gas cooking tops in its test sample and identified three efficiency levels associated with improving the burner and grate design. *Id.*

Although DOE's testing showed that there was no statistically significant correlation between burner input rate and cooking energy consumption of the cooking top, DOE noted that cooking tops that incorporate different combinations of burners, including HIR burners for larger food loads, have differing capabilities to cook or heat different sized food loads. As a result, DOE proposed multiple efficiency levels that took into account key burner configurations. *Id.* DOE defined EL 1 in the September 2016 SNOPR based on an optimized burner and improved grate design of the unit in the test sample with the lowest measured IAEC among those with cast-iron grates and a six-surface unit configuration with at least four out of the six surface units having burner input rates exceeding 14,000 Btu/h. *Id.* DOE selected these criteria to maintain the full functionality of cooking tops marketed as commercial-style. *Id.* DOE noted that while there are some such products with fewer than six surface units and fewer than four HIR burners, DOE did not observe any products marketed as residential-style with the burner configuration DOE associated with Efficiency Level 1 of the September 2016 SNOPR. *Id.*

DOE defined EL 2 in the September 2016 SNOPR based on an optimized burner and further improved grate design of the unit in the DOE test sample with the lowest measured IAEC among those units with cast-iron grates and at least one surface unit having a burner input rate exceeding 14,000 Btu/h. *Id.* None of the gas units in the DOE test sample marketed as commercial-style were capable of achieving this efficiency level. The cooking tops in the DOE test sample capable of meeting this efficiency level were marketed as residential-style and had significantly lighter cast-iron grates than the commercial-style units. *Id.*

DOE defined EL 3 (max-tech) in the September 2016 SNOPR based on the unit in the DOE test sample with the lowest measured IAEC among those with cast-iron grates, regardless of the number of burners or burner input rate. *Id.* DOE noted that the grate weight for this unit was not lowest in the DOE test sample, confirming that a fully optimized burner and grate design, and not a reduction in grate weight alone, is required to improve cooking top efficiency.

In response to the September 2016 SNOPR, AHAM commented that there were commercial-style products on the market at that time with up to six HIR burners. AHAM's test data indicated that cooking products meeting this description were not able to meet DOE's Efficiency Level 1 as proposed in the September 2016 SNOPR. (AHAM, No. 64 at p. 25) Because DOE's proposed standard level was designed to maintain the full functionality of commercial-style gas cooking tops, AHAM urged DOE to propose a less stringent level for gas cooking tops. (AHAM, No. 64 at p. 28)

DOE has preliminarily determined, as discussed in section IV.B.1.b of this document, that the utility of commercial-style cooking products can be met with a single HIR burner. For this SNOPR, DOE considered efficiency levels associated with optimized burner and grate design, but only insofar as was not screened out. DOE is aware that some methods used by gas cooking top manufacturers to achieve lower AEC can result in a smaller number of HIR burners.[36] HIR burners provide unique consumer utility and allow consumers to perform high heat cooking activities such as searing and stir-frying. DOE is also aware that some consumers derive utility from continuous cast-iron grates, such as the ability to use heavy pans, or to shift cookware between burners without needing to lift them. Because of this, as discussed in IV.B.1.b of this document, DOE has defined the ELs for gas cooking tops such that all ELs are achievable with continuous cast-iron grates and at least one HIR burner.

DOE's testing showed that energy use was correlated to burner design and cooking top configuration (*e.g.,* grate weight, flame angle, distance from burner ports to the cooking surface) and could be reduced by optimizing the design of the burner and grate system. DOE reviewed the test data for the gas cooking tops in its test sample and identified two efficiency levels associated with improving the burner and grate design that corresponded to different design criteria. DOE defined EL 1 and EL 2 for gas cooking tops using the same E_{TLP} as used for the baseline efficiency level.

DOE seeks comment on the methodology and results for the proposed incremental efficiency levels for gas cooking tops.

iii. Analyzed Efficiency Levels

As discussed, DOE established efficiency levels for electric smooth element cooking tops and for gas cooking tops based on combining an AEC value and an E_{TLP} value associated with specific design options, noting that different combinations of AEC and E_{TLP} could be used to meet the IAEC of a

[36] DOE defines a high-input rate burner as a burner with an input rate greater than or equal to 14,000 Btu/h.

given efficiency level. Table IV.10 through Table IV.12 show the efficiency levels for each cooking top product class that are evaluated in this SNOPR.

TABLE IV.10—ELECTRIC OPEN (COIL) ELEMENT COOKING TOP EFFICIENCY LEVELS

Level	IAEC (kWh/year)
Baseline	199

TABLE IV.11—ELECTRIC SMOOTH ELEMENT COOKING TOP EFFICIENCY LEVELS

Level	Design options	IAEC (kWh/year)
Baseline	Baseline	250
1	Baseline + Low-Standby-Loss Electronic Controls	207
2	1 + Improved Resistance Heating Elements	189
3	1 + Highest Active Mode Efficiency (Induction)	179

TABLE IV.12—GAS COOKING TOP EFFICIENCY LEVELS

Level	Design options	IAEC (kBtu/year)
Baseline	Baseline	1,775
1	Baseline + Optimized Burner/Improved Grates (Achievable with 4 or more HIR burners and continuous cast-iron grates).	1,440
2	Highest Measured Efficiency	1,204

b. Conventional Ovens

Potential Prescriptive Standards

As discussed in section III.C of this document, there are no current test procedures for conventional ovens. Therefore, in this SNOPR, DOE is considering only efficiency levels corresponding to prescriptive design requirements as defined by the design options developed as part of the screening analysis (see section IV.B of this document): forced convection, the use of a switch-mode power supply, and an oven separator.

DOE ordered the design options by ease of implementation. Table IV.13 and Table IV.14 define the efficiency levels analyzed in this SNOPR for conventional electric and gas ovens, respectively.

TABLE IV.13—CONVENTIONAL ELECTRIC OVEN EFFICIENCY LEVELS

Level	Design option
Baseline	Baseline.
1	Baseline + SMPS.
2	1 + Forced Convection.
3	2 + Oven Separator.

TABLE IV.14—CONVENTIONAL GAS OVEN EFFICIENCY LEVELS

Level	Design option
Baseline	Baseline.
1	Baseline + SMPS.
2	1 + Forced Convection.

Note: All efficiency levels for conventional gas ovens include the current prescriptive requirement prohibiting the use of a constant burning pilot light.

In this SNOPR, DOE is assuming that a baseline conventional oven uses a linear power supply, based on DOE's analysis of these products. A linear power supply typically produces unregulated as well as regulated power. The main characteristic of an unregulated power supply is that its output may contain significant voltage ripple and that the output voltage will usually vary with the current drawn. The voltages produced by regulated power supplies are typically more stable, exhibiting less ripple than the output from an unregulated power supply and maintaining a relatively constant voltage within the specified current limits of the device(s) regulating the power. The unregulated portion of a linear power supply typically consists of a transformer that steps AC line voltage down, a voltage rectifier circuit for AC to DC conversion, and a capacitor to produce unregulated, DC output. However, there are other means of producing and implementing an unregulated power supply such as transformerless capacitive and/or resistive rectification circuits. Within a linear power supply, the unregulated

output serves as an input into a single or multiple voltage-regulating devices. Such regulating devices include Zener diodes, linear voltage regulators, or similar components which produce a lower-potential, regulated power output from a higher-potential DC input. This approach results in a rugged power supply which is reliable, but typically has an efficiency of about 40 percent.

For EL 1, DOE is analyzing the use of an SMPS rather than a linear power supply. An SMPS can reduce the standby mode energy consumption for conventional ovens due to their higher conversion efficiencies of up to 75 percent in appliance applications for power supply sizes similar to those of conventional ovens. An SMPS also reduces the no-load standby losses. In this SNOPR, DOE is considering EL 1 to correspond to the prescriptive requirement that the conventional oven not be equipped with a linear power supply.

For EL 2, DOE is analyzing the use of forced convection. A forced convection oven uses a fan to distribute warm air evenly throughout the oven cavity. The use of forced circulation can reduce fuel consumption by cooking food more quickly, at lower temperatures, and in larger quantities than a natural convection oven of the same size and rating. Ovens can use convection heating elements in addition to resistance and other types of elements to speed up the cooking process. By using different cooking elements where they are most effective, such combination ovens can reduce the time and energy consumption required to cook food. As described further in chapter 5 of the TSD for this SNOPR, DOE performed testing on consumer conventional ovens in support of this rulemaking to determine the improvement in cooking efficiency associated with forced convection. Included in the DOE test sample were four gas ovens and two electric ovens equipped with forced convection. DOE compared the measured energy consumption of each oven in bake mode to the average energy consumption of bake mode and convection mode (including energy consumption due to the fan motor) as specified in the test procedure. The relative decrease in active mode energy consumption resulting from the use of forced convection in consumer conventional ovens ranged from 3.5 to 7.5 percent depending on the product class. In this SNOPR, DOE is considering EL 2 to correspond to the prescriptive requirement that the conventional oven be equipped with a convection fan. This prescriptive requirement would not preclude a non-convection mode being offered selectable by the consumer.

For EL 3, DOE is analyzing the use of an oven separator, for electric ovens only.[37] For loads that do not require the entire oven volume, an oven separator can be used to reduce the cavity volume that is used for cooking. With less oven volume to heat, the energy used to cook an item would be reduced. The oven separator considered here is the type that can be easily and quickly installed by the user. The side walls of the oven cavity would be fitted with ''slots'' that guide and hold the separator into position, and a switch to indicate when the separator has been installed. The oven would also require at least two separate heating elements to heat the two cavities. Different pairs of ''slots'' would be spaced throughout the oven cavity so that the user could select different positions to place the separator. In this SNOPR, DOE is considering EL 3 to correspond to the prescriptive requirement that the conventional electric oven be equipped with an oven separator.

DOE seeks comment on the definitions of the proposed efficiency level for conventional ovens.

Energy Consumption of Baseline Efficiency Level

As noted in the December 2020 NOPD, DOE's test sample for conventional ovens included one gas wall oven, seven gas ranges, five electric wall ovens, and two electric ranges for a total of 15 conventional ovens covering all of the considered product classes. DOE conducted testing according to the test procedure adopted in the July 2015 TP Final Rule. 81 FR 60784, 60812. However, as discussed previously, in this SNOPR, DOE is considering only efficiency levels corresponding to prescriptive design requirements. In order to develop estimated energy consumption rates for each efficiency level, in support of the Energy Use analysis (see section IV.E of this document), DOE based its analyses on the data measured using the now-repealed test procedure.

The integrated annual oven energy consumption (''IE_{AO}'' [38]) for each consumer conventional oven in DOE's test sample was broken down into its component parts: the energy of active cooking mode, E_{AO} (including any self-cleaning operation); fan-only mode, for built-in/slide-in ovens as applicable; and combined low-power mode, E_{TLP} (including standby mode and off mode).

Because oven cooking efficiency and energy consumption depend on cavity volume, DOE normalized IE_{AO} to a representative cavity volume of 4.3 ft^3 using the relationship between energy consumption and cavity volume discussed in chapter 5 of the TSD for this SNOPR to allow for more direct comparison between units in the test sample.

As part of the September 2016 SNOPR, DOE developed energy consumption values for the baseline efficiency levels for conventional ovens considering both data from the previous standards rulemaking and the measured energy use for the test units. DOE conducted testing for all units in its test sample to measure integrated annual energy consumption, which included energy use in active mode (including fan-only mode) and standby mode. 81 FR 60784, 60814. As discussed in the September 2016 SNOPR, DOE augmented its analysis of electric standard ovens by considering the energy use of the electric self-clean units in its test sample, adjusted to account for the differences between standard-clean and self-clean ovens. Augmenting the electric standard oven dataset with self-clean models from the DOE test sample allowed DOE to consider a wider range of cavity volumes in its analysis. 81 FR 60784, 60815. To establish the estimated energy consumption values for the baseline efficiency levels for conventional ovens, DOE first derived a relationship between energy consumption and cavity volume. Using the slope from the previous rulemaking, DOE selected new intercepts corresponding to the ovens in its test sample with the lowest efficiency, so that no ovens in the test sample were cut off by the baseline curve. DOE then set baseline standby energy consumption for conventional ovens equal to that of the oven (including the oven component of a range) with the highest standby energy consumption in DOE's test sample to maintain the full functionality of controls for consumer utility. In response to the September 2016 SNOPR, DOE did not receive comment on the baseline efficiency levels considered for

[37] Oven separators are not used in conventional gas ovens because they would interfere with the combustion air flow and venting requirements for the separate gas burners on the top and bottom of the oven cavity.

[38] In this SNOPR, DOE refers to the integrated annual oven energy consumption using the abbreviation IE_{AO}, rather than IAEC, as was used in previous documents in this rulemaking. This change is being made to emphasize the difference between the IAEC values used for conventional cooking tops which were measured according to the new appendix I1 and the energy use values used for conventional ovens which were measured according to the test procedure as finalized in the July 2015 TP Final Rule.

conventional ovens. 85 FR 80982, 81011. Thus, DOE did not modify the baseline levels for conventional ovens in the December 2020 NOPD.

As part of the December 2020 NOPD, DOE evaluated the baseline efficiency levels presented in Table IV.15, which also presents the energy consumption values for each product class which are based on an oven with a cavity volume of 4.3 ft^3. *Id.*

TABLE IV.15—DECEMBER 2020 NOPD PROPOSED CONVENTIONAL OVEN BASELINE EFFICIENCY LEVELS

Product class	Sub type	IE_{AO}*
Electric Oven—Standard Oven with or without a Catalytic Line	Freestanding	315.2 kWh/year.
	Built-in/Slide-in	322.3 kWh/year.
Electric Oven—Self-Clean Oven	Freestanding	354.9 kWh/year.
	Built-in/Slide-in	362.0 kWh/year.
Gas Oven—Standard Oven with or without a Catalytic Line	Freestanding	2083.1 kBtu/year.
	Built-in/Slide-in	2093.0 kBtu/year.
Gas Oven—Self-Clean Oven	Freestanding	1959.6 kBtu/year.
	Built-in/Slide-in	1969.6 kBtu/year.

* IE_{AO} values are normalized based on a 4.3 ft^3 volume oven.

For this SNOPR, DOE expanded its sample size of conventional ovens and ranges which were used to determine the baseline E_{TLP} value. DOE calculated the baseline E_{TLP} using the highest combined low-power mode measured power on a conventional range with a linear power supply. DOE also rectified a formula error which was incorrectly allocating the number of hours in fan-only mode. These small changes resulted in slightly updated estimated energy consumption representing the baseline efficiency levels.

The evaluated baseline efficiency levels for consumer conventional ovens are presented in Table IV.16. After receiving manufacturer feedback and reviewing products currently on the market, DOE determined the energy consumption of the baseline efficiency levels based on an oven with a cavity volume of 4.3 ft^3 to represent the market-average cavity volume.

TABLE IV.16—ESTIMATED ENERGY CONSUMPTION OF BASELINE CONSUMER CONVENTIONAL OVENS

Product class	Sub type	IE_{AO}*
Electric Oven—Standard Oven with or without a Catalytic Line	Freestanding	314.7 kWh/year.
	Built-in/Slide-in	321.2 kWh/year.
Electric Oven—Self-Clean Oven	Freestanding	354.4 kWh/year.
	Built-in/Slide-in	360.5 kWh/year.
Gas Oven—Standard Oven with or without a Catalytic Line	Freestanding	2085 kBtu/year.
	Built-in/Slide-in	2104 kBtu/year.
Gas Oven—Self-Clean Oven	Freestanding	1958 kBtu/year.
	Built-in/Slide-in	1979 kBtu/year.

* IE_{AO} values are normalized based on a 4.3 ft^3 volume oven.

Energy Consumption of Incremental Efficiency Levels

For the September 2016 SNOPR, DOE developed incremental efficiency levels for each conventional oven product class by first considering information from the previous rulemaking analysis described in the 2009 TSD. In cases where DOE identified design options during testing and reverse engineering teardowns, DOE updated the efficiency levels based on the tested data. 81 FR 60784, 60818. Table IV.17 through Table IV.20 present the efficiency levels for each product class proposed in the September 2016 SNOPR, along with the associated estimated energy consumption normalized based on an oven with a cavity volume of 4.3 ft^3. In response to the September 2016 SNOPR, DOE did not receive comment on the incremental efficiency levels considered for conventional ovens. *Id.* Thus, DOE did not modify the incremental levels for conventional ovens in the December 2020 NOPD. 85 FR 80982, 81015.

TABLE IV.17—DECEMBER 2020 NOPD EVALUATED ELECTRIC STANDARD OVEN EFFICIENCY LEVELS

Level	Design option	IE_{AO} (kWh/year)	
		Freestanding	Built-in/ slide-in
Baseline	Baseline	315.2	322.3
1	Baseline + SMPS	306.3	313.3
2	1 + Reduced Vent Rate	291.9	299.0
3	2 + Improved Insulation	278.0	285.0
4	3 + Improved Door Seals	273.2	280.3
5	4 + Forced Convection	261.7	268.7
6	5 + Oven Separator	220.6	227.7

TABLE IV.18—DECEMBER 2020 NOPD EVALUATED ELECTRIC SELF-CLEAN OVEN EFFICIENCY LEVELS

Level	Design option	IE_{AO} (kWh/year)	
		Freestanding	Built-in/ slide-in
Baseline	Baseline	354.9	362.0
1	Baseline + SMPS	346.0	353.0
2	1 + Forced Convection	327.3	334.3
3	2 + Oven Separator	277.8	284.7

TABLE IV.19—DECEMBER 2020 NOPD EVALUATED GAS STANDARD OVEN EFFICIENCY LEVELS

Level	Design option	IE_{AO} (kBtu/year)	
		Freestanding	Built-in/ slide-in
Baseline	Baseline	2083.1	2093.0
1	Baseline + SMPS	2052.5	2062.4
2	1 + Improved Insulation	1946.4	1955.8
3	2 + Improved Door Seals	1926.6	1935.9
4	3 + Forced Convection	1832.9	1841.7

TABLE IV.20—DECEMBER 2020 NOPD EVALUATED GAS SELF-CLEAN OVEN EFFICIENCY LEVELS

Level	Design option	IE_{AO} (kBtu/year)	
		Freestanding	Built-in/ slide-in
Baseline	Baseline	1959.6	1969.6
1	Baseline + SMPS	1929.0	1939.0
2	1 + Forced Convection	1830.5	1839.9

DOE developed the incremental efficiency levels for each design option identified as a result of the screening analysis. DOE then developed estimated energy consumption values for each efficiency level based on test data collected according to the earlier version of the oven test procedure established in the July 2015 TP Final Rule. The details of the methodology used to estimate the energy consumption of each efficiency level for each product class are available in chapter 5 of the TSD for this SNOPR.

DOE's testing of freestanding, built-in, and slide-in installation configurations for consumer conventional gas and electric ovens revealed that built-in and slide-in ovens have a fan that consumes energy in fan-only mode, whereas freestanding ovens do not have such a fan. For this SNOPR, DOE developed separate energy consumption values for each installation configuration.

Table IV.21 and Table IV.22 show the efficiency levels for each consumer conventional oven product class analyzed in this SNOPR. The IE_{AO} values for each efficiency level are normalized based on an oven cavity volume of 4.3 ft^3.

TABLE IV.21—ESTIMATED ENERGY CONSUMPTION OF ELECTRIC OVEN EFFICIENCY LEVELS

Level	Design option	IE_{AO} (kBtu/year)			
		Standard freestanding	Standard built-in/ slide-in	Self-clean freestanding	Self-clean built-in/ slide-in
Baseline	Baseline	314.7	321.2	354.4	360.5
1	Baseline + SMPS	302.0	308.9	341.7	348.1
2	1 + Forced Convection	289.0	295.9	328.7	335.1
3	2 + Oven Separator	235.3	242.1	275.0	281.4

TABLE IV.22—ESTIMATED ENERGY CONSUMPTION OF GAS OVEN EFFICIENCY LEVELS

Level	Design option	IE_{AO} (kBtu/year)			
		Standard freestanding	Standard built-in/ slide-in	Self-clean freestanding	Self-clean built-in/ slide-in
Baseline	Baseline	2085	2104	1958	1979
1	Baseline + SMPS	2041	2062	1915	1937
2	1 + Forced Convection	1908	1929	1781	1804

DOE seeks comment on the methodology and results for the estimated energy use of each proposed efficiency level for conventional ovens.

Energy Use Versus Cavity Volume

The energy consumption of the conventional oven efficiency levels detailed above are predicated upon ovens with a cavity volume of 4.3 ft^3. Based on DOE's testing of conventional gas and electric ovens and discussions with manufacturers, energy use scales with oven cavity volume due to larger ovens having higher thermal masses and larger volumes of air (including larger vent rates) than smaller ovens. Because the DOE test procedure adopted in the July 2015 TP Final Rule for measuring IE_{AO} uses a fixed test load size, larger ovens with higher thermal mass will have a higher measured IE_{AO}. As a result, DOE considered available data to characterize the relationship between energy use and oven cavity volume.

For the September 2016 SNOPR, DOE established the slopes by first evaluating the data from the previous rulemaking analysis described in the 2009 TSD, which presented the relationship between measured energy factor (''EF'') and cavity volume, then translating from EF to IE_{AO}, considering the range of cavity volumes for the majority of products available on the market as well as testing of units in DOE's test sample. The intercepts for each efficiency level were then chosen so that the equations passed through the desired IE_{AO} corresponding to a particular volume. 81 FR 60784, 60821–60822. As part of the analysis for the December 2020 NOPD, DOE updated the intercepts in the IE_{AO} versus cavity volume relationships for each product class to reflect the revisions to the efficiency levels made in that analysis.

In this SNOPR, DOE further updated the efficiency levels, and associated IE_{AO} intercepts. Additional discussion of DOE's derivation of the oven IE_{AO} versus cavity volume relationship is presented in chapter 5 of the TSD for this SNOPR.

2. Cost Analysis

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated product, the availability and timeliness of purchasing the product on the market. The cost approaches are summarized as follows:

- *Physical teardowns:* Under this approach, DOE physically dismantles a commercially available product, component-by-component, to develop a detailed bill of materials for the product.
- *Catalog teardowns:* In lieu of physically deconstructing a product, DOE identifies each component using parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the bill of materials for the product.
- *Price surveys:* If neither a physical nor catalog teardown is feasible (for example, for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable) or cost-prohibitive and otherwise impractical (*e.g.,* large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

In the present case, DOE conducted the analysis using physical and catalog teardowns. The resulting bill of materials provides the basis for the manufacturer production cost (''MPC'') estimates.

3. Cost-Efficiency Results

a. Conventional Cooking Tops

For the December 2020 NOPD, DOE maintained its estimates for the incremental MPCs developed for the September 2016 SNOPR, but adjusted the cost-efficiency results to reflect updates to parts pricing estimates and the most recent PPI data. 85 FR 80982, 81018. DOE also updated the cost-efficiency results to reflect the revised efficiency levels in that analysis. *Id.* The estimates for the incremental MPCs considered in the December 2020 NOPD are presented in Table IV.23.

TABLE IV.23—DECEMBER 2020 NOPD CONVENTIONAL COOKING TOP INCREMENTAL MANUFACTURING PRODUCTION COSTS

[2018$]

NOPD level	Electric open (coil) element cooking tops	Electric smooth element cooking tops	Gas cooking tops
Baseline			
1		$0.69	
2		1.81	
3		198.33	

For this SNOPR, DOE developed the cost-efficiency results for each conventional cooking top product class with incremental efficiency levels shown in Table IV.24 and Table IV.25. DOE developed incremental MPCs based on manufacturing cost modeling of units in its sample featuring the design options.

As discussed in chapter 5 of the TSD for this SNOPR, DOE evaluated two versions of the optimized burner and grate design option, representative of a minimum of either 4 or 1 HIR burners. DOE's testing showed that decreased energy use could be correlated to burner design and cooking top configuration (*e.g.,* grate weight, flame angle, distance from burner ports to the cooking surface). Because this design option effectively corresponds to a whole burner and grate system re-design, regardless of the efficiency level achieved by the re-design, the incremental costs for EL 1 and for EL 2 for gas cooking tops include the cost for redesigning the combination of each burner and grate configuration. Therefore, DOE was not able to determine different incremental costs for EL 1 and EL 2 for gas cooking tops.

TABLE IV.24—ELECTRIC SMOOTH ELEMENT COOKING TOPS INCREMENTAL MANUFACTURER PRODUCTION COSTS

Level	Design option	Incremental MPC (2021$)
1	Baseline + Low-Standby-Loss Electronic Controls	$2.17
2	1 + Improved Resistance Heating Elements	11.05
3	1 + Highest Active Mode Efficiency (Induction)	263.19

TABLE IV.25—GAS COOKING TOPS MANUFACTURER PRODUCTION COSTS

Level	Design option	Incremental MPC (2021$)
1	Baseline + Optimized Burner/Improved Grates (Achievable with 4 or more HIR burners and continuous cast-iron grates).	$12.41
2	Maximum Measured Efficiency	12.41

b. Conventional Ovens

For the December 2020 NOPD, DOE maintained its estimates for the incremental MPCs developed for the September 2016 SNOPR, but adjusted the cost-efficiency results to reflect updates to parts pricing estimates and the most recent PPI data. 85 FR 80982, 81019. DOE also updated the cost-efficiency results to reflect the efficiency levels in that analysis. *Id.* The estimates for the incremental MPCs considered in the December 2020 NOPD are presented in Table IV.26.

TABLE IV.26—DECEMBER 2020 NOPD CONVENTIONAL OVEN INCREMENTAL MANUFACTURING PRODUCTION COSTS

[2018$]

NOPD level	Electric ovens		Gas ovens	
	Standard	Self-clean	Standard	Self-clean
Baseline.				
1	$0.81	$0.81	$0.81	$0.81
2	2.73	26.97	6.00	21.35
3	7.91	58.68	8.40	.....
4	10.31	.....	28.94	.....
5	36.48	.....	.....	.....
6	68.19	.....	.....	.....

For this SNOPR, DOE developed the cost-efficiency results for each conventional oven product class shown in Table IV.27 and Table IV.28. DOE developed incremental MPCs based on manufacturing cost modeling of units in its sample featuring the design options. DOE notes that the estimated incremental MPCs are equivalent for the freestanding and built-in/slide-in oven product classes and for the standard and self-clean oven product classes because none of the considered design options would be implemented differently as a function of installation configuration or self-clean functionality.

TABLE IV.27—ELECTRIC OVEN INCREMENTAL MANUFACTURER PRODUCTION COSTS

Level	Design option	Incremental MPC (2021$)
1	Baseline + SMPS	$2.03
2	1 + Forced Convection	34.11
3	2 + Oven Separator	67.77

TABLE IV.28—GAS OVEN INCREMENTAL MANUFACTURER PRODUCTION COSTS

Level	Design option	Incremental MPC (2021$)
1	Baseline + SMPS	$2.17
2	1 + Forced Convection	24.96

DOE seeks comment on the manufacturer production costs for consumer conventional cooking products used in this analysis.

4. Manufacturer Selling Price

To account for manufacturers' non-production costs and profit margin, DOE applies a multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (''MSP'') is the price at which the manufacturer distributes a unit into commerce. DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (''SEC'') 10–K reports filed by publicly traded manufacturers primarily engaged in appliance manufacturing and whose combined product range includes consumer conventional cooking products. See chapter 12 of the TSD for this SNOPR 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 the 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.

For consumer conventional cooking products, the main parties in the distribution chain are (1) the manufacturers of the products; (2) the retailers purchasing the products from manufacturers and selling them to consumers; and (3) the consumers who purchase the products.

For retailers, DOE developed separate markups for baseline products (baseline markups) and for the incremental cost of more efficient products (incremental markups). Incremental markups are coefficients that relate the change in the MSP of higher-efficiency models to the change in the retailer sales price. 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.[39] DOE relied on economic data from the U.S. Census Bureau to estimate average baseline and incremental markups.[40]

Based on microeconomic theory, the degree to which firms can pass along a cost increase depends on the level of market competition, including variables such as the market structure and conditions on both the supply and demand sides (*e.g.,* supply and demand elasticity). DOE examined industry data from IBISWorld and determined the results suggest that the industry groups involved in appliance retail exhibit a fair degree of competition even though three firms occupy approximately 85 percent of the market.[41] However DOE notes that, consumer demand for household appliances is relatively inelastic (*i.e.,* demand is not expected to decrease substantially with an increase in the price of product). Under relatively competitive markets with elastic demand, it may be tenable for retailers to maintain a fixed markup for a short period of time after an input price increase, but the market competition should eventually force them to readjust their markups to reach a medium-term equilibrium in which per-unit profit is relatively unchanged before and after standards are implemented. DOE developed the incremental markup approach based on the widely accepted economic view that firms are not able to sustain a persistently higher dollar margin in a competitive market in the medium term. Under competitive market conditions, if the price of the product increases under standards, the only way to maintain the same dollar margin as before is for the markup (and percent gross margin) to decline.

Chapter 6 of the TSD for this SNOPR provides details on DOE's development of retail markups for consumer conventional cooking products DOE requests comment on the markup analysis described above.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of consumer conventional cooking products at different efficiencies in representative U.S. single-family homes, multi-family residences, and to assess the energy savings potential of increased consumer conventional cooking product efficiency. The energy use analysis estimates the range of energy use of consumer conventional cooking products in the field (*i.e.,* as they are actually used by consumers). 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 standards.

In the December 2020 NOPD, DOE used the 2009 California Residential Appliance Saturation Survey (''RASS'') and a Florida Solar Energy Center (''FSEC'') study to establish representative annual energy use values for conventional cooking tops and ovens.

DOE established a range of energy use from data in the EIA's 2015 Residential Energy Consumption Survey (''RECS 2015'').[42] RECS 2015 does not provide the annual energy consumption of cooking tops, but it does provide the frequency of cooking top use.[43] DOE

[39] Because the projected price of standards-compliant products is typically higher than the price of baseline products, using the same retail markup for the incremental cost and the baseline cost would result in higher per-unit operating profit for retailers. 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 for retailers in the long run.

[40] U.S. Census, *2017 Annual Retail Trade Survey* (*ARTS*), Electronics and Appliance Stores sectors.

[41] IBISWorld. *US Industry Reports (NAICS): 45211—Department Stores; 44311—Consumer Electronics Stores; 44411—Home Improvement Stores; 42362 TV & Appliance Retailers in the US.* 2022. IBISWorld. (Last accessed February 1, 2022.) *www.ibisworld.com.*

[42] U.S. Department of Energy: Energy Information Administration, Residential Energy Consumption Survey: 2015 RECS Survey Data (2019). Available at: *www.eia.gov/consumption/residential/data/2015/.* RECS 2015 is based on a sample of 5,686 households statistically selected to represent 118.2 million housing units in the United States. Available at: *www.eia.gov/consumption/residential/.*

[43] DOE was unable to use the frequency of use to calculate the annual energy consumption using a bottom-up approach, as data in RECS did not include information about the duration of a cooking event to allow for an annual energy use calculation.

was unable to use the frequency of use to calculate the annual energy consumption using a bottom-up approach, as data in RECS 2015 did not include information about the duration of a cooking event to allow for an annual energy use calculation. For the December 2020 NOPD, DOE relied on California RASS 2009 and FSEC data to establish the average annual energy consumption of a conventional cooking top and a conventional oven.

From RECS 2015, DOE developed household samples for each product class. For each household using a conventional cooking top and a conventional oven, RECS provides data on the frequency of use and number of meals cooked in the following bins: (1) less than once per week, (2) once per week, (3) a few times per week, (4) once per day, (5) two times per day, and (6) three or more times per day. DOE utilized the frequency of use to define the variability of the annual energy consumption. First, DOE assumed that the weighted-average cooking frequency from RECS represents the average energy use values based on the California RASS and FSEC data. DOE then varied the annual energy consumption across the RECS households based on their reported cooking frequency relative to the weighted-average cooking frequency.

AHAM stated that consumer cooking behavior is still the most significant factor in the energy use of consumer conventional cooking products. (AHAM, No. 84 at p. 4)

The CA IOUs commented that the COVID–19 pandemic has fundamentally altered cooking behavior in households across the country. (CA IOUs, No. 89 at p. 3) The CA IOUs cited a December 2020 survey of more than 1,000 demographically and geographically representative participants conducted by HUNTER,[44] in which over 54 percent of responders reported that they cooked more at home compared to before the pandemic, with 51–71 percent of responders intending to continue cooking at home, even after the pandemic is over. (*Id.*) The CA IOUs also cited a survey by International Food Information Council,[45] in which nearly 60 percent of responders stated they are cooking at home more as a result of the pandemic, and a separate PG&E survey[46] in which 28 percent of responders claiming that cooking had been the most likely factor which contributed to increased energy use in their home during the pandemic. (*Id.*) The CA IOUs added that DOE's use of the 2015 RECS to estimate operating hours for cooking tops does not account for these changing use trends. (*Id.*)

DOE agrees that cooking behavior is a significant factor for determining the energy use of consumer conventional cooking products. Although, the pandemic has likely introduced changes to consumers lifestyle, there is insufficient data at this time to establish a definite trend originating from the pandemic. If appropriate data from the 2020 RECS are available for the final rule analysis, DOE will evaluate the extent to which the data may have been affected by changes in cooking usage due to the pandemic. DOE notes that an increase in consumer cooking product usage would translate into increased energy savings and monetized benefits relative to the reference estimates presented in this SNOPR.

DOE requests comment on data and information on how the pandemic has changed consumer cooking behavior and product usage.

For this SNOPR, DOE updated the datasets used to establish average annual energy consumption values for cooking tops and ovens. DOE utilized the 2019 California RASS[47] and 2021 field-metered data from the Pecan Street Project[48] to estimate representative annual energy use values for conventional cooking tops and ovens. Pecan Street measures circuit-level electricity use at 1-minute resolution from volunteer households across multiple states. From the Pecan Street data, DOE performed an analysis of 39 households in Texas and 28 households in New York to derive develop average annual energy consumption values for each State. In the absence of similar field-metered data for other States, DOE weighted the average annual energy use results from California (from CA RASS 2019), Texas, and New York by the number of households in each State to estimate an average National energy use value more representative than any individual State measurement. DOE calculated a household-weighted National value using the average values from Texas, New York, and California and estimates for the number of households in each State from the U.S. Census.[49] DOE retained the methodology used in the NOPD to establish a range in energy use values using RECS 2015.

Chapter 7 of the TSD for this SNOPR provides details on DOE's energy use analysis for consumer conventional cooking products.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for consumer conventional cooking products. 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.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of consumer conventional cooking products in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of housing units. As stated previously, DOE developed household samples from the 2015 RECS. For each sample household, DOE determined the energy consumption for the consumer conventional cooking

[44] HUNTER: FOOD STUDY 2020 SPECIAL REPORT (America Gets Cooking: The Impact of COVID–19 on Americans' Food Habits), published in December 2020. Available at *www.hunterpr.com/foodstudy_coronavirus/*.

[45] International Food Information Council. 2020 Food & Health Survey. 10 June 2020. Available at *www.foodinsight.org/2020-food-and-health-survey/*.

[46] PG&E administered survey results, November 18, 2020.

[47] California Energy Commission, Residential Appliance Saturation Survey (RASS) (2019).

[48] Pecan Street Dataset. *www.pecanstreet.org/category/dataport/* (last accessed June 28, 2022).

[49] U.S. Census. *data.census.gov/cedsci/table?q=households%20by%20state&tid=ACSDT5Y2020.B10063*.

products and the appropriate energy price. By developing a representative sample of households, the analysis captured the variability in energy consumption and energy prices associated with the use of consumer conventional cooking products.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and consumer conventional cooking product user samples. For this rulemaking, the Monte Carlo approach is implemented in MS Excel together with the Crystal Ball™ add-on.[50] The model calculated the LCC for products at each efficiency level for 10,000 housing units per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for consumers of conventional cooking products as if each were to purchase a new product in the expected year of required compliance with new or amended standards. New and amended standards would apply to consumer conventional cooking products manufactured 3 years after the date on which any new or amended standard is published. (42 U.S.C. 6295(m)(4)(A)(i)) At this time, DOE estimates publication of a final rule in 2023. Therefore, for purposes of its analysis, DOE used 2027 as the first year of compliance with any amended standards for consumer conventional cooking products.

Table IV.29 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The paragraphs that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the TSD for this SNOPR and its appendices.

TABLE IV.29—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to project product costs.
Installation Costs	Baseline installation cost determined with data from RS Means. Assumed no change with efficiency level.
Annual Energy Use	The total annual energy use multiplied by the hours per year. Average number of hours based on field data. *Variability:* Based on the 2015 RECS.
Energy Prices	*Electricity:* Based on Edison Electric Institute data for 2021. *Natural Gas:* Based on EIA's Natural Gas Navigator for 2020. *Variability:* Regional energy prices by Census Division.
Energy Price Trends	Based on *AEO2022* price projections.
Repair and Maintenance Costs.	Assumed no change with efficiency level.
Product Lifetime	Average: 16.8 years for electric units and 14.5 years for gas units.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances.
Compliance Date	2027.

* Not used for PBP calculation. References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the TSD for this SNOPR.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described previously (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products.

To project future product prices, DOE examined the electric and gas cooking products Producer Price Index (''PPI''). These indices, adjusted for inflation, show a declining trend. DOE performed a power-law fit of historical PPI data and cumulative shipments. For the electric cooking products price trend, DOE used the ''Electric household ranges, ovens, surface cooking units and equipment'' PPI for 1967–2021.[51] For the gas cooking product price trend, DOE used the ''Gas household ranges, ovens, surface cooking units and equipment'' for 1981–2021.[52] See chapter 8 of the TSD for this SNOPR

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE used data from the 2021

[50] Crystal Ball™ is commercially available software tool to facilitate the creation of these types of models by generating probability distributions and summarizing results within Excel, available at *www.oracle.com/middleware/technologies/crystalball.html* (last accessed June 28, 2022).

[51] Electric household ranges, ovens, surface cooking units and equipment PPI series ID: PCU33522033522011; *www.bls.gov/ppi/.*

[52] Gas household ranges, ovens, surface cooking units, and equipment PPI series ID; PCU33522033522013; *www.bls.gov/ppi/.*

RS Means Mechanical Cost Data [53] on labor requirements to estimate installation costs for consumer conventional cooking products.

In general, DOE estimated that installation costs would be the same for different efficiency levels. In the case of electric smooth element cooking tops, the induction heating at EL 3 requires a change of cookware to those that are ferromagnetic to operate the cooking tops in addition to an upgrade to existing electrical wiring to accommodate for a higher amperage. DOE treated this as additional installation cost for this particular design option. DOE used average number of pots and pans utilized by a representative household to estimate this portion of the installation cost. See chapter 8 of the TSD for this SNOPR for details about this component.

3. Annual Energy Consumption

For each sampled household, DOE determined the energy consumption for a consumer conventional cooking product at different efficiency levels using the approach described previously in section IV.E of this document.

4. Energy and Gas Prices

Because marginal electricity price more accurately captures the incremental savings associated with a change in energy use from higher efficiency, it provides a better representation of incremental change in consumer costs than average electricity prices. Therefore, DOE applied average electricity prices for the energy use of the product purchased in the no-new-standards case, and marginal electricity prices for the incremental change in energy use associated with the other efficiency levels considered.

DOE derived electricity prices in 2021 using data from the Edison Electric Institute (''EEI'') Typical Bills and Average Rates reports. Based upon comprehensive, industry-wide surveys, this semi-annual report presents typical monthly electric bills and average kilowatt-hour costs to the customer as charged by investor-owned utilities. For the residential sector, DOE calculated electricity prices using the methodology described in Coughlin and Beraki (2018).[54] For the commercial sector, DOE calculated electricity prices using the methodology described in Coughlin and Beraki (2019).[55]

DOE obtained data for calculating regional prices of natural gas from the EIA publication, *Natural Gas Navigator.*[56] This publication presents monthly volumes of natural gas deliveries and average prices by state for residential, commercial, and industrial customers.

DOE's methodology allows electricity prices to vary by sector, region and season. In the analysis, variability in electricity prices is chosen to be consistent with the way the consumer economic and energy use characteristics are defined in the LCC analysis. For consumer conventional cooking products, DOE calculated weighted-average values for average and marginal electricity and gas price for the nine census divisions. See chapter 8 of the TSD for this SNOPR for details.

To estimate energy prices in future years, DOE multiplied the 2021 energy prices by the projection of annual average price changes for each of the nine census divisions from the Reference case in *AEO2022,* which has an end year of 2050.[57] To estimate price trends after 2050, DOE used constant value calculated from a simple average of the price trend between 2046 through 2050.

5. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing product components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the product. Typically, small incremental increases in product efficiency produce no, or only minor, changes in repair and maintenance costs compared to baseline efficiency products.

For gas ovens, DOE determined the repair and maintenance costs associated with glo-bar ignition systems. DOE estimated the average repair cost attributable to glo-bar systems and annualized it over the life of the unit at $22.58 based on an analysis of available online data found on appliance repair costs.

DOE seeks feedback and comment on its estimate for repair costs for consumer conventional cooking products.

6. Product Lifetime

Equipment lifetime is the age at which the equipment is retired from service. DOE used a variety of sources to establish low, average, and high estimates for product lifetime. Additionally, DOE used AHAM's input to the December 2020 NOPD on the average useful life by product categories, such as electric range, gas range, wall oven, and electric cooking top. Utilizing this detail and the market shares of these product categories, DOE refined the average lifetime estimates to a more representative 16.8 years for all electric cooking products and 14.5 years for all gas cooking products. DOE characterized the product lifetimes with Weibull probability distributions.

DOE requests comment and additional data on its estimates for the lifetime distribution.

See chapter 8 of the TSD for this SNOPR for further details on the sources used to develop product lifetimes, as well as the use of Weibull distributions.

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating cost savings. DOE estimated a distribution of discount rates for consumer conventional cooking products based on the opportunity cost of consumer funds.

DOE applies weighted average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates.[58] The LCC analysis estimates net present value over the lifetime of the product, so the appropriate discount rate will reflect the general opportunity cost of household funds, taking this time scale into account. Given the long-time horizon modeled in the LCC analysis, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their

[53] RS Means Company Inc., RS Means Mechanical Cost Data (2021). Available at *https://rsmeans.com* (last accessed on June 23, 2022).

[54] Coughlin, K. and B. Beraki. 2018. Residential Electricity Prices: A Review of Data Sources and Estimation Methods. Lawrence Berkeley National Lab. Berkeley, CA. Report No. LBNL–2001169. *ees.lbl.gov/publications/residential-electricity-prices-review.*

[55] Coughlin, K. and B. Beraki. 2019. Non-residential Electricity Prices: A Review of Data Sources and Estimation Methods. Lawrence Berkeley National Lab. Berkeley, CA. Report No. LBNL–2001203. *ees.lbl.gov/publications/non-residential-electricity-prices.*

[56] U.S. Department of Energy—Energy Information Administration. *Natural Gas Navigator* 2020. Available at *www.eia.gov/naturalgas/data.php* (last accessed November 14, 2021).

[57] EIA. *Annual Energy Outlook 2022 with Projections to 2050.* Washington, DC. Available at *www.eia.gov/forecasts/aeo/* (last accessed June 28, 2022).

[58] The implicit discount rate is inferred from a consumer purchase decision between two otherwise identical goods with different first cost and operating cost. It is the interest rate that equates the increment of first cost to the difference in net present value of lifetime operating cost, incorporating the influence of several factors: transaction costs; risk premiums and response to uncertainty; time preferences; interest rates at which a consumer is able to borrow or lend. The implicit discount rate is not appropriate for the LCC analysis because it reflects a range of factors that influence consumer purchase decisions, rather than the opportunity cost of the funds that are used in purchases.

debt and asset holdings over the LCC analysis period, based on the restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's triennial Survey of Consumer Finances [59] (''SCF'') starting in 1995 and ending in 2019. Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each type, is 4.3 percent. See chapter 8 of the TSD for this SNOPR for further details on the development of consumer discount rates.

8. Energy Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of product efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards) in the compliance year (2027).

For cooking tops, DOE estimated the current efficiency distribution for each product class from the sample of cooking tops used to develop the engineering analysis. For ovens, DOE relied on model counts of the current market distribution. Given the lack of data on historic efficiency trends, DOE assumed that the estimated current distributions would apply in 2027.

While DOE acknowledges that economic factors may play a role when consumers decide on what type of conventional cooking product to install, assignment of conventional cooking product efficiency for a given installation, based solely on economic measures such as life-cycle cost or simple payback period most likely would not fully and accurately reflect actual real-world installations. There are a number of market failures discussed in the economics literature that illustrate how purchasing decisions with respect to energy efficiency are unlikely to be perfectly correlated with energy use, as described below. DOE maintains that the method of assignment, which is in part random, is a reasonable approach, one that simulates behavior in the conventional cooking product market, where market failures result in purchasing decisions not being perfectly aligned with economic interests, more realistically than relying only on apparent cost-effectiveness criteria derived from the limited information in RECS. DOE further emphasizes that its approach does not assume that all purchasers of conventional cooking product make economically irrational decisions (*i.e.,* the lack of a correlation is not the same as a negative correlation). As part of the random assignment, some homes or buildings with more frequent cooking events will be assigned higher efficiency conventional cooking products, and some homes or buildings with particularly lower cooking events will be assigned baseline units. By using this approach, DOE acknowledges the uncertainty inherent in the data and minimizes any bias in the analysis by using random assignment, as opposed to assuming certain market conditions that are unsupported given the available evidence.

First, consumers are motivated by more than simple financial trade-offs. There are consumers who are willing to pay a premium for more energy-efficient products because they are environmentally conscious.[60] There are also several behavioral factors that can influence the purchasing decisions of complicated multi-attribute products, such as conventional cooking products. For example, consumers (or decision makers in an organization) are highly influenced by choice architecture, defined as the framing of the decision, the surrounding circumstances of the purchase, the alternatives available, and how they're presented for any given choice scenario.[61] The same consumer or decision maker may make different choices depending on the characteristics of the decision context (*e.g.,* the timing of the purchase), which have nothing to do with the characteristics of the alternatives themselves or their prices. Consumers or decision makers also face a variety of other behavioral phenomena including loss aversion, sensitivity to information salience, and other forms of bounded rationality.[62]

The first of these market failures—the split-incentive or principal-agent problem—is likely to affect conventional cooking products more than many other types of appliances. The principal-agent problem is a market failure that results when the consumer that purchases the equipment does not internalize all of the costs associated with operating the equipment. Instead, the user of the product, who has no control over the purchase decision, pays the operating costs. There is a high likelihood of split incentive problems in the case of rental properties where the landlord makes the choice of what conventional cooking product to install, whereas the renter is responsible for paying energy bills.

Attari et al.[63] show that consumers tend to underestimate the energy use of large energy-intensive appliances, but overestimate the energy use of small appliances. This may affect how consumers evaluate and purchase available products on the market. Therefore, it is likely that consumers systematically underestimate the energy use associated with conventional cooking products, resulting in less cost-effective purchases.

These market failures affect a sizeable share of the consumer population. A study by Houde [64] indicates that there is a non-negligible subset of consumers

[59] U.S. Board of Governors of the Federal Reserve System. Survey of Consumer Finances. 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 2019. (Last accessed June 28, 2022.) *www.federalreserve.gov/econresdata/scf/scfindex.htm.*

[60] Ward, D.O., Clark, C.D., Jensen, K.L., Yen, S.T., & Russell, C.S. (2011): ''Factors influencing willingness-to pay for the ENERGY STAR® label,'' *Energy Policy, 39*(3), 1450–1458. (Available at: *www.sciencedirect.com/science/article/abs/pii/S0301421510009171*) (Last accessed Feb. 15, 2022).

[61] Thaler, R.H., Sunstein, C.R., and Balz, J.P. (2014). ''Choice Architecture'' in *The Behavioral Foundations of Public Policy,* Eldar Shafir (ed).

[62] Thaler, R.H., and Bernartzi, S. (2004). ''Save More Tomorrow: Using Behavioral Economics in Increase Employee Savings,'' *Journal of Political Economy* 112(1), S164–S187. *See also* Klemick, H., et al. (2015) ''Heavy-Duty Trucking and the Energy Efficiency Paradox: Evidence from Focus Groups and Interviews,'' *Transportation Research Part A: Policy & Practice,* 77, 154–166. (providing evidence that loss aversion and other market failures can affect otherwise profit-maximizing firms).

[63] Attari, S.Z., M.L. DeKay, C.I. Davidson, and W. Bruine de Bruin (2010): ''Public perceptions of energy consumption and savings.'' *Proceedings of the National Academy of Sciences* 107(37), 16054–16059 (Available at: *www.pnas.org/content/107/37/16054*) (Last accessed Feb. 15, 2022).

[64] Houde, S. (2018): ''How Consumers Respond to Environmental Certification and the Value of Energy Information,'' *The RAND Journal of Economics,* 49 (2), 453–477 (Available at: *onlinelibrary.wiley.com/doi/full/10.1111/1756–2171.12231*) (Last accessed Feb. 15, 2022).

that appear to purchase appliances without taking into account their energy efficiency and operating costs at all.

DOE requests comment and feedback on its efficiency assignment in the LCC analysis.

The estimated market shares for the no-new-standards case for consumer conventional cooking products in 2027 are shown in Table IV.30 through Table IV.32. See chapter 8 of the TSD for this SNOPR for further information on the derivation of the efficiency distributions.

TABLE IV.30—COOKING TOP MARKET SHARES FOR THE NO-NEW STANDARDS CASE

Electric open (coil) element cooking tops			Electric smooth element cooking tops			Gas cooking tops		
Standard level	IAEC (kWh/year)	Market share (%)	Standard level	IAEC (kWh/year)	Market share (%)	Standard level	IAEC (kBtu/year)	Market share (%)
Baseline	199	100	Baseline	250	20	Baseline	1,775	48
			1	207	50	1	1,440	48
			2	189	25	2	1,204	4
			3	179	5			

TABLE IV.31—CONVENTIONAL ELECTRIC OVEN PRODUCT MARKET SHARES FOR THE NO-NEW STANDARDS CASE

Efficiency level	Standard ovens				Self-clean ovens			
	Freestanding		Built-in/slide-in		Freestanding		Built-in/slide-in	
	IE_{AO} (kWh/year)	Market share (%)	IE_{AO} (kWh/year)	Market share (%)	IE_{AO} (kWh/year)	Market share (%)	IE_{AO} (kWh/year)	Market share (%)
Baseline	314.7	5	321.2	5	354.4	5	360.5	5
1	302.0	57	308.9	65	341.7	18	348.1	7
2	289.0	38	295.9	30	328.7	77	335.1	86
3	235.3	0	242.1	0	275.0	0	281.4	2

TABLE IV.32—CONVENTIONAL GAS OVEN PRODUCT MARKET SHARES FOR THE NO-NEW STANDARDS CASE

Efficiency level	Standard ovens				Self-clean ovens			
	Freestanding		Built-in/slide-in		Freestanding		Built-in/slide-in	
	IE_{AO} (kBtu/year)	Market share (%)	IE_{AO} (kBtu/year)	Market share (%)	IE_{AO} (kBtu/year)	Market share (%)	IE_{AO} (kBtu/year)	Market share (%)
Baseline	2,085	4	2,104	4	1,958	4	1,979	4
1	2,041	34	2,062	58	1,915	3	1,937	19
2	1,908	62	1,929	38	1,781	93	1,804	77

DOE seeks comment and feedback on its estimate for the no-new-standards case efficiency distribution.

9. Payback Period Analysis

The payback period is the amount of time (expressed in years) it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. DOE refers to this as a ''simple PBP'' because it does not consider changes over time in operating cost savings. The PBP calculation uses the same inputs as the LCC analysis when deriving first-year operating costs.

As noted previously, 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 first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the new and amended standards would be required.

G. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[65] The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age

[65] DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general, one would expect a close correspondence between shipments and sales.

distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock. The shipment projections are based on historical data and an analysis of key market drivers for each product. For consumer conventional cooking products, DOE accounted for three market segments: (1) new construction, (2) existing homes (*i.e.,* replacing failed products), and (3) retired but not replaced products.

To determine new construction shipments, DOE used a forecast of new housing coupled with product market saturation data for new housing. For new housing completions and mobile home placements, DOE adopted the projections from EIA's *AEO2022* through 2050. For subsequent years, DOE set the annual new housing completions fixed to the 2050 value. The market saturation data for new housing was derived from RECS 2015.

DOE estimated replacements using product retirement functions developed from product lifetimes. DOE used retirement functions based on Weibull distributions. To reconcile the historical shipments with modeled shipments, DOE assumed that every retired unit is not replaced. DOE attributed the reason for this non-replacement to building demolition occurring over the period 2027–2056. The not-replaced rate is distributed across electric and gas cooking products.

DOE allocated shipments to each product class based on the current market share of the class. DOE developed the market shares based on data collected from Appliance Magazine Market Research report [66] and U.S. Appliance Industry Statistical Review.[67] The product class market shares are kept constant over time.

As in the December 2020 NOPD, DOE did not estimate any fuel switching between electric and gas cooking products, as no significant switching was observed from historical data between 2003 to 2020. However, DOE is aware of recent state and local policies promoting the decarbonization of residential buildings which may impact estimates for the distribution of shipments between electric and gas cooking products in the no-new-standards case. Additionally, the Inflation Reduction Act (IRA) allocates $4.5 billion in rebates to cover the costs of high-efficiency electric home upgrades, including rebates targeting electric conventional cooking products. DOE understands that these rebates may cause the shipments of electric conventional cooking products to increase and gas conventional cooking products to decline in the no-new-standards case, thus impacting economic estimates in standards cases.[68] Ideally, incorporating the impacts of these policies would require data on the consumer response rebates covering conventional cooking products offered through local policies and the IR A rebates. The implementation and consumer response to these policies is still nascent and has not yet shown an impact on available shipments data. However, other forecasts and data may prove useful in informing an analysis that recognizes the likely sizeable impact the IRA will have in incentivizing GHG reducing fuel-switching choices among cooking product consumers, independent of the standards proposed in this action. DOE will continue to explore possible avenues for such analysis in anticipation of the final rule. If DOE receives or discovers through further exploration, information and data (including its own cooking specific modeling as program designs are established under the IRA), DOE may consider a sensitivity scenario or other analytic approach based on comments received on IRA and other policies promoting electrification.

DOE seeks comment on the distribution between electric and gas cooking products over the shipments analysis period and the potential for fuel switching between electric and gas cooking products. Specifically, DOE requests data on existing policy incentives for consumers to switch fuels and data that indicates the number of consumers switching fuel types between electric and gas cooking products.

DOE considered the impact of standards on product shipments. DOE concluded that it is unlikely that the price increase due to the proposed standards would impact the decision to install a cooking product in the new construction market. In the replacement market, DOE assumed that, in response to an increased product price, some consumers will choose to repair their old cooking product and extend its lifetime instead of replacing it immediately. DOE estimated the magnitude of such impact through a purchase price elasticity of demand. The estimated price elasticity of −0.367 is based on data for cooking products as described in appendix 9A of the TSD for this SNOPR. This elasticity relates the repair or replace decision to the incremental installed cost of higher efficiency cooking products. DOE estimated that the average extension of life of the repaired unit would be 5 years, and then that unit will be replaced with a new cooking unit.

The second-hand market for used appliances is a potential alternative to consumers purchasing a new unit or repairing a broken unit. An increase in the purchases of older, less-efficient second-hand units due to a price increase due to a standard could potentially decrease projected energy savings. DOE assumed that purchases on the second-hand market would not change significantly due to a standard and did not include their impact on product shipments.

DOE requests data on the market size and typical selling price of units sold through the second-hand market for cooking products.

For further details on the shipments analysis, please refer to chapter 9 of the TSD for this SNOPR.

DOE welcomes input on the effect of new and amended standards on impacts across products within the same fuel class and equipment type.

DOE seeks comment on the general approach to its shipments methodology.

H. National Impact Analysis

The NIA assesses the national energy savings (*i.e.,* NES) and the NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.[69] (''Consumer'' in this context refers to consumers of the product being regulated.) 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 conventional cooking products sold from 2027 through 2056.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each product class in

[66] Appliance Magazine Market Research. The U.S. Appliance Industry: Market Value, Life Expectancy & Replacement Picture 2012.

[67] U.S. Appliance Industry Statistical Review: 2000 to YTD 2011.

[68] U. S. Department of Energy Press Release Pertaining to the Inflation Reduction Act's Direct Consumer Rebates. See *https://www.energy.gov/articles/biden-harris-administration-announces-state-and-tribe-allocations-home-energy-rebate.*

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

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 (*i.e.,* the TSLs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. 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.

Table IV.33 summarizes the inputs and methods DOE used for the NIA analysis for the SNOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the TSD for this SNOPR for further details.

TABLE IV.33—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2027.
Efficiency Trends	No-new-standards case: No efficiency trend. Standards cases: No efficiency trend.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL. Incorporates projection of future product prices based on historical data.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	Annual values do not change with efficiency level.
Energy Price Trends	*AEO2022* projections (to 2050) and constant value based on average between 2046–2050 thereafter.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on *AEO2022.*
Discount Rate	3 percent and 7 percent.
Present Year	2022.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.8 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered product classes for the year of anticipated compliance with an amended or new standard. DOE assumed a static efficiency distribution over the shipments analysis period.

For the standards cases, DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective (2027). In this scenario, the market shares of products in the no-new-standards case that do not meet the standard under consideration would ''roll up'' to meet the new standard level, and the market share of products above the standard would remain unchanged.

2. National Energy Savings

The national energy savings analysis involves a comparison of national energy consumption of the considered products between each trial standards case (or TSL) and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO2022.* Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

Use of higher-efficiency products is sometimes associated with a direct rebound effect, which refers to an increase in utilization of the product due to the increase in efficiency. DOE did not find any data on the rebound effect specific to consumer conventional cooking products.

DOE seeks feedback on its assumption of no rebound effect associated with the use of more efficient conventional cooking products as a result of a standard.

In 2011, in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (''NEMS'') is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [70] that EIA uses to prepare its *Annual Energy Outlook.* The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the TSD for this SNOPR.

EEI commented that values for full-fuel-cycle energy estimates for electricity are extremely overstated,

[70] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009,* DOE/EIA–0581(2009), October 2009. Available at *www.eia.gov/outlooks/aeo/nems/documentation/archive/pdf/0581(2009).pdf* (last accessed July 11, 2022).

especially for consumers in states with renewable portfolio standards. (EEI, No. 83 at pp. 61–62) EEI added that the values in the December 2020 NOPD use outdated information, are more accurate of a national average, and are not very representative of what many consumers are going to see. (*Id.*) EEI also noted that other standards are increasingly using regional values. (*Id.*)

As previously mentioned, DOE converts electricity consumption and savings to primary energy using annual conversion factors derived from the *AEO.* Traditionally, EIA has used the fossil fuel equivalency approach to report noncombustible renewables' contribution to total primary energy, in part because the resulting shares of primary energy are closer to the shares of generated electricity.[71] The fossil fuel equivalency approach applies an annualized weighted-average heat rate for fossil fuel power plants to the electricity generated (in kWh) from noncombustible renewables. EIA recognizes that using captured energy (the net energy available for direct consumption after transformation of a noncombustible renewable energy into electricity) or incident energy (the mechanical, radiation, or thermal energy that is measurable as the ''input'' to the device) are possible approaches for converting renewable electricity to a common measure of primary energy,[72] but it continues to use the fossil fuel equivalency approach in the *AEO* and other reporting of energy statistics. DOE contends that it is important for it to maintain consistency with EIA in DOE's accounting of primary energy savings from energy efficiency standards.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

As discussed in section IV.F.1 of this document, DOE developed separate product price trends for electric and gas cooking products based on a power-law fit of historical PPI data and cumulative shipments. For the electric cooking products price trend, DOE used the ''Electric household ranges, ovens, surface cooking units and equipment'' PPI for 1967–2021.[73] For the gas cooking product price trend, DOE used the ''Gas household ranges, ovens, surface cooking units and equipment'' for 1981–2021.[74] DOE applied the same trends to project prices for each product class at each considered efficiency level. By 2056, which is the end date of the projection period, the average product price is projected to drop 17 percent relative to 2027 for electric cooking products, and 25 percent for gas cooking products. DOE's projection of product prices is described in chapter 8 of the TSD for this SNOPR.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price projections on the consumer NPV for the considered TSLs for consumer conventional cooking products. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) a high price decline case based on a learning rate derived from subset of PPI data for the period 1993–2021 for electric cooking products and the period 1981–2001 for gas cooking products (2) a low price decline case based on a learning rate derived from a subset of PPI data from the period of 1967–1992 for electric cooking products and the period 2002–2021 for gas cooking products. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10C of the TSD for this SNOPR.

The energy cost savings are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average residential energy price changes in the Reference case from *AEO2022,* which has an end year of 2050. To estimate price trends after 2050, DOE used a constant value derived from the average value between 2046 through 2050. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *AEO2022* Reference case that have lower and higher economic growth. Those cases have lower and higher energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10C of the TSD for this SNOPR.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this SNOPR, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the OMB to Federal agencies on the development of regulatory analysis.[75] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended energy conservation standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. The purpose of a subgroup analysis is to determine the extent of any such disproportional impacts. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this SNOPR, DOE analyzed the impacts of the considered standard levels on two subgroups: (1) low-income households and (2) senior-only households. The analysis used subsets of the RECS 2015 sample composed of households that meet the criteria for the two subgroups. While the RECS data offers further disaggregation of these consumer subgroups by owner or renter status, DOE only examined the overall positive LCC savings to these consumer subgroups and did not further

[71] Without adjusting primary energy for fossil fuel equivalence, the noncombustible renewable share of total energy consumption for utility-scale electricity generation in 2018 would have bene 6 percent instead of the 15-percent share under the fossil fuel equivalency approach. On a physical units basis, net generation from noncombustible renewable energy sources was 16 percent of total utility-scale net generation in the same year. *www.eia.gov/todayinenergy/detail.php?id=41013* (last accessed June 28, 2022).

[72] See: *www.eia.gov/totalenergy/data/monthly/pdf/sec12_28.pdf* (last accessed June 28, 2022).

[73] Electric household ranges, ovens, surface cooking units and equipment PPI series ID: PCU33522033522011; *www.bls.gov/ppi/.*

[74] Gas household ranges, ovens, surface cooking units, and equipment PPI series ID; PCU33522033522013; *www.bls.gov/ppi/.*

[75] United States Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Section E. Available at *obamawhitehouse.archives.gov/omb/circulars_a004_a-4/* (last accessed July 11, 2022).

disaggregate the data. DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on these subgroups. Chapter 11 in the TSD for this SNOPR describes the consumer subgroup analysis.

DOE requests comment on whether additional consumer subgroups, including any disaggregation of the subgroups analyzed in this SNOPR, may be disproportionately affected by a new or amended national standard and warrant additional analysis in the final rule.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of new and amended energy conservation standards on manufacturers of consumer conventional cooking products and to estimate the potential impacts of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of projected industry cash flows, the INPV, investments in research and development (''R&D'') and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how new and amended energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the GRIM, an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer margins, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM outputs are the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of more-stringent energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between a no-new-standards case and the various standards cases (*i.e.,* TSLs). To capture the uncertainty relating to manufacturer pricing strategies following new and amended standards, the GRIM estimates a range of possible impacts under different markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard's impact on manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and the impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the TSD for this SNOPR.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the consumer conventional cooking product manufacturing industry based on the market and technology assessment, preliminary manufacturer interviews, and publicly available information. This included a top-down analysis of consumer conventional cooking product manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.,* revenues; materials, labor, overhead, and depreciation expenses; selling, general, and administrative expenses (''SG&A''); and R&D expenses). DOE also used public sources of information to further calibrate its initial characterization of the consumer conventional cooking products manufacturing industry, including company filings of form 10–K from the SEC,[76] corporate annual reports, the U.S. Census Bureau's *Economic Census,*[77] and reports from D&B Hoovers.[78]

In Phase 2 of the MIA, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of new and amended energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the compliance date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes.

In addition, during Phase 2, DOE developed interview guides to distribute to manufacturers of consumer conventional cooking products in order to develop other key GRIM inputs, including product and capital conversion costs, and to gather additional information on the anticipated effects of energy conservation standards on revenues, direct employment, capital assets, industry competitiveness, and subgroup impacts.

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with representative manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. As part of Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by new and amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, low-volume manufacturers (''LVMs''), niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified two manufacturer subgroups for a separate impact analysis: commercial-style manufacturers and small business manufacturers. The commercial-style manufacturer subgroup is discussed in section V.B.2.d of this document. The small business subgroup is discussed in section VI.B of this document.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to new and amended standards that result in a higher or lower industry value. The GRIM uses a standard, annual discounted cash-flow analysis that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from new and amended energy conservation standards. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2022 (the reference year of the analysis) and continuing to 2056. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of consumer conventional cooking

[76] Available at *www.sec.gov/edgar.shtml.*

[77] Available at *www.census.gov/programs-surveys/asm/data/tables.html.*

[78] Available at *app.avention.com.*

products, DOE used a real discount rate of 9.1 percent, which was derived from industry financials and then modified according to feedback received during manufacturer interviews.

DOE requests comment on the use of 9.1 percent as an appropriate real discount rate for consumer conventional cooking product manufacturers.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the new and amended energy conservation standards on manufacturers. As discussed previously, DOE developed critical GRIM inputs using a number of sources, including publicly available data, results of the engineering analysis, and information gathered from industry stakeholders during the course of manufacturer interviews. The GRIM results are presented in section V.B.2 of this document. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the TSD for this SNOPR.

a. Manufacturer Production Costs

Manufacturing more efficient products is typically more expensive than manufacturing baseline products due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of the covered products can affect the revenues, manufacturer margins, and cash flow of the industry.

In the MIA, DOE used the MPCs calculated in the engineering analysis, as described in section IV.C of this document and further detailed in chapter 5 of the TSD for this SNOPR. For this SNOPR analysis, DOE used a design-option approach supported by testing, supplemented by reverse engineering (physical teardowns and testing of existing products in the market) to identify the incremental cost and efficiency improvement associated with each design option or design option combination. DOE used these updated MPCs from the engineering analysis in this MIA.

b. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment projections derived from the shipments analysis from 2022 (the reference year) to 2056 (the end year of the analysis period). See chapter 9 of the TSD for this SNOPR for additional details.

c. Product and Capital Conversion Costs

New or amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and product designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each product class. For the MIA, DOE classified these conversion costs into two major groups: (1) product conversion costs; and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with new and amended energy conservation standards. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled.

To evaluate the level of capital conversion costs manufacturers would likely incur to comply with new and amended energy conservation standards, DOE estimated the capital investments that a major and minor consumer conventional cooking product manufacturer would be required to make to be able to manufacture compliant products at each efficiency levels for each product class. DOE then scaled these cost investment estimates by the number of major and minor consumer conventional cooking product manufacturers to arrive at the industry conversion cost estimates.

To evaluate the level of product conversion costs manufacturers would likely incur to comply with amended energy conservation standards, DOE estimated the number of consumer conventional cooking product models currently on the market, the efficiency distribution of those models on the market, the estimated testing cost to test to the DOE test procedure (for cooking tops only), and the estimated per model R&D costs to redesign a non-compliant model into a compliant model for each analyzed efficiency level.

DOE used DOE's Compliance Certification Database (''CCD''),[79] California Energy Commission's (''CEC's'') MAEDBS database,[80] and Canada's Natural Resources Canada database[81] to identify consumer conventional cooking product models covered by this rulemaking. DOE used the efficiency distribution of the shipments analysis to estimate the model efficiency distribution. DOE increased the cost estimates from the August 2022 TP Final Rule[82] based on manufacturer feedback and used these higher per unit testing costs to estimate the per model testing costs for cooking tops. Lastly, DOE estimated separate per model R&D costs for each product class at each efficiency level based on manufacturer interviews and inputs from the engineering analysis. DOE then combined the per model testing and R&D costs with the number of models that would need to be tested and redesigned to estimate the industry product conversion costs.

In general, DOE assumes all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new and amended standards. The conversion cost figures used in the GRIM can be found in section V.B.2 of this document. For additional information on the estimated capital and product conversion costs, see chapter 12 of the TSD for this SNOPR.

d. Markup Scenarios

MSPs include direct manufacturing production costs (*i.e.,* labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied manufacturer margins to the MPCs estimated in the engineering analysis for each product class and efficiency level. Modifying these margins in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of new and amended energy conservation standards: (1) a preservation of gross margin scenario; and (2) a preservation of operating profit scenario. These

[79] *www.regulations.doe.gov/certification-data.* Cooking Product-Gas: only contains consumer conventional cooking products that use gas as a fuel source.

[80] Available at *cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx.*

[81] Available at *oee.nrcan.gc.ca/pml-lmp/index.cfm?action=app.welcome-bienvenue.* Used to identify any electric cooking products not identified in CEC's database, since many major consumer conventional cooking product manufacturers sell the same consumer conventional cooking products in the US and in Canada.

[82] 87 FR 51492, 51532–51533.

scenarios lead to different margins that, when applied to the MPCs, result in varying revenue and cash flow impacts on manufacturers.

Under the preservation of gross margin scenario, DOE applied the same ''gross margin percentage'' across all efficiency levels in the standards-cases that is used in the no-new-standards case. This scenario assumes that manufacturers would be able to maintain the same margin of 17 percent, that is used in the no-new-standards case, in all standards cases, even as the MPCs increase due to energy conservation standards.[83] This margin is the same margin that was used in the December 2020 NOPD. This scenario represents the upper bound to industry profitability under new and amended energy conservation standards.

Under the preservation of operating profit scenario, DOE modeled a situation in which manufacturers are not able to increase per-unit operating profit in proportion to increases in MPCs. Under this scenario, as the MPCs increase, manufacturers reduce their margins (on a percentage basis) to a level that maintains the no-new-standards operating profit (in absolute dollars). The implicit assumption behind this scenario is that the industry can only maintain its operating profit in absolute dollars after compliance with new and amended standards. Therefore, operating profit in percentage terms is reduced between the no-new-standards case and the analyzed standards cases. DOE adjusted the margins in the GRIM at each TSL to yield approximately the same earnings before interest and taxes in the standards case in the year after the compliance date of the new and amended standards as in the no-new-standards case. This scenario represents the lower bound to industry profitability under new and amended energy conservation standards.

A comparison of industry financial impacts under the two scenarios is presented in section V.B.2.a of this document.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions to emissions of other gases due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion.

The analysis of electric power sector emissions of CO_2, NO_X, SO_2, and Hg uses emissions factors intended to represent the marginal impacts of the change in electricity consumption associated with amended or new standards. The methodology is based on results published for the *AEO,* including a set of side cases that implement a variety of efficiency-related policies. The methodology is described in appendix 13A in the TSD for this SNOPR. The analysis presented in this notice uses projections from *AEO2022.* Power sector emissions of CH_4 and N_2O from fuel combustion are estimated using Emission Factors for Greenhouse Gas Inventories published by the Environmental Protection Agency (''EPA'').[84]

The on-site operation of consumer conventional cooking products requires combustion of fossil fuels and results in emissions of CO_2, NO_X, SO_2, CH_4, and N_2O, where these products are used. Site emissions of these gases were estimated using Emission Factors for Greenhouse Gas Inventories and, for NO_X and SO_2 emissions intensity factors from an EPA publication.[85]

A 2022 study by Stanford University (''Stanford Study''), which measured methane emissions in 53 California homes, suggests that gas ranges (including the gas cooking top and gas oven portions) contribute methane emissions that were estimated to be 0.8 to 1.3 percent of gas consumption for active (cooking) mode due to incomplete combustion and post-meter leakage during active, standby, and off modes.[86] Further, a significant majority (three-quarters) of these emissions take place during standby mode due to leakage. In active mode, the Stanford Study noted that such emissions occurred both during steady-state operation and during burner ignition/extinction. Gas cooking tops with standing pilot lights released on average over 10 times the methane during each ignition event than those with electronic spark ignition. Regarding standby mode, the Stanford Study found that 48 out of the 53 gas ranges measured, along with their associated nearby piping, leaked some methane continuously. The Stanford Study estimated that, over a 20-year analysis period, the annual methane emissions from all gas-fired consumer conventional cooking products in U.S. homes have a climate impact comparable to the annual CO_2 emissions from 500,000 automobiles. Additionally, increased methane emissions contribute to the formation of surface level ozone which has been linked to negative health outcomes.

Studies from the emerging field of indoor air quality have measured emissions of additional pollutants associated with gas cooking products not quantified in this SNOPR analysis that may potentially contribute to negative health impacts, especially in areas with inadequate ventilation.[87] [88] Such in-home emissions may be associated with a variety of serious respiratory and cardiovascular conditions and other health risks. Reduced in-home gas combustion may deliver additional health benefits to consumers and their families by reducing exposure to various pollutants. The level of health benefits may also depend on the degree to which a household uses or has access to proper ventilation. Although the benefits in reductions of these pollutants are not quantified in this SNOPR analysis, reductions of on-site emissions provide health benefits to sensitive populations such as children, elderly, and household members with respiratory conditions.[89] These subgroups are likely to experience more acutely health effects that are caused or exacerbated by the on-site emissions. DOE acknowledges the potential heath impact of these emissions, but notes the uncertainty in quantifying their impact in this emerging area of study.

DOE notes that the current energy conservation standards for consumer conventional cooking products established in the April 2009 Final Rule prohibit constant burning pilots for all gas cooking products (*i.e.,* gas cooking

[83] The gross margin percentage of 17 percent is based on a manufacturer markup of 1.20.

[84] Available at *www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf* (last accessed July 12, 2021).

[85] U.S. Environmental Protection Agency. External Combustion Sources. In *Compilation of Air Pollutant Emission Factors.* AP–42. Fifth Edition. Volume I: Stationary Point and Area Sources. Chapter 1. Available at *www.epa.gov/ttn/chief/ap42/index.html* (last accessed June 28, 2022).

[86] E.D. Lebel, C.J. Finnegan, Z. Ouyang, and R.B. Jackson, ''Methane and NO_X Emissions from Natural Gas Stoves, Cooktops, and Ovens in Residential Homes,'' Environmental Science and Technology 2022, Vol. 56, pp. 2529–2539.

[87] J. Logue, N., Klepeis N, A. Lobscheid A, B. Singer B, ''Pollutant exposures from natural gas cooking burners: a simulation-based assessment for Southern California'' Environ Health Perspect, 2014, Vol 122, pp. 43–50.

[88] Eric D. Lebel et. al ''Composition, Emissions, and Air Quality Impacts of Hazardous Air Pollutants in Unburned Natural Gas from Residential Stoves in California'', Environmental Science & Technology, October 2022.

[89] Seals, D and Krasner A, ''Health Effects from Gas Stove Pollution'', Rocky Mountain Institute. 2020.

products both with or without an electrical supply cord) manufactured on and after April 9, 2012. 10 CFR 430.32(j)(1)–(2). In this SNOPR, DOE analyzed a design option and corresponding efficiency levels for gas cooking tops, optimized burner/improved grates, that are associated with improvements in combustion characteristics. In general, higher efficiency burner systems correlate with more complete combustion and thus more efficient conversion of the energy content in the gas to thermal energy.

DOE seeks comment on any health impacts to consumers, environmental impacts, or general public health and welfare impacts (including the distribution of such impacts across sensitive populations) of its proposals in this SNOPR on on-site emissions from gas cooking products of methane, carbon dioxide, particulate matter, nitrogen dioxide, or other hazardous air emissions. DOE also seeks comment on whether manufacturers are instituting design approaches, control strategies, or other measures to mitigate methane or other emissions from incomplete combustion and leakage.

FFC upstream emissions, which include emissions from fuel combustion during extraction, processing, and transportation of fuels, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2, are estimated based on the methodology described in chapter 15 of the TSD for this SNOPR.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. For power sector emissions, specific emissions intensity factors are calculated by sector and end use. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

1. Air Quality Regulations Incorporated in DOE's Analysis

DOE's no-new-standards case for the electric power sector reflects the *AEO,* which incorporates the projected impacts of existing air quality regulations on emissions. *AEO2022* generally represents current legislation and environmental regulations, including recent government actions, that were in place at the time of preparation of *AEO2022,* including the emissions control programs discussed in the following paragraphs.[90]

SO_2 emissions from affected electric generating units (''EGUs'') are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (''DC''). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from numerous States in the eastern half of the United States are also limited under the Cross-State Air Pollution Rule (''CSAPR''). 76 FR 48208 (Aug. 8, 2011). CSAPR requires these States to reduce certain emissions, including annual SO_2 emissions, and went into effect as of January 1, 2015.[91] *AEO2022* incorporates implementation of CSAPR, including the update to the CSAPR ozone season program emission budgets and target dates issued in 2016. 81 FR 74504 (Oct. 26, 2016). Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by another regulated EGU.

However, beginning in 2016, SO_2 emissions began to fall as a result of the Mercury and Air Toxics Standards (''MATS'') for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS final rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (''HAP''), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions are being reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. In order to continue operating, coal power plants must have either flue gas desulfurization or dry sorbent injection systems installed. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Because of the emissions reductions under the MATS, it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity generation would generally reduce SO_2 emissions. DOE estimated SO_2 emissions reduction using emissions factors based on *AEO2022.*

CSAPR also established limits on NO_X emissions for numerous States in the eastern half of the United States. Energy conservation standards would have little effect on NO_X emissions in those States covered by CSAPR emissions limits if excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other EGUs. In such case, NO_X emissions would remain near the limit even if electricity generation goes down. A different case could possibly result, depending on the configuration of the power sector in the different regions and the need for allowances, such that NO_X emissions might not remain at the limit in the case of lower electricity demand. In this case, energy conservation standards might reduce NO_X emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce NO_X emissions in States covered by CSAPR. Energy conservation standards would be expected to reduce NO_X emissions in the States not covered by CSAPR. DOE used *AEO2022* data to derive NO_X emissions factors for the group of States not covered by CSAPR.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would be expected to slightly reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO2022,* which incorporates the MATS.

L. Monetizing Emissions Impacts

As part of the development of this proposed rule, for the purpose of complying with the requirements of Executive Order 12866, DOE considered the estimated monetary benefits from the reduced emissions of CO_2, CH_4, N_2O, NO_X, and SO_2 that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to

[90] For further information, see the Assumptions to *AEO2022* report that sets forth the major assumptions used to generate the projections in the Annual Energy Outlook. Available at *www.eia.gov/outlooks/aeo/assumptions/* (last accessed June 28, 2022).

[91] CSAPR requires states to address annual emissions of SO_2 and NO_X, precursors to the formation of fine particulate matter ($PM_{2.5}$) pollution, in order to address the interstate transport of pollution with respect to the 1997 and 2006 $PM_{2.5}$ National Ambient Air Quality Standards (''NAAQS''). CSAPR also requires certain states to address the ozone season (May-September) emissions of NO_X, a precursor to the formation of ozone pollution, in order to address the interstate transport of ozone pollution with respect to the 1997 ozone NAAQS. 76 FR 48208 (Aug. 8, 2011). EPA subsequently issued a supplemental rule that included an additional five states in the CSAPR ozone season program. 76 FR 80760 (Dec. 27, 2011) (Supplemental Rule).

result over the lifetime of products shipped in the projection period for each TSL. This section summarizes the basis for the values used for monetizing the emissions benefits and presents the values considered in this SNOPR.

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. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law. However, DOE notes it would reach the same conclusion presented in this proposed rulemaking that the proposed standards are economically justified no matter what value is ascribed to climate benefits. DOE requests comment on how to address the climate benefits and other non-monetized effects of the proposal.

1. Monetization of Greenhouse Gas Emissions

DOE estimates the monetized benefits of the reductions in emissions of CO_2, CH_4, and N_2O by using a measure of the social cost (''SC'') of each pollutant (*e.g.,* SC-CO_2). These estimates represent the monetary value of the net harm to society associated with a marginal increase in emissions of these pollutants in a given year, or the benefit of avoiding that increase. These estimates are intended to include (but are not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.

DOE exercises its own judgment in presenting monetized climate benefits as recommended by applicable Executive orders and DOE would reach the same conclusion presented in this proposed rulemaking in the absence of the social cost of greenhouse gases. That is, the social costs of greenhouse gases, whether measured using the February 2021 interim estimates presented by the Interagency Working Group on the Social Cost of Greenhouse Gases or by another means, did not affect the rule ultimately proposed by DOE.

DOE estimated the global social benefits of CO_2, CH_4, and N_2O reductions (*i.e.,* SC-GHGs) using the estimates presented in the Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990, published in February 2021 by the IWG. The SC-GHGs is the monetary value of the net harm to society associated with a marginal increase in emissions in a given year, or the benefit of avoiding that increase. In principle, SC-GHGs includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC-GHGs therefore, reflects the societal value of reducing emissions of the gas in question by one metric ton. The SC-GHGs is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect CO_2, N_2O and CH_4 emissions. As a member of the IWG involved in the development of the February 2021 SC-GHG TSD, DOE agrees that the interim SC-GHG estimates represent the most appropriate estimate of the SC-GHG until revised estimates have been developed reflecting the latest, peer-reviewed science.

The SC-GHGs estimates presented here were developed over many years, using a transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. Specifically, in 2009, the IWG, that included the DOE and other executive branch agencies and offices, was established to ensure that agencies were using the best available science and to promote consistency in the social cost of carbon (*i.e.,* SC-CO_2) values used across agencies. The IWG published SC-CO_2 estimates in 2010 that were developed from an ensemble of three widely cited integrated assessment models (''IAMs'') that estimate global climate damages using highly aggregated representations of climate processes and the global economy combined into a single modeling framework. The three IAMs were run using a common set of input assumptions in each model for future population, economic, and CO_2 emissions growth, as well as equilibrium climate sensitivity—a measure of the globally averaged temperature response to increased atmospheric CO_2 concentrations. These estimates were updated in 2013 based on new versions of each IAM. In August 2016, the IWG published estimates of the social cost of methane (*i.e.,* SC-CH_4) and nitrous oxide (*i.e.,* SC-N_2O) using methodologies that are consistent with the methodology underlying the SC-CO_2 estimates. The modeling approach that extends the IWG SC-CO_2 methodology to non-CO_2 GHGs has undergone multiple stages of peer review. The SC-CH_4 and SC-N_2O estimates were developed by Marten *et al.*[92] and underwent a standard double-blind peer review process prior to journal publication. In 2015, as part of the response to public comments received to a 2013 solicitation for comments on the SC-CO_2 estimates, the IWG announced a National Academies of Sciences, Engineering, and Medicine review of the SC-CO_2 estimates to offer advice on how to approach future updates to ensure that the estimates continue to reflect the best available science and methodologies. In January 2017, the National Academies released their final report, ''Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide,'' and recommended specific criteria for future updates to the SC-CO_2 estimates, a modeling framework to satisfy the specified criteria, and both near-term updates and longer-term research needs pertaining to various components of the estimation process (National Academies, 2017).[93] Shortly thereafter, in March 2017, President Trump issued Executive Order 13783, which disbanded the IWG, withdrew the previous TSDs, and directed agencies to ensure SC-CO_2 estimates used in regulatory analyses are consistent with the guidance contained in OMB's Circular A–4, ''including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates'' (E.O. 13783, Section 5(c)). Benefit-cost analyses following E.O. 13783 used SC-GHG estimates that attempted to focus on the U.S.-specific

[92] Marten, A.L., E.A. Kopits, C.W. Griffiths, S.C. Newbold, and A. Wolverton. Incremental CH_4 and N_2O mitigation benefits consistent with the US Government's SC-CO_2 estimates. *Climate Policy.* 2015. 15(2): pp. 272–298.

[93] National Academies of Sciences, Engineering, and Medicine. *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide.* 2017. The National Academies Press: Washington, DC.

share of climate change damages as estimated by the models and were calculated using two discount rates recommended by Circular A–4, 3 percent and 7 percent. All other methodological decisions and model versions used in SC-GHG calculations remained the same as those used by the IWG in 2010 and 2013, respectively.

On January 20, 2021, President Biden issued Executive Order 13990, which re-established the IWG and directed it to ensure that the U.S. Government's estimates of the social cost of carbon and other greenhouse gases reflect the best available science and the recommendations of the National Academies (2017). The IWG was tasked with first reviewing the SC-GHG estimates currently used in Federal analyses and publishing interim estimates within 30 days of the E.O. that reflect the full impact of GHG emissions, including by taking global damages into account. The interim SC-GHG estimates published in February 2021 are used here to estimate the climate benefits for this proposed rulemaking. The E.O. instructs the IWG to undertake a fuller update of the SC-GHG estimates by January 2022 that takes into consideration the advice of the National Academies (2017) and other recent scientific literature. The February 2021 SC-GHG TSD provides a complete discussion of the IWG's initial review conducted under E.O. 13990. In particular, the IWG found that the SC-GHG estimates used under E.O. 13783 fail to reflect the full impact of GHG emissions in multiple ways.

First, the IWG found that the SC-GHG estimates used under E.O. 13783 fail to fully capture many climate impacts that affect the welfare of U.S. citizens and residents, and those impacts are better reflected by global measures of the SC-GHG. Examples of omitted effects from the E.O. 13783 estimates include direct effects on U.S. citizens, assets, and investments located abroad, supply chains, U.S. military assets and interests abroad, and tourism, and spillover pathways such as economic and political destabilization and global migration that can lead to adverse impacts on U.S. national security, public health, and humanitarian concerns. In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents. A wide range of scientific and economic experts have emphasized the issue of reciprocity as support for considering global damages of GHG emissions. If the United States does not consider impacts on other countries, it is difficult to convince other countries to consider the impacts of their emissions on the United States. The only way to achieve an efficient allocation of resources for emissions reduction on a global basis—and so benefit the U.S. and its citizens—is for all countries to base their policies on global estimates of damages. As a member of the IWG involved in the development of the February 2021 SC-GHG TSD, DOE agrees with this assessment and, therefore, in this proposed rule DOE centers attention on a global measure of SC-GHG. This approach is the same as that taken in DOE regulatory analyses from 2012 through 2016. A robust estimate of climate damages that accrue only to U.S. citizens and residents does not currently exist in the literature. As explained in the February 2021 TSD, existing estimates are both incomplete and an underestimate of total damages that accrue to the citizens and residents of the U.S. because they do not fully capture the regional interactions and spillovers discussed above, nor do they include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature. As noted in the February 2021 SC-GHG TSD, the IWG will continue to review developments in the literature, including more robust methodologies for estimating a U.S.-specific SC-GHG value, and explore ways to better inform the public of the full range of carbon impacts. As a member of the IWG, DOE will continue to follow developments in the literature pertaining to this issue.

Second, the IWG found that the use of the social rate of return on capital (7 percent under current OMB Circular A–4 guidance) to discount the future benefits of reducing GHG emissions inappropriately underestimates the impacts of climate change for the purposes of estimating the SC-GHG. Consistent with the findings of the National Academies (2017) and the economic literature, the IWG continued to conclude that the consumption rate of interest is the theoretically appropriate discount rate in an intergenerational context,[94] and recommended that discount rate uncertainty and relevant aspects of intergenerational ethical considerations be accounted for in selecting future discount rates.

Furthermore, the damage estimates developed for use in the SC-GHG are estimated in consumption-equivalent terms, and so an application of OMB Circular A–4's guidance for regulatory analysis would then use the consumption discount rate to calculate the SC-GHG. DOE agrees with this assessment and will continue to follow developments in the literature pertaining to this issue. DOE also notes that while OMB Circular A–4, as published in 2003, recommends using 3- and 7-percent discount rates as ''default'' values, Circular A–4 also reminds agencies that ''different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions.'' On discounting, Circular A–4 recognizes that ''special ethical considerations arise when comparing benefits and costs across generations,'' and Circular A–4 acknowledges that analyses may appropriately ''discount future costs and consumption benefits [. . .] at a lower rate than for intragenerational analysis.'' In the 2015 Response to Comments on the Social Cost of Carbon for Regulatory Impact Analysis, OMB, DOE, and the other IWG members recognized that ''Circular A–4 is a living document'' and ''the use of 7 percent is not considered appropriate for intergenerational discounting. There is wide support for this view in the academic literature, and it is recognized in Circular A–4 itself.'' Thus, DOE concludes that a 7 percent discount rate is not appropriate to apply to value the social cost of greenhouse gases in the analysis presented in this analysis.

To calculate the present and annualized values of climate benefits,

[94] Interagency Working Group on Social Cost of Carbon. *Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866.* 2010. United States Government. (Last accessed April 15, 2022.) *www.epa.gov/sites/default/files/2016-12/documents/scc_tsd_2010.pdf;* Interagency Working Group on Social Cost of Carbon. *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* 2013. (Last accessed April 15, 2022.) *www.federalregister.gov/documents/2013/11/26/2013-28242/technical-support-document-technical-update-of-the-social-cost-of-carbon-for-regulatory-impact;* Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Technical Support Document: Technical Update on the Social Cost of Carbon for Regulatory Impact Analysis-Under Executive Order 12866. August 2016. (Last accessed January 18, 2022.) *www.epa.gov/sites/default/files/2016-12/documents/sc_co2_tsd_august_2016.pdf;* Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide. August 2016. (Last accessed January 18, 2022.) *www.epa.gov/sites/default/files/2016-12/documents/addendum_to_sc-ghg_tsd_august_2016.pdf.*

DOE uses the same discount rate as the rate used to discount the value of damages from future GHG emissions, for internal consistency. That approach to discounting follows the same approach that the February 2021 TSD recommends ''to ensure internal consistency—*i.e.,* future damages from climate change using the SC-GHG at 2.5 percent should be discounted to the base year of the analysis using the same 2.5 percent rate.'' DOE has also consulted the National Academies' 2017 recommendations on how SC-GHG estimates can ''be combined in RIAs [regulatory impact analyses] with other cost and benefits estimates that may use different discount rates.'' The National Academies reviewed ''several options,'' including ''presenting all discount rate combinations of other costs and benefits with [SC-GHG] estimates.''

As a member of the IWG involved in the development of the February 2021 SC-GHG TSD, DOE agrees with this assessment and will continue to follow developments in the literature pertaining to this issue. While the IWG works to assess how best to incorporate the latest, peer reviewed science to develop an updated set of SC-GHG estimates, it set the interim estimates to be the most recent estimates developed by the IWG prior to the group being disbanded in 2017. The estimates rely on the same models and harmonized inputs and are calculated using a range of discount rates. As explained in the February 2021 SC-GHG TSD, the IWG has recommended that agencies revert to the same set of four values drawn from the SC-GHG distributions based on three discount rates as were used in regulatory analyses between 2010 and 2016 and subject to public comment. For each discount rate, the IWG combined the distributions across models and socioeconomic emissions scenarios (applying equal weight to each) and then selected a set of four values recommended for use in benefit-cost analyses: an average value resulting from the model runs for each of three discount rates (2.5 percent, 3 percent, and 5 percent), plus a fourth value, selected as the 95th percentile of estimates based on a 3 percent discount rate. The fourth value was included to provide information on potentially higher-than-expected economic impacts from climate change. As explained in the February 2021 SC-GHG TSD, and DOE agrees, this update reflects the immediate need to have an operational SC-GHG for use in regulatory benefit-cost analyses and other applications that was developed using a transparent process, peer-reviewed methodologies, and the science available at the time of that process. Those estimates were subject to public comment in the context of dozens of proposed rulemakings as well as in a dedicated public comment period in 2013.

There are a number of limitations and uncertainties associated with the SC-GHG estimates. First, the current scientific and economic understanding of discounting approaches suggests discount rates appropriate for intergenerational analysis in the context of climate change are likely to be less than 3 percent, near 2 percent or lower.[95] Second, the IAMs used to produce these interim estimates do not include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature and the science underlying their ''damage functions''—*i.e.,* the core parts of the IAMs that map global mean temperature changes and other physical impacts of climate change into economic (both market and nonmarket) damages—lags behind the most recent research. For example, limitations include the incomplete treatment of catastrophic and non-catastrophic impacts in the integrated assessment models, their incomplete treatment of adaptation and technological change, the incomplete way in which inter-regional and intersectoral linkages are modeled, uncertainty in the extrapolation of damages to high temperatures, and inadequate representation of the relationship between the discount rate and uncertainty in economic growth over long time horizons. Likewise, the socioeconomic and emissions scenarios used as inputs to the models do not reflect new information from the last decade of scenario generation or the full range of projections. The modeling limitations do not all work in the same direction in terms of their influence on the SC-CO_2 estimates. However, as discussed in the February 2021 TSD, the IWG has recommended that, taken together, the limitations suggest that the interim SC-GHG estimates used in this SNOPR likely underestimate the damages from GHG emissions. DOE concurs with this assessment.

DOE's derivations of the SC-GHG values (*i.e.,* SC-CO_2, SC-N_2O, and SC-CH_4) used for this SNOPR are discussed in the following sections, and the results of DOE's analyses estimating the benefits of the reductions in emissions of these GHGs are presented in section V.B.6 of this document.

a. Social Cost of Carbon

The SC-CO_2 values used for this SNOPR were based on the values presented for the IWG's February 2021 TSD. Table IV.34 shows the updated sets of SC-CO_2 estimates from the IWG's February 2021 TSD in 5-year increments from 2020 to 2050. The full set of annual values that DOE used is presented in appendix 14A of the TSD for this SNOPR. For purposes of capturing the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate include all four sets of SC-CO_2 values, as recommended by the IWG.[96]

TABLE IV.34—ANNUAL SC-CO_2 VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per metric ton CO_2]

Year	Discount rate			
	5% (average)	3% (average)	2.5% (average)	3% (95th percentile)
2020	14	51	76	152
2025	17	56	83	169
2030	19	62	89	187
2035	22	67	96	206
2040	25	73	103	225

[95] Interagency Working Group on Social Cost of Greenhouse Gases (IWG). 2021. Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990. February. United States Government. Available at: *www.whitehouse.gov/briefing-room/blog/2021/02/26/a-return-to-science-evidence-based-estimates-of-the-benefits-of-reducing-climate-pollution/.*

[96] For example, the February 2021 TSD discusses how the understanding of discounting approaches suggests that discount rates appropriate for intergenerational analysis in the context of climate change may be lower than 3 percent.

TABLE IV.34—ANNUAL SC-CO_2 VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050—Continued

[2020$ per metric ton CO_2]

Year	Discount rate			
	5% (average)	3% (average)	2.5% (average)	3% (95th percentile)
2045	28	79	110	242
2050	32	85	116	260

For 2051 to 2070, DOE used SC-CO_2 estimates published by EPA, adjusted to 2020$.[97] These estimates are based on methods, assumptions, and parameters identical to the 2020–2050 estimates published by the IWG. DOE expects additional climate benefits to accrue for any longer-life consumer conventional cooking products after 2070, but a lack of available SC-CO_2 estimates for emissions years beyond 2070 prevents DOE from monetizing these potential benefits in this analysis. DOE notes that the SC-CO_2 monetization results presented in this SNOPR are a conservative estimate and that the inclusion of emissions after 2070 would slightly increase estimated benefits.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SC-CO_2 value for that year in each of the four cases. DOE adjusted the values to 2021$ using the implicit price deflator for gross domestic product (''GDP'') from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SC-CO_2 values in each case.

b. Social Cost of Methane and Nitrous Oxide

The SC-CH_4 and SC-N_2O values used for this SNOPR were based on the values developed for the February 2021 TSD. Table IV.35 shows the updated sets of SC-CH_4 and SC-N_2O estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14A of the TSD for this SNOPR. To capture the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC-CH_4 and SC-N_2O values, as recommended by the IWG. DOE derived values after 2050 using the approach described above for the SC-CO_2.

TABLE IV.35—ANNUAL SC-CH_4 AND SC-N_2O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per metric ton]

Year	SC-CH_4				SC-N_2O			
	Discount rate and statistic				Discount rate and statistic			
	5% (average)	3% (average)	2.5% (average)	3% (95th percentile)	5% (average)	3% (average)	2.5% (average)	3% (95th percentile)
2020	670	1500	2000	3900	5800	18000	27000	48000
2025	800	1700	2200	4500	6800	21000	30000	54000
2030	940	2000	2500	5200	7800	23000	33000	60000
2035	1100	2200	2800	6000	9000	25000	36000	67000
2040	1300	2500	3100	6700	10000	28000	39000	74000
2045	1500	2800	3500	7500	12000	30000	42000	81000
2050	1700	3100	3800	8200	13000	33000	45000	88000

DOE multiplied the CH_4 and N_2O emissions reduction estimated for each year by the SC-CH_4 and SC-N_2O estimates for that year in each of the cases. DOE adjusted the values to 2021$ using the implicit price deflator for GDP from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC-CH_4 and SC-N_2O estimates in each case.

2. Monetization of Other Emissions Impacts

For the SNOPR, DOE estimated the monetized value of NO_X and SO_2 emissions reductions from electricity generation using the latest benefit per ton estimates for that sector from the EPA's Benefits Mapping and Analysis Program.[98] DOE used EPA's values for $PM_{2.5}$-related benefits associated with NO_X and SO_2 and for ozone-related benefits associated with NO_X for 2025, 2030, and 2040, calculated with discount rates of 3 percent and 7 percent. DOE used linear interpolation to define values for the years not given in the 2025 to 2040 period; for years beyond 2040 the values are held constant. DOE derived values specific to the sector for consumer conventional cooking products using a method described in appendix 14B of the TSD for this SNOPR.

DOE also estimated the monetized value of NO_X and SO_2 emissions reductions from site use of natural gas in consumer conventional cooking products using benefit-per-ton estimates from the EPA's Benefits Mapping and Analysis Program. Although none of the sectors covered by EPA refers

[97] See EPA, *Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis,* Washington, DC, December 2021. Available at: *www.epa.gov/system/files/documents/2021-12/420r21028.pdf* (last accessed January 13, 2022).

[98] *Estimating the Benefit per Ton of Reducing $PM_{2.5}$ Precursors from 21 Sectors.* Available at *www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors.*

specifically to residential and commercial buildings, the sector called ''area sources'' would be a reasonable proxy for residential and commercial buildings.[99] The EPA document provides high and low estimates for 2025 and 2030 at 3- and 7-percent discount rates.[100] DOE used the same linear interpolation and extrapolation as it did with the values for electricity generation. DOE notes that in-home emissions may carry different monetized health risks than the risks assumed in the monetized health benefits calculations.

DOE multiplied the site emissions reduction (in tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate. DOE will continue to evaluate the monetization of avoided NO_X emissions and will make any appropriate updates for the final rule. Additional details on the monetization of NO_X and SO_2 emissions reductions are included in chapter 14 of the TSD for this SNOPR.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the electric power generation industry that would result from the adoption of new or amended energy conservation standards. The utility impact analysis estimates the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from the NEMS associated with *AEO2022.* NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. For the current analysis, impacts are quantified by comparing the levels of electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO2022* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the TSD for this SNOPR.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of potential new or amended energy conservation standards.

In response to the September 2016 SNOPR, the Joint Gas Associations commented that DOE should conduct a similar analysis on natural gas utilities as it conducted on electric utilities to assess the impact of the proposed efficiency requirements on that segment of the energy industry. (Joint Gas Associations, No. 68 at pp. 3–4) The Joint Gas Associations added that a shift from natural gas cooking products to electric cooking products would impact the electric grid requirements. (*Id.*)

DOE notes that the utility impact analysis as applied to electric utilities only estimates the change to capacity and generation as a result of a standard, as modeled in NEMS, and there is no gas utility analog. DOE further notes that the impact to natural gas utility sales is equivalent to the natural gas saved by the proposed standard and includes those results in chapter 15 of the TSD for this SNOPR.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by (1) reduced spending by consumers on energy, (2) reduced spending on new energy supply by the utility industry, (3) increased consumer spending on the products to which the new standards apply and other goods and services, and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (''BLS''). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[101] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this SNOPR using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 (''ImSET'').[102] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (''I–O'') model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and that the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts

[99] ''Area sources'' represents all emission sources for which states do not have exact (point) locations in their emissions inventories. Because exact locations would tend to be associated with larger sources, ''area sources'' would be fairly representative of small dispersed sources like homes and businesses.

[100] ''Area sources'' are a category in the 2018 document from EPA, but are not used in the 2021 document cited above. See: *www.epa.gov/sites/default/files/2018-02/documents/sourceapportionmentbpttsd_2018.pdf.*

[101] See U.S. Department of Commerce—Bureau of Economic Analysis. *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II).* 1997. U.S. Government Printing Office: Washington, DC. Available at *apps.bea.gov/scb/pdf/regional/perinc/meth/rims2.pdf* (last accessed July 11, 2022).

[102] Livingston, O.V., S.R. Bender, M.J. Scott, and R.W. Schultz. *ImSET 4.0: Impact of Sector Energy Technologies Model Description and User Guide.* 2015. Pacific Northwest National Laboratory: Richland, WA. PNNL–24563.

over the long run for this rule. Therefore, DOE used ImSET only to generate results for near-term timeframes (2027), where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the TSD for this SNOPR.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for consumer conventional cooking products. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for consumer conventional cooking products, and the standards levels that DOE is proposing to adopt in this SNOPR. Additional details regarding DOE's analyses are contained in the TSD for this SNOPR supporting this document.

A. Trial Standard Levels

In general, DOE typically evaluates potential new or amended standards for products and equipment by grouping individual efficiency levels for each class into TSLs. Use of TSLs allows DOE to identify and consider manufacturer cost interactions between the product classes, to the extent that there are such interactions, and market cross elasticity from consumer purchasing decisions that may change when different standard levels are set.

In the analysis conducted for this SNOPR, DOE analyzed the benefits and burdens of three TSLs for consumer conventional cooking products. DOE developed TSLs that combine efficiency levels for each analyzed product class. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the TSD for this SNOPR.

Table V.1 through Table V.3 present the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for consumer conventional cooking products. TSL 3 represents the maximum technologically feasible (max-tech) energy efficiency for all product classes. TSL 2 represents an intermediate TSL. TSL 1 is configured with the minimum efficiency improvement in each product class corresponding to electronic controls for electric cooking tops, optimized burners for gas cooking tops, and switch mode power supplies for ovens.

TABLE V.1—TRIAL STANDARD LEVELS FOR COOKING TOP MARKET

Trial standard level	Electric open (coil) element cooking tops		Electric smooth element cooking tops		Gas cooking tops	
	EL	IAEC (kWh/year)	EL	IAEC (kWh/year)	EL	IAEC (kBtu/year)
1	Baseline	199	1	207	1	1,440
2	Baseline	199	1	207	2	1,204
3	Baseline	199	3	179	2	1,204

TABLE V.2—TRIAL STANDARD LEVELS FOR CONVENTIONAL ELECTRIC OVEN

Trial standard level	Standard electric ovens				Self-clean electric ovens			
	Freestanding		Built-in/slide-in		Freestanding		Built-in/slide-in	
	EL	IE_{AO} (kWh/year)	EL	IE_{AO} (kWh/year)	EL	IE_{AO} (kWh/year)	EL	IE_{AO} (kWh/year)
1	1	302.0	1	308.9	1	341.7	1	348.1
2	1	302.0	1	308.9	1	341.7	1	348.1
3	3	235.3	3	242.1	3	275.0	3	281.4

TABLE V.3—TRIAL STANDARD LEVELS FOR CONVENTIONAL GAS OVEN

Trial standard level	Standard gas ovens				Self-clean gas ovens			
	Freestanding		Built-in/slide-in		Freestanding		Built-in/slide-in	
	EL	IE_{AO} (kBtu/year)	EL	IE_{AO} (kBtu/year)	EL	IE_{AO} (kBtu/year)	EL	IE_{AO} (kBtu/year)
1	1	2,041	1	2,062	1	1,915	1	1,937
2	1	2,041	1	2,062	1	1,915	1	1,937
3	2	1,908	2	1,929	2	1,781	2	1,804

DOE constructed the TSLs for this SNOPR to include ELs representative of ELs with similar characteristics (*i.e.,* using similar technologies and/or efficiencies, and having roughly comparable equipment availability). The use of representative ELs provided for greater distinction between the TSLs. While representative ELs were included in the TSLs, DOE considered all efficiency levels as part of its analysis.[103]

[103] Efficiency levels that were analyzed for this SNOPR are discussed in section IV.C of this document. Results by efficiency level are presented in chapters 8, 10, and 12 of the TSD for this SNOPR.

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on consumer conventional cooking products consumers by looking at the effects that potential new and amended standards at each TSL would have on

the LCC and PBP. DOE also examined the impacts of potential standards on selected consumer subgroups. These analyses are discussed in the following sections.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products affect consumers in two ways: (1) purchase price increases and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the TSD for this SNOPR provides detailed information on the LCC and PBP analyses.

Table V.4 through Table V.25 show the LCC and PBP results for the TSLs considered for each product class. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second table, impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.8 of this document). Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline product and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

TABLE V.4—AVERAGE LCC AND PBP RESULTS FOR ELECTRIC OPEN (COIL) ELEMENT COOKING TOPS

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1–3	Baseline	$327	$14	$334	$661	.....	16.8

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ELECTRIC OPEN (COIL) ELEMENT COOKING TOPS

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost
1–3	Baseline	$0.00	0

* The savings represent the average LCC for affected consumers.

TABLE V.6—AVERAGE LCC AND PBP RESULTS FOR ELECTRIC SMOOTH ELEMENT COOKING TOPS

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	$552	$20	$408	$960	.....	16.8
1, 2	1	555	14	336	891	0.6	16.8
	2	568	13	321	890	2.5	16.8
3	3	1,204	12	314	1,517	87.5	16.8

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.7—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ELECTRIC SMOOTH ELEMENT COOKING TOPS

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost
1, 2	1	$13.29	0
3	3	(580.31)	95

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.8—AVERAGE LCC AND PBP RESULTS FOR GAS COOKING TOPS

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	$376	$16	$337	$713	.....	14.5
1	1	395	13	310	705	8.4	14.5
2, 3	2	395	12	292	686	5.0	14.5

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.9—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR GAS COOKING TOPS

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost
1	1	$3.88	27
2, 3	2	21.89	18

* The savings represent the average LCC for affected consumers.

TABLE V.10—AVERAGE LCC AND PBP RESULTS FOR ELECTRIC STANDARD OVENS, FREESTANDING

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	$652	$23	$482	$1,134	.....	16.8
1, 2	1	655	21	459	1,114	1.7	16.8
	2	704	20	448	1,152	19.8	16.8
3	3	755	17	405	1,160	17.0	16.8

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.11—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ELECTRIC STANDARD OVENS, FREESTANDING

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost
1, 2	1	$0.99	0
3	3	(29.92)	80

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.12—AVERAGE LCC AND PBP RESULTS FOR ELECTRIC STANDARD OVENS, BUILT-IN/SLIDE-IN

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	$682	$24	$494	$1,176	.....	16.8
1, 2	1	685	22	472	1,157	1.8	16.8
	2	734	21	461	1,195	20.2	16.8
3	3	785	18	417	1,203	17.2	16.8

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.13—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ELECTRIC STANDARD OVENS, BUILT-IN/SLIDE-IN

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost
1, 2	1	$0.95	0
3	3	(33.05)	81

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.14—AVERAGE LCC AND PBP RESULTS FOR ELECTRIC SELF-CLEAN OVENS, FREESTANDING

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	$699	$28	$552	$1,251	.....	16.8
1, 2	1	702	26	529	1,231	1.7	16.8
	2	751	26	518	1,269	19.8	16.8
3	3	802	22	474	1,277	17.0	16.8

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.15—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ELECTRIC SELF-CLEAN OVENS, FREESTANDING

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost
1, 2	1	$1.02	0
3	3	(15.31)	75

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.16—AVERAGE LCC AND PBP RESULTS FOR ELECTRIC SELF-CLEAN OVENS, BUILT-IN/SLIDE-IN

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	$729	$29	$563	$1,292	.....	16.8
1, 2	1	732	27	540	1,273	1.8	16.8
	2	781	27	530	1,311	20.1	16.8
3	3	832	23	486	1,319	17.2	16.8

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.17—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ELECTRIC SELF-CLEAN OVENS, BUILT-IN/SLIDE-IN

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost
1, 2	1	$1.01	0
3	3	(10.84)	72

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.18—AVERAGE LCC AND PBP RESULTS FOR GAS STANDARD OVENS, FREESTANDING

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	$677	$43	$684	$1,361	.....	14.5
1, 2	1	681	41	664	1,345	1.9	14.5
3	2	715	40	653	1,367	14.1	14.5

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.19—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR GAS STANDARD OVENS, FREESTANDING

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2021$)	Percent of consumers that experience net cost
1, 2	1	$0.65	1
3	2	(7.56)	33

*The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.20—AVERAGE LCC AND PBP RESULTS FOR GAS STANDARD OVENS, BUILT-IN/SLIDE-IN

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	$707	$44	$692	$1,399	.....	14.5
1, 2	1	710	42	673	1,384	2.0	14.5
3	2	744	41	662	1,406	14.4	14.5

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.21—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR GAS STANDARD OVENS, BUILT-IN/SLIDE-IN

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2021$)	Percent of consumers that experience net cost
1, 2	1	$0.59	1
3	2	(13.37)	56

*The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.22—AVERAGE LCC AND PBP RESULTS FOR GAS SELF-CLEAN OVENS, FREESTANDING

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	$847	$44	$702	$1,549	.....	14.5
1, 2	1	850	43	683	1,532	1.9	14.5
3	2	884	42	671	1,555	14.1	14.5

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.23—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR GAS SELF-CLEAN OVENS, FREESTANDING

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost
1, 2	1	$0.70	1
3	2	(0.86)	6

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.24—AVERAGE LCC AND PBP RESULTS FOR GAS SELF-CLEAN OVENS, BUILT-IN/SLIDE-IN

TSL	Average costs (2021$)				LCC	Simple payback (years)	Average lifetime (years)
	Efficiency level	Installed cost	First year's operating cost	Lifetime operating cost			
	Baseline	$876	$45	$711	$1,587		14.5
1, 2	1	879	44	692	1,571	2.0	14.5
3	2	913	43	680	1,594	14.4	14.5

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.25—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR GAS SELF-CLEAN OVENS, BUILT-IN/SLIDE-IN

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost
1, 2	1	$0.60	1
3	2	(4.52)	20

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on low-income households and senior-only households. Table V.26 through Table V.36 compare the average LCC savings and PBP at each efficiency level for the consumer subgroups with similar metrics for the entire consumer sample for each product class. In most cases, the average LCC savings and PBP for low-income households and senior-only households at the considered efficiency levels are not substantially different from the average for all households. Usage data from RECS 2015 indicate that low-income households have a similar usage pattern to all households which leads to similar results. Senior-only households were found to use cooking products less frequently than the general population resulting in slightly lower savings. Chapter 11 of the TSD for this SNOPR presents the complete LCC and PBP results for the subgroups.

TABLE V.26—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; ELECTRIC OPEN (COIL) ELEMENT COOKING TOPS

	Low-income households	Senior-only households	All households
Average LCC Savings (2021$) *			
TSL 1–3	$0.00	$0.00	$0.00
Payback Period (years)			
TSL 1–3	.....	.....	.....
Consumers with Net Benefit (%)			
TSL 1–3	0%	0%	0%
Consumers with Net Cost (%)			
TSL 1–3	0%	0%	0%

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.27—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; ELECTRIC SMOOTH ELEMENT COOKING TOPS

	Low-income households	Senior-only households	All households
Average LCC Savings (2021$)			
TSL 1, 2	$13.71	$13.30	$13.29
TSL 3	($556.90)	($580.13)	($580.31)
Payback Period (years)			
TSL 1, 2	0.5	0.6	0.6
TSL 3	82.4	86.6	87.5
Consumers with Net Benefit (%)			
TSL 1, 2	20%	19%	19%
TSL 3	1%	0%	0%
Consumers with Net Cost (%)			
TSL 1, 2	0%	0%	0%
TSL 3	94%	95%	95%

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.28—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; GAS COOKING TOPS

	Low-income households	Senior-only households	All households
Average LCC Savings (2021$)			
TSL 1	$3.56	$3.65	$3.88
TSL 2, 3	$21.06	$21.37	$21.89
Payback Period (years)			
TSL 1	8.5	8.6	8.4
TSL 2, 3	5.0	5.0	5.0
Consumers with Net Benefit (%)			
TSL 1	21%	19%	21%
TSL 2, 3	76%	76%	75%
Consumers with Net Cost (%)			
TSL 1	28%	29%	27%
TSL 2, 3	18%	19%	18%

* The savings represent the average LCC for affected consumers.

TABLE V.29—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; ELECTRIC STANDARD OVENS, FREESTANDING

	Low-income households	Senior-only households	All households
Average LCC Savings (2021$)			
TSL 1, 2	$1.00	$0.95	$0.99
TSL 3	($29.95)	($40.40)	($29.92)
Payback Period (years)			
TSL 1, 2	1.7	1.8	1.7
TSL 3	17.1	20.4	17.0
Consumers with Net Benefit (%)			
TSL 1, 2	5%	5%	5%
TSL 3	21%	14%	21%
Consumers with Net Cost (%)			
TSL 1, 2	0%	0%	0%
TSL 3	79%	86%	80%

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.30—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; ELECTRIC STANDARD OVENS, BUILT-IN/SLIDE-IN

	Low-income households	Senior-only households	All households
Average LCC Savings (2021$)			
TSL 1, 2	$0.95	$0.86	$0.95
TSL 3	($32.96)	($43.69)	($33.05)
Payback Period (years)			
TSL 1, 2	1.8	1.9	1.8
TSL 3	17.3	20.6	17.2
Consumers with Net Benefit (%)			

TABLE V.30—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; ELECTRIC STANDARD OVENS, BUILT-IN/SLIDE-IN—Continued

	Low-income households	Senior-only households	All households
TSL 1, 2	5%	5%	5%
TSL 3	20%	13%	20%
Consumers with Net Cost (%)			
TSL 1, 2	0%	0%	0%
TSL 3	80%	87%	81%

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.31—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; ELECTRIC SELF-CLEAN OVENS, FREESTANDING

	Low-income households	Senior-only households	All households
Average LCC Savings (2021$)			
TSL 1, 2	$1.07	$0.99	$1.02
TSL 3	($15.42)	($24.72)	($15.31)
Payback Period (years)			
TSL 1, 2	1.7	1.8	1.7
TSL 3	17.1	20.4	17.0
Consumers with Net Benefit (%)			
TSL 1, 2	5%	5%	5%
TSL 3	25%	18%	25%
Consumers with Net Cost (%)			
TSL 1, 2	0%	0%	0%
TSL 3	75%	82%	75%

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.32—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; ELECTRIC SELF-CLEAN OVENS, BUILT-IN/SLIDE-IN

	Low-income households	Senior-only households	All households
Average LCC Savings (2021$)			
TSL 1, 2	$0.96	$0.90	$1.01
TSL 3	($10.89)	($20.02)	($10.84)
Payback Period (years)			
TSL 1, 2	1.8	1.9	1.8
TSL 3	17.3	20.6	17.2
Consumers with Net Benefit (%)			
TSL 1, 2	5%	5%	5%
TSL 3	26%	19%	26%
Consumers with Net Cost (%)			
TSL 1, 2	0%	0%	0%
TSL 3	72%	79%	72%

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.33—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; GAS STANDARD OVENS, FREESTANDING

	Low-income households	Senior-only households	All households
Average LCC Savings (2021$)			
TSL 1, 2	$0.72	$0.56	$0.65
TSL 3	($6.77)	($8.51)	($7.56)
Payback Period (years)			
TSL 1, 2	1.7	2.1	1.9
TSL 3	12.0	15.7	14.1
Consumers with Net Benefit (%)			
TSL 1, 2	3%	3%	3%
TSL 3	4%	3%	4%
Consumers with Net Cost (%)			
TSL 1, 2	1%	1%	1%
TSL 3	34%	34%	33%

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.34—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; GAS STANDARD OVENS, BUILT-IN/SLIDE-IN

	Low-income households	Senior-only households	All households
Average LCC Savings (2021$)			
TSL 1, 2	$0.74	$0.58	$0.59
TSL 3	($11.63)	($14.33)	($13.37)
Payback Period (years)			
TSL 1, 2	1.7	2.2	2.0
TSL 3	12.3	16.0	14.4
Consumers with Net Benefit (%)			
TSL 1, 2	4%	3%	3%
TSL 3	6%	5%	6%
Consumers with Net Cost (%)			
TSL 1, 2	1%	1%	1%
TSL 3	56%	57%	56%

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.35—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; GAS SELF-CLEAN OVENS, FREESTANDING

	Low-income households	Senior-only households	All households
Average LCC Savings (2021$)			
TSL 1, 2	$0.90	$0.64	$0.70
TSL 3	($0.60)	($1.12)	($0.86)
Payback Period (years)			
TSL 1, 2	1.7	2.1	1.9
TSL 3	12.1	15.7	14.1
Consumers with Net Benefit (%)			
TSL 1, 2	4%	4%	4%
TSL 3	2%	1%	1%
Consumers with Net Cost (%)			
TSL 1, 2	0%	1%	1%
TSL 3	5%	6%	6%

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

TABLE V.36—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; GAS SELF-CLEAN OVENS, BUILT-IN/SLIDE-IN

	Low-income households	Senior-only households	All households
Average LCC Savings (2021$)			
TSL 1, 2	$0.67	$0.50	$0.60
TSL 3	($3.58)	($4.92)	($4.52)
Payback Period (years)			
TSL 1, 2	1.7	2.2	2.0
TSL 3	12.3	16.0	14.4
Consumers with Net Benefit (%)			
TSL 1, 2	3%	3%	3%
TSL 3	3%	2%	3%
Consumers with Net Cost (%)			
TSL 1, 2	1%	1%	1%
TSL 3	20%	21%	20%

* The savings represent the average LCC for affected consumers. Negative values denoted in parentheses.

In the absence to data specific to each consumer subgroup, DOE assumed the efficiency distribution developed for the reference case analysis (see section IV.F.8 of this document for details). However, for gas cooking tops, this likely overestimates the negative impact to low-income households that are more likely to purchase traditional residential-style gas cooking tops which tend to have fewer high output burners and slimmer grates relative to commercial-style gas cooking tops. These households are more likely to purchase products above the baseline at EL 1 or EL 2. As both EL 1 and EL 2 have the same installed cost (see Table V.5), a standard for these consumers would not lead to an increase in purchase price and would result in operating cost savings for consumers that purchase EL 1 in the no-new-standards case and EL 2 in a standards case.

c. Rebuttable Presumption Payback

As discussed in section III.F.2 of this document, EPCA establishes a rebuttable presumption that an energy conservation standard is economically

justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedure for consumer conventional cooking products. In contrast, the PBPs presented in section V.B.1.a of this document were calculated using distributions that reflect the range of energy use in the field.

Table V.37 presents the rebuttable-presumption payback periods for the considered TSLs for consumer conventional cooking products. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for the SNOPR are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V.37—REBUTTABLE-PRESUMPTION PAYBACK PERIODS

Product class	Trial standard level		
	1	2	3
	years		
Electric Open (Coil) Element Cooking Tops	n.a.	n.a.	n.a.
Electric Smooth Element Cooking Tops	0.5	0.5	66.0
Gas Cooking Tops	6.4	3.8	3.8
Electric Standard Ovens, Freestanding	1.8	1.8	9.4
Electric Standard Ovens, Built-In/Slide-In	1.8	1.8	9.4
Electric Self-Clean Ovens, Freestanding	1.8	1.8	9.4
Electric Self-Clean Ovens, Built-In/Slide-In	1.8	1.8	9.4
Gas Standard Ovens, Freestanding	8.5	8.5	24.4
Gas Standard Ovens, Built-In/Slide-In	8.9	8.9	24.7
Gas Self-Clean Ovens, Freestanding	8.7	8.7	24.4
Gas Self-Clean Ovens, Built-In/Slide-In	8.9	8.9	24.7

* The entry ''n.a.'' means not applicable because the evaluated standard is the baseline.

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of new and amended energy conservation standards on manufacturers of consumer conventional cooking products. The following section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the TSD for this SNOPR explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that would result from the analyzed energy conservation standards. The following tables summarize the estimated financial impacts (represented by changes in INPV) of potential new and amended energy conservation standards on manufacturers of consumer conventional cooking products, as well as the conversion costs that DOE estimates manufacturers of consumer conventional cooking products would incur at each TSL. To evaluate the range of cash-flow impacts on the consumer conventional cooking product industry, DOE modeled two scenarios using different assumptions that correspond to the range of anticipated market responses to new and amended energy conservation standards: (1) the preservation of gross margin scenario and (2) the preservation of operating profit scenario.

In the preservation of gross margin scenario, consumer conventional cooking product manufacturers are able to maintain their margins (as a percentage), even as the MPCs of consumer conventional cooking products increase due to energy conservation standards. The same uniform margin of 17 percent is applied across all efficiency levels in the preservation of gross margin.[104] In the preservation of operating profit scenario, manufacturers are not able to maintain their original margins of 17 percent, in the standards cases. Instead, manufacturers are only able to maintain the same operating profit (in absolute dollars) in the standards cases as in the no-new-standards case, despite higher MPCs.

Each of the modeled scenarios results in a unique set of cash-flows and corresponding industry values at each TSL for consumer conventional cooking product manufacturers. In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and each standards case resulting from the sum of discounted cash-flows from 2022 through 2056. To provide perspective on the short-run cash-flow impact, DOE includes in the discussion of results a comparison of free cash flow between the no-new-standards case and the standards case at each TSL in the year before new and amended standards are required.

DOE presents the range in INPV for consumer conventional cooking product manufacturers in Table V.38 and Table V.39.

[104] The gross margin percentage of 17 percent is based on a manufacturer markup of 1.20.

TABLE V.38—MANUFACTURER IMPACT ANALYSIS FOR CONSUMER CONVENTIONAL COOKING PRODUCTS—PRESERVATION OF GROSS MARGIN SCENARIO

	Units	No-new-standards case	Trial standard level *		
			1	2	3
INPV	2021$ millions	1,607	1,506	1,456	422
Change in INPV	2021$ millions		(100.7)	(150.4)	(1,185.1)
	%		(6.3)	(9.4)	(73.8)
Product Conversion Costs	2021$ millions		45.5	109.9	1,401.6
Capital Conversion Costs	2021$ millions		58.5	73.5	444.8
Total Conversion Costs	2021$ millions		104.1	183.4	1,846.4

* Parentheses indicate negative values. Numbers may not sum exactly due to rounding.

TABLE V.39—MANUFACTURER IMPACT ANALYSIS FOR CONSUMER CONVENTIONAL COOKING PRODUCTS—PRESERVATION OF OPERATING PROFIT SCENARIO

	Units	No-new-standards case	Trial standard level *		
			1	2	3
INPV	2021$ millions	1,607	1,502	1,452	238
Change in INPV	2021$ millions		(105.1)	(154.8)	(1,368.6)
	%		(6.5)	(9.6)	(85.2)
Product Conversion Costs	2021$ millions		45.5	109.9	1,401.6
Capital Conversion Costs	2021$ millions		58.5	73.5	444.8
Total Conversion Costs	2021$ millions		104.1	183.4	1,846.4

* Parentheses indicate negative values. Numbers may not sum exactly due to rounding.

At TSL 1, DOE estimates impacts on INPV will range from −$105.1 million to −$100.7 million, which represents a change of −6.5 percent to −6.3. percent, respectively. At TSL 1, industry free cash-flow decrease to $90.3 million, which represents a decrease of approximately 42.5 percent, compared to the no-new-standards case value of $132.9 million in 2026, the year before the estimated compliance date.

TSL 1 would set the energy conservation standard at baseline for the electric open (coil) element cooking top product class and at EL 1 for all other product classes. DOE estimates that 100 percent of the electric open (coil) element cooking top shipments, 80 percent of the electric smooth element cooking top shipments, 52 percent of the gas cooking top shipments, 95 percent of the electric oven shipments, and 96 percent of the gas oven shipments would already meet or exceed the efficiency levels required at TSL 1 in 2027.

At TSL 1, DOE expects consumer conventional cooking product manufacturers to incur approximately $45.5 million in product conversion costs to redesign all non-compliant cooking top models and oven models, as well as to test all (both compliant and newly redesigned) cooking top models to DOE's cooking top test procedure. Additionally, consumer conventional cooking product manufacturers would incur approximately $58.5 million in capital conversion costs to purchase new tooling and equipment necessary to produce all electric smooth element cooking top models and all oven models to use switch-mode power supplies and to purchase new molds for grates and burners for gas cooking top models that would not meet this energy conservation standard.

At TSL 1, the shipment-weighted average MPC for consumer conventional cooking products slightly increases by 0.5 percent relative to the no-new-standards case shipment-weighted average MPC in 2027. In the preservation of gross margin scenario, manufacturers can fully pass on this slight cost increase. The slight increase in shipment weighted average MPC is outweighed by the $104.1 million in conversion costs, causing a moderately negative change in INPV at TSL 1 under the preservation of gross margin scenario.

Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments or higher MPCs. In this scenario, the 0.5 percent shipment weighted average MPC increase results in a reduction in the margin after the analyzed compliance year. This reduction in the margin and the $104.1 million in conversion costs incurred by manufacturers cause a moderately negative change in INPV at TSL 1 under the preservation of operating profit scenario.

At TSL 2, DOE estimates impacts on INPV will range from −$154.8 million to −$150.4 million, which represents a change of −9.6 percent to −9.4 percent, respectively. At TSL 2, industry free cash-flow decrease to $60.7 million, which represents a decrease of approximately 72.2 percent, compared to the no-new-standards case value of $132.9 million in 2026, the year before the estimated compliance date.

TSL 2 would set the energy conservation standard at baseline for the electric open (coil) element cooking top product class; at EL 1 for the electric smooth element cooking top and for all oven product classes (electric and gas); and at EL 2 for the gas cooking top product class, which represents max-tech for this product class. DOE estimates that 100 percent of the electric open (coil) element cooking top shipments, 80 percent of the electric smooth element cooking top shipments, 4 percent of the gas cooking top shipments, 95 percent of the electric oven shipments, and 96 percent of the gas oven shipments would already meet or exceed the efficiency levels required at TSL 2 in 2027.

At TSL 2, DOE expects consumer conventional cooking product manufacturers to incur approximately $109.9 million in product conversion costs at this TSL. This includes testing costs and product redesign costs. The majority of the product conversion costs

are for gas cooking top manufacturers to redesign non-compliant gas cooking top models to meet this energy conservation standard, as well as to test all (both compliant and newly redesigned) cooking top models to DOE's cooking top test procedure. Additionally, consumer conventional cooking product manufacturers would incur approximately $73.5 million in capital conversion costs to purchase new tooling and equipment necessary to produce all electric smooth element cooking top models and all oven models to use switch-mode power supplies and to purchase new molds for grates and burners for gas cooking top models that would not meet this energy conservation standard.

At TSL 2, the shipment-weighted average MPC for consumer conventional cooking products slightly increases by 0.5 percent relative to the no-new-standards case shipment-weighted average MPC in 2027. In the preservation of gross margin scenario, manufacturers can fully pass on this slight cost increase. The slight increase in shipment weighted average MPC is outweighed by the $183.4 million in conversion costs, causing a moderately negative change in INPV at TSL 2 under the preservation of gross margin scenario.

Under the preservation of operating profit scenario, the 0.5 percent shipment weighted average MPC increase results in a reduction in the margin after the analyzed compliance year. This reduction in the manufacturer markup and the $183.4 million in conversion costs incurred by manufacturers cause a moderately negative change in INPV at TSL 2 under the preservation of operating profit scenario.

At TSL 3, DOE estimates impacts on INPV will range from −$1,368.6 million to −$1,185.1 million, which represents a change of −85.2 percent to −73.8 percent, respectively. At TSL 3, industry free cash-flow decrease to −$666.2 million, which represents a decrease of approximately 799.0 percent, compared to the no-new-standards case value of $132.9 million in 2026, the year before the estimated compliance date.

TSL 3 would set the energy conservation standard at baseline for the electric open (coil) element cooking top product class; at EL 2 for the gas cooking top product class and for all the gas oven product classes (standard and self-clean); and at EL 3 for the electric smooth element cooking top product class and for all the electric oven product classes (standard and self-clean). This represents max-tech for all product classes. DOE estimates that 100 percent of the electric open (coil) element cooking top shipments, 5 percent of the electric smooth element cooking top shipments, 4 percent of the gas cooking top shipments, zero percent of the electric standard oven (freestanding and built-in) shipments, zero percent of the electric self-clean oven (freestanding) shipments, 2 percent of the electric self-clean (built-in) shipments, 62 percent of gas standard oven (freestanding) shipments, 38 percent of the gas standard oven (built-in) shipments, 93 percent of the gas self-clean oven (freestanding) shipments, and 77 percent of the gas self-clean (built-in) shipments would already meet the efficiency levels required at TSL 3 in 2027.

At TSL 3, DOE expects consumer conventional cooking product manufacturers to incur approximately $1,401.6 million in product conversion costs at this TSL. This includes testing costs and product redesign costs. At this TSL electric smooth element cooking top manufacturers would have to completely redesign most of their electric smooth element cooking top models to use induction technology. Electric oven manufacturers would have to completely redesign all of their electric oven models to use oven separators. Additionally, consumer conventional cooking product manufacturers would incur approximately $444.8 million in capital conversion costs to purchase new tooling and equipment necessary to produce the numerous redesigned cooking top and oven models at this TSL.

At TSL 3, the shipment-weighted average MPC for consumer conventional cooking products significantly increases by 17.7 percent relative to the no-new-standards case shipment-weighted average MPC in 2027. In the preservation of gross margin scenario, manufacturers can fully pass on this cost increase. The significant increase in shipment weighted average MPC is outweighed by the $1,846.4 million in conversion costs, causing a significantly negative change in INPV at TSL 3 under the preservation of gross margin scenario.

Under the preservation of operating profit scenario, the 17.7 percent shipment weighted average MPC increase results in a reduction in the margin after the analyzed compliance year. This reduction in the margin and the $1,846.4 million in conversion costs incurred by manufacturers cause a significantly negative change in INPV at TSL 3 under the preservation of operating profit scenario.

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of new and amended energy conservation standards on direct employment in the consumer conventional cooking products industry, DOE used the GRIM to estimate the domestic labor expenditures and number of direct employees in the no-new-standards case and in each of the standards cases (*i.e.,* TSLs) during the analysis period.

Production employees are those who are directly involved in fabricating and assembling products within a manufacturer facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are included as production labor, as well as line supervisors.

DOE used the GRIM to calculate the number of production employees from labor expenditures. DOE used statistical data from the U.S. Census Bureau's 2019 Annual Survey of Manufacturers (''ASM'') and the results of the engineering analysis to calculate industry-wide labor expenditures. Labor expenditures related to product manufacturing depend on the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in the GRIM were then converted to domestic production employment levels by dividing production labor expenditures by the annual payment per production worker.

Non-production employees account for those workers that are not directly engaged in the manufacturing of the covered products. This could include sales, human resources, engineering, and management. DOE estimated non-production employment levels by multiplying the number of consumer conventional cooking product workers by a scaling factor. The scaling factor is calculated by taking the ratio of the total number of employees, and the total production workers associated with the industry NAICS code 335220, which covers consumer conventional cooking product manufacturing.

The employment impacts shown in Table V.40 represent the potential domestic production employment that could result following the new and amended energy conservation standards. The upper bound of the results estimates the maximum change in the number of production workers that could occur after compliance with the new and amended energy conservation standards when assuming that manufacturers continue to produce

the same scope of covered products in the same production facilities. It also assumes that domestic production does not shift to lower labor-cost countries. Because there is a risk of manufacturers evaluating sourcing decisions in response to the new and amended energy conservation standards, the lower bound of the employment results includes DOE's estimate of the total number of U.S. production workers in the industry who could lose their jobs if some existing domestic production were moved outside of the United States. While the results present a range of domestic employment impacts following 2027, the following sections also include qualitative discussions of the likelihood of negative employment impacts at the various TSLs.

Using 2019 ASM data and interviews with manufacturers, DOE estimates that approximately 60 percent of the consumer conventional cooking products sold in the United States are manufactured domestically. With this assumption, DOE estimates that in the absence of new and amended energy conservation standards, there would be approximately 4,322 domestic production workers involved in manufacturing consumer conventional cooking products in 2027. Table V.40 shows the range of the impacts of the new and amended energy conservation standards on U.S. production workers in the consumer conventional cooking product industry.

TABLE V.40—DOMESTIC EMPLOYMENT FOR CONSUMER CONVENTIONAL COOKING PRODUCTS IN 2027

	No-new-standards case	Trial standard level		
		1	2	3
Domestic Production Workers in 2027	4,322	4,343	4,343	4,880
Domestic Non-Production Workers in 2027	631	634	634	713
Total Direct Employment in 2027	4,953	4,977	4,977	5,593
Potential Changes in Total Direct Employment in 2027*		0–21	0–21	(1,068)–558

* DOE presents a range of potential impacts. Numbers in parentheses indicate negative values.

At the upper end of the range, all examined TSLs show an increase in the number of domestic production workers for consumer conventional cooking products. The upper end of the range represents a scenario where manufacturers increase production hiring due to the increase in the labor associated with adding the required components to make consumer conventional cooking products more efficient. However, as previously stated, this assumes that in addition to hiring more production employees, all existing domestic production would remain in the United States and not shift to lower labor-cost countries.

At the lower end of the range, all examined TSLs show either no change in domestic production employment or a decrease in domestic production employment. The lower end of the domestic employment range assumes that gas cooking top domestic production employment does not change at any TSL. Manufacturing more efficient gas cooking tops by optimizing the burner and improving grates would not impact the location where production occurs for this product class. Additionally, this lower range assumes that TSLs set at EL 1 for all oven product classes and the electric smooth element cooking top product class would not change the domestic production employment. EL 1 would require SMPSs for all oven product classes and can be achieved using low-standby-loss electronic controls for the electric smooth element cooking top product class. The majority of manufacturers already use SMPSs in their ovens and are able to meet the efficiency requirements at EL 1 for the electric smooth element cooking top product class. Adding these standby features to models currently not using these features would not change the location where production occurs for these product classes.

At the lower end of the range, DOE estimated that up to 50 percent of domestic production employment for the electric smooth element cooking top product class could be relocated abroad at max-tech. Additionally, DOE estimated that up to 25 percent of domestic production employment for the oven product classes could be relocated abroad at max-tech. DOE estimates that there would be approximately 584 domestic production employees involved in the production of electric smooth element cooking tops and 3,102 domestic production employees involved in the production covering all oven product classes in 2027 in the no-new-standards case. Using these values to estimate the lower end of the range, DOE estimated that up to 1,068 domestic production employees could be eliminated at TSL 3 (due to standards being set at max-tech for the electric smooth element cooking top product class and for all oven product classes).[105]

DOE provides a range of potential impacts to domestic production employment as each manufacturer would make a business decision that best suits their individual product needs. However, manufacturers stated during interviews that due to the larger size of most consumer conventional cooking products, there are few units that are manufactured and shipped from far distances such as Asia or Europe. The vast majority of consumer conventional cooking products are currently made in North America. Some manufacturers stated that even significant changes to production lines would not cause them to shift their production abroad, as several manufacturers either only produce consumer conventional cooking products domestically or have made significant investments to continue to produce consumer conventional cooking products domestically.

DOE requests comment on the estimated potential domestic employment impacts on consumer conventional cooking product manufacturers presented in this SNOPR.

c. Impacts on Manufacturing Capacity

Manufacturers stated that any standard requiring induction heating technology for electric smooth element cooking tops would be very difficult to meet since there are approximately 5 percent of shipments currently using this technology. Additionally, any standards requiring oven separators for the electric oven product classes would be very difficult to meet since that would require completely redesigning the oven cavity of almost every electric oven model currently on the market.

All other ELs analyzed require making incremental improvements to existing designs and should not present any manufacturing capacity constraints given the 3-year compliance period proposed in this SNOPR.

[105] $584 \times 50\% + 3{,}102 \times 25\% = 1{,}067.5$.

DOE requests comment on the potential manufacturing capacity constraints placed on consumer conventional cooking product manufacturers at the TSLs presented in this SNOPR.

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche product manufacturers, and manufacturers exhibiting cost structures substantially different from the industry average could be affected disproportionately. DOE analyzed the impacts on small businesses in section VI.B of this document. DOE also identified the commercial-style manufacturer subgroup as a potential manufacturer subgroup that could be adversely impacted by energy conservation standards based on the results of the industry characterization.

The commercial-style manufacturer subgroup consists of consumer conventional cooking product manufacturers that primarily sell gas cooking tops, gas ovens, and electric self-clean ovens marketed as commercial-style, either as a stand-alone product or as a component of a conventional range. For the cooking top product classes, while commercial-style manufacturers do not produce electric open (coil) element cooking tops, some commercial-style manufacturers do produce electric smooth element cooking tops. Of those commercial-style manufacturers that do produce electric smooth element cooking tops, all these manufacturers have products that use induction technology and would be able to meet the max-tech for this product class.

Commercial-style manufacturers would likely face more difficulty meeting potential standards set for the gas cooking top product class than other consumer conventional cooking product manufacturers. However, as previously stated in IV.C.1, all analyzed ELs for the gas cooking top product class are achievable with continuous cast-iron grates and at least one HIR burner. Therefore, while commercial-style manufacturers would likely have to redesign a higher portion of their gas cooking top models compared to other consumer conventional cooking product manufacturers, all ELs for the gas cooking top product class are achievable for commercial-style manufacturers.

For the oven product classes, the vast majority of commercial-style electric and gas ovens already use SMPSs in their ovens and would not have difficulty meeting potential standard levels requiring SMPSs for any oven product classes. Additionally, commercial-style manufactures typically have a higher percentage of gas oven models that use forced convention than other consumer conventional cooking product manufacturers. However, like the rest of the market, there are very few, if any, commercial-style electric ovens equipped with an oven separator and it would be difficult for commercial-style manufacturers to convert all of their oven cavities into ovens equipped with an oven separator.

DOE requests comment on the potential impacts on commercial-style manufacturers at the TSLs presented in this SNOPR.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

DOE evaluates product-specific regulations that will take effect approximately 3 years before or after the estimated 2027 compliance date of any new and amended energy conservation standards for consumer conventional cooking products. This information is presented in Table V.41.

TABLE V.41—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING CONSUMER CONVENTIONAL COOKING PRODUCT MANUFACTURERS

Federal energy conservation standard	Number of manufacturers *	Number of manufacturers affected from this rule **	Approx. standards year	Industry conversion costs (millions)	Industry conversion costs/product revenue *** (percent)
Portable Air Conditioners, 85 FR 1378 (Jan. 10, 2020)	11	1	2025	$320.9 (2015$)	6.7
Room Air Conditioners,† 87 FR 20608 (Apr. 7, 2022)	8	3	2026	22.8 (2020$)	0.5
Microwave Ovens,† 87 FR 52282 (Aug. 24, 2022)	18	10	2026	46.1 (2021$)	0.7
Clothes Dryers,† 87 FR 51734 (Aug. 23, 2022)	15	8	2027	149.7 (2020$)	1.8

* This column presents the total number of manufacturers identified in the energy conservation standard rule contributing to cumulative regulatory burden.

** This column presents the number of manufacturers producing consumer conventional cooking products that are also listed as manufacturers in the listed energy conservation standard contributing to cumulative regulatory burden.

*** This column presents industry conversion costs as a percentage of product revenue during the conversion period. Industry conversion costs are the upfront investments manufacturers must make to sell compliant products/equipment. The revenue used for this calculation is the revenue from just the covered product/equipment associated with each row. The conversion period is the time frame over which conversion costs are made and lasts from the publication year of the final rule to the compliance year of the energy conservation standard. The conversion period typically ranges from 3 to 5 years, depending on the rulemaking.

† Indicates a NOPR publications. Values may change on publication of a Final Rule.

In addition to the rulemaking listed in Table V.41 DOE has ongoing rulemakings for other products or equipment that consumer conventional cooking product manufacturers

produce, including air cleaners; [106] automatic commercial ice makers; [107] commercial clothes washers; [108] dehumidifiers; [109] miscellaneous refrigeration products; [110] refrigerators, refrigerator-freezers, and freezers; [111] and residential clothes washers. [112] If DOE proposes or finalizes any energy conservation standards for these products or equipment prior to finalizing energy conservation standards for consumer conventional cooking products, DOE will include the energy conservation standards for these other products or equipment as part of the cumulative regulatory burden for the consumer conventional cooking products final rule.

DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of consumer conventional cooking products associated with multiple DOE standards or product-specific regulatory actions of other Federal agencies.

3. National Impact Analysis

This section presents DOE's estimates of the national energy savings and the NPV of consumer benefits that would result from each of the TSLs considered as potential amended standards.

a. Significance of Energy Savings

To estimate the energy savings attributable to potential amended standards for consumer conventional cooking products, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2027–2056). Table V.42 presents DOE's projections of the national energy savings for each TSL considered for consumer conventional cooking products. The savings were calculated using the approach described in section IV.H.3 of this document.

TABLE V.42—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CONSUMER CONVENTIONAL COOKING PRODUCTS; 30 YEARS OF SHIPMENTS

[2027–2056]

	Trial standard level		
	1	2	3
	quads		
Primary energy	0.26	0.43	1.39
FFC energy	0.28	0.46	1.47

OMB Circular A–4 [113] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[114] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to consumer conventional cooking products. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.43. The impacts are counted over the lifetime of consumer conventional cooking products purchased in 2027–2035.

TABLE V.43—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CONSUMER CONVENTIONAL COOKING PRODUCTS; 9 YEARS OF SHIPMENTS

[2027–2035]

	Trial standard level		
	1	2	3
	quads		
Primary energy	0.07	0.12	0.37
FFC energy	0.08	0.13	0.39

[106] *www.regulations.gov/docket/EERE-2021-BT-STD-0035.*

[107] *www.regulations.gov/docket/EERE-2017-BT-STD-0022.*

[108] *www.regulations.gov/docket/EERE-2019-BT-STD-0044.*

[109] *www.regulations.gov/docket/EERE-2019-BT-STD-0043.*

[110] *www.regulations.gov/docket/EERE-2020-BT-STD-0039.*

[111] *www.regulations.gov/docket/EERE-2017-BT-STD-0003.*

[112] *www.regulations.gov/docket/EERE-2017-BT-STD-0014.*

[113] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. *obamawhitehouse.archives.gov/omb/circulars_a004_a-4/* (last accessed July 11, 2022).

[114] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for consumer conventional cooking products. In accordance with OMB's guidelines on regulatory analysis,[115] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.44 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2027–2056.

TABLE V.44—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CONSUMER CONVENTIONAL COOKING PRODUCTS; 30 YEARS OF SHIPMENTS

[2027–2056]

Discount rate	Trial standard level		
	1	2	3*
	billion 2021$		
3 percent	0.96	1.71	(27.75)
7 percent	0.33	0.65	(15.68)

* Negative values denoted in parentheses.

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.45. The impacts are counted over the lifetime of products purchased in 2027–2035. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.45—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CONSUMER CONVENTIONAL COOKING PRODUCTS; 9 YEARS OF SHIPMENTS

[2027–2035]

Discount rate (percent)	Trial standard level		
	1	2	3*
	billion 2021$		
3	0.32	0.61	(9.86)
7	0.15	0.31	(7.48)

* Negative values denoted in parentheses.

The previous results reflect the use of a default trend to estimate the change in price for consumer conventional cooking products over the analysis period (see section IV.F.1 of this document). DOE also conducted a sensitivity analysis that considered one scenario with a lower rate of price decline than the reference case and one scenario with a higher rate of price decline than the reference case. The results of these alternative cases are presented in appendix 10C of the TSD for this SNOPR. In the high-price-decline case, the NPV of consumer benefits is higher than in the default case. In the low-price-decline case, the NPV of consumer benefits is lower than in the default case. In each case, net benefits remain positive.

c. Indirect Impacts on Employment

It is estimated that that amended energy conservation standards for consumer conventional cooking products would reduce energy expenditures for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered. There are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2027), where these uncertainties are reduced.

The results suggest that the proposed standards would be likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the TSD for this SNOPR presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

As discussed in section IV.C of this document, DOE has tentatively concluded that the standards proposed in this SNOPR would not lessen the utility or performance of the consumer conventional cooking products under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the proposed standards.

AHAM stated that the introduction of any new standards could have a significant impact on the utility of cooking products by, for example, potentially lowering burner input rates or requiring changes that would result in less sturdy grates. (AHAM, No. 84 at p. 4)

As discuss in section IV.C of this document, when evaluating higher ELs

[115] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. *obamawhitehouse.archives.gov/omb/circulars_a004_a-4/* (last accessed July 11, 2022).

for gas cooking tops, DOE ensured that all potential standard levels would maintain the ability for cooking tops to offer at least one HIR burner and continuous cast-iron grates.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from new or amended standards. As discussed in section III.F.1.e of this document, the Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. To assist the Attorney General in making this determination, DOE has provided DOJ with copies of this SNOPR and the accompanying TSD for review. DOE will consider DOJ's comments on the proposed rule in determining whether to proceed to a final rule. DOE will publish and respond to DOJ's comments in that document.

As discussed in chapter 3 of the TSD for this SNOPR, DOE estimates that there are approximately 34 manufacturers of consumer conventional cooking products supplying the domestic market, and that three major manufacturers represent roughly 85 percent of the market. The major manufacturers offer a full array of appliances under multiple brands at a range of price points. Other manufacturers offer a much more limited set of products that are focused on the higher end premium products or other consumer niches.

The consumer conventional cooking product market can be divided into three sub-markets: a smaller entry level ''value'' consumer conventional cooking product market; a mass-market consumer conventional cooking product market; and a premium commercial-style consumer conventional cooking product market. The smaller entry level consumer conventional cooking product market typically consists of ovens, cooking tops, and ranges that have a width of 30'' or less. These products typically compete on price, as consumers that purchase these products are price sensitive. The mass-market consumer conventional cooking product market makes up the vast majority of the consumer conventional cooking product market. These are ovens, cooking tops, and ranges that are sold in big box retail stores and larger internet retailers. The premium commercial-style consumer conventional cooking product market typically consists of ovens, cooking tops, and ranges, that have a width of 30'' or larger that have gas cooking tops, gas ovens, or electric self-clean ovens marketed as commercial-style, either as a stand-alone product or as a component of a conventional range. These products typically do compete on brand and features as well as price and are significantly more expensive than the mass-produced consumer conventional cooking products.

As discussed in section III.C of this document, there is currently no test procedure for conventional ovens and efficiency gains can be obtained from product redesigns of design improvements at low incremental manufacturing costs.

For products sold in all three consumer conventional cooking product sub-markets, meeting energy conservation standards for consumer conventional ovens set at EL 1 (TSL 1 and TSL 2) would not present a significant challenge for any consumer conventional cooking product manufacturer. Based on the shipments analysis used in the NIA, DOE estimates that approximately 95 percent of ovens will meet or exceed EL 1 by the estimated compliance date. The remaining five percent of the market would need to purchase switch-mode power supplies to be used in their consumer conventional ovens. Switch-mode power supplies are widely used and readily available and constitute a minor increase in production costs for the consumer conventional ovens that do not currently use switch-mode power supplies.

As discussed in section III.C of this document, although there is a new test procedure for conventional cooking tops, there is no current performance standard. As a result, conventional cooking top design may not be optimized to the IAEC metric and efficiency gains can be obtained from product redesigns at low incremental manufacturing costs.

Regarding standards for consumer conventional cooking tops, the majority of smaller entry level ''value'' consumer conventional cooking products would not be significantly impacted by any energy conservation standards set below max-tech for consumer conventional cooking tops. The majority of consumer conventional cooking tops sold in the smaller entry level ''value'' consumer conventional cooking product market either have electric open (coil) element cooking tops or gas-cooking tops with thinner non-continuous grates. DOE is only considering a baseline efficiency level for electric open (coil) element cooking tops that can be meet by all products. Gas cooking tops with thinner non-continuous grates typically are at max-tech. It is unlikely that many gas cooking tops sold in the smaller entry level ''value'' consumer conventional cooking product market would have to redesign their products to meet standards set at any efficiency level.

For the mass-market consumer conventional cooking product market, most electric smooth element cooking tops will meet or exceed standards set at EL 1 (TSL 1 and TSL 2). The majority of electric smooth element cooking tops that are at baseline, EL 1, and EL 2 (*i.e.,* not the electric smooth cooking tops that use induction technology, which are electric smooth element cooking tops meting max-tech) are sold in the mass-market consumer conventional cooking product market. Based on the shipments analysis used in the NIA, DOE estimates that approximately 80 percent of electric smooth element cooking tops will meet or exceed EL 1 by the estimated compliance date.

Most of the gas cooking top products sold in the mass-market consumer conventional cooking product market would have to be redesigned to meet standards set at max-tech (TSL 2 and TSL 3). Based on the shipments analysis used in the NIA, DOE estimates that approximately 96 percent of gas cooking tops will need to be redesigned to meet standards set at max-tech by the estimated compliance date.

The premium commercial-style consumer conventional cooking product market typically uses either electric cooking tops that use induction technology and are at max-tech for the electric smooth element cooking top product class or gas cooking tops. All electric smooth element cooking tops using induction technology would be able to meet standards set at max-tech for the electric smooth element product class. Premium commercial-style manufacturers would likely face more difficulty meeting potential standards set for the gas cooking top product class than other consumer conventional cooking product manufacturers. However, as previously stated in section IV.C.1 of this document, all analyzed ELs for the gas cooking top product class are achievable with continuous cast-iron grates and at least one HIR burner. Therefore, while commercial-style manufacturers would likely have to redesign a higher portion of their gas cooking top models compared to other consumer conventional cooking product manufacturers, all ELs for the gas cooking top product class are achievable for commercial-style manufacturers. Additionally, premium commercial-style consumer conventional cooking products typically are not as cost sensitive as the other consumer

conventional cooking product markets. Premium commercial-style consumer conventional cooking product typically sell for more than twice the cost of mass-market consumer conventional cooking products. DOE anticipates that premium commercial-style consumer conventional cooking product manufacturers are more likely to be able to pass on cost increases to their customers than the other consumer conventional cooking product markets.

Overall, DOE does not anticipate that energy conservation standards set at TSL 1 or TSL 2 would significantly alter the current market structure that consumer conventional cooking products are currently sold.

DOE does not expect the proposed rule to increase the concentration in an already concentrated market. DOE understands that barriers to entry or expansion associated with manufacturing and selling cooking products is high particularly in the mass-market segment. The cost of developing brand recognition; achieving manufacturing scale to lower production costs; and developing a distribution network, are all significant challenges. The industry has responded by segmenting the market into more focused markets that allow differentiation and competition on factors other than price. For the reasons described in this section, the proposed rule likely would not alter the competitive balance or market structure of the consumer conventional cooking product industry.

DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production.

DOE seeks comment on the potential impacts on energy security as a result of amended standards for cooking products, which reduce the use of natural gas as a result of more-efficient cooking appliances.

Reduced in-home gas combustion may deliver additional health benefits to consumers and their families by reducing exposure to various pollutants. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. Chapter 15 in the TSD for this SNOPR presents the estimated impacts on electricity generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from potential energy conservation standards for consumer conventional cooking products is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V.46 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The emissions were calculated using the multipliers discussed in section IV.K of this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the TSD for this SNOPR.

TABLE V.46—CUMULATIVE EMISSIONS REDUCTION FOR CONSUMER CONVENTIONAL COOKING PRODUCTS SHIPPED IN 2027–2056

	Trial standard level		
	1	2	3
Power Sector Emissions:			
CO_2 (*million metric tons*)	10.7	19.6	50.7
CH_4 (*thousand tons*)	0.5	0.7	3.0
N_2O (*thousand tons*)	0.1	0.1	0.4
SO_2 (*thousand tons*)	2.2	2.2	16.6
NO_X (*thousand tons*)	7.7	15.5	31.3
Hg (*tons*)	0.01	0.01	0.11
Upstream Emissions:			
CO_2 (*million metric tons*)	1.2	2.3	4.8
CH_4 (*thousand tons*)	120.6	244.2	479.2
N_2O (*thousand tons*)	0.0	0.0	0.0
SO_2 (*thousand tons*)	0.0	0.0	0.2
NO_X (*thousand tons*)	18.1	36.3	73.7
Hg (*tons*)	0.00	0.00	0.00
Total FFC Emissions:			
CO_2 (*million metric tons*)	11.9	21.9	55.5
CH_4 (*thousand tons*)	121.1	244.9	482.2
N_2O (*thousand tons*)	0.1	0.1	0.4
SO_2 (*thousand tons*)	2.2	2.2	16.7
NO_X (*thousand tons*)	25.9	51.8	105.0
Hg (*tons*)	0.01	0.01	0.11

As part of the analysis for this rulemaking, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 that DOE estimated for each of the considered TSLs for consumer conventional cooking products. Section IV.L of this document discusses the SC–CO_2 values that DOE used. Table V.47 presents the value of CO_2 emissions reduction at each TSL for each of the SC–CO_2 cases. The time-series of annual values is presented for the proposed TSL in chapter 14 of the TSD for this SNOPR.

TABLE V.47—PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR CONSUMER CONVENTIONAL COOKING PRODUCTS SHIPPED IN 2027–2056

TSL	SC–CO_2 case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	million 2021$			
1	105.2	464.5	731.9	1,409.9
2	194.3	856.8	1,349.7	2,601.2
3	488.9	2,160.9	3,405.9	6,558.5

As discussed in section IV.L.2 of this document, DOE estimated the climate benefits likely to result from the reduced emissions of methane and N_2O that DOE estimated for each of the considered TSLs for consumer conventional cooking products. Table V.48 presents the value of the CH_4 emissions reduction at each TSL, and Table V.49 presents the value of the N_2O emissions reduction at each TSL. The time-series of annual values is presented for the proposed TSL in chapter 14 of the TSD for this SNOPR.

TABLE V.48—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR CONSUMER CONVENTIONAL COOKING PRODUCTS SHIPPED IN 2027–2056

TSL	SC–CH_4 case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	million 2021$			
1	49.8	152.5	214.2	403.4
2	101.1	309.0	433.8	817.4
3	197.1	606.1	851.8	1,603.2

TABLE V.49—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR CONSUMER CONVENTIONAL COOKING PRODUCTS SHIPPED IN 2027–2056

TSL	SC–N_2O case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	million 2021$			
1	0.21	0.89	1.38	2.36
2	0.28	1.17	1.83	3.11
3	1.42	5.84	9.13	15.57

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the global and U.S. economy continues to evolve rapidly. DOE, together with other Federal agencies, will continue to review methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. DOE notes that the proposed standards would be economically justified even without inclusion of monetized benefits of reduced GHG emissions.

DOE also estimated the monetary value of the health benefits associated with NO_X and SO_2 emissions reductions anticipated to result from the considered TSLs for consumer conventional cooking products. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.50 presents the present value for NO_X emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates, and Table V.51 presents similar results for SO_2 emissions reductions. The results in these tables reflect application

of EPA's low dollar-per-ton values, which DOE used to be conservative. The time-series of annual values is presented for the proposed TSL in chapter 14 of the TSD for this SNOPR.

TABLE V.50—PRESENT VALUE OF NO_2 EMISSIONS REDUCTION FOR CONSUMER CONVENTIONAL COOKING PRODUCTS SHIPPED IN 2027–2056

TSL	3% Discount rate	7% Discount rate
	million 2021$	
1	793.7	297.5
2	1,521.9	572.9
3	3,482.5	1,299.7

TABLE V.51—PRESENT VALUE OF SO_2 EMISSIONS REDUCTION FOR CONSUMER CONVENTIONAL COOKING PRODUCTS SHIPPED IN 2027–2056

TSL	3% Discount rate	7% Discount rate
	million 2021$	
1	109.0	41.1
2	111.0	41.9
3	842.8	319.0

DOE has not considered the monetary benefits of the reduction of Hg for this proposed rule. DOE has also not quantitatively assessed the health benefits of reducing in-home exposure to particulate matter, nitrogen dioxide, and other hazardous air pollutants. Such in-home emissions may be associated with a variety of serious respiratory and cardiovascular conditions and other health risks. Not all the public health and environmental benefits from the reduction of greenhouse gases, NO_X, and SO_2 are captured in the values above, and additional unquantified benefits from the reductions of those pollutants as well as from the reduction of Hg, direct PM, and other co-pollutants may be significant. For example, studies have indicated that gas ranges, particularly when used without venting systems, can expose household members to indoor air pollution at levels that exceed health-based guidelines.

DOE seeks comment on any impacts of its proposals in this SNOPR on indoor air pollutants released by gas cooking products, as well as any other design approaches, control strategies, or other measures to mitigate these emissions.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

8. Summary of Economic Impacts

Table V.52 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced GHG, NO_X and SO_2 emissions to the NPV of consumer benefits calculated for each TSL considered in this rulemaking. The consumer benefits are domestic U.S. monetary savings that occur as a result of purchasing the covered products, and are measured for the lifetime of products shipped in 2027–2056. The climate benefits associated with reduced GHG emissions resulting from the adopted standards are global benefits and are also calculated based on the lifetime of consumer conventional cooking products shipped in 2027–2056.

TABLE V.52—CONSUMER NPV COMBINED WITH PRESENT VALUE OF CLIMATE BENEFITS AND HEALTH BENEFITS

Category	TSL 1	TSL 2	TSL 3 *
3% discount rate for Consumer NPV and Health Benefits (billion 2021$)			
5% Average SC–GHG case	2.02	3.64	(22.74)
3% Average SC–GHG case	2.49	4.51	(20.65)
2.5% Average SC–GHG case	2.81	5.13	(19.16)
3% 95th percentile SC–GHG case	3.68	6.77	(15.25)
7% discount rate for Consumer NPV and Health Benefits (billion 2021$)			
5% Average SC–GHG case	0.82	1.56	(13.37)
3% Average SC–GHG case	1.28	2.43	(11.29)
2.5% Average SC–GHG case	1.61	3.05	(9.79)
3% 95th percentile SC–GHG case	2.48	4.68	(5.88)

* Negative values denoted in parentheses.

C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

For this SNOPR, DOE considered the impacts of new and amended standards for consumer conventional cooking products at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy. DOE refers to this process at the ''walk-down'' analysis.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information or informational asymmetries, (2) a lack of sufficient salience of the long-term or aggregate benefits, (3) a lack of sufficient personal financial savings to warrant delaying or altering purchases, (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments, due to loss aversion, myopia, inattention, or other factors, (5) computational or other difficulties associated with the evaluation of relevant tradeoffs, and (6) a divergence in incentives (for example, between renters and owners, or builders and purchasers, or between current and subsequent owners). Having less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher-than-expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a standard decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the TSD for this SNOPR. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[116]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy conservation standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[117]

DOE welcomes data submissions and comments that will provide for a fuller assessment of the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of TSLs Considered for Consumer Conventional Cooking Products Standards

Table V.53 and Table V.54 summarize the quantitative impacts estimated for each TSL for consumer conventional cooking products. The national impacts are measured over the lifetime of consumer conventional cooking products purchased in the 30-year period that begins in the anticipated year of compliance with amended standards (2027–2056). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. DOE is presenting monetized benefits in accordance with the applicable Executive Orders and DOE would reach the same conclusion presented in this notice in the absence of the social cost of greenhouse gases, including the Interim Estimates presented by the Interagency Working Group. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V.53—SUMMARY OF ANALYTICAL RESULTS FOR CONSUMER CONVENTIONAL COOKING PRODUCTS TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3
Cumulative FFC National Energy Savings:			
Quads	0.28	0.46	1.47
CO_2 (*million metric tons*)	11.9	21.9	55.5

[116] P.C. Reiss and M.W. White. Household Electricity Demand, Revisited. *Review of Economic Studies.* 2005. 72(3): pp. 853–883. doi: *10.1111/0034–6527.00354.*

[117] Sanstad, A.H. *Notes on the Economics of Household Energy Consumption and Technology Choice.* 2010. Lawrence Berkeley National Laboratory. *www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf* (last accessed June 28, 2022).

TABLE V.53—SUMMARY OF ANALYTICAL RESULTS FOR CONSUMER CONVENTIONAL COOKING PRODUCTS TSLS: NATIONAL IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3
CH_4 (*thousand tons*)	121.1	244.9	482.2
N_2O (*thousand tons*)	0.1	0.1	0.4
SO_2 (*thousand tons*)	2.2	2.2	16.7
NO_X (*thousand tons*)	25.9	51.8	105.0
Hg (*tons*)	0.01	0.01	0.11
Present Value of Monetized Benefits and Costs (*3% discount rate, billion 2021$*):			
Consumer Operating Cost Savings	1.53	2.28	8.02
Climate Benefits *	0.62	1.17	2.77
Health Benefits **	0.90	1.63	4.33
Total Benefits †	3.05	5.08	15.12
Consumer Incremental Product Costs ‡	0.56	0.56	35.77
Consumer Net Benefits ***	0.96	1.71	(27.75)
Total Net Benefits ***	2.49	4.51	(20.65)
Present Value of Monetized Benefits and Costs (*7% discount rate, billion 2021$*):			
Consumer Operating Cost Savings	0.63	0.95	3.17
Climate Benefits*	0.62	1.17	2.77
Health Benefits**	0.34	0.61	1.62
Total Benefits†	1.59	2.74	7.56
Consumer Incremental Product Costs ‡	0.31	0.31	18.85
Consumer Net Benefits***	0.33	0.65	(15.68)
Total Net Monetized Benefits***	1.28	2.43	(11.29)

Note: This table presents the costs and benefits associated with consumer conventional cooking products shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056.

* Climate benefits are calculated using four different estimates of the SC–CO_2, SC–CH_4 and SC–N_2O. Together, these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate. 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. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for NO_X and SO_2) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.L of this document for more details.

*** Negative values denoted in parentheses.

† Total and net benefits include consumer, climate, and health benefits. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates.

‡ Costs include incremental equipment costs as well as installation costs.

TABLE V.54—SUMMARY OF ANALYTICAL RESULTS FOR CONSUMER CONVENTIONAL COOKING PRODUCTS TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3
Manufacturer Impacts:			
Industry NPV (*million 2021$*) (No-new-standards case INPV = 1,607)	1,502–1,506	1,452–1,456	238–422
Industry NPV *(% change)*	(6.5)–(6.3)	(9.6)–(9.4)	(85.2)–(73.8)
Consumer Average LCC Savings (*2021$*):			
Electric Open (Coil) Element Cooking Tops	$0.00	$0.00	$0.00
Electric Smooth Element Cooking Tops	$13.29	$13.29	($580.31)
Gas Cooking Tops	$3.88	$21.89	$21.89
Electric Standard Ovens, Freestanding	$0.99	$0.99	($29.92)
Electric Standard Ovens, Built-In/Slide-In	$0.95	$0.95	($33.05)
Electric Self-Clean Ovens, Freestanding	$1.02	$1.02	($15.31)
Electric Self-Clean Ovens, Built-In/Slide-In	$1.01	$1.01	($10.84)
Gas Standard Ovens, Freestanding	$0.65	$0.65	($7.56)
Gas Standard Ovens, Built-In/Slide-In	$0.59	$0.59	($13.37)
Gas Self-Clean Ovens, Freestanding	$0.70	$0.70	($0.86)
Gas Self-Clean Ovens, Built-In/Slide-In	$0.60	$0.60	($4.52)
Shipment-Weighted Average *	$3.19	$6.75	($87.60)
Consumer Simple PBP (*years*):			
Electric Open (Coil) Element Cooking Tops	n.a.	n.a.	n.a.
Electric Smooth Element Cooking Tops	0.6	0.6	87.5

TABLE V.54—SUMMARY OF ANALYTICAL RESULTS FOR CONSUMER CONVENTIONAL COOKING PRODUCTS TSLS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3
Gas Cooking Tops	8.4	5.0	5.0
Electric Standard Ovens, Freestanding	1.7	1.7	17.0
Electric Standard Ovens, Built-In/Slide-In	1.8	1.8	17.2
Electric Self-Clean Ovens, Freestanding	1.7	1.7	17.0
Electric Self-Clean Ovens, Built-In/Slide-In	1.8	1.8	17.2
Gas Standard Ovens, Freestanding	1.9	1.9	14.1
Gas Standard Ovens, Built-In/Slide-In	2.0	2.0	14.4
Gas Self-Clean Ovens, Freestanding	1.9	1.9	14.1
Gas Self-Clean Ovens, Built-In/Slide-In	2.0	2.0	14.4
Shipment-Weighted Average *	2.7	2.0	22.4
Percent of Consumers that Experience a Net Cost:			
Electric Open (Coil) Element Cooking Tops	0%	0%	0%
Electric Smooth Element Cooking Tops	0%	0%	95%
Gas Cooking Tops	27%	18%	18%
Electric Standard Ovens, Freestanding	0%	0%	80%
Electric Standard Ovens, Built-In/Slide-In	0%	0%	81%
Electric Self-Clean Ovens, Freestanding	0%	0%	75%
Electric Self-Clean Ovens, Built-In/Slide-In	0%	0%	72%
Gas Standard Ovens, Freestanding	1%	1%	33%
Gas Standard Ovens, Built-In/Slide-In	1%	1%	56%
Gas Self-Clean Ovens, Freestanding	1%	1%	6%
Gas Self-Clean Ovens, Built-In/Slide-In	1%	1%	20%
Shipment-Weighted Average *	6%	4%	48%

Parentheses indicate negative (−) values. The entry ''n.a.'' means not applicable the evaluated standard is the baseline.
* Weighted by shares of each product class in total projected shipments in 2027.

DOE first considered TSL 3, which represents the max-tech efficiency levels for all product classes except for electric open (coil) element cooking tops, for which the only considered efficiency level is the baseline. TSL 3 would save an estimated 1.47 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would decrease compared to the no-new-standards case by $15.68 billion using a discount rate of 7 percent, and by $27.75 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 55.5 Mt of CO_2, 16.7 thousand tons of SO_2, 105.0 thousand tons of NO_X, 0.11 tons of Hg, 482.2 thousand tons of CH_4, and 0.4 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 3 is $2.77 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 3 is $1.62 billion using a 7-percent discount rate and $4.33 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 3 is $11.29 billion less than the no-new-standards case. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 3 is $20.65 billion less than the no-new-standards case. The estimated total NPV is provided for additional information. However, DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 3, the average LCC impact is a savings of $22 for gas cooking tops and an average LCC loss of $580 for electric smooth element cooking tops, $30 for freestanding electric standard ovens, $33 for built-in/slide-in electric standard ovens, $15 for freestanding electric self-clean ovens, $11 for built-in/slide-in electric self-clean ovens, $8 for freestanding gas standard ovens, $13 for built-in/slide-in gas standard ovens, $1 for freestanding gas self-clean ovens, and $5 for built-in/slide-in gas self-clean ovens. The simple payback period is 87.5 years for electric smooth element cooking tops, 5.0 years for gas cooking tops, 17.0 years for freestanding electric ovens, 17.2 years for built-in/slide-in electric ovens, 14.1 years for freestanding gas ovens, and 14.4 years for built-in/slide-in gas ovens. The fraction of consumers experiencing a net LCC cost is 95 percent for electric smooth element cooking tops, 18 percent for gas cooking tops, 80 percent for freestanding electric standard ovens, 81 percent for built-in/slide-in electric standard ovens, 75 percent for freestanding electric self-clean ovens, 72 percent for built-in/slide-in electric self-clean ovens, 33 percent for freestanding gas standard ovens, 56 percent for built-in/slide-in gas standard ovens, 6 percent for freestanding gas self-clean ovens, and 20 percent for built-in/slide-in gas self-clean ovens. At TSL 3, the proposed standard for electric open (coil) element cooking tops is at the baseline resulting in no LCC impact, an undefined PBP, and no consumers experiencing a net LCC cost.

At TSL 3, the projected change in INPV ranges from a decrease of $1,368.6 million to a decrease of $1,185.1 million, which corresponds to decreases of 85.2 percent and 73.8 percent, respectively. DOE estimates that industry must invest $1,846.4 million to comply with standards set at TSL 3. DOE estimates that 100 percent of the electric open (coil) element cooking top shipments, 5 percent of the electric smooth element cooking top shipments, 4 percent of the gas cooking top shipments, zero percent of the electric standard oven (freestanding and built-in) shipments, zero percent of the electric self-clean oven (freestanding) shipments, 2 percent of the electric self-clean (built-in) shipments, 62 percent of gas standard oven (freestanding) shipments, 38 percent of the gas standard oven (built-in) shipments, 93 percent of the gas self-clean oven (freestanding) shipments, and 77 percent of the gas self-clean (built-in) shipments would already meet the efficiency levels required at TSL 3 in 2027.

The Secretary tentatively concludes that at TSL 3 for consumer conventional cooking products, the benefits of energy savings, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the negative NPV of consumer benefits, the economic burden on many consumers (*e.g.,* negative LCC savings across all product classes except gas cooking tops), and the significant impacts on manufacturers, including the large conversion costs and the significant reduction in INPV. A significant fraction of electric smooth element cooking top, electric oven, and gas standard oven consumers would experience a net LCC cost and negative LCC savings. The consumer NPV is negative at both 3 and 7 percent. The potential reduction in INPV could be as high as 85.2 percent. Consequently, the Secretary has tentatively concluded that TSL 3 is not economically justified as a whole, and in particular for all product classes except for gas cooking tops. DOE notes that for gas cooking tops, the only product class with positive LCC savings, the same EL (2) is carried forward to TSL 2.

DOE then considered TSL 2, which represents the baseline efficiency for electric open (coil) element cooking tops, efficiency level 1 for electric smooth element cooking tops, electric ovens, and gas ovens, and efficiency level 2 for gas cooking tops. TSL 2 would save an estimated 0.46 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefit would be $0.65 billion using a discount rate of 7 percent, and $1.71 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 21.9 Mt of CO_2, 2.2 thousand tons of SO_2, 51.8 thousand tons of NO_X, 0.01 tons of Hg, 244.9 thousand tons of CH_4, and 0.1 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 2 is $1.17 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 2 is $0.61 billion using a 7-percent discount rate and $1.63 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 2 is $2.43 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 2 is $4.51 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 2, the average LCC impact is a savings of $13 for electric smooth element cooking tops, $22 for gas cooking tops, $1 for electric ovens, and $1 for gas ovens. The simple payback period is 0.6 years for electric smooth element cooking tops, 5.0 years for gas cooking tops, 1.7 years for freestanding electric ovens, 1.8 years for built-in/slide-in electric ovens, 1.9 years for freestanding gas ovens, and 2.0 years for built-in/slide-in gas ovens. The fraction of consumers that experience a net LCC cost is 0 percent for electric smooth element cooking tops, 18 percent for gas cooking tops, 0 percent for electric ovens, and 1 percent for gas ovens. At TSL 2, the proposed standard for electric open (coil) element cooking tops is at the baseline resulting in no LCC impact, an undefined PBP, and no consumers experiencing a net LCC cost.

At TSL 2, the projected change in INPV ranges from a decrease of $154.8 million to a decrease of $150.4 million, which correspond to decreases of 9.6 percent and 9.4 percent, respectively. DOE estimates that industry must invest $183.4 million to comply with standards set at TSL 2. DOE estimates that 100 percent of the electric open (coil) element cooking top shipments, 80 percent of the electric smooth element cooking top shipments, 4 percent of the gas cooking top shipments, 95 percent of the electric oven shipments, and 96 percent of the gas oven shipments would already meet or exceed the efficiency levels required at TSL 2 in 2027.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that at a standard set at TSL 2 for consumer conventional cooking products would be economically justified for all product classes. At this TSL, the average LCC savings for all conventional cooking product classes is positive. A shipment-weighted 4 percent of conventional cooking product consumers experience a net cost, with the highest in any single product class being 18 percent for gas cooking tops; the percent net cost for all other product classes is between 0 to 1 percent. The FFC national energy savings are significant and the NPV of consumer benefits is positive using both a 3-percent and 7-percent discount rate. Notably, the benefits to consumers vastly outweigh the cost to manufacturers. At TSL 2, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent is over 4 times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at TSL 2 are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing $1.17 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and $1.63 billion (using a 3-percent discount rate) or $0.61 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

As stated, DOE conducts the walk-down analysis to determine the TSL that represents the maximum improvement in energy efficiency that is technologically feasible and economically justified as required under EPCA. The walk-down is not a comparative analysis, as a comparative analysis would result in the maximization of net benefits instead of energy savings that are technologically feasible and economically justified, which would be contrary to the statute. 86 FR 70892, 70908. Although DOE has not conducted a comparative analysis to select the proposed energy conservation standards, DOE notes that TSL 2 has a lower percentage of consumers experiencing a net cost and a shorter payback period relative to TSL 3.

Although DOE considered proposed amended standard levels for conventional cooking products by grouping the efficiency levels for each product class into TSLs, DOE evaluates all analyzed efficiency levels in its analysis. For electric open (coil) element cooking tops, TSL 2 represents the baseline efficiency level, the only level considered in this product class in this SNOPR. For electric smooth element cooking tops, TSL 2 represents EL 1 which incorporates low-standby-loss electronic controls. Setting a standard at EL 2 or EL 3 would result in a larger percentage of consumers experiencing a net LCC cost and longer payback periods relative to EL 1. For gas cooking tops, TSL 2 represents EL 2, the maximum measured efficiency for products with at least one HIR burner, which is determined to be technologically feasible and economically justified. For electric and gas ovens, TSL 2 corresponds to EL 1, which incorporates switch mode power supplies. A standard at EL 2 or EL 3 for electric ovens would result in a significantly higher percentage of consumers experiencing a net LCC cost and longer payback periods relative to EL 1. Similarly, for gas ovens, a

standard at EL 2 would result in a larger percentage of consumers experiencing a net LCC cost and longer payback periods relative to EL 1. The proposed standard levels at TSL 2 results in positive LCC savings for all product classes and a lower percentage of consumers experiencing a net cost to the point where DOE has tentatively concluded that they are economically justified, as discussed for TSL 2 in the preceding paragraphs.

Therefore, based on the above considerations, DOE proposes to adopt the energy conservation standards for consumer conventional cooking products at TSL 2. The proposed amended energy conservation standards for consumer conventional cooking products, are shown in Table V.55 and Table V.56.

TABLE V.55—PROPOSED PERFORMANCE ENERGY CONSERVATION STANDARDS FOR CONVENTIONAL COOKING TOPS

Product class	Maximum integrated annual energy consumption (IAEC)
Electric Open (Coil) Element Cooking Tops	199 *kWh/year*.
Electric Smooth Element Cooking Tops	207 *kWh/year*.
Gas Cooking Tops	1,204 *kBtu/year*.

TABLE V.56—PROPOSED PRESCRIPTIVE ENERGY CONSERVATION STANDARDS FOR CONVENTIONAL OVENS

Product class	Prescriptive standards
Electric Standard, Freestanding Electric Standard, Built-In/Slide-In Electric Self-Clean, Freestanding Electric Self-Clean, Built-In/Slide-In	Shall not be equipped with a control system that uses linear power supply.
Gas Standard, Freestanding Gas Standard, Built-In/Slide-In Gas Self-Clean, Freestanding Gas Self-Clean, Built-In/Slide-In	The control system for gas ovens shall: (1) Not be equipped with a constant burning pilot light; and (2) Not be equipped with a linear power supply.

2. Annualized Benefits and Costs of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is (1) the annualized national economic value (expressed in 2021$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs, and (2) the annualized monetary value of the climate and health benefits from emission reductions.

Table V.57 shows the annualized values for consumer conventional cooking products under TSL 2, expressed in 2021$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the proposed standards for consumer conventional cooking products is $32.5 million per year in increased equipment costs, while the estimated annual benefits are $100.8 million from reduced equipment operating costs, $67.0 million from GHG reductions, and $64.9 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $200.3 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards for consumer conventional cooking products is $32.2 million per year in increased equipment costs, while the estimated annual benefits are $130.7 million in reduced operating costs, $67.0 million from GHG reductions, and $93.8 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $259.2 million per year.

TABLE V.57—TABLE V.57 ANNUALIZED MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER CONVENTIONAL COOKING PRODUCTS (TSL 2)

	million 2021$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	130.7	124.7	137.9
Climate Benefits *	67.0	65.3	68.4
Health Benefits **	93.8	91.4	95.6
Total Monetized Benefits †	291.5	281.4	301.8
Consumer Incremental Product Costs ‡	32.2	36.1	31.4
Net Monetized Benefits	259.2	245.2	270.4

TABLE V.57—TABLE V.57 ANNUALIZED MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER CONVENTIONAL COOKING PRODUCTS (TSL 2)—Continued

	million 2021$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
7% discount rate			
Consumer Operating Cost Savings	100.8	96.5	105.8
Climate Benefits* (3% discount rate)	67.0	65.3	68.4
Health Benefits**	64.9	63.4	66.0
Total Monetized Benefits†	232.8	225.3	240.2
Consumer Incremental Product Costs‡	32.5	35.8	31.8
Net Monetized Benefits	200.3	189.5	208.4

Note: This table presents the costs and benefits associated with consumer conventional cooking products shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the *AEO2022* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.H.3 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC–GHG (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates. 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. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.L of this document for more details.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate.

‡ Costs include incremental equipment costs as well as installation costs.

D. Reporting, Certification, and Sampling Plan

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For consumer conventional cooking products, the certification template reflects the general certification requirements specified at 10 CFR 429.12 and the product-specific requirements specified at 10 CFR 429.23.

In manufacturer interviews, multiple manufacturers expressed concern about the variability of cooking top test results and the potential impact on certifying compliance, but none provided information regarding how DOE should consider such variability in its analysis of potential energy conservation standards for cooking tops. DOE notes that as part of the August 2022 TP Final Rule, a sampling plan for cooking tops was established at 10 CFR 429.23, requiring that a sample of sufficient size be tested to ensure that any represented value of IAEC be greater than the mean of the sample or than the upper 97.5 percent confidence limit of the true mean divided by 1.05. DOE is not proposing to amend the product-specific certification requirements for these products in this SNOPR because it does not have information regarding whether the confidence limit should be adjusted.

DOE seeks comment and data to potentially re-evaluate the sampling plan for cooking tops in the context of any potential performance standards for these products.

VI. 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 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 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 proposed regulatory action constitutes a ''significant regulatory action within the scope of section 3(f)(1)'' of E.O. 12866. Accordingly, pursuant to section 6(a)(3)(C) of E.O. 12866, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the proposed regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments are summarized in this preamble and further detail can be found in the technical support document for this rulemaking.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by 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 (*energy.gov/gc/office-general-counsel*). DOE has prepared the following IRFA for the products that are the subject of this rulemaking.

For manufacturers of consumer conventional cooking products, the SBA has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. (*See* 13 CFR part 121.) The size standards are listed by North American Industry Classification System (''NAICS'') code and industry description and are available at *www.sba.gov/document/support—table-size-standards.* Manufacturing of consumer conventional cooking products is classified under NAICS 335220, ''Major Household Appliance Manufacturing.'' The SBA sets a threshold of 1,500 employees or fewer for an entity to be considered as a small business for this category.

1. Description of Reasons Why Action Is Being Considered

EPCA prescribed energy conservation standards for consumer conventional cooking products (42 U.S.C. 6295(h)(1)), and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(h)(2)) 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 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)(1)) This rulemaking is in accordance with DOE's obligations under EPCA.

2. Objectives of, and Legal Basis for, Rule

NAECA, Public Law 100–12, amended EPCA to establish prescriptive standards for gas cooking products, requiring gas ranges and ovens with an electrical supply cord that are manufactured on or after January 1, 1990, not to be equipped with a constant burning pilot light. (42 U.S.C.6295(h)(1)) NAECA also directed DOE to conduct two cycles of rulemakings to determine if more stringent or additional standards were justified for kitchen ranges and ovens. (42 U.S.C. 6295(h)(2)) EPCA additionally requires that, not later than 6 years after the issuance of a final rule establishing or amending a standard, DOE publish a NOPR proposing new standards or a notification of determination that the existing standards do not need to be amended. (42 U.S.C. 6295(m)(1)) This rulemaking is also in accordance with the six-year review required under 42 U.S.C. 6295(m)(1).

3. Description of Estimated Number of Small Entities Regulated

DOE has recently conducted a focused inquiry into small business manufacturers of the products covered by this rulemaking. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. The size standards are listed by NAICS code as well as by industry description and are available at *www.sba.gov/document/support—table-size-standards.* Manufacturing cooking tops is classified under NAICS 335220, ''major household appliance manufacturing.'' The SBA sets a threshold of 1,500 employees or fewer for an entity to be considered as a small business for this category. DOE used available public information to identify potential small manufacturers. DOE accessed the Compliance Certification Database [118] (CCD), the Modernized Appliance Efficiency Database System [119] (MAEDbS), and the National Resources Canada database [120] (NRCan) to create a list of companies that import or otherwise manufacture the products covered by this SNOPR. Additionally, in response to the September 2016 SNOPR, Felix Storch provided a list of potential small businesses, not previously identified in the September 2016 SNOPR.[121] (Felix Storch, No. 62 at p. 2) Once DOE created a list of potential manufacturers, DOE used market research tools to determine whether any companies met SBA's definition of a small entity—based on the total number of employees for each company including parent, subsidiary, and sister entities—and gather annual revenue estimates.

Based on DOE's analysis, DOE identified 34 companies potentially manufacturing consumer conventional cooking products covered by this rulemaking. DOE screened out companies that have more than 1,500 total employees or are entirely foreign owned and operated, and therefore do not meet SBA's requirements to be considered a small entity. Of the 34 companies DOE identified as manufacturing consumer conventional cooking products sold in the United States, 15 were identified as potential small businesses.

[118] U.S. Department of Energy Compliance Certification Management System, available at: *www.regulations.doe.gov/ccms.*

[119] California Energy Commission's Modernized Appliance Efficiency Database System, available at: *cacertappliances.energy.ca.gov/Login.aspx.*

[120] Natural Resources Canada searchable product list, available at: *oee.nrcan.gc.ca/pml-lmp/.*

[121] Some of the companies Felix Storch identified, either had more than 1,500 employees, were completely foreign owned and operated, or did not sell any products covered by this rulemaking. Therefore, these companies do not meet SBA's definition of a small business and DOE did not include these companies in this IRFA. The remaining companies that do meet SBA's definition of a small business were included in this IRFA.

4. Description and Estimate of Compliance Requirements Including Differences in Cost, if Any, for Different Groups of Small Entities

DOE is proposing TSL 2 in this SNOPR. For all oven product classes, TSL 2 requires that the ovens not be equipped with a linear power supply. Based on DOE's shipment analysis more than 95 percent of ovens use a switch mode power supply and therefore are not equipped with a linear power supply. Based on DOE's shipment analysis, DOE assumed most, if not all, small businesses already use switch mode power supplies for the ovens they manufacturer. If any small businesses do still use linear power supplies in their ovens, there would be minimal conversion costs to these small businesses, as switch mode power supplies can be purchased as a separate component and would most likely not require a significant redesign to incorporate these switch mode power supplies. The remainder of this cost analysis focuses on the costs associated with complying with the proposed cooking top energy conservation standards.

As stated in the previous section, DOE identified 15 potential small manufacturers of consumer conventional cooking products. All 15 of these small businesses manufacture cooking tops. These 15 small businesses can be grouped into two manufacturing groups: those that manufacture entry level cooking tops and those that manufacture premium cooking tops.

Gas cooking top entry level products typically have thinner non-continuous grates with only one burner above 14,000 BTUs (although some of these small businesses may offer a limited number of models with thicker continuous grates and more than one burner above 14,000 BTUs). Electric cooking top entry level products typically have electric coil element cooking tops (although a few small businesses may have up to 25 percent of their electric ranges or electric cooking tops using electric smooth element cooking tops). These entry level small businesses usually compete on price in the market.

Gas cooking top premium products typically have thicker continuous grates with multiple burners above 14,000 BTUs. Electric cooking top premium products use smooth element, typically with induction technology. Small businesses manufacturing premium products do not offer electric coil element cooking tops. Lastly, small businesses manufacturing premium products typically compete on the high quality and professional look and design of their products. These ranges or cooking tops are typically significantly more expensive than entry level products.

Based on data from each small business's websites, DOE estimated the number of basic models each small business offers.

TABLE VI.2—NUMBER OF UNIQUE BASIC MODELS FOR EACH SMALL BUSINESS

Manufacturer	Small business type	Number of cooking top basic models (by product class)		
		Gas	Smooth element	Open (coil) element
Small Business 1	Entry Level	4	4	
Small Business 2	Entry Level	14		13
Small Business 3	Entry Level	3	2	3
Small Business 4	Entry Level		30	
Small Business 5	Entry Level	24		13
Small Business 6	Entry Level	27	13	28
Small Business 7	Premium	14		
Small Business 8	Premium	42		
Small Business 9	Premium	16		
Small Business 10	Premium	24	5	
Small Business 11	Premium	12		
Small Business 12	Premium	11		
Small Business 13	Premium	13		
Small Business 14	Premium	14	1	
Small Business 15	Premium	20	7	

DOE estimated the small business conversion costs and testing costs using the same methodology used to estimate the industry conversion costs, described in section IV.J.2.c of this document. There are two types of conversion costs that small businesses could incur due to the proposed standards: product conversion costs (including any testing costs) and capital conversion costs. Felix Storch commented in response to the September 2016 SNOPR that small manufacturers often lack the staff with expertise to fully understand the test procedures, complexities and nuances of the regulations. (Felix Storch, No. 62 at p. 2) Additionally, Felix Storch commented that small manufacturers pay substantially more and have longer lead times for energy testing. (Felix Storch, No. 62 at p. 3) In the August 2022 TP Final Rule, DOE estimated a lower per unit testing costs for testing done in-house and a more costly third-party lab per unit testing cost. For this IRFA, DOE assumed all small businesses would incur the more costly third-party lab per unit testing cost, as most small businesses do not have in-house testing capabilities or capacity to test all their products in accordance with the DOE test procedure.

Product conversion costs are investments in R&D, testing, marketing, and other non-capitalized costs necessary to make product designs comply with new and amended energy conservation standards. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled. Manufacturers would have to incur testing costs for all cooking tops since DOE is proposing to establish a new energy conservation standard for cooking tops. Therefore, even products that meet the proposed energy conservation standard would incur testing costs to test these cooking tops to demonstrate compliance with the proposed energy conservation

standards. However, manufacturers would only incur R&D product conversion costs and capital conversion costs if they have products that do not meet the energy conservation standards.

Based on the estimated model counts for each cooking top product class shown in Table VI.2 and the conversion cost and testing cost methodology used to calculate industry conversion costs, DOE estimated the conversion costs and testing costs for each small business, displayed in Table VI.3. DOE then used D&B Hoovers [122] to estimate the annual revenue for each small business. Manufacturers will have 3 years between publication of a final rule and compliance with the energy conservation standards. Therefore, DOE presents the estimated conversion costs and testing costs as a percent of the estimated 3 years of annual revenue for each small business.

TABLE VI.3—ESTIMATED CONVERSION COSTS AND ANNUAL REVENUE FOR EACH SMALL BUSINESS

Manufacturer	Small business type	Total conversion and testing costs	Annual revenue	Conversion costs as a % of 3-years of annual revenue (%)
Small Business 1	Entry Level	$358,000	$950,000	13
Small Business 2	Entry Level	814,000	8,780,000	3
Small Business 3	Entry Level	945,400	58,630,000	1
Small Business 4	Entry Level	303,400	31,370,000	<1
Small Business 5	Entry Level	221,400	23,980,000	<1
Small Business 6	Entry Level	336,800	107,350,000	<1
Small Business 7	Premium	2,227,050	2,730,000	27
Small Business 8	Premium	4,021,200	5,000,000	27
Small Business 9	Premium	3,612,600	8,800,000	14
Small Business 10	Premium	2,784,800	7,990,000	12
Small Business 11	Premium	2,830,500	8,648,000	11
Small Business 12	Premium	2,338,600	10,970,000	7
Small Business 13	Premium	5,685,100	32,600,000	6
Small Business 14	Premium	2,450,150	19,800,000	4
Small Business 15	Premium	2,561,700	23,730,000	4
Average Small Business		2,099,380	23,421,867	3

Based on Table VI.3 there are two premium small businesses manufacturers that could be significantly impacted by this proposed rulemaking, if finalized as proposed.

DOE requests comment on its findings that there are 15 domestic small businesses that manufacture conventional cooking products and its estimate of the potential impacts on these small businesses. Additionally, DOE requests comment on the potential for any small businesses to exit the consumer conventional cooking products market in response to the proposed energy conservation standards.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered.

6. Significant Alternatives to the Rule

The discussion in the previous section analyzes impacts on small businesses that would result from DOE's proposed rule, represented by TSL 2. In reviewing alternatives to the proposed rule, DOE examined energy conservation standards set at lower efficiency levels. DOE estimates that manufacturers, including small businesses, would have to spend approximately 43 percent less conversion costs at TSL 1 compared to TSL 2. While TSL 1 would reduce the impacts on small business manufacturers, it would come at the expense of a reduction in energy savings and consumer savings. TSL 1 achieves 39 percent lower energy savings compared to the energy savings at TSL 2. Additionally, TSL 1 achieves 44 percent lower consumer NPV at 3 percent and 49 percent lower consumer NPV at 7 percent compared to the consumer NPV achieved at TSL 2.

Based on the presented discussion, establishing standards at TSL 2 balances the benefits of the energy savings at TSL 2 with the potential burdens placed on consumer conventional cooking product manufacturers, including small business manufacturers. Accordingly, DOE does not propose one of the other TSLs considered in the analysis, or the other policy alternatives examined as part of the regulatory impact analysis and included in chapter 17 of the TSD for this SNOPR.

DOE seeks comment on the policy alternatives presented in the regulatory impact analysis and data that can be used to estimate the manufacturer response to Federal credits.

Additional compliance flexibilities may be available through other means. EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. (42 U.S.C. 6295(t)) Additionally, manufacturers subject to DOE's energy efficiency standards may apply to DOE's Office of Hearings and Appeals for exception relief under certain circumstances. Manufacturers should refer to 10 CFR part 430, subpart E, and 10 CFR part 1003 for additional details.

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

[122] See: *app.avention.com*. Last accessed on August 22, 2022.

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 consumer conventional cooking products.

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.

Revised certification data would be required for gas cooking tops and conventional gas ovens were this SNOPR to be finalized as proposed. New certification data would be required for electric cooking tops and conventional electric ovens were this SNOPR to be finalized as proposed. However, DOE is not proposing new or amended certification or reporting requirements for consumer conventional cooking products in this SNOPR. Instead, DOE may consider proposals to establish certification requirements and reporting for consumer conventional cooking products 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

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings that establish energy conservation standards for consumer products or industrial equipment. 10 CFR part 1021, subpart D, appendix B5.1. DOE anticipates that this rulemaking qualifies for categorical exclusion B5.1 because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in categorical exclusion B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

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 proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) 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 Executive Order 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 proposed 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. Pub. L. 104–4, section 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b))

The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect 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*.

Although this proposed rule does not contain a Federal intergovernmental mandate, it may require expenditures of $100 million or more in any one year by the private sector. Such expenditures may include: (1) investment in research and development and in capital expenditures by consumer conventional cooking products manufacturers in the years between the final rule and the compliance date for the new standards and (2) incremental additional expenditures by consumers to purchase higher-efficiency consumer conventional cooking products, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this SNOPR and the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(m), this proposed rule would establish new and amended energy conservation standards for consumer conventional cooking products that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified, as required by 42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B). A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this proposed rule.

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 (Mar. 15, 1988), DOE has determined that this proposed 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 SNOPR 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 proposed 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 proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which proposes new and amended energy conservation standards for consumer conventional cooking products, is not a significant energy action because the proposed 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 proposed 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 has prepared

a report describing that peer review.[123] 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. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. DOE is in the process of evaluating the resulting report.[124]

VII. Public Participation

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 at *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=34*. Participants are responsible for ensuring their systems are compatible with the webinar software.

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.

DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar/public meeting 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, as well as on any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present 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. 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/public meeting 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 previous procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document and will be accessible on the DOE website. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, 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.

[123] 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 July 1, 2022).

[124] The report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.*

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information 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).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comment on its proposed definition for portable conventional cooking top and DOE's proposal to include portable conventional cooking tops in the existing product classes. DOE also seeks data and information on its initial determination not to differentiate conventional cooking tops on the basis of portability when considering product classes for this SNOPR analysis.

(2) DOE seeks comment on the impacts of downdraft venting systems on energy consumption and associated data about such impacts. DOE further requests comment on its proposal to not include the energy consumption of any downdraft venting system in the energy conservation standards for conventional cooking tops.

(3) DOE requests comment on its proposed tested configuration and determination of representative IAEC for single-zone non-portable cooking tops.

(4) DOE requests comment on its proposal to not define ''basic model'' with respect to cooking products or cooking tops, and on possible definitions for ''basic model'' with respect to cooking products or cooking tops that could be used if DOE were to determine such a definition is necessary.

(5) DOE welcomes data on the consumer usage patterns of pyrolytic versus non-pyrolytic self-cleaning functions in conventional ovens, and requests comment on its preliminary determination that self-cleaning technologies do not warrant separate product class considerations.

(6) DOE seeks comment on the product classes evaluated in this SNOPR.

(7) DOE seeks comment on any existing technologies that improve the efficiency of electric open (coil) element cooking tops.

(8) DOE requests information on the potential energy savings associated with intermittent pilot ignition systems.

(9) DOE requests comment on the magnitude of potential energy savings that could result from the use of a reduced air gap as a technology option.

(10) DOE seeks comment on its screening analysis for conventional electric cooking tops and whether any additional technology options should be screened out on the basis of any of the screening criteria in this SNOPR.

(11) DOE seeks comment on its screening analysis for conventional gas cooking tops and whether any additional technology options should be screened out on the basis of any of the screening criteria in this SNOPR.

(12) DOE seeks comment on its screening analysis for conventional ovens and whether any additional technology options should be screened out on the basis of any of the screening criteria in this SNOPR.

(13) DOE seeks comment on the retained design options for consumer conventional cooking products.

(14) DOE seeks comment on the methodology and results for the proposed baseline efficiency levels for conventional cooking tops.

(15) DOE seeks comment on the methodology and results for the proposed incremental efficiency levels for electric cooking tops.

(16) DOE seeks comment on the methodology and results for the proposed incremental efficiency levels for gas cooking tops.

(17) DOE seeks comment on the definitions of the proposed efficiency level for conventional ovens.

(18) DOE seeks comment on the methodology and results for the estimated energy use of each proposed efficiency level for conventional ovens.

(19) DOE seeks comment on the manufacturer production costs for consumer conventional cooking products used in this analysis.

(20) DOE requests comment on data and information on how the pandemic has changed consumer cooking behavior and product usage.

(21) DOE seeks feedback and comment on its estimate for repair costs for consumer conventional cooking products.

(22) DOE requests comment and additional data on its estimates for the lifetime distribution.

(23) DOE requests comment and feedback on its efficiency assignment in the LCC analysis.

(24) DOE seeks comment and feedback on its estimate for the no-new-standards case efficiency distribution.

(25) DOE seeks comment on the distribution between electric and gas cooking products over the shipments analysis period and the potential for

fuel switching between electric and gas cooking products. Specifically, DOE requests data on existing policy incentives for consumers to switch fuels and data that indicates the number of consumers switching fuel types between electric and gas cooking products.

(26) DOE requests data on the market size and typical selling price of units sold through the second-hand market for cooking products.

(27) DOE welcomes input on the effect of new and amended standards on impacts across products within the same fuel class and equipment type.

(28) DOE seeks comment on the general approach to its shipments methodology.

(29) DOE seeks feedback on its assumption of no rebound effect associated with the use of more efficient conventional cooking products as a result of a standard.

(30) DOE requests comment on whether additional consumer subgroups, including any disaggregation of the subgroups analyzed in this SNOPR, may be disproportionately affected by a new or amended national standard and warrant additional analysis in the final rule.

(31) DOE requests comment on the use of 9.1 percent as an appropriate real discount rate for consumer conventional cooking product manufacturers.

(32) DOE seeks comment on any health impacts to consumers, environmental impacts, or general public health and welfare impacts (including the distribution of such impacts across sensitive populations) of its proposals in this SNOPR on on-site emissions from gas cooking products of methane, carbon dioxide, particulate matter, nitrogen dioxide, or other hazardous air emissions. DOE also seeks comment on whether manufacturers are instituting design approaches, control strategies, or other measures to mitigate methane or other emissions from incomplete combustion and leakage.

(33) DOE requests comment on the estimated potential domestic employment impacts on consumer conventional cooking product manufacturers presented in this SNOPR.

(34) DOE requests comment on the potential manufacturing capacity constraints placed on consumer conventional cooking product manufacturers at the TSLs presented in this SNOPR.

(35) DOE requests comment on the potential impacts on commercial-style manufacturers at the TSLs presented in this SNOPR.

(36) DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of consumer conventional cooking products associated with multiple DOE standards or product-specific regulatory actions of other Federal agencies.

(37) DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

(38) DOE seeks comment on any impacts of its proposals in this SNOPR on indoor air pollutants released by gas cooking products, as well as any other design approaches, control strategies, or other measures to mitigate these emissions.

(39) DOE welcomes data submissions and comments that will provide for a fuller assessment of the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

(40) DOE seeks comment and data to potentially re-evaluate the sampling plan for cooking tops in the context of any potential performance standards for these products.

(41) DOE requests comment on its findings that there are 15 domestic small businesses that manufacture conventional cooking products and its estimate of the potential impacts on these small businesses. Additionally, DOE requests comment on the potential for any small businesses to exit the consumer conventional cooking products market in response to the proposed energy conservation standards.

(42) DOE seeks comment on the policy alternatives presented in the regulatory impact analysis and data that can be used to estimate the manufacturer response to Federal credits.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this supplemental notice of proposed rulemaking and announcement of public meeting.

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 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on December 23, 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 January 10, 2023.

Treena V. Garrett,

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

For the reasons set forth in the preamble, DOE proposes to amend parts 429 and 430 of chapter II, subchapter D, of title 10 of the 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 § 429.23 by revising paragraph (a) to read as follows:

§ 429.23 Cooking products.

(a) Determination of represented values. Manufacturers must determine the represented values, which include the certified ratings, for each basic model of cooking product by testing, in conjunction with the applicable sampling provisions.

(1) *Sampling plan for selection of units for testing.* (i) The requirements of

§ 429.11 are applicable to cooking products; and

(ii) For each basic model of cooking product, a sample of sufficient size shall be randomly selected and tested to ensure that any represented value of estimated annual operating cost, standby mode power consumption, off mode power consumption, annual energy consumption, integrated annual energy consumption, or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) 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 i^{th} sample; Or,

(B) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with $n-1$ degrees of freedom (from appendix A).

(2) *Product-specific provisions for determination of represented values.* (i) *Non-portable conventional cooking tops with a single cooking zone.*

(A) Representations for a basic model must be based on the tested configuration. For the purpose of this paragraph (a)(2)(i), the ''tested configuration'' means:

(*1*) The non-portable conventional cooking top unit containing the single cooking zone, and

(*2*) If commercially available from the same manufacturer, the non-portable conventional cooking top unit that has similar design characteristics (*e.g.,* construction materials, user interface) as the non-portable conventional cooking top containing the single cooking zone, but that contains two cooking zones that are within the same product class and use the same heating technology (*i.e.,* gas flame, electric resistive heating, or electric inductive heating) and energy source (*e.g.,* voltage, gas type) as the non-portable conventional cooking top containing the single cooking zone. If more than one such comparable unit with two cooking zones is commercially available from the same manufacturer, the least energy consumptive of those units with two cooking zones shall be included in the tested configuration. If no such comparable unit with two cooking zones is commercially available from the same manufacturer, the tested configuration shall be only the non-portable conventional cooking top unit containing the single cooking zone.

(B) *Determination of the represented value of integrated annual energy consumption (IAEC) of the tested configuration of a non-portable conventional cooking top with a single cooking zone.*

(*1*) If the tested configuration includes a comparable non-portable conventional cooking top unit containing two cooking zones, the represented value of IAEC is calculated as follows:

$IAEC = \frac{1}{3} \times IAEC_{single} \times \frac{2}{3} \times IAEC_{double}$

Where:

$IAEC_{single}$ is the IAEC for the non-portable conventional cooking top unit containing the single cooking zone included in the tested configuration as determined in § 430.23(i)(2) of this chapter; and

$IAEC_{double}$ is the IAEC for the comparable non-portable conventional cooking top unit containing two cooking zones included in the tested configuration as determined in § 430.23(i)(2) of this chapter.

(*2*) If the tested configuration includes only the non-portable conventional cooking top unit containing the single cooking zone, the represented value of IAEC is equal to that cooking top's IAEC as determined in § 430.23(i)(2) of this chapter.

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Amend § 430.2 by adding in alphabetical order, the definition of ''Portable conventional cooking top'' to read as follows:

§ 430.2 Definitions.

* * * * *

Portable conventional cooking top means a conventional cooking top designed to be moved place to place.

* * * * *

■ 5. Amend § 430.32 by revising paragraph (j) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(j) *Cooking Products.* (1) The control system of a conventional oven shall:

(i) Not be equipped with a constant burning pilot light for gas ovens manufactured on or after April 9, 2012; and

(ii) Not be equipped with a linear power supply for electric and gas ovens manufactured on or after [DATE 3 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

(2) Conventional cooking tops manufactured on or after [DATE 3 YEARS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] shall have an integrated annual energy consumption, excluding any downdraft venting system energy consumption, no greater than:

Product class	Maximum integrated annual energy consumption (IAEC) (kWh/year)
(i) Electric Cooking Tops—Open (Coil) Elements	199
(ii) Electric Cooking Tops—Smooth Elements	207
(iii) Gas Cooking Tops	1,204

* * * * *

[FR Doc. 2023–00610 Filed 1–31–23; 8:45 am]

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Part III

Bureau of Consumer Financial Protection

12 CFR Part 1092
Registry of Supervised Nonbanks That Use Form Contracts To Impose Terms and Conditions That Seek To Waive or Limit Consumer Legal Protections; Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1092

[Docket No. CFPB–2023–0002]

RIN 3170–AB14

Registry of Supervised Nonbanks That Use Form Contracts To Impose Terms and Conditions That Seek To Waive or Limit Consumer Legal Protections

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Consumer Financial Protection Act of 2010 (CFPA) requires the Consumer Financial Protection Bureau (Bureau or CFPB) to monitor markets for consumer financial products and services for risks to consumers in order to support the various statutory functions of the CFPB, and to conduct a risk-based nonbank supervision program for the purpose of assessing compliance with Federal consumer financial law (among other purposes). Pursuant to these authorities, the CFPB is proposing a rule to require that nonbanks subject to its supervisory authority, with limited exceptions, register each year in a nonbank registration system established by the CFPB information about their use of certain terms and conditions in form contracts for consumer financial products and services that pose risks to consumers. In particular, these nonbanks would be required to register if they use specific terms and conditions defined in the proposed rule that attempt to waive consumers' legal protections, to limit how consumers enforce their rights, or to restrict consumers' ability to file complaints or post reviews. To facilitate public awareness and oversight by other regulators including the States, the Bureau is proposing to publish information identifying registrants and their use of these terms and conditions.

DATES: Comments should be received on or before April 3, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2023–0002 or RIN 3170–AB14, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2023-NPRM-ContractsRegistry@cfpb.gov.* Include Docket No. CFPB–2023–0002 or RIN 3170–AB14 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—Nonbank Registration and Collection of Contract Information, Consumer Financial Protection Bureau, c/o Legal Division Docket Manager, 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *https://www.regulations.gov.*

All comments, including attachments and other supporting materials, will become part of the public record and are subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Owen Bonheimer, Senior Counsel, Office of Supervision Policy, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

The proposal would establish a Bureau system for registration of nonbanks that use covered terms or conditions, as described below, in a new part 1092 in title 12 of the Code of Federal Regulations. Proposed subpart C would require annual registration by most nonbanks subject to the Bureau's supervisory authority under section 1024(a) of the CFPA [1] when they use certain terms or conditions that seek to waive consumer rights or other legal protections or limit the ability of consumers to enforce or exercise their rights.[2] With limited exceptions, including an exception for certain small entities,[3] supervised registrants would be required to register annually in the system by submitting or updating their identifying information as well as information about their use of covered terms or conditions. The Bureau will provide filing instructions with details on how to register, the implementation date for the registration system, and the annual registration date. Under the proposal, the Bureau would publish this information on its website and potentially in other forms, as permitted by applicable law and described further in § 1092.303 of the proposed rule.

In particular, the Bureau is generally proposing to collect information about supervised nonbanks' use of terms and conditions in form contracts that expressly seek to impose the following limitations on consumer rights and other legal protections applicable to the offering or provision of consumer financial products or services in markets the Bureau supervises: waivers of claims a consumer can bring in a legal action; limits on the company's liability to a consumer; limits on the consumer's ability to bring a legal action by dictating the time frame, forum, or venue for a consumer to bring a legal action; limits on the ability of a consumer to bring or participate in collective legal actions such as class actions; limits on the ability of the consumer to complain or post reviews; certain other waivers of consumer rights or other legal protections; and arbitration agreements. The proposal defines these terms and conditions as covered terms and conditions. Covered terms and conditions would be covered by the proposal whether they are legally enforceable or not.[4]

Consistent with the risks to consumers posed by covered terms and conditions contained in form contracts as described below, Congress, States, the courts, the Bureau, the Federal Trade Commission (FTC), and other governmental bodies periodically have restricted their use in some contexts. In its statutory risk-based nonbank supervision program and in other activities, the Bureau also has identified risks posed by covered terms and conditions contained in form contracts. In addition, some States have begun to require registration and publication of

[1] 12 U.S.C. 5514(a).

[2] For brevity, the proposal refers to these nonbanks as ''supervised nonbanks.''

[3] Proposed § 1092.301(h) of the proposed rule would include certain exclusions from the registration requirements, including an exclusion for nonbanks with less than $1 million in annual receipts from offering or providing certain consumer financial products or services that would make the nonbank subject to the Bureau's supervisory authority.

[4] For brevity, the proposal generally uses the phrase ''waivers and limitations'' on consumer legal protections broadly, to include terms and conditions that seek to impose waivers and limitations whether or not they are enforceable. *See, e.g., Waiver, Black's Law Dictionary* (11th ed. 2019) (alternate definitions for the relinquishment or abandonment of a right, and for an instrument seeking to have that effect). This broad framing is reflected in the scope of proposed § 1092.301(d), which covers both effective and purported waivers and limitations, as discussed in the section-by-section analysis in part V below.

form contracts in one market (private student lending).

The Bureau is proposing this rule, pursuant to CFPA sections 1022(b) and (c) and section 1024(b), to facilitate the Bureau's market monitoring functions and its risk-based supervisory processes, including by identifying an important subset of non-bank covered persons and the covered terms and conditions they use in form contracts for the consumer financial products or services they offer or provide. In exercise of its authorities discussed in part II.C.3 of the proposal, and consistent with general standards for transparency of government data, the Bureau preliminarily has determined that the Bureau would publish the information it collects as permitted by law and described in the proposed rule. Publishing this information would facilitate public awareness and oversight by other regulators of the use of covered terms and conditions including those that waive or limit consumer protections under State law and Tribal law.

The Bureau proposes to establish the registry to monitor risks to consumers from the use of covered terms or conditions in form contracts in today's marketplace and to inform its various functions, including supervision, enforcement, consumer education, and rulemaking. Most immediately, the information collected by the registry would facilitate the Bureau's prioritization and implementation of examination work in its statutorily-mandated risk-based nonbank supervision program.

II. Background and Rationale for the Proposed Rule

Fair, transparent, and competitive markets for consumer financial products and services depend on fair, transparent, and competitive contracting with consumers. Form contracts are the dominant means of setting terms and conditions for consumer financial products and services in today's marketplace. However, consumers face risks when businesses use form contracts to impose terms and conditions that seek to waive consumer legal protections or to limit how consumers enforce their rights or post complaints or reviews. There is often little choice for people except to sign these form contracts due both to the market pervasiveness of form contracts and the critical role the products and services play in consumers' daily lives.

In recognition of these risks to consumers, over the past several decades, many Federal, State, Tribal, and local laws and regulations have limited the use of these types of terms and conditions, including in form contracts for consumer financial products and services. Examples, discussed in part II.B, include the 1984 FTC Credit Practices Rule, which, among other things, prohibits contract terms purporting to waive State laws protecting consumer assets from seizure by unsecured creditors. In addition, the 2016 Consumer Review Fairness Act generally prohibits the use of form contracts that limit how consumers communicate their reviews, assessments, or similar analysis of the sale of goods or services. Several Federal consumer financial laws the Bureau administers also restrict the use of certain covered terms and conditions in the offering or provision of consumer financial products and services, including in markets where the CFPB exercises supervisory authority. The CFPB preliminarily has determined that a nonbank registration system to continuously and systematically monitor and assess these risks to consumers is needed to support its functions in promoting a fair, transparent, and competitive consumer financial marketplace, including its statutorily-mandated risk-based non-bank supervision program.

CFPA sections 1022(c) and 1024(b), respectively, require the Bureau to monitor for risks to consumers in markets for consumer financial products and services, and to conduct a risk-based supervision program for nonbanks operating in markets the Bureau supervises. As discussed in part II.A below, the use of form contracts to set terms and conditions for consumer financial products and services in general poses a degree of risk to consumers, particularly as to consumer understanding. As elaborated in part II.B, certain terms and conditions that often appear in these form contracts either waive or limit enforcement or exercise of applicable legal protections, or purport to do so. Such waivers of and limitations on applicable legal protections often pose risks to consumers, as evidenced by: (a) examples of Federal laws, State laws, and Tribal laws summarized in part II.B and also discussed in part II.C.2 restricting or invalidating the use of covered terms and conditions in certain contexts; and (b) examples discussed in part II.C.2 suggesting the prevalence of, and potential for consumer harm caused by, the use of covered terms and conditions in markets supervised by the Bureau. The risks that covered terms and conditions pose to consumers vary in degree or magnitude. And the degree to which specific examples would be covered by the proposed rule also may depend on the precise wording and context of their terms and conditions analyzed in light of the specific provisions of the proposed rule. But any time a consumer legal protection is being relinquished or constrained pursuant to a term or condition contained in a form contract, some degree of risk to the consumer arises. For that reason, an assessment of the risk is warranted. Accordingly, for the reasons explained in part II.C and elsewhere in the proposal, the Bureau seeks to collect information to monitor and assess risks posed by covered terms and conditions that supervised nonbanks use to waive or limit applicable legal protections in the offering or providing of consumer financial products or services.[5] In developing the proposal, the Bureau has considered alternative approaches to achieving these goals, as discussed below including in part II.D and the section-by-section analysis of the proposed rule in part V.

A. Use of Form Contracts Poses Risks to Consumer Understanding of Terms and Conditions

Form contracts that establish terms and conditions are a standard feature of markets for consumer financial products or services. In the Bureau's experience and expertise, virtually all consumer financial products and services the Bureau supervises are governed by or operate largely on the basis of a paper or electronic written contract with the consumer, and sometimes on the basis of multiple such contracts. The consumer may enter the contract directly with a provider such as a lender, loan servicer, debt collector, remittance provider, or in some cases, a consumer reporting agency. The contract typically defines how the product or service works and the rights and obligations of the consumer, the provider, and, sometimes, third parties hired by the provider such as a loan servicer or debt collector.

Consumers generally do not choose most contract terms and conditions in their agreements for consumer financial products or services. Form contracts often specify a fixed set of terms and

[5] The examples provided in part II illustrate the types of terms and conditions that may pose risks to consumers by purporting to waive or limit legal protections applicable to consumer financial products or services. As noted above, the scope of the proposed rule is informed by these examples but will not necessarily cover each and every one of them or similar examples. The proposed regulation text as further explained in the section-by-section analysis in part V would govern whether the proposed rule would cover a particular term or condition.

conditions which the consumer typically must accept in their totality. While form contracts may memorialize certain conspicuous financially ''core deal terms,'' like price, payment methods, and a few others, other contract terms and conditions appear in fine print among a variety of ''non-core standard contract terms'' that the business requires.[6]

This type of contracting is ubiquitous in the modern economy and gives rise to certain risks. According to a leading treatise on contract law published by the American Law Institute, the prevalence of ''standard-form'' consumer contracts throughout the United States presents a ''fundamental challenge . . . arising from the asymmetry in information, sophistication, and stakes between the parties to the contracts—the business and consumers.'' [7] This form of contracting risks turning the overall agreement into what sometimes is referred to as an ''adhesion contract.'' That name derives from the notion that the consumer must *adhere* to the terms and conditions in the form contract; they are presented to the consumer on a take-it-or-leave-it basis and are non-negotiable by the consumer. A defining characteristic of these terms and conditions is ''the absence of meaningful choice on the part of the consumer.'' [8]

Consumers also lack an incentive to review fully the terms and conditions in form contracts that they cannot negotiate. Form contracts often are lengthy, with terms and conditions written by the provider, often in fine print. With the expansion of the digital consumer economy, online contracting with features such as ''click-through'' contracts are the norm. The terms and conditions in electronic form contracts may not be visible on the page where the consumer is asked to indicate their agreement; consumers may be required to do additional clicking or downloading to view the terms and conditions.[9] Some terms or conditions may be de-emphasized. In some cases, some companies may also engage in risky digital design practices—termed ''dark patterns''—that obscure certain terms and conditions in adhesion contracts or the adhesion contract itself.[10]

Studies confirm that consumers rarely read adhesion contracts.[11] These studies validate conventional wisdom recognized by other academic research.[12] Moreover, consumers generally focus attention on salient terms such as price and quantity.[13] As a result, providers of consumer financial products and services may seek to insert terms and conditions that pose risks to consumers who may not notice, until the consumer has a problem that they need to resolve or the terms and conditions face wider public scrutiny. In a recent reported example, a provider of consumer financial products and services inserted a term or condition that purported to provide for a substantial fine on users of a payment processing platform for promoting so-called ''misinformation.'' [14]

In some cases, consumers may have nominal choices, such as to opt-out of a particular term or condition, or they are given notice of certain terms and conditions that they cannot negotiate, or both. And, depending on the facts and circumstances, these choices may be constrained; for example, some negative options may not present a meaningful choice.[15] Alternatively, a contract may provide a process for the consumer to opt into a term or condition such as a waiver or limitation. Either way, the business, not the consumer, defines the option and drafts the associated terms and conditions. As discussed further below in part II.C, the use of so-called non-core contract terms and conditions seeking to waive or limit consumer legal protections raises questions about a consumer's understanding of these terms and conditions.

B. Public Policy Recognizes Risks to Consumers Posed by Contract Terms and Conditions That Seek To Waive or Limit Applicable Legal Protections

Many providers of consumer financial products and services regularly use form contracts to impose one or more contract terms or conditions that may effectively strip consumers of legal protections or diminish their adequacy, either through an express waiver of rights or other legal protections, or a limitation on how consumers may seek to enforce or exercise their rights. In this proposal, the Bureau is focused on terms and conditions in form contracts that expressly seek to impose the following limitations on consumer rights and other legal protections: waivers of claims a consumer can bring in a legal action; limits on the company's liability to a consumer; limits on the consumer's ability to bring a legal action by dictating the time frame, forum, or venue for a consumer to bring a legal action; limits on the

[6] Restatement (Third) of Consumer Contracts (Tentative Draft No. 2, approved at ALI 2022 Annual Meeting) at 1. For convenience, the proposal refers to this source simply as the Restatement.

[7] *Id.* at 1.

[8] *Id.* sec. 5(b)(2).

[9] *See generally, e.g., id.* at 55–62 (discussing numerous court decisions on so-called browsewrap and clickwrap electronic contracting processes).

[10] *See generally* FTC Staff Report, ''Bringing Dark Patterns to Light'' (Sept. 2022) at 7 (''[s]ome dark patterns operate by hiding or obscuring material information from consumers, such as burying key limitations of the product or service in dense Terms of Service documents that consumers don't see before purchase''), *https://www.ftc.gov/system/files/ftc_gov/pdf/sP214800%20Dark%20Patterns%20Report%209.s14.2022%20-%20FINAL.pdf;* Restatement at 116–17 (discussing relationship between the use of dark patterns and risk of procedural unconscionability in the contracting process, discussed in this proposal at part II.B.5).

[11] *See, e.g.,* Yannis Bakos, Florencia Marotta-Wurgler & David R. Trossen, ''Does Anyone Read the Fine Print?, Testing a Law and Economics Approach to Standard Form Contracts,'' 43 U. Chicago J. of Legal Studies 1 (2014) (describing study finding one or two of every 1,000 retail software shoppers access the license agreements and that most of those who do access it read no more than a small portion), *https://www.jstor.org/stable/10.1086/674424;* Carl Schneider & Omri Ben-Shahar, ''The Failure of Mandated Disclosure,'' 159 U. Penn. L. Rev. 647, 671 (2011) (reciting research that ''suggests that almost no consumers read [contract] boilerplate, even when it is fully and conspicuously disclosed''), *https://www.jstor.org/stable/41149884#metadata_info_tab_contents;* Uri Benoliel & Shmuel Becher, ''The Duty to Read the Unreadable,'' Boston Col. L. Rev. 2255, 2270–81 (2019) (discussing empirical research), *https://lira.bc.edu/work/ns/508eab7d-ddca-4829-be55-7aa6be4820b1;* Jeff Sovern, ''The Content of Consumer Law Classes III,'' 22 J. Consumer L. 1 (2018) (reporting 2018 update to survey finding 57% of professors surveyed rarely or never read contracts), *http://www.jtexconsumerlaw.com/V22N1/V22N1_Classes.pdf.*

[12] *See generally* Ian Ayres, ''The No-Reading Problem in Consumer Contract Law,'' 66 Stanford L. Rev. 546 (2014), *https://ianayres.yale.edu/sites/default/files/files/sThe%20No%20s Reading%20Problem(2).spdf;* Ian Ayres & Gregory Klass, ''Responses: One-Legged Contracting,'' 133 Harv. L. Rev. Forum 1 (2019), *https://harvards lawreview.org/wp-content/uploads/2019/11/Ayres-Klass_Online.pdf.*

[13] *See generally* Robert Hillman & Jeffrey Rachlinski, Standard-Form Contracting in the Electronic Age, 77 N.Y.U. L. Rev. 429, 450–54 (2002) (discussing research on how cognitive factors affect consumer decisions related to terms and conditions in form contracts, including consumer focus on salient terms).

[14] Xinyi Wan, ''PayPal's 'Misinformation' Fine Sparks Backlash,'' Harv. J. L. & Tech. (Nov. 1, 2022) (describing how payment processor updated terms and conditions to claim authority to impose a $2,500 ''fine'' on consumers for promoting ''misinformation'' and then removed the update after public criticism), *https://jolt.law.s harvard.edu/digest/paypals-misinformation-fine-sparks-backlash* (last visited Nov. 30, 2022).

[15] FTC Enforcement Policy Statement Regarding Negative Option Marketing, 85 FR 60822, 60823 (Nov. 4, 2021) (discussing how negative option marketing and contracting are ''widespread in the marketplace'' and that FTC and States ''regularly bring cases challenging a variety of harmful negative option practices''). *See also* CFPB, Supervisory Highlights, 87 FR 26727, 26737 (May 5, 2022) (discussing examiner findings of consumer reporting agency using ''digital dark patterns'' to impose recurring payments that are difficult to cancel).

ability of a consumer to bring or participate in collective legal actions such as class actions; limits on the ability of the consumer to complain or post reviews; certain other waivers of consumer rights or other legal protections; and arbitration agreements.

Express waivers, by definition, purport to extinguish legal protections otherwise applicable to consumer financial products and services. Some of these legal protections may afford consumers rights, such as the right to assert claims in a legal action. Even when terms and conditions do not purport to set forth such express waivers, they may impose significant limitations on a consumer's ability to bring a legal action, such as by capping liability or restricting the timing, venue, or forum for a consumer to file a private legal action to enforce an applicable consumer legal protection. These limitations, like waivers, may diminish the adequacy of the consumer legal protections to which they apply. Arbitration agreements also generally foreclose a consumer's choice to bring legal actions in court, sometimes with limited exceptions for individual actions in small claims court. Informal mechanisms, like filing a complaint or posting a review online, provide another mechanism for consumers to assert their rights and to identify business practices that, in some cases, may signify non-compliance with applicable legal protections or their inadequacy. Contract terms and conditions that restrict or limit consumers' ability to take those steps thus also undermine consumers' ability to prevent or obtain relief for violations of their rights.

By eliminating or diminishing private enforcement or exercise of rights, covered terms and conditions risk harming consumers. Indeed, given the limited resources of public regulators, private enforcement and other forms of exercising rights play an important role in incentivizing compliance with the laws applicable to consumer financial products and services. For example, Bureau research suggests that public and private enforcement actions often have not overlapped, such that private enforcement often plays an additive, not duplicative, role in supporting the rule of law.[16] Even when private and public enforcement overlap, private enforcement can set the stage for public enforcement by identifying risky or unlawful conduct. The Bureau also may consider both private and public enforcement actions as field market intelligence for its supervisory prioritization process discussed in part II.C.2 below.

Public policy has long recognized the risk covered terms and conditions pose to consumers. This part II.B discusses below numerous examples of public policies prohibiting or restricting covered terms and conditions, dating back to regulations that the FTC issued before the 2010 CFPA established the Bureau and some of which the Bureau also now enforces. These examples generally confirm that covered terms and conditions pose risks to consumers by undermining or diminishing the adequacy of existing legal protections.[17] The Bureau requests comment on the risks to consumers indicated by these examples, and requests that commenters provide additional examples of Federal, State, or Tribal laws that prohibit or restrict the use of covered terms and conditions, as well as additional enforcement and supervisory actions applying these prohibitions or restrictions.

1. Consumer Protection Statutes and Regulations Administered by the FTC Including Trade Regulations Enforced by the CFPB

In 1975, the FTC promulgated a trade regulation, titled ''Preservation of Consumers' Claims and Defenses'' (also known as the Holder in Due Course Rule or the Holder Rule). The Holder Rule requires sellers of goods or services to consumers to include a provision in their finance contracts that ensures that if another person holds the loan or lease a consumer uses to finance acquisition of a good or service from a seller or lessor, then the holder is subject to the same consumer rights and defenses that the consumer had with respect to the seller or lessor.[18] The FTC adopted this regulation in part to prohibit merchant creditors from including a ''waiver of defenses'' clause in their installment sale and lease agreements.[19] ''A 'waiver of defenses' is the consumer's written agreement that his installment purchase contract may be treated like a promissory note in the event it is sold or assigned to a credit company.'' [20] Absent the Holder Rule, when such a promissory note was assigned to a third-party, the third-party would take it free of any claim or defense the buyer would have against the seller.

In adopting the Holder Rule, the FTC also acknowledged ''widespread public concern about mechanical abrogations of consumer rights'' [21] and noted that associated economic injury ''results from terms contained in form contracts'' that ''consumers rarely comprehend. . . .'' [22] The FTC explained that the ''waiver of defenses are presented to consumers on a take-it-or-leave-it basis. These contracts are drafted by sellers and creditors, and they are not susceptible to modification at the point of sale.'' [23]

The Bureau also enforces the Holder Rule,[24] which applies in important ways in markets the Bureau supervises described in part II.C.2. For example, the regulation covers many types of consumer automobile finance agreements. As a result, under the rule, a consumer who obtains automobile financing through a dealer has the right to assert claims and defenses that they have against the dealer, as against an indirect automobile finance company, when the dealer sells the financing to that company. The Holder Rule also applies to credit contracts used to finance the sale of services such as trade or vocational school agreements.[25] In addition, U.S. Department of Education regulations specify that, in certain

[16] CFPB, Arbitration Study: Report to Congress, pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act section 1028(a) (2015) at sec. 1.4.8 (summarizing Bureau research indicating that class action and public enforcement resolutions often do not both address the same claims), *https://www.consumerfinance.gov/data-research/research-reports/arbitration-study-report-to-congress-2015/.*

[17] To be sure, existing law permits certain contractual waivers or limitations in consumer contracts. *Cf. United States* v. *Mezzanatto,* 513 U.S. 196, 203 (1995) (citing presumption that legal rights generally, and in the criminal law context, evidentiary protections, may be voluntarily waived), *cited by Clark* v. *Capital Credit & Collection Services, Inc.,* 460 F.3d 1162, 1170 (9th Cir. 2006) (noting exceptions including for waivers that contravene statutory policy). However, as discussed in this part II, several examples in statutes and regulations applicable to supervised nonbanks explicitly restrict when and how waivers can be obtained. And while an expressly-prohibited waiver may risk deceiving consumers as to the nature of their rights (in the face of an express public policy recognizing the importance of the particular right), the risk of such provisions is not limited to this deception, but rather derives from the consumers inability to exercise the affirmative right lost through the contract clause.

[18] 16 CFR part 433 (Holder Rule), *https://www.ecfr.gov/current/title-16/chapter-I/subchapter-D/part-433.* A ''seller'' is a person that, in the ordinary course of business, sells or leases goods or services to consumers. 16 CFR 433.1(j).

[19] *See* 40 FR 53506, 53507 (Nov. 15, 1975) (issuing final Holder Rule). FTC Staff Guidelines on Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses (May 4, 1976) at 5, *https://www.ftc.gov/system/files/documents/rules/holder-due-course-rule/s760504hidcrule.pdf* (last visited Dec. 30, 2022).

[20] *Id.*

[21] *See* 40 FR at 53508.

[22] *Id.* at 53523.

[23] *Id.* at 53524.

[24] The Bureau included the Holder Rule among the list of enforceable rules and orders it identified upon transfer of authorities to the Bureau in July 2011, pursuant to CFPA section 1063(i). *See* 76 FR 43569, 43571 (July 21, 2011), *https://www.gpo.gov/fdsys/pkg/FR-2011-07-21/pdf/2011-18426.pdf.*

[25] 40 FR at 53524.

circumstances, the holder of certain types of Federal student loans is subject to ''all claims and defenses that the borrower could assert against the school with respect to that loan. . . .'' [26]

The FTC also addressed the issue of waivers and limitation of consumer rights in form contracts in its 1984 Credit Practices Rule, which the Bureau also enforces.[27] This trade regulation prohibits, among other practices, the use of contract terms purporting to waive a consumer's State law right to block creditors from seizing personal or real property of the consumer in which they do not hold security interests.[28] In adopting that rule, the FTC found that ''creditors frequently include clauses in their consumer contracts that require consumers to waive [such] statutory protections.'' [29] It determined that such waivers can cause substantial injury because, without these assets, ''the consumer can lose the basic necessities of life.'' [30] The FTC also determined that, when entering into contracts, ''most consumers are neither aware of the rights they have under [asset seizure] exemption statutes nor of the presence or significance of waiver clauses in their contracts.'' [31] For one thing, the waivers relate to ''elements of a transaction that are distant in time and probability.'' [32] As a result, the FTC found consumers could not bargain over this provision or shop for a contract without one.[33] Yet the FTC found that, when the time comes for collection of a debt, the waivers function as ''*in terrorem* collection devices[.]'' [34]

The 1984 FTC rule also prohibits creditors from using contract terms that waive consumers' due process rights, such as in the event of a future debt collection lawsuit.[35] The FTC similarly found that consumers either are not aware of or rarely understand the significance of these clauses, which are framed in technical, confounding language and presented in small print; thus, consumers cannot bargain over them or shop for alternatives.[36]

In addition, Congress, in the 2016 Consumer Review Fairness Act, generally prohibited the use of form contracts that limit how consumers communicate their reviews, assessments, or similar analysis of the sale of goods or services.[37] The statute also invalidates these types of contract terms and conditions.[38] As the legislative history noted, these so-called ''[g]ag clauses have been imposed by many different types of businesses and come in different forms.'' [39] Congress noted that such clauses may ''become widely adopted[.]'' [40] Under the statute, use of these types of contract terms and conditions constitutes an unfair or deceptive act or practice.[41] The statute specifically authorizes enforcement by the FTC and State attorneys general. The FTC recently brought enforcement actions for violations of this statute by providers of credit repair services and a real estate investment training scheme.[42] One of the clauses purported to explicitly restrict the filing of complaints with government authorities.[43]

In early 2022, the Bureau issued a bulletin noting the public policy against that use of these types of terms and conditions. The bulletin warned that their use in contracts for consumer financial products and services also may constitute an unfair, deceptive, or abusive act or practice (UDAAP). The bulletin stated that the Bureau intends to prioritize scrutiny of these provisions in its supervisory and enforcement activities.[44]

Finally, the FTC also administers the Credit Repair Organizations Act (CROA),[45] which prohibits waivers and attempts to obtain waivers of CROA's legal protections. The FTC has applied CROA to, among other businesses, foreclosure relief services.[46]

2. Federal Consumer Financial Laws Administered by the CFPB

Several other provisions in statutes and regulations the Bureau enforces include prohibitions and restrictions on waivers and limitations on the enforcement of consumer legal protections. These examples also reflect public policy concerns with the risks covered terms and conditions pose to consumers.

Regulation Z implements the Truth-in-Lending Act (TILA) prohibition against including, in a residential mortgage loan or open-ended consumer credit plan secured by the principal dwelling, terms requiring arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling claims arising out of the transaction.[47] Regulation Z also implements the TILA prohibition against applying or interpreting terms in agreements related to these transactions to bar a consumer from bringing a claim in court in connection with any alleged violation of Federal law.[48]

Several other provisions in the Bureau's consumer mortgage regulations also restrict waivers of specified rights or other protections, such as waivers of the right of rescission of certain mortgage transactions, as well as the right to receive certain disclosures within a certain time period in advance of consummation.[49] By restricting the circumstances in which these waivers can be lawfully obtained, these regulations illustrate the risks that the waivers pose. For example, mortgage lenders cannot use ''[p]rinted forms'' for purposes of obtaining a waiver of the right of rescission.[50] In addition, consumers can only waive most of these protections when necessary to obtain a loan to meet a ''bona fide personal financial emergency.'' [51] Federal

[26] 34 CFR 682.209(g) (describing rules for FFEL loan program). *See also* 34 CFR 685.206 (Direct Loan program borrower defense regulations).

[27] 76 FR at 43571.

[28] 16 CFR 442(a)(2).

[29] 49 FR 7740, 7769 (Mar. 1, 1984), *https://archives.federalregister.gov/issue_slice/1984/3/1/7708-7793.pdf#spage=82.*

[30] *Id.* at 7744.

[31] *Id.* at 7770.

[32] *Id.* at 7747.

[33] *Id.*

[34] *Id.* at 7769.

[35] 16 CFR 442(a)(1).

[36] 49 FR at 7749, 7753.

[37] 15 U.S.C. 45b(c); Consumer Review Fairness Act of 2016, Public Law 114–258 (Dec. 14, 2016), 130 Stat. 1355.

[38] *Id.* at 45b(b). California law also includes a similar protection against these types of terms and conditions in contracts for the sale or lease of consumer goods or services. Cal. Civ. Code 1670.8.

[39] H.R. Rep. No. 114–731 at 5 (Sept. 9, 2016).

[40] *Id.*

[41] 15 U.S.C. 45b(d)(1).

[42] *See FTC* v. *Grand Teton Professionals, LLC, et al.,* Case No. 19cv933 (D. Conn) (Complaint filed June 17, 2019), ¶¶ 62–63, 80–82, and 127–35; *FTC & Utah Div. of Cons. Prot.* v. *Zurixx, LLC,* Case No. 19cv713 (D. Utah) (Second Amended Complaint filed Feb. 12, 2021), ¶¶ 115–20, and 150–55.

[43] *Zurixx* Second Amended Complaint, ¶ 116.

[44] CFPB Bulletin 2022–05, ''Unfair and Deceptive Acts or Practices That Impede Consumer Reviews,'' 87 FR 17143 (Mar. 22, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-policy-on-contractual-gag-clauses-and-fake-review-fraud/.*

[45] *See, e.g., FTC* v. *United Credit Adjusters,* Case No. 09–cv–798 (D. N.J.) (consent order entered Feb. 4, 2010, with foreclosure relief firm resolving, among other allegations, an alleged violation of CROA); *FTC* v. *Lalonde,* 545 F. Appx. 825 (11th Cir. 2013) (upholding trial court decision finding violations of CROA by firm offering credit repair and foreclosure relief services).

[46] 15 U.S.C. 1679f(a)–(b).

[47] 12 CFR 1026.36(h)(1), implementing 15. U.S.C. 1639c(e)(1). For this reason, the Bureau's 2015 Arbitration Study generally did not study the mortgage market. *See, e.g.,* Arbitration Study sec. 5 n.34, sec. 8 at 8 & n.24.

[48] 12 CFR 1026.36(h)(2), implementing 15. U.S.C. 1639c(e)(3).

[49] 12 CFR 1026.15(e) (rescission); 12 CFR 1026.23(e) (same); 12 CFR 1026.19(a)(3), (e)(1)(v), (f)(1)(iv) (timing requirements for delivery of certain mortgage disclosures); 12 CFR 1026.31(c)(1)(iii) (timing requirement for delivery of certain disclosures for high-cost mortgages); 12 CFR 1024.10(c) (timing requirement for delivery of settlement statement); 12 CFR 1002.14(a)(1) (timing requirement for providing copy of appraisal or other writing valuation in certain mortgage transactions).

[50] 12 CFR 1026.15(e).

[51] *See* 12 CFR 1026.15(e); 12 CFR 1026.23(e); 12 CFR 1026.19(a)(3), (e)(1)(v), (f)(1)(iv); 12 CFR 1026.31(c)(1)(iii).

regulators have rejected requests to allow such waivers in a broader set of circumstances. For example, in rejecting a request to broaden the exception to the general prohibition against waiving the right of rescission for certain mortgage transactions, the Federal Reserve Board stated in a 1981 rule as follows:

> before accepting a waiver [of the right of rescission], creditors must assure themselves that the reasons given for the waiver are both substantial and credible and that the waiver is in all respects bona fide. This requirement, combined with the prohibition on the use of preprinted forms, will prevent abusive practices, while at the same time permitting consumers to waive the rescission right in appropriate circumstances.[52]

More broadly across the markets the Bureau supervises, including when making payments to supervised nonbanks, consumers enjoy important protections afforded by the Electronic Fund Transfer Act (EFTA) and its implementing regulation, Regulation E.[53] EFTA prohibits contract terms that contain a ''waiver of any right conferred'' by EFTA.[54] Recognizing that depriving consumers of a remedy undermines the right itself, EFTA section 914 also prohibits waiver of any ''cause of action'' under EFTA.[55]

3. Federal Consumer Bankruptcy Statute Protections

The Federal bankruptcy statute provides a legal process for liquidating the debts of consumers who cannot repay their debts. A fundamental goal of the bankruptcy laws enacted by Congress is to give debtors a financial ''fresh start'' from burdensome debts.[56] The Federal bankruptcy statute generally stays collection on most consumer debts during a bankruptcy proceeding,[57] which generally can result in discharge of those debts (under Chapter 7 of the Bankruptcy Code [58]) or a plan to facilitate repayment of those debts (under Chapter 13 of the Bankruptcy Code [59]). Consumers generally initiate the bankruptcy proceeding, which is overseen by the bankruptcy courts and bankruptcy trustees. The Bureau does not administer or enforce the Bankruptcy Code. However, Federal consumer financial law generally applies to consumer financial product and service providers' communications with consumers and other acts and practices relating to bankruptcy protections and the bankruptcy process.[60]

A number of bankruptcy courts long have held that creditors cannot enforce contracts purporting to waive consumers' statutory right to file for bankruptcy protection under the Federal bankruptcy statute.[61] Relatedly, since 1978, the Federal bankruptcy statute has explicitly stated that, in the event of discharge of a debt in bankruptcy, the debt may be voided ''whether or not discharge of such debt is waived'' by contract.[62] As discussed in part II.C.2 below, however, some lenders nevertheless may use contract terms that attempt or purport to limit or waive bankruptcy protections such as these.

4. Federal Statutory Protections for Military Families Including Protections Enforced by the CFPB

Federal law also affords servicemembers other relevant protections when taking out mortgages and installment loans, including from lenders supervised by the Bureau such as mortgage lenders, payday lenders, private student lenders, and automobile finance lenders. The Bureau enforces the Military Lending Act (MLA), which covers many types of consumer credit, including payday and private student loans.[63] The MLA and its implementing regulations generally prohibit terms in consumer credit contracts that require servicemembers and their dependents to ''waive the covered borrower's right to legal recourse under any otherwise applicable provision of State or Federal law . . . .'' [64] The MLA and its implementing regulations also prohibit arbitration agreements in these transactions.[65] These provisions do not apply, however, to certain consumer credit transactions, such as residential mortgage or automobile finance transactions.[66] Congress enacted the MLA in 2006 at the recommendation of the Department of Defense, which in a 2006 report on predatory lending to servicemembers noted:

> Service[ ]members should maintain full legal recourse against unscrupulous lenders. Loan contracts to Service members should not include mandatory arbitration clauses or onerous notice provisions, and should not require the Service[ ]member to waive his or her right of recourse, such as the right to participate in a plaintiff class. Waiver is not a matter of ''choice'' in take-it-or-leave-it contracts of adhesion.[67]

The Bureau has alleged MLA violations with respect to the use of contract terms and conditions prohibited by the MLA, including when short-term small-dollar lenders allegedly provided servicemembers with loans at high rates prohibited by the MLA under contracts that included arbitration agreements.[68]

[52] Federal Reserve Board, Credit; Truth in Lending; Revision of Regulation Z, Final Rule, 46 FR 20848, 20872 (Apr. 7, 1981), *https://www.govinfo.gov/content/pkg/FR-1981-04-07/pdf/FR-1981-04-07.pdf#page=190*.

[53] 15 U.S.C. 1693 *et seq.;* 12 CFR part 1005.

[54] 15 U.S.C. 1693l.

[55] *Id.*

[56] *Local Loan Co.* v. *Hunt,* 292 U.S. 234, 244 (1934) (noting that a primary purpose of the bankruptcy law is to ''relieve the honest debtor from the weight of oppressive indebtedness, and permit [the debtor] to start afresh . . . ,'' *citing Williams* v. *U.S. Fidelity & Guaranty Co.,* 236 U.S. 549, 554 (1915), and elaborating that the bankruptcy law ''gives the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt'').

[57] 11 U.S.C. 362.

[58] *See generally* 11 U.S.C. chapter 7.

[59] *See generally* 11 U.S.C. chapter 13.

[60] *See, e.g.,* CFPB, Supervisory Highlights (Fall 2014) at 2.5.5 (describing examiner findings that one or more supervised entities were misrepresenting to consumers that student loans are never dischargeable in bankruptcy); Supervisory Highlights (Fall 2015) at 2.5.3 (same); Supervisory Highlights (Spring 2022) at 2.2.6 (describing examiner findings that certain furnishers violated the Fair Credit Reporting Act by, among other things, failing to promptly update account statutes to reflect the discharge of debt in bankruptcy).

[61] *See, e.g., In re Weitzen,* 3 F. Supp. 698, 699 (S.D.N.Y. 1933) (holding that a contract provision seeking to waive the benefit of bankruptcy is unenforceable because it would ''frustrate the object of the Bankruptcy Act,'' which would be ''nullified in the vast majority of debts arising out of contracts, if this were permissible''); *In re Madison,* 184 B.R. 686, 690–692 (E.D. Pa. Bktcy. 1995) (''an agreement not to file bankruptcy is unenforceable because it violates public policy''). *See also* Paul R. Hage, ''Border Control: The Enforceability of Contractual Restraints on Bankruptcy Filings, Part 1'' (Dec. 14, 2019) (''Courts almost universally agree that the right to file a petition in bankruptcy is fundamental and cannot be waived . . . because of the strong public policy favoring access to bankruptcy relief.''), *https://www.americanbar.sorg/groups/business_law/publications/blt/2019/12/border-control/* (last visited Dec. 2, 2022).

[62] 11 U.S.C. 524(a)(1). *See* Bktcy. Reform Act of 1978, Public Law 95–598 (Nov. 6, 1978), 92 Stat. 2549, 2592 (codifying section 524(a)(1) provisions on non-waiver of discharge); H.R. Rep. No. 95–595 (Sept. 8, 1977) at 366 (anti-waiver provision ''intended to prevent waiver of discharge of a particular debt from defeating the purposes'' of the discharge provision in the bankruptcy statute); S. Rep. No. 95–989 at 80 (July 14, 1978) (same).

[63] 10 U.S.C. 987(f)(6) (authorizing Bureau enforcement of the Military Lending Act). *See also* 32 CFR part 232 (regulations implementing the Military Lending Act).

[64] 32 CFR 232.8(b), implementing 10 U.S.C. 987(e)(2).

[65] 10 U.S.C. 987(e)(3); 32 CFR 232.8(c).

[66] *See, e.g.,* 32 CFR 232.3(f)(2).

[67] Department of Defense Report (Aug. 6, 2006) at 7–8, *https://apps.dtic.mil/sti/pdfs/ADA521462.pdf* (last visited Dec. 2, 2022).

[68] *CFPB* v. *LendUp Loans, LLC,* Case No. 20cv8583 (Complaint filed Dec. 4, 2020) (N.D. Cal.), ¶¶ 13–16 (arbitration count), *https://www.consumerfinance.gov/enforcement/actions/lendup-loans-llc/; CFPB* v. *First Cash, Inc. & Cash America West, Inc.,* Case No. 21cv1251 (Complaint filed Nov. 12, 2021) (N.D. Tex.), ¶¶ 22–25 (same), *https://www.consumerfinance.gov/enforcement/actions/firstcash-inc-and-cash-america-west-inc/; CFPB* v. *MoneyLion Technologies Inc. et al.,* Case No. 22cv8308 (Compliant filed Sept. 29, 2022) (S.D.N.Y.), ¶¶ 65–68 (same), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-moneylion-for-overcharging-*

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In addition, the Servicemembers Civil Relief Act (SCRA), among other things, allows servicemembers to reduce interest rates on preservice loans and includes certain protections against default judgments and automobile repossessions.[69] The SCRA also requires that any time period for servicemembers to file legal action or to enjoy certain defenses in mortgage transactions exclude periods of military service.[70] The SCRA further imposes specific requirements for any contractual waiver of a right or other protection afforded by the SCRA.[71] However, in a recent report, the U.S. Government Accountability Office (GAO) found that most of the stakeholders GAO interviewed who have regular contact with servicemembers or their representatives said that ''servicemembers do not understand the waivers they are asked to sign[.]'' [72] And, in resolving claims of SCRA violations, the Department of Justice often imposes detailed constraints on how lenders may obtain these waivers in order to further limit risks to consumers.[73]

5. State Laws and Tribal Laws

As discussed in this part II.B.5 and also in part II.C below, a number of State laws and Tribal laws specifically prohibit or restrict contractual waivers of or certain limits on enforcement and exercise of important consumer legal protections. These State and Tribal laws reflect a judgment that waivers and other such limitations may undermine the adequacy of legal protections. Some of these legal protections are so fundamental that waiving or otherwise limiting their enforcement or exercise through consumer contracts is prohibited under State or Tribal law. Other State and Tribal laws set specific standards for waivers of certain consumer legal protections or limits on their enforcement or exercise. These anti-waiver prohibitions, waiver restrictions, and prohibitions and restrictions on other limits on enforcement and exercise of legal protections appear in a variety of State laws and Tribal laws, including some of those that prohibit unfair and deceptive acts and practices, some consumer lending statutes, and other statutes setting forth specific types of protections, as well as in the general principles of State common law of contracts. While not summarized in detail in this part II.B, other similar prohibitions also appear in regulations and ordinances adopted at the local level.[74]

For example, the California Consumer Privacy Act affords consumers certain rights to know how their information is used and to instruct businesses not to sell personal information of the consumer.[75] That statute further states that ''[a]ny provision of a contract or agreement of any kind, including a representative action waiver, that purports to waive or limit in any way rights under this title, including, but not limited to, any right to a remedy or means of enforcement, shall be deemed contrary to public policy and shall be void and unenforceable.'' [76] California's consumer credit reporting agencies statute includes a similar anti-waiver provision.[77] Similarly, the Model Tribal Consumer Protection Code also encourages Indian Tribes to establish privacy protections that are non-waivable.[78]

In addition, several State and Tribal laws specifically prohibit or restrict waivers of protections against unfair and deceptive acts and practices. Michigan law defines prohibited unfair, unconscionable, or deceptive methods, acts, or practices to include ''[e]ntering into a consumer transaction in which the consumer waives or purports to waive a right, benefit, or immunity provided by law, unless the waiver is clearly stated and the consumer has specifically consented to it.'' [79] Texas law prohibits waivers of consumer legal protections under the State deceptive trade practices statute as contrary to public policy, unenforceable, and void unless certain conditions are met and ''the consumer is not in a significantly disparate bargaining position.'' [80] Other State laws contain outright prohibitions of waivers of legal protections in general consumer protection laws. Illustrative examples include the laws of California,[81] Illinois,[82] Kansas,[83] and Tennessee.[84] Finally, the Navajo Nation unfair trade practices statute broadly prohibits acts or practices that take advantages of a lack of consumer understanding of contract terms to an unreasonably unfair degree.[85]

Some State consumer lending laws also generally prohibit waivers, either outright or by provisions rendering them void and unenforceable. Illustrative examples include the Virginia usury statute,[86] the Louisiana consumer credit law,[87] and the Nebraska loan brokers statute.[88] Other State laws generally prohibit waivers for certain types of loan and loan-related

servicemembers-trapping-consumers-in-costly-memberships/.

[69] *See* 50 U.S.C. 3937 (interest rate cap); 50 U.S.C. 3931 (protections against default judgments); 50 U.S.C. 3952 (protections against automobile repossessions); 50 U.S.C. 3953 (mortgage protections).

[70] 50 U.S.C. 3936(a) (tolling of statute of limitations); 50 U.S.C. 3936(b) (excluding period of military service from any time period provided by law for the redemption of real property sold or forfeited to enforce a mortgage obligation).

[71] 50 U.S.C. 3918(a)–(c).

[72] GAO Rept. 21–550R, Servicemember Rights: Stakeholders Reported Servicemembers Have Limited Understanding about Waivers of Their Consumer Rights and Protections (June 29, 2021) at 4–7 (reporting that 12 of 15 stakeholders interviewed reported that servicemembers have limited understanding about waivers of their rights and protections under SCRA, and the other three said they did not know or did not respond).

[73] *See e.g., United States* v. *Sallie Mae, Inc., et al.,* Case No. 14cv600 (D. Del.), Consent Order (Sept. 29, 2014), ¶¶ 36.c, 37–38 (requiring Department of Justice (DoJ) approval of procedures for obtaining waivers of SCRA legal protections); *United States* v. *3rd Generation, Inc. & California Auto Finance,* Case No. 18cv523 (C.D. Cal.), Consent Order (Mar. 12, 2019), ¶ 10.e; *United States* v. *Westlake Services, LLC,* Case No. 17cv7125 (C.D. Cal.), Settlement Agreement (Sept. 27, 2017), ¶ 10.e; *see also generally* DoJ SCRA settlement agreements, *https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-scra.*

[74] *See, e.g.,* New York City Admin. Code sec. 20–701(4) (providing that ''the degree to which terms of the transaction require consumers to waive legal rights'' shall be a factor in considering whether to regulate an act or practice in connection with the extension of consumer credit or the collection of consumer debt as a prohibited unconscionable trade practice); S.F. Police Code sec. 2704 (prohibiting attempts by mortgage modification consultants to induce real property owners to waive rights under municipal mortgage modification regulations); City of Los Angeles Muni. Code sec. 47.107 (same).

[75] *See generally* Cal. Civ. Code sec. 1798.100 *et seq.* described at *https://oag.ca.gov/privacy/ccpa.*

[76] Cal. Civ. Code sec. 1798.192.

[77] Cal. Civ. Code sec. 1785.36.

[78] First Nations Development Institute, Model Tribal Consumer Protection Code (2018) Ch. II—Privacy Protection—section D (''[a]ny waiver of a provision of this title is contrary to public policy and is void and unenforceable''), *https://www.firstnations.org/publications/model-tribal-consumer-protection-code/* (last visited Dec. 5, 2022).

[79] Mich. Code 445.903 sec 3(1)(t).

[80] Tex. Bus. & Com. Code sec. 17.42.

[81] Cal. Civ. Code. sec. 1751 (barring waivers of protections under California Consumers Legal Remedies Act).

[82] Ill. St. Ch. 815 sec. 505(10c), Waiver or modification (barring waiver or modification of protections under consumer fraud and deceptive practices statute).

[83] Kan. Stat. 50–625(a), Waiver (generally prohibiting waivers of rights or benefits under the Kansas Consumer Protection Act, unless otherwise specified in the statute).

[84] Tenn. Stat. 47–18–113(a) (generally prohibiting waivers ''by contract, agreement, or otherwise'' of provisions of the Tennessee Consumer Protection Act of 1977). *See also* Tenn. Stat. 47–18–113(c) (specifying conditions for waivers of other consumer protections in Tennessee law).

[85] NNCA Ch. 7 sec. 1103.E.1, *https://www.nnols.org/wp-content/uploads/2022/05/1-5.pdf.*

[86] Va. Code. Ann. 6–2–306, Waiver of rights violative of public policy.

[87] La. R. S. 9:3513 (barring waivers or agreements to forego rights or benefits under Louisiana Consumer Credit Law, except for settlement of a claim disputed in good faith).

[88] Neb. Stat. 45–191.05, Waiver of sections; attempt; prohibited.

products. For example, the Florida payday lending statute expressly prohibits waiver of its protections, including a mandatory cooling-off period between payoff on an existing payday loan and origination of a new payday loan.[89] Several other State payday and short-term small-dollar lending statutes include similar prohibitions, whether against waivers generally [90] or waivers of certain rights such as jury trial waivers not contained in permissible arbitration agreements.[91] In the automobile lending market, the California automobile sales financing statute and the New Mexico motor vehicle sales financing statute include general prohibitions on waivers, and in the mortgage market, the New Mexico mortgage foreclosure relief statute does the same.[92] And in the context of secured lending nationwide, Article 9 of the Uniform Commercial Code (UCC)—adopted in both State and Tribal laws—identifies numerous consumer legal protections that may not be waived or varied, including, among others, a prohibition on extrajudicial repossession without breach of the peace.[93] Article 9 also restricts waivers of other consumer legal protections, including several that apply in the event of default on the loan.[94] Some State laws also set forth additional applicable legal protections against certain waivers in contracts for the financing of the sale of goods and services.[95]

Other provisions of State and Tribal laws prohibit contract terms and conditions that limit how consumers can enforce applicable legal protections. The California automobile sales financing statute, for example, prohibits contract provisions that limit liability for legal remedies available to the consumer.[96] Tennessee law, for example, prohibits specifying an out-of-state forum for adjudication of claims arising under the Tennessee consumer protection statute.[97] Minnesota law similarly prohibits specifying an out-of-state forum for resolution of disputes related to certain short-term loans.[98] Idaho law prohibits contract terms shortening the statute of limitations in some circumstances.[99] Cherokee Nation law prohibits waiver of numerous provisions in arbitration agreements.[100]

Even when State statutory law may not expressly prohibit or restrict waivers or limitations on how consumers may enforce or exercise their rights, the Restatement of the law of consumer contracts further articulates how the State common law of contracts scrutinizes certain standard terms and conditions for unconscionability. A similar analysis also may be applied under some Tribal laws.[101] The doctrine of unconscionability protects consumers against (1) fundamentally unfair or unreasonably one-sided terms and conditions that are (2) imposed through a contracting process that results in unfair surprise or results from the absence of meaningful choice on the part of the consumer.[102] The common law of contracts describes two distinct aspects of unconscionability: substantive and procedural. As the American Law Institute has explained, when consumer contract terms and conditions are substantively unconscionable, they ''undermine the substantive rights consumers acquired under the contract.'' [103] Examples of substantively unconscionable terms and conditions include terms and conditions that unreasonably limit either liability for a consumer's loss ''by an intentional or negligent act or omission of the business'' or ''the consumer's ability to pursue or express a complaint or seek reasonable redress for a violation of a legal right.'' [104] The Restatement also expressly acknowledges the potential for overlap in circumstances involving terms and conditions that are unconscionable and UDAAPs under the CFPA.[105]

The Restatement discusses how the doctrine of unconscionability may render several types of contractual waivers and limitations on applicable legal protections unenforceable.

First, terms and conditions in consumer contracts may attempt to waive certain types of liability of the business. Public policy recognizes that these types of contract terms and conditions pose risks to consumers. As the Restatement explains, most State courts deem a contact term to be substantively unconscionable and thus, unenforceable, if it ''unreasonably exclude[s] or limit[s] the business's liability or the consumer's remedies that would otherwise be applicable for . . . any loss to the consumer caused by an intentional or negligent act or omission of the business.'' [106]

[89] Fl. Stat. 560.404(10)(e) (general prohibition on waivers); Fl. Stat. 560.404(19)–(20) (cooling-off period provisions).

[90] *See, e.g.,* Ks. Stat. 16a–2–404(10)(d)(iii) (prohibiting use of terms and conditions in which the consumer agrees not to assert a claim or defense arising out of the contract); Oh. Stat. 1321.41(G) (prohibiting short-term loan licensees from requiring the borrower to ''waive the borrower's right to legal recourse under any otherwise applicable provision of state or federal law''); Ill. Stat. Ch. 815 sec. 122/4–5(10)(D) (prohibiting ''a provision in which the consumer agrees not to assert any claim or defense arising out of the contract'').

[91] Ill. Stat. Ch. 815 sec. 122/4–5(10)(B).

[92] Cal. Civ. Code sec. 2983.7(a) & (c), Prohibition on certain provisions (prohibiting automobile sale finance agreements that contain waivers of claims or defenses of consumers); N.M. Stat. 58–19–12, Waiver (''Any waiver of the provisions of this act shall be unenforceable and void''); N.M. Stat. 47–15–5.G(1) (prohibiting including a provision in a foreclosure consulting contract that ''attempts or purports to waive an owner's rights'' under the New Mexico foreclosure relief statute).

[93] UCC 9–602, Waiver and Variance of Rights and Duties. *See, e.g.,* CNCA, title 80, sec. 9–602 (Cherokee nation secured lending code restricting waiver and variance of rights), *https://attorneygeneral.cherokee.org/media/5upcrg3j/word-searchable-full-code.pdf. See also* First Nations Development Institute, Model Tribal Consumer Protection Code (2018) Ch. IV—Rental-Purchase Agreements—sec. F.1.e (defining ''waiver by the consumer of claims or defenses'' as an example of ''[p]rohibited rental-purchase agreement terms; practices'' in automobile finance agreements); Ch. V—Repossessions of Personal Property—sec. D.4.c (prohibiting any seller from ''attempt[ing] to obtain a waiver of this section from any consumer, or to obtain such a waiver''), *https://www.firstnations.org/publications/model-tribal-consumer-protection-code/.*

[94] UCC 9–624, Waiver (placing restrictions on waivers of certain rights to notice of disposition of collateral, to require disposition of collateral, and to redeem collateral). *See, e.g.,* CNCA title 80, sec. 9–624.

[95] *See, e.g.,* N.J. Stat. 17:16C–38.2. *See also* Nat'l Conf. of Commissioners on Uniform Laws, Revised Model Tribal Secured Transactions Act (May 2017), sec. 9–403(a) (model statute for Tribal use providing that waivers of rights and defenses not enforceable in consumer finance agreements related to sale or lease of goods or services), *https://www.uniformlaws.org/committees/community-home?CommunityKey=1f31aa7f-74be-457e-904b-ba3b6d7d3646#:~:text=The%20Model%20Tribal%20Secured%20Transactions,secured%20credit%20to%20their%20members.*

[96] Cal. Civ. Code sec. 2983.7(e).

[97] Tenn. Stat. 47–18–113(b).

[98] *See, e.g.,* Minn. Stat. 47.601 sec. 2 (prohibiting certain terms and conditions in contracts for short-term loans, including, among others, ''a provision choosing a forum for dispute resolution other than the state of Minnesota.'').

[99] *See, e.g., DelJack, Inc.* v. *U.S. Bank Nat'l Ass'n,* 2012 WL 4482049 at *6–*7 (D. Idaho 2012) (applying Idaho Code 29–110(1) to invalidate attempt to use a standard contract term to shorten statute of limitation). Under Idaho law, ''[e]very stipulation or condition in a contract . . . which limits the time within which [any party thereto] may thus enforce [their] rights, is void as it is against the public policy of Idaho.'' Idaho Code 29–110(1) (also qualifying that section 110(1) does not apply to arbitration agreement allowing arbitration in Idaho).

[100] CNCA title 11, Ch.8, sec. 1304.B & C.

[101] *See, e.g., Green Tree Servicing, LLC* v. *Duncan,* 7 a.m. Tribal Law 633, 640 (Navajo Nat'n Sup. Ct. 2008) (applying principles of unconscionability to invalidate an arbitration agreement associated with a mobile home loan), *https://cite.case.law/am-tribal-law/7/633/.*

[102] Restatement sec. 5.

[103] *Id.* at 97 (comment on sec. 5(c)(3)).

[104] *Id.* at secs. 5(c)(1)(B) and 5(c)(2).

[105] *Id.* at 99 (citing 12 U.S.C. 5531 and 5536(a)).

[106] Standard contract terms stating that the liability or remedy limitations are specifically agreed upon, or that conduct that would otherwise be regarded by law as negligent is contractually-agreed upon to be non-negligent, do not necessarily render the limit on liability reasonable. Restatement at 93–94.

Second, forum selection clauses often found in consumer contracts may designate a specific judicial forum to hear any ensuing disputes arising out of the contract.[107] In some cases, the designated forum might be so inconvenient as to eliminate the viability of pursuing legal action. The Restatement describes some examples that may pose risks to consumers, including the following:

- A business's standard contract terms include a dispute-resolution term specifying a forum in a distant location, such that the consumer would have to bear travel and accommodation expenses exceeding the value of the remedy sought. The dispute-resolution forum requires a non-refundable filing fee exceeding the value of the remedy sought. Either one of these two features unreasonably limits or imposes obstacles to the consumer's ability to enforce legal rights. That result applies to any type of dispute-resolution forum clause in standard terms in a consumer contract that imposes such an unreasonable cost or personal burden, be it a public court or a private arbitration panel.[108]

Third, terms and conditions that impose unreasonably short limitations periods may pose risks to consumers by imposing challenges or creating hurdles for consumers in seeking redress. Terms and conditions that limit the period in which a consumer must bring an action to a shorter time period than underlying law may block the consumer from asserting an otherwise viable substantive claim. These terms and conditions reduce the time for a consumer to sue, which may result in fewer actions and otherwise actionable claims prematurely going stale. As noted above, some State laws prohibit these terms and conditions as void and against public policy in some circumstances. Absent an express prohibition in State law, though, the Restatement indicates that courts often enforce these terms and conditions, even when the parties have unequal bargaining power, as long as the resulting time period is reasonable (six months is an oft-mentioned floor).[109]

Fourth, some arbitration agreements may have features that unreasonably limit the consumer's ability to enforce their rights. The Restatement describes examples, including the following:

- A business's standard contract terms require consumers to resolve disputes through arbitration. If the costs of pursuing individual arbitration make it impractical for consumers to seek redress for breach of the contract, a court may determine that the provision in the contract barring class actions is not enforceable. In those circumstances where costs of pursuing individual arbitration are prohibitive, such arbitration clauses may still be enforceable where the arbitration forum permits class arbitration, but substantively unconscionable otherwise.[110]
- A business's standard contract terms include a class-action waiver and do not specify a choice of forum, thus allowing consumers to resolve disputes in court. A common grievance for consumers entering this contract involves low damages—no more than a few dollars each. Thus, these clauses may unreasonably limit consumers' ability to obtain a remedy for breach.[111]

While the Restatement expressly does not address ''possible preemption under the Federal Arbitration Act,'' [112] these examples nonetheless illustrate how arbitration agreements can pose risks to consumers.

Fifth, in addition to the Consumer Review Fairness Act discussed above and the Bureau's related policy statement, State law contract principles also illustrate how clauses that seek to restrict consumers from posting negative reviews or filing complaints may pose several risks to consumers. These restrictions may explicitly limit the ability of consumers to obtain informal resolution of a dispute. These restrictions also pose risks to other consumers who may be deprived of the benefits of information about the experiences of other consumers. As the Restatement explains, ''[s]uch restrictions undermine the reputation mechanism. In consumer markets, in which legal forms of redress are often impractical or delayed, the existence of a robust reputation mechanism is particularly important. Contractual arrangements that seek to weaken it are therefore against public policy and substantively unconscionable.'' [113] When such restrictions are prohibited by law, they ''may also be unenforceable under the doctrine of illegality or on grounds of public policy.'' [114]

C. Need for Registry of Supervised Nonbanks That Use Form Contracts To Impose Terms and Conditions That Seek To Waive or Limit Consumer Legal Protections

Accordingly, and in light of the considerations described in part II.C.1 below, the Bureau is proposing to collect information described in this rule to learn more about the business practices of supervised nonbanks that use the covered terms and conditions, and to monitor for associated risks to consumers that would inform the Bureau's evaluation of how it can utilize its functions to address those risks. Most immediately, as further described in part II.C.2 below, the proposal would facilitate the Bureau's risk-based nonbank supervision program, including through facilitating the assessment and detection of risks to consumers posed by covered terms and conditions. In addition, to support the public interest in promoting public understanding of the use of covered terms and conditions, as discussed in part II.C.3 below, the Bureau is proposing to make information collected public as described in § 1092.303 of the proposed rule. The proposal is thus authorized under the Bureau's monitoring, supervisory, and related nonbank registration authorities, described below and in part IV of the proposal. The proposed registry also would further these goals in ways that existing registration systems do not.

This proposal reflects a priority on establishing a system by rule for the collection of information on the use of covered terms and conditions from supervised nonbanks as a subset of covered persons. One of the reasons for prioritizing coverage of supervised nonbanks is the need to identify them, as discussed in part II.C.2 below. As discussed in the impacts analysis in part VII of the proposal, the Bureau estimates that there are thousands of nonbanks subject to its supervisory authority

[107] Forum clauses were historically perceived as contrary to public policy and as preventing the proper forum from hearing the dispute. Now, courts generally enforce forum selection clauses unless exceptional circumstances exist. *M/S Bremen* v. *Zapata Off-Shore Corp.,* 407 U.S. 1, 15 (1972) (holding that, in an international commercial dispute, ''the forum clause should control absent a strong showing that it should be set aside'').

[108] Restatement sec. 5 cmt. 7.

[109] Restatement sec. 5. The Restatement notes (at 98), however, that a business's standard contract terms that require that all claims against the business be made within three months after the conclusion of the transaction may be unenforceable to the extent that it covers claims for ''latent defects'' (claims not widely relevant to consumer financial products and services). *Cf.* UCC sec. 2–725(1).

[110] Restatement at 98 (example 9). The Department of Education also has proposed to prohibit the use of arbitration agreements and class action waivers in connection with Federal student loan programs. *See* Dept. of Educ. Proposed Rule, 87 FR 41878 (July 13, 2022).

[111] Restatement at 98 (example 8).

[112] *Id.* at 97.

[113] *Id.* at 114; *see also id.* at 98–99 (discussing example where a business includes in its standard-form contract a clause that charges a high monetary penalty every time a consumer posts a negative review of the business online or obligates the consumer to indemnify the business for any loss caused by the negative review.'').

[114] *Id.* at 107.

under CFPA section 1024(a). In addition, there is no comprehensive registry of identifying information for nonbanks subject to the Bureau's supervisory authority across supervised markets. Finally, in light of resource constraints, the Bureau does not regularly examine each of the thousands of nonbanks subject to its supervisory authority under CFPA section 1024. Rather, under CFPA section 1024(b)(2), the Bureau must implement a risk-based program for supervision of these nonbanks. By contrast, Federal prudential regulators track and already publicize information about the identity and size of depository institutions.[115] These include depository institutions subject to the Bureau's supervisory authorities under CFPA sections 1025 and 1026. The Bureau also publicly identifies the fewer than 200 large depository institutions subject to its supervisory authority under CFPA section 1025, and it has procedures for regularly supervising them.[116] In light of all these considerations, the Bureau is prioritizing this proposal to establish a registration system for identifying those nonbanks that use covered terms or conditions and monitoring and assessing the associated risks to consumers as discussed in this part II above.[117] This proposal does not affect how the Bureau can apply its functions for monitoring and assessing risks posed by covered terms and conditions used by depository institutions and credit unions subject to its authority under CFPA sections 1022, 1025, and 1026.

1. The Proposed Registry Would Support the Bureau in Fulfilling Its Statutory Mandate To Monitor Risks to Consumers in Markets for Consumer Financial Products and Services

As recently discussed in the Bureau's proposal to register certain orders,[118] Congress established the Bureau to regulate (among other things) the offering and provision of consumer financial products and services under the Federal consumer financial laws, and it granted the Bureau authority to ensure that the Bureau could achieve that mission.[119] But it also understood that the Bureau could not fully and effectively achieve that mission unless it developed a clear window into the markets for and persons involved in offering and providing such products and services. To that end, Congress mandated that the Bureau ''shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.'' [120]

Notably, Congress directed the Bureau to engage in such monitoring ''to support its rulemaking and other functions,'' [121] instructing the Bureau to use monitoring to inform all of its work. Congress separately described the Bureau's ''primary functions'' as ''conducting financial education programs''; ''collecting, investigating, and responding to consumer complaints''; ''collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets''; ''supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law''; ''issuing rules, orders, and guidance implementing Federal consumer financial law''; and ''performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.'' [122] Put simply, Congress envisioned that the Bureau would use its market monitoring work to inform its activities, all with the express purpose of ''ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.'' [123]

To achieve these ends, Congress took care to ensure that the Bureau had the tools necessary to effectively monitor for risks in the markets for consumer financial products and services. It granted the Bureau authority ''to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers.'' [124] In particular, Congress authorized the Bureau to ''require covered persons and service providers participating in markets for consumer financial products and services to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions,'' that would furnish the Bureau with such information ''as necessary for the Bureau to fulfill the monitoring . . . responsibilities imposed by Congress.'' [125]

To assist the Bureau in allocating resources to perform its monitoring, Congress also identified a non-exhaustive list of factors that the Bureau may consider, including ''likely risks and costs to consumers associated with buying or using a type of consumer financial product or service''; [126] ''understanding by consumers of the risks of a type of consumer financial product or service''; [127] ''the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers''; [128] ''the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers''; [129] and ''the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.'' [130]

The Bureau takes its market monitoring obligations seriously, and it

[115] *See, e.g.,* FDIC Bank Find Suite, *https://banks.data.fdic.gov/bankfind-suite/bankfind;* Federal Financial Institutions Examinations Council National Information Center, *https://www.ffiec.gov/NPW;* OCC Financial Institutions Lists, *https://www.occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/index-financial-institution-lists.html;* Credit Union Locator, *https://mapping.ncua.gov/.*

[116] *See* CFPB, List of Depository Institutions and Depository Affiliates under CFPB Supervision, *https://www.consumerfinance.gov/compliance/supervision-examinations/institutions/;* CFPB Supervision and Examination Manual, Overview at 5 (describing Bureau's approach to setting regular examination schedules for large depository institutions), *https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_2022-09.pdf.*

[117] In prioritizing this proposal, the Bureau also has considered other factors, including the following: The Bureau's existing regulations already require depository institutions to submit to the Bureau information about their agreements in certain markets, such as credit cards and prepaid accounts. The Bureau makes these agreements publicly available at *https://www.consumerfinance.gov/credit-cards/agreements/* and *https://www.consumerfinance.gov/data-research/prepaid-accounts/.* In addition, CFPA sections 1022 and 1024 do not expressly authorize the Bureau to establish a registration system for depository institutions, which are excluded from the Bureau's registration authority under section 1022(c)(7)(A) and excluded from the scope of section 1024(b)(7). There is no parallel registration provision in the Bureau's authorities over depository institutions generally.

[118] *See generally* CFPB, Proposed Rule, Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders (Dec. 12, 2022), (''Nonbank Registration—Orders Proposal''), *https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf.*

[119] *See* 12 U.S.C. 5511.

[120] *See* 12 U.S.C. 5512(c)(1).

[121] *Id.*

[122] 12 U.S.C. 5511(c).

[123] 12 U.S.C. 5511(a).

[124] 12 U.S.C. 5512(c)(4)(A).

[125] 12 U.S.C. 5512(c)(4)(B)(ii).

[126] 12 U.S.C. 5512(c)(2)(A).

[127] 12 U.S.C. 5512(c)(2)(B).

[128] 12 U.S.C. 5512(c)(2)(C).

[129] 12 U.S.C. 5512(c)(2)(E).

[130] 12 U.S.C. 5512(c)(2)(F).

has incorporated valuable insights gained to date from such monitoring in conducting the multiple functions assigned to it under the CFPA, including its supervisory and enforcement efforts, as well as its rulemaking, consumer education, and other functions.[131] As discussed in further detail below, this proposed rule seeks to continue and build upon that commitment by creating a registry of covered terms and conditions to accomplish a number of goals, with a particular focus on monitoring for risks to consumers related to the use of form contracts containing terms and conditions that waive or limit consumer legal protections.

How the Proposed Registry Would Support Market Monitoring

A registry of covered terms and conditions would further the Bureau's market monitoring activities in several ways. As discussed in further detail below, among other things, the registry would assist the Bureau in assessing the impact of the covered terms and conditions on the adequacy of applicable legal protections, and consumer understanding of covered terms and conditions included in form contracts.[132]

In particular, and as reflected in Congress' own judgment, the Bureau has a particular interest in exercising its market monitoring authorities to address questions or concerns regarding the ''legal protections applicable'' to consumer financial products and services ''including the extent to which the law is likely to adequately protect consumers. . . .'' [133] Numerous legal protections apply to consumer financial products and services. Federal, State, Tribal, and local government bodies have adopted these consumer protections in statutes and regulations. However, these laws may not adequately protect consumers when consumers are required through covered terms and conditions to waive the protections or agree to limits on their enforcement or exercise.

These types of provisions may simultaneously place consumers at an increased risk of harm from conduct the protections are designed to prevent, while making it more difficult for consumers to remedy those harms by enforcing the protections. Covered terms and conditions pose risks to consumers by potentially reducing deterrence, compliance, and accountability for non-compliance with the underlying legal protections to which they apply. Some of these legal protections are so fundamental that the use of covered terms and conditions is prohibited or restricted by law, as discussed in part II.C.1. As discussed above and in the section 1022(b) impacts analysis, when consumers cannot protect themselves, such as by directly enforcing legal protections or exercising informal mechanisms, there may be an increased risk that these protections will not be followed (less deterrence) and that they will not be remedied when violated (less accountability). These risks may be significant, given the prevalence of covered terms and conditions in supervised markets and the examples of harms identified in supervisory and enforcement actions discussed in part II.C. The proposed registry would allow for fuller and continuous monitoring of these risks, but the information already available suggests these risks warrant increased regulatory oversight of supervised market participants that use covered terms and conditions. Indeed, Federal, State, Tribal, and local regulators can enforce many of the legal protections constrained by covered terms and conditions, or analogous legal protections. The GAO recently recognized, for example, that public enforcement of a Federal statute can be particularly important where private enforcement is constrained by contract.[134]

In addition to the foregoing risks, covered terms and conditions also may create the risk of a UDAAP violation whether they are expressly prohibited under existing statutes or regulations and thus unenforceable or whether no existing law expressly addresses the provision. In the former circumstance, as discussed below, the covered term or condition risks deceiving consumers into thinking the underlying legal protection no longer applies or that they cannot enforce a right, when in fact that is not this case. This misimpression is likely to dissuade consumers from availing themselves of available mechanisms to enforce or otherwise exercise their rights. In the latter circumstance, as also discussed below, the waiver still might constitute an unfair act or practice under Federal or State law. For example, Bureau examiners have found unfairness violations where, although not expressly prohibited under existing law, a waiver substantially injured consumers (through loss of the underlying right), was not reasonably avoidable (for example, because presented in a form contract on a take it or leave it basis), and did not have countervailing benefits to consumers or competition.[135]

Consumer understanding of the risks described above also is a factor the Bureau has considered in proposing the registry. Because covered terms and conditions are established through an adhesion-type contracting process, as discussed in part II.A above, consumers may not understand the covered terms and conditions or be aware that they have agreed to them and therefore may not recognize the ensuing risks from this agreement.

Of course, the Bureau does not supervise or enforce all consumer legal protections that are applicable to consumer financial products and services it supervises, including both the laws to which covered terms and conditions apply and the laws that may prohibit particular covered terms and conditions. But, even apart from a potential UDAAP violation as described

[131] *See, e.g.,* CFPB Semiannual Regulatory Agenda, 87 FR 5326, 5328 (Jan. 31, 2022) (''The Bureau's market monitoring work assists in identifying issues for potential future rulemaking work.''); Payday, Vehicle, and Certain High-Cost Installment Loans, 82 FR 54472, 54475, 54488, 54498 (Nov. 17, 2017) (citing information obtained through Bureau market monitoring efforts); Arbitration Agreements, 82 FR 33210, 33220 (July 19, 2017) (same). *See also, e.g.,* Consumer Fin. Prot. Bureau, *Buy Now, Pay Later: Market trends and consumer impacts* (Sept. 2022), *https://files.consumerfinance.gov/f/documents/cfpb_buy-now-pay-later-market-trends-consumer-impacts_report_2022-09.pdf* (publishing information obtained through Bureau market monitoring efforts); Consumer Fin. Prot. Bureau, *Consumer Credit Trends: Credit Card Line Decreases* (June 2022), *https://files.consumerfinance.gov/f/documents/cfpb_credit-card-line-decreases_report_2022-06.pdf* (same); Consumer Fin. Prot. Bureau, *Data Point: Checking Account Overdraft at Financial Institutions Served by Core Processors* (Dec. 2021), *https://files.consumerfinance.gov/f/documents/cfpb_overdraft-core-processors_report_2021-12.pdf* (same). *See also, e.g.,* Consumer Fin. Prot. Bureau, *Buy Now, Pay Later: Market trends and consumer impacts* (Sept. 2022), *https://files.consumerfinance.gov/f/documents/cfpb_buy-now-pay-later-market-trends-consumer-impacts_report_2022-09.pdf* (publishing information obtained through Bureau market monitoring efforts); Consumer Fin. Prot. Bureau, *Consumer Credit Trends: Credit Card Line Decreases* (June 2022), *https://files.consumerfinance.gov/f/documents/cfpb_credit-card-line-decreases_report_2022-06.pdf* (same); Consumer Fin. Prot. Bureau, *Data Point: Checking Account Overdraft at Financial Institutions Served by Core Processors* (Dec. 2021), *https://files.consumerfinance.gov/f/documents/cfpb_overdraft-core-processors_report_2021-12.pdf* (same).

[132] 12. U.S.C. 5512(c)(2).

[133] 12 U.S.C. 5512(c)(2)(C). Inadequate legal protections also create risks the Bureau's monitoring program must consider under section 1022(c)(2)(A).

[134] *See* GAO Rept. 21–221, Servicemember Rights: Mandatory Arbitration Clauses Have Affected Some Employment and Consumer Claims but the Extent of Their Effects is Unknown (Feb. 2021) at 9–10 (describing instances where arbitration agreements prevented servicemembers from resolving SCRA claims in court, while noting that Federal enforcement under the SCRA is not limited by arbitration agreements).

[135] *See* discussion of examples from mortgage market supervision, part II.C.2 *infra.*

above, a company that violates other applicable law may have a poor compliance management system and thus may be more likely to violate Federal consumer financial law. And the existence of a covered term or condition in some circumstances may be indicative of a violation of law, since a company that would go to such lengths to include certain terms or conditions in its contracts may be acting in other ways to undermine the underlying rights addressed by the waivers or limitations. Thus, the existence of covered terms and conditions may inform the Bureau's understanding of the adequacy of legal protections, including compliance with Federal consumer financial law, in protecting consumers who buy or use consumer financial products or services.

The Bureau can use that market monitoring information to support a variety of its functions, including through conducting consumer education (where a waiver or limit may risk deceiving consumers, or may be lawful but nevertheless harmful to consumers who lack understanding), bolstering its consumer response function (for example, through better understanding of whether consumer complaints the Bureau receives or does not receive may be driven by covered terms and conditions or the risks they pose), or identifying regulatory voids that it may consider filling through regulation implementing Federal consumer financial law, orders, or guidance (if another important protection is not adequate due to waivers or limitations).

A registry of covered terms and conditions would fill an important information gap on the topic of covered terms and conditions. Currently, there is limited information on the use of covered terms and conditions, especially at the individual provider/product level. Even at the market level, information is limited. The Bureau issued the latest comprehensive national study of one type of covered term or condition—arbitration agreements—in a report to Congress over seven years ago, discussed above. The Bureau requests information from commenters on other studies of the use of covered terms and conditions. The Bureau also has not identified any existing Federal, State, or Tribal system that collects information specifically about the use of covered terms and conditions across markets the Bureau supervises.[136] The absence of this data leaves uncertain the degree to which the use of covered terms and conditions is eroding legal protections in many of the markets the Bureau oversees. Collection of that data and filling the gaps in available information on these issues would be important for the Bureau's efforts to monitor for risks to consumers in the offering of consumer financial products or services.

As indicated above, in developing the proposal, the Bureau has considered (among others) the factors listed at CFPA section 1022(c)(2), to the extent relevant here to the allocation of Bureau resources to perform market monitoring. For example, the proposed registry would help the Bureau to monitor the extent to which supervised nonbanks are using covered terms or conditions in form contracts in a manner that allows consumers to understand the risks that covered terms or conditions pose to consumers (*see* CFPA section 1022(c)(2)(B)). The proposed registry would help the Bureau to monitor potential effects of covered terms or conditions on the adequacy of legal protections to which they apply or which apply to them (*see* CFPA section 1022(c)(2)(C)). And relatedly, the proposed registry would help the Bureau to monitor likely risks and costs to consumers from buying or using consumer financial products or services that contain covered terms and conditions (*see* CFPA section 1022(c)(2)(A)).[137]

In addition, the information collected in the proposed registry may form the basis of additional focused assessments. For example, the information collected may help the Bureau to identify changes over time in the use of certain covered terms or conditions which may be relevant to assessing the rate of growth in the offering of consumer financial products and services that have different contractual frameworks (*see* CFPB section 1022(c)(2)(D)). In addition, to the extent that supervised nonbanks use covered terms or conditions in offering a consumer financial product or service to traditionally underserved consumers, the registry would enable comparisons to covered terms and conditions used by other supervised nonbanks offering similar consumer financial products or services. That information may help the Bureau to monitor whether the covered terms or conditions may disproportionately affect these consumers (*see* CFPB section 1022(c)(2)(E)). The registry also would enable other comparisons in the degree and type of covered terms and conditions used across supervised nonbanks in a given market and across supervised markets. These comparisons may identify pertinent characteristics of firms that use particular covered terms or conditions or combinations of covered terms or conditions (*see* CFPB section 1022(c)(2)(F)).[138]

Accordingly, for the reasons described in this part II., as elaborated elsewhere in the proposal, the Bureau proposes to establish a registration system to collect data on supervised nonbanks' use of covered terms and conditions, allowing it to monitor and assess the risks described above on a continuous basis in supervised markets.

2. The Proposed Registry Would Facilitate the Bureau's Statutorily-Mandated Risk-Based Nonbank Supervision Program

As recently discussed in the Bureau's proposal to register certain orders,[139] one of the Bureau's key responsibilities under the CFPA is the supervision of very large banks, thrifts, and credit unions, and their affiliates, and certain nonbank covered persons. Congress has authorized the Bureau to supervise certain categories of nonbank covered persons under CFPA section 1024.[140] Congress provided that the Bureau ''shall require reports and conduct examinations on a periodic basis'' of nonbank covered persons subject to its supervisory authority for purposes of ''assessing compliance with the requirements of Federal consumer financial law''; ''obtaining information about the activities and compliance systems or procedures of such person[s]''; and ''detecting and assessing risks to consumers and to markets for consumer financial products and services.'' [141] Pursuant to the CFPA, the Bureau implements a risk-based supervision program under which it prioritizes nonbank covered persons for supervision in accordance with its assessment of risks posed to consumers.[142] In making prioritization determinations, the Bureau considers several factors, including ''the asset size of the covered person,'' [143] ''the volume of transactions involving consumer financial products or services in which the covered person engages,'' [144] ''the risks to consumers created by the provision of such consumer financial

[136] As noted in this part II.C.2, the Bureau is only aware of existing registration systems that collect and publish limited information about standard contracts in private student loan markets in certain states and mortgage market contracts used for certain federally-related mortgage transactions.

[137] *See* 12 U.S.C. 5512(c)(2)(A)–(C).

[138] *See* 12 U.S.C. 5512(c)(2)(D)–(E).

[139] *See generally* Nonbank Registration—Orders Proposal.

[140] 12 U.S.C. 5514.

[141] 12 U.S.C. 5514(b)(1).

[142] 12 U.S.C. 5514(b)(2).

[143] 12 U.S.C. 5514(b)(2)(A).

[144] 12 U.S.C. 5514(b)(2)(B).

products or services,'' [145] ''the extent to which such institutions are subject to oversight by State authorities for consumer protection,'' [146] and ''any other factors that the Bureau determines to be relevant to a class of covered persons.'' [147] CFPA section 1024(b)(7)(A)–(C) further authorizes the Bureau to prescribe rules to facilitate supervision and assessing and detecting risks to consumers, as well as to ensure that supervised nonbanks ''are legitimate entities and are able to perform their obligations to consumers.'' [148] Since it began its nonbank supervision program in 2012, the Bureau has provided further explanation to the public about the purposes of the program and how it works.[149]

How the Proposed Registry Would Facilitate Risk-Based Nonbank Supervision

Under those authorities, the Bureau is proposing the registry to facilitate its assessment of risks to consumers in connection with its nonbank supervision program. The proposed registry can facilitate the Bureau's risk-based nonbank supervision program in a number of ways. For example, as discussed below, the proposed registry can facilitate the Bureau's prioritization of which entities to examine, as well as, relatedly, its identification of entities eligible for examination. The proposed registry also can facilitate the scoping of its examinations.

First, the Bureau can use the information collected on supervised nonbanks' use of covered terms and conditions to inform its prioritization process to determine which entities to examine. Prioritization is a fundamental component of the Bureau's supervision program, which has been designed to conduct slightly more than 100 on-site examinations per year, and less than 1,000 overall exam events per year.[150] As discussed in the impacts analysis in part VII of the proposal, the Bureau estimates that there are thousands of nonbanks subject to its supervisory authority under CFPA section 1024(a). Given resource constraints and the number of supervised nonbanks, the Bureau does not regularly examine each of the nonbanks subject to its supervisory authority under CFPA section 1024. Rather, pursuant to CFPA section 1024(b)(2), the Bureau implements a risk-based supervision program, prioritizing which supervised nonbanks it will examine in a given annual period based on information available about the risks they pose to consumers. By incorporating into its supervisory prioritization process the information it collects on supervised registrants' use of covered terms and conditions that pose risks to consumers, the Bureau's risk-based nonbank supervision program would be able to better take into consideration the ''risks to consumers created by the provisions'' of consumer financial products and services within the meaning of CFPA section 1024(b)(2)(C).[151]

The Bureau can use the information collected on supervised nonbanks' use of covered terms and conditions to assess potential risks to consumers posed by different covered terms and conditions, and combinations of covered terms and conditions. That assessment can inform its decisions prioritizing which supervised nonbanks to examine. For example, when covered terms and conditions violate anti-waiver and other legal prohibitions in Federal consumer financial law, the proposed registry could highlight where this may be a problem, potentially facilitating prioritization of supervisory action or, in some cases, potentially, enforcement action.

In addition, certain covered terms and conditions, such as non-disparagement clauses, also could be an important companion to the Bureau's existing prioritization process that is based in significant part on consumer complaints. Depending on the wording of these terms and conditions, they may pose varying degrees of risk of suppressing consumer complaints, which could result in an understatement of or gap in complaint information in the Bureau's consumer complaint database. Or they could deter online reviews, which the Bureau also may use as field market intelligence to inform its assessments of risks used for prioritization of its exam work.

In addition, by prioritizing based on the risks specifically posed by covered terms and conditions, the Bureau's risk-based supervision would better account for the limited extent to which this information is available to inform existing oversight by enforcers of Federal consumer financial law, including certain State authorities.[152] As discussed below, the universe of nonbanks supervised by the States and the Bureau overlaps but is not coextensive. Even with respect to areas of overlap, existing State registration systems generally do not collect information about the use of supervised entity's covered terms and conditions across the market. States have made only limited use of this option for specific markets. For example, Colorado, Louisiana, Maine, and Illinois recently adopted laws establishing registration systems for private student lenders that obtain their standard loan terms and conditions; the Colorado, Louisiana, and Maine statutes also require the registry to post these terms and conditions on a public website.[153] Accordingly, the proposed rule would facilitate supervision on a topic—the use of covered terms or conditions in form contracts—that otherwise would not be overseen to the same extent by State authorities for consumer protection within the meaning of CFPA section 1024(b)(2)(D).[154]

Second, and relatedly, for those nonbank entities that use covered terms and conditions in offering consumer financial products or services in markets supervised by the Bureau, the proposed registry can facilitate a more efficient process for the Bureau to identify these

[145] 12 U.S.C. 5514(b)(2)(C).

[146] 12 U.S.C. 5514(b)(2)(D).

[147] 12 U.S.C. 5514(b)(2)(E).

[148] 12 U.S.C. 5514(b)(7)(A)–(C).

[149] *See, e.g.,* Steve Antonakes and Peggy Twohig, ''The CFPB launches its nonbank supervision program'' (Jan. 5, 2012), *https://www.consumerfinance.gov/about-us/blog/the-cfpb-launches-its-nonbank-supervision-program/;* Lorelei Salas, ''Explainer: What is nonbank supervision? (May 25, 2022), *https://www.consumerfinance.gov/about-us/blog/explainer-what-is-nonbank-supervision/.*

[150] *See* CFPB Annual Performance Plan and Report FY 2022 at Table 2.2.1.1 (on-site exams) & Table 2.2.1.2 (all supervisory events with significant activity), *https://files.consumerfinance.gov/f/documents/cfpb_performance-plan-and-report_fy22.pdf.*

[151] 12 U.S.C. 5514(b)(2)(C).

[152] *See* CFPB Consumer Financial Protection Circular 2022–01, ''System of Consumer Financial Protection Circulars to Agencies Enforcing Federal Consumer Financial Law'' (June 14, 2022), 87 FR 34868 (June 14, 2022) (discussing role of State attorneys general and State regulators in enforcing Federal consumer financial law as described in CFPA section 1042, codified at 12 U.S.C. 5552).

[153] *See* Col. Rev. Stat. 5–20–203(2)(b)(V) (requiring private education lenders to annually provide model loan agreements) & *id.* 5–20–203(3)(c) (requiring copies of the model loan agreements for each registered private education lender to be posted on a publicly accessible website); La. Rev. Stat. 6:1401–1404 (added by HB 789 enacted June 18, 2022); Me. Rev. Stat. 9–A:15–102.1.B(5) & *id.* 15–102.2 (same); Il. Pub. Act. 102–0583 sec. 10(e). These websites are available at *https://coag.gov/office-sections/consumer-protection/consumer-credit-unit/student-loan-servicers-act/private-education-lender-registration/registered-private-education-lenders/, https://www.maine.gov/pfr/consumercredit/student_loan_registry/index.html.*

[154] 12 U.S.C. 5514(b)(2)(B) (describing ''the extent to which supervised nonbanks are subject to oversight by State authorities for consumer protection'' as something for the Bureau to consider in conducting risk-based supervision). As discussed in the section-by-section analysis of the exemption in proposed § 1092.301(h)(5) related to certain small entities, the Bureau also has considered the factors in CFPA section 1022(b)(2)(A) and (B). Other factors, such as risks from the provision of the consumer financial product or service, also are generally discussed throughout this part II.

nonbank entities. In particular, a registration system that more comprehensively and periodically collects identifying information about many nonbank entities subject to the Bureau's supervisory authority would facilitate the Bureau's nonbank supervision program at the most basic level—identifying who the Bureau could examine. As discussed below there is no comprehensive registry of identifying information for nonbanks subject to the Bureau's supervisory authority across supervised markets. Thus, the identifying information the proposal would collect would, in turn, enhance the Bureau's prioritization process discussed above.

The proposed registry would gather identifying information that would be uniquely useful to the Bureau's supervision of nonbanks. For most nonmortgage markets where the Bureau has supervisory authority, existing registration systems do not necessarily identify all nonbanks based on whether they are subject to Bureau supervisory authority.[155] While some States and Indian Tribes require licensing of participants in certain supervised markets, there is no comprehensive list of who participates in these markets. The full scope of State and Tribal licensing requirements across the States and Tribes is not co-extensive with the scope of the Bureau's supervisory authority across these markets, leaving geographic and market gaps where the Bureau supervises but States or Tribes do not license. Moreover, even for institutions that States or Tribes license, the data about them that States and Tribes collect does not consistently establish whether they engage in the specific activities, or volume of such activity, that would make them subject to the Bureau's supervisory authority.[156] As a result, for purposes of identifying Bureau-supervised nonbanks, information on providers licensed at the State and Tribal level is both overinclusive (of entities the Bureau does not supervise, such as persons who are not larger participants) and potentially underinclusive (not necessarily covering all markets as defined in the statute in all States).

The Bureau currently may draw upon information about who is licensed at the State and Tribal level to inform its assessment of who may be subject to the Bureau's supervisory authority. However, as described above, that information does not clearly or consistently identify which entities are subject to the Bureau's supervisory authority in many cases. As a result, in many cases, to determine whether it can commence an examination, the Bureau must first collect information directly from individual market participants about the nature, and in the case of markets subject to larger participant rules, the volume of certain consumer financial product and service offerings or associated receipts. This activity can be resource- and time-intensive and can lead to rescheduling of planned exams when the information collected indicates entities are not subject to supervisory authority. A registration system that more comprehensively collects and periodically updates identifying information about many nonbank entities subject to the Bureau's supervisory authority would facilitate the Bureau's nonbank supervision program at the most basic level—identifying who the Bureau could examine.

For that reason, the Bureau also considered proposing a registry that would require registration of all supervised nonbank covered persons, regardless of whether those persons use form contracts that impose covered terms and conditions that pose risks to consumers. However, the Bureau preliminarily has concluded that it is a higher priority to require registration of supervised nonbank covered persons that use covered terms and conditions contained in covered form contracts. The proposed registry therefore has a fundamentally different purpose from a universal registration system. This proposal would focus on identifying the supervised nonbanks offering consumer financial products and services that pose risks to consumers as identified above, rather than identifying all supervised nonbanks regardless of whether they present such risks. In this way, the proposed registry is almost fully distinct from the type of licensing and registration systems typically maintained by States and Tribes, which, as discussed above, generally do not focus on collection of covered terms and conditions contained in covered form contracts. As a result, this approach is even less likely to lead to duplication with State and Tribal licensing and registration systems. The Bureau requests comment on this approach.

Third, the information collected can form a basis for the Bureau to scope and conduct examinations of supervised nonbanks, enhancing its ability to detect and address violations and risks of violations of Federal consumer financial law or compliance management system deficiencies.[157] With respect to detecting and addressing violations, if the Bureau scheduled an examination at an entity who had registered its use of a covered term or condition that appeared to be prohibited by Federal consumer financial law, the Bureau likely would incorporate the use of this term or condition into the scope of an exam. More broadly, if the entity registered other covered terms and conditions, an examination could review and assess risks to consumers related to how the entity established, used, and applied these terms or conditions, including in the contracting process or in response to consumer complaints. That review could inform examiners' conclusions concerning the presence of a UDAAP, a risk of a UDAAP, or a compliance management system concern. Examiners also could coordinate with other regulators about their findings, especially if they implicate consumer legal protections administered by the other regulators. In addition, prior to an examination, examiners could consult the registry and review any non-disparagement clause, which may inform how the examiners scope and conduct a review of consumer complaints. In these and other ways discussed in this proposal, by developing its examination scope based on the information it collects on supervised registrants' use of covered terms and conditions that pose risks to consumers, the Bureau's risk-based nonbank supervision program would be able to better take into consideration the ''risks to consumers created by the provisions'' of consumer financial products and services within the meaning of CFPA section 1024(b)(2)(C).[158]

[155] For mortgage markets, there is considerably more information available about who participates and may be subject to the Bureau's supervisory authority, in light of registration and licensing systems for mortgage originators under the SAFE Act (discussed in more detail at *https://files.consumerfinance.gov/f/201203_cfpb_update_SAFE_Act_Exam_Procedures.pdf*), data submission requirements of mortgage originators under the Home Mortgage Disclosure Act (HMDA) in Regulation C at 12 CFR part 1003, and call reports for mortgage servicers and others (described at *https://mortgage.nationwidelicensingsystem.org/slr/common/mcr/Pages/default.aspx (last visited Dec. 5, 2022)*).

[156] For the international money transfer market, State registration money services business licensing data often is aligned with the Bureau's supervisory authority to facilitate the Bureau's identification of larger participants.

[157] *See generally* CFPB Bulletin 2021–01, ''Changes to Types of Supervisory Communications'' (Mar. 31, 2021) (describing scope of Bureau supervisory communications as including findings of violations of laws the Bureau enforces, risks of violation, and compliance management system concerns), *https://files.consumerfinance.gov/f/documents/cfpb_bulletin_2021-01_changes-to-types-of-supervisory-communications_2021-03.pdf.*

[158] 12 U.S.C. 5514(b)(2)(C).

Covered Terms and Conditions Are Prevalent in Markets Supervised by the Bureau

As discussed below, enforcement and supervisory findings in markets the Bureau supervises illustrate how covered terms and conditions used by nonbanks pose risks to consumers. The proposed registry would facilitate review and assessment of these types of risks more broadly throughout the Bureau's non-bank supervision program, as discussed above.

Mortgage Markets

While the TILA and Regulation Z provisions discussed at the outset of part II.B.2 above may protect consumers against certain waivers and limitations on private enforcement in the mortgage market, the Bureau has routinely highlighted for the public examiner findings over the past decade that some mortgage originators and servicers have been engaging in acts and practices inconsistent with this prohibition and that the examiners found constituted UDAAPs.[159] In addition, even before the June 1, 2013 effective date of this provision of Regulation Z,[160] examiners found that two mortgage servicers engaged in an unfair practice in connection with the use of ''across-the-board waivers of existing claims'' in a ''take it or leave it'' loss mitigation agreements for forbearance or loan modification.[161]

In addition, the Bureau's supervisory authority over the mortgage market extends to nonbanks that offer or provide ''loan modification or foreclosure relief services'' in connection with residential mortgages.[162] Some nonbanks offering these products and services have used terms and conditions that pose risks. For example, as noted earlier, the FTC has taken action against a credit repair firm for its use of non-disparagement clauses in violation of a Federal statute.[163] In addition, the Bureau is aware of reports that a nonbank mortgage lender had imposed certain non-disparagement provisions in certain loan modification agreements associated with settlement of pending legal claims, until committing to the New York State financial regulator to stop doing so.[164]

Other Credit Markets (Payday Lending, Private Student Lending, and Automobile Finance) [165]

The potential for significant prevalence in the use of contract terms and conditions seeking to waive or limit applicable legal protections in the automobile finance, private student lending, and short-term small-dollar markets is supported by the following examples:

- Automobile finance lender engaged in a deceptive act or practice by using a contract term that created the impression consumers could not exercise a right to file bankruptcy when in fact consumers could file for bankruptcy in light of the public policy voiding waivers of individual's right to file for bankruptcy.[166]
- Private student lenders and servicers enjoined from enforcing borrower certifications in contracts entered into before filing for bankruptcy on the ground that such prepetition waivers of dischargeability in bankruptcy are unenforceable as against public policy.[167]
- Institutional private student lender violated the Holder Rule where it failed to include the notice required under that rule, and attempted to waive consumers' legal rights by including a contract clause purporting to ''waive any claim or cause of action of any kind whatsoever that they may have'' against the lender education institution.[168]
- Short-term small-dollar lender allegedly used contract term excluding lender liability for fees imposed by the borrower's bank as a result of lender's payment practices.[169]
- Short-term small-dollar lender allegedly frequently enforced a forum selection clause to file debt collection lawsuits in a State that was not where consumers resided or entered into the loan agreement, leading to default judgments and their enforcement in garnishment actions against consumers.[170]
- Short-term small-dollar lender's standard terms set an unenforceable 30-day deadline for filing suit, attempting to shorten four-year period set by State law.[171]

[159] *See, e.g.,* Supervisory Highlights (Fall 2022) at 2.6.2; Supervisory Highlights (Summer 2021) at 2.6.3; Supervisory Highlights (Summer 2017) at 2.6.2; Supervisory Highlights (Fall 2015) at 2.4.2; Supervisory Highlights (Summer 2015) at 2.4.5. *See also Lyons* v. *PNC Bank, N.A.,* 26 F.4th 180, 191 (4th Cir. 2022) (holding that an arbitration agreement related to a mortgage transaction was unenforceable in light of the restriction in TILA discussed in part II.B.2 above).

[160] 12 CFR 1026.36(h).

[161] Supervisory Highlights (Winter 2013) at 2.1.2 (covering results of supervision work completed between July and October 2013).

[162] 12 U.S.C. 5514(a)(1)(A).

[163] *FTC* v. *Grand Teton Professionals, LLC, et al.,* Case No. 19cv933 (D. Conn) (Complaint filed June 17, 2019).

[164] Peter Rudegeair, Michelle Conlin, ''Exclusive: Ocwen Financial to stop gagging homeowners in mortgage deals,'' Reuters.com (June 3, 2014), *https://www.reuters.com/article/us-banks-mortgages/exclusive-ocwen-financial-to-stop-gagging-homeowners-in-mortgage-deals-idUSKBN0EE1XG20140603 (last visited Dec. 2, 2022);* Brena Swanson, ''Ocwen will stop using mortgage gag orders,'' Housingwire.com (June 3, 2014), *https://www.housingwire.com/articles/30196-ocwen-will-stop-using-mortgage-gag-orders/* (last visited Dec. 8, 2022).

[165] The Bureau supervises the automobile finance market pursuant to its rule defining larger participants in that market. *See* 12 U.S.C. 5514(a)(1)(B) & 5514(a)(2); 12 CFR 1090.108.

[166] *In re Nissan Motor Acceptance Corporation,* Admin. Proc. 2020–BCFP–0017 (Consent order filed Oct. 13, 2020), ¶ 46 *et seq., https://files.consumerfinance.gov/f/documents/cfpb_nissan-motor-acceptance-corporation_consent-order_2020-10.pdf.*

[167] *In re Homaidan v Sallie Mae, Inc. Navient Sol'n, LLC, Navient Cred. Fin. Corp.,* 640 B.R. 810, 848 (E.D.N.Y. Bktcy. 2022). *See also In re Mazloom,* 2022 WL 950932 at *5 (N.D.N.Y. Bktcy. 2022) (''Courts are rightfully concerned that lenders would consistently take advantage of unsophisticated or desperate debtors by including pre-petition waivers of dischargeability in all loan agreements, thus vitiating one of the core protections of the bankruptcy process.''); *Lichtenstein* v. *Barbanel,* 161 F. Appx. 461, 467 (6th Cir. 2005) (collecting earlier cases); *Klingman* v. *Levinson,* 831 F.2d 1292, 1296 n.3 (7th Cir. 1987) (''For public policy reasons, a debtor may not contract away the right to a discharge in bankruptcy.''), *cited by In re Palmer,* 2021 WL 1259258 at *10 (N.D. Ohio Bktcy. 2021) (holding ''stipulation contained in the [student loan] Credit Agreement's boilerplate language is legally insufficient to determine nondischargeability in a later-filed bankruptcy case'').

[168] *FTC* v. *Hum. Resc. Dev. Svcs., Inc., d/b/a Saint James Schools of Medicine and HRDS et al.,* Case No. 22cv1919 (N.D. Ill.) (Complaint filed Apr. 14, 2022), ¶¶ 28, 43–48 (citing violation of the Holder Rule); *id.* Stipulated Order dated Apr. 14, 2022) (settlement of allegations).

[169] *See, e.g.,* Klarna Pay Later in 4 Agreement (Oct. 26, 2022) (provision labelled ''Fees Imposed By Your Financial Institution or Card Issuer'' stating that lender ''do[es] not have any liability to [consumer] for such fees''), *https://cdn.klarna.com/1.0/shared/content/legal/terms/0/en_us/sliceitinx* (last accessed Dec. 5, 2022). *Cf. Perks et al.* v. *Activehours, Inc. d/b/a Earnin,* Case No. 19cv5543 (N.D. Cal. 2019) (Complaint filed Sept. 3, 2019), ¶ 52, *https://www.govinfo.gov/app/details/USCOURTS-cand-5_19-cv-05543/context.* That matter resulted in a court order of final approval of a class action settlement. *Id.,* Order of Mar. 25, 2021, 2021 WL 1146038. In the Bureau's experience and expertise, payday lenders may also be incentivized to use provisions like this, given the potential their payment practices have to cause bank fees. *See generally CFPB* v. *ACE Cash Express,* Case No. 22cv1494 (N.D. Tex.), Complaint filed July 12, 2022, ¶¶ 79–84 (citing unfair practice for payment practices likely to result in bank fees).

[170] *CFPB* v. *Freedom Stores, Inc., et al.* (E.D. Va. Case no. 2:14cv643) (Complaint filed Dec. 18, 2014), ¶¶ 50–59, 62–81 (alleging unfair and abusive acts and practices based on lender's filing ''over 3,500 [collection] lawsuits in Norfolk, Virginia, against consumers who lived in distant venues and who were not physically present in Norfolk, Virginia, when they executed the underlying financing contract; almost all of the lawsuits resulted in a default judgment.''), *https://files.consumerfinance.gov/f/201412_cfpb_complaint_freedom-stores_va-nc.pdf.* The Bureau entered into a 2015 settlement barring this company from filing distant-forum actions and providing relief for affected consumers. See *https://files.consumerfinance.gov/f/201512_cfpb_stipulated-final-judgment-and-order-freedom-stores_va-nc.pdf.*

[171] *Gandee* v. *LDL Freedom Enterprises, Inc.,* 293 P.3d 1197, 1201 (Wa. 2013).

• Short-term small dollar lender allegedly used term or condition attempting to limit or waive consumers' right to cancel preauthorized electronic funds transfers used to repay loan, despite anti-waiver provision in EFTA section 914.[172]

The Bureau also previously studied and reported on the prevalence of one type of contract term that limits enforcement of consumer rights in these markets—arbitration agreements. For more than a decade now, under U.S. Supreme Court precedent, the Federal Arbitration Act has preempted State law prohibitions on enforcement of arbitration agreements due to their containing a ''no class'' provision.[173] As a result, some supervised institutions have used arbitration agreements to block collective legal action by consumers. When that occurs, there is a risk that consumers may not receive relief for breach of consumer legal protections unless they pursue actions individually. And if the threat of individual action is lower, arbitration agreements also may reduce deterrence and in turn compliance with these consumer legal protections. This risk may be present across supervised markets.[174] For example, in its 2015 Arbitration Study, the Bureau noted that nearly 84% of storefront payday loan agreements representing nearly 99% of storefronts sampled had arbitration clauses in their agreements in 2013 and 2014, with almost all of these agreements also limiting availability of class proceedings.[175] Similarly, over 85% of private student loan contracts sampled by the Bureau included arbitration clauses in 2014, with all of these limiting availability of class proceedings.[176] The 2015 Arbitration Study also found that, while consumers sometimes can obtain relief in class actions concerning these products,[177] arbitration agreements also can be used to block those efforts.[178] Although the Bureau had issued a 2017 regulation to prohibit limitations on class actions in arbitration agreements for many types of consumer financial products and services,[179] Congress overturned that rule later that year.[180] As a result, in the Bureau's experience and expertise, arbitration agreements remain a common term or condition in contracts for supervised consumer financial products or services. Arbitration agreements also may specify the location for an arbitration hearing[181] and may include provisions setting deadlines for filing of claims, raising a question of whether those deadlines are shorter than the time frame specified in State statutes.[182] Tracking on an ongoing basis when these agreements are used, by whom, and whether they are held to be enforceable, is important to the Bureau for the assessment of potential risks to consumers from such limitations on their ability to actually pursue and/or participate in legal action.

Consumer Reporting Market[183]

In the credit monitoring market, contract waivers and other provisions may undermine the adequacy of the legal protections afforded to consumers under the Fair Credit Reporting Act (FCRA). The Bureau's Arbitration Study found that FCRA claims were the third most common type of Federal statutory claim in Federal class action settlements reviewed by the Bureau from selected cases filed from 2010 through 2012.[184] Moreover, class settlements of Federal class actions related to consumer reporting filed between 2010 and 2012 provided over $750 million in relief to consumers.[185] More recently, as discussed below, case law indicates that consumer reporting agencies may use arbitration agreements to block potential availability of this type of relief in this market.

For example, the Bureau has learned that some credit monitoring products that some consumer reporting agencies market by representing that they help consumers detect and fix inaccuracies in their consumer reports may undermine FCRA protections. For example, in one case, after consumers engaged the service, the consumer reporting agency used the terms of that service against the consumer to block a putative class action lawsuit. The consumer reporting agency used an arbitration agreement in the credit monitoring contract to block consumers' legal action seeking to remedy alleged failure to reasonably investigate inaccurate information on consumer reports in violations of the FCRA.[186] This outcome illustrates how consumer reporting agencies could use arbitration agreements to limit collective legal action seeking to remedy pre-existing inaccuracies in a consumer's credit report. This outcome also may indicate a broader trend: through its market monitoring activity, the Bureau also has seen several examples of national consumer reporting agencies imposing arbitration agreements when consumers use their online interface to obtain copies of their credit report or their credit score, to file a dispute, or to place a security freeze. The Bureau has a need, through its nonbank supervision program and market monitoring more broadly, to assess the potential magnitude of these risks across the consumer reporting market.

Consumer Debt Collection Market[187]

Waivers and other limitations often found in the terms and conditions of a form contract can put consumers at risk during the debt collection process. For example, although debt collectors typically do not enter into arbitration agreements directly with consumers, nevertheless, they may attempt to use these and other limitations in the terms and conditions of the underlying consumer contract establishing the debt

[172] 15 U.S.C. 1693l. *See, e.g., Cobb* v. *Monarch Finance Corp.,* 913 F. Supp. 1164, 1179 (N.D. Ill. 1995) (rejecting motion to dismiss claim that nonbank lender violated EFTA anti-waiver provisions by using contract term purporting to waive right under EFTA to stop payment of preauthorized electronic funds transfers); *Baldukas* v. *B&R Check Holders, Inc.,* 2012 WL 7681733 at *5 (D. Colo. Oct. 2, 2012) (similar holding), adopted by 2013 WL 950847 (D. Colo. Mar. 8, 2013). *See also Jordan* v. *Freedom Nat'l,* 2016 WL 5363752 (D. Ariz. Sept. 26, 2016) (granting class certification for EFTA anti-waiver claims involving payment authorizations requiring consumers to agree that the payee ''will not be responsible for claims relating to the debit or credit of my account'').

[173] Arbitration Study at 4 (citing *AT&T Mobility LLC* v. *Concepcion,* 131 S. Ct. 1740 (2011)).

[174] As noted in part II.B.2 above, Federal law (TILA) restricts the use of arbitration agreements in the mortgage market. But as discussed at the outset of this part II.C.2, the Bureau routinely finds acts and practices inconsistent with the TILA prohibitions and restrictions.

[175] 2015 Arbitration Study sec. 2.3.4 & sec. 2.5.5 (describing prevalence of class action-limiting terms).

[176] *Id.* sec. 2.3.5 & sec. 2.5.5 (describing prevalence of class action-limiting terms).

[177] *Id.* sec. 8 Table 1 (number of Federal class action settlements, by market, identified from cases filed from 2010 to 2012) & Table 8 (gross monetary relief to class members, by market).

[178] *Id.* sec. 6.7.1 (motions to compel arbitration of putative class litigation filed in Federal court and selected State courts from 2010 through 2012 in payday loan, private student loan, and automobile finance markets).

[179] 82 FR 33210 (July 19, 2017).

[180] 82 FR 55500 (Nov. 22, 2017) (discussing adoption of joint resolution of Congress disapproving the 2017 rule, signed by the President).

[181] Arbitration Study sec. 2 at 56.

[182] *Id.* sec. 2.5.7 (noting three storefront payday loan agreements specified time limits for consumer claims).

[183] The Bureau supervises the consumer reporting market pursuant to its rule defining larger participants in that market. *See* 12 U.S.C. 5514(a)(1)(B) & 5514(a)(2); 12 CFR 1090.104.

[184] Arbitration Study sec. 8.3.1 Figure 1.

[185] *Id.* sec. 8.3.3 Table 8.

[186] *See, e.g., Coulter* v. *Experian Info. Sols., Inc.,* Case No. 20–cv–1814 (E.D. Pa.) (Order Feb. 25, 2021), 2021 WL 735726.

[187] The Bureau supervises the consumer debt collection market pursuant to its rule defining larger participants in that market. *See* 12 U.S.C. 5514(a)(1)(B) & 5514(a)(2); 12 CFR 1090.105.

to block class actions.[188] When used in this manner, any valid claims that would have been asserted only on a class basis are suppressed. Such potential for claim suppression may pose risks to consumers. Indeed, the collective action mechanism can generate relief in this market, as the Bureau's Arbitration Study found that Fair Debt Collection Practices Act (FDCPA) claims were by far the most common type of claim in Federal class action settlements the Bureau analyzed from cases filed between 2010 and 2012.[189] And these settlements provided over $95 million in monetary relief to consumers.[190]

In addition, as discussed above, when setting up recurring payments or payment plans on loans, creditors or their collectors may use contract terms that attempt to limit or waive consumers' rights to cancel these payments, including in circumstances that violate the anti-waiver provision in EFTA section 914.[191]

Debt collectors also may seek to rely on other covered terms and conditions used by creditors. For example, debt collectors may seek to rely on contract terms in creditor contracts that seek to waive the right of consumers to revoke consent to receive autodialed calls under the Telephone Consumer Protection Act and its implementing regulations.[192] In the Bureau's experience and expertise, including based on findings in recent examination activity, waivers of that consumer right to revoke consent—an applicable legal protection administered by the Federal Communications Commission (FCC)—may make it challenging for consumers to exercise applicable legal protections under other statutes the Bureau administers to stop unwanted or even harassing or unlawful debt collection calls. The FCC has determined that consumers' right to revoke this consent cannot be waived.[193] But some courts have not embraced that position.[194] Creditor contract terms that waive any such right to revoke consent to so-called robocalls pose potential risk to consumers in debt collection markets. Similarly, to the extent that debt collectors contract directly with consumers, debt collectors also might attempt to directly deploy contract terms that seek to waive or otherwise limit consumer rights under the FDCPA and its implementing regulations [195] to stop collections communications or to specify inconvenient times, places, or media for collections communications.[196]

As also discussed above, under FTC rules, in consumer credit and collection markets, consumers have important rights to limit the types of assets that can be seized or garnished to enforce a court order to pay a debt. As noted above, terms and conditions may directly flout those rules and the rules may not be comprehensive enough to prevent contract terms that waive or undermine these rights. For example, the Bureau recently found that a very large depository institution sought to limit its liability to consumers for failing to follow these laws.[197] Garnishor creditors or their debt collectors may seek to utilize similar contract terms and conditions.

Further, the Bureau notes that the FDCPA prohibits debt collectors from bringing legal actions in certain inconvenient venues, generally requiring that debt collectors only file suit where the consumer resides or entered into the contract, or in the case of real property, where the real property is located.[198] Forum selection clauses in terms or conditions may suggest otherwise. For example, similar to the case involving a short-term small-dollar lender described above, a debt collector could seek to use such a clause as a basis for filing actions in venues not permitted under the FDCPA.

Finally, some larger participant debt collectors the Bureau supervises also collect medical debt. Collection of amounts subject to waiver, arbitration agreements, or both can pose risks to consumers in the medical debt context. For example, the Department of Health and Human Services (HHS) recently finalized rules implementing the No Surprises Act. Under these implementing regulations, when an insured consumer seeks non-emergency treatment at a hospital, the hospital may use a contract that includes a waiver of the consumer's new Federal law protections against surprise bills. The regulations require that these waivers must meet certain standards, including that they are ''provided voluntarily, meaning the individual is able to consent freely, without undue influence, fraud, or duress . . . .'' [199] HHS estimated that hospitals may deploy these contract waivers nearly 2.5 million times each year.[200] Debt collectors may attempt to collect amounts hospitals charge on the basis of such waivers. Depending on the circumstances of the waiver, this may raise risks to consumers including under applicable legal protections such as the FDCPA and the FCRA.[201] If a consumer contests such an amount in a legal action, a debt collector could seek to enforce the underlying waiver to block such a claim. If a consumer asserts the waiver is invalid, that may raise questions of whether the Holder Rule, described above, applies to ensure the consumer may assert that defense. Or

[188] Arbitration Study sec. 6 at n.94 (describing examples).

[189] *Id.* sec. 8.3.1 Figure 1.

[190] *Id.* sec. 8.3.3 Table 3.

[191] 15 U.S.C. 1693l. *See, e.g., Cobb* v. *Monarch Finance Corp.,* 913 F. Supp. 1164, 1179 (N.D. Ill. 1995) (rejecting motion to dismiss claim that nonbank lender violated EFTA anti-waiver provisions by using contract term purporting to waive right under EFTA to stop payment of preauthorized electronic funds transfers); *Baldukas,* 2012 WL 7681733 at *5 (D. Colo. Oct. 2, 2012) (similar holding), adopted by 2013 WL 950847 (D. Colo. Mar. 8, 2013). *See also Jordan* v. *Freedom Nat'l,* 2016 WL 5363752 (D. Ariz. Sept. 26, 2016) (granting class certification for EFTA anti-waiver claims involving payment authorizations requiring consumers to agree that the payee ''will not be responsible for claims relating to the debit or credit of my account'').

[192] Under the TCPA, according to the FCC, such consent when given to a creditor in connection with an existing debt may also extend to the debt collector. Implementing the Telephone Consumer Protection Act of 1991, Request of ACA Int'l for Clarification and Declaratory Ruling, 23 FCC Rcd 559, 563–65 (Feb. 1, 2008).

[193] *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991,* 30 FCC. Rcd. 7961, 7994–7999 (2015); *ACA International* v. *FCC,* No. 15–1211 (D.C. Cir. 2018). *See also Ginwright* v. *Exeter Finance Corp.,* 280 F.Supp.3d 674, 683–84 (D. Md. 2017) (holding that a standard contractual term in an automobile finance agreement prohibiting the consumer from revoking consent to be called would violate FCC ruling that a consumer has a right of revocation); *Jara* v. *GC Servs. LP,* 2018 WL 2276635 at *5 (C.D. Cal. May 17, 2018) (same, in private legal action by consumer against a debt collector).

[194] *Reyes* v. *Lincoln Automotive Fin. Svs.,* 16–2104–cv, 2017 WL 2675363 (2d Cir. June 22, 2017); *Medley* v. *Dish Network, LLC,* No. 18–13841 (11th Cir. 2020). *See also Harris* v. *Navient Sols., LLC,* 2018 WL 3748155 (D. Conn. Aug. 7, 2018) (applying *Reyes* to private legal action by consumer against student loan servicer).

[195] *See* Bureau's Regulation F at 12 CFR part 1006.

[196] *Cf. Clark* v. *Capital Credit & Collection Services, Inc.,* 460 F.3d 1162, 1170 (9th Cir. 2006) (applying heightened standard of voluntariness but finding that consumer's initiation of contact with a debt collector constituted a limited waiver of the consumer's cease communications request under the FDCPA).

[197] *In re Bank of America, N.A.,* Admin. Proc. 2022–CFPB–0002 (Consent Order filed May 4, 2022), ¶ 49 *et seq.* (citing deposit agreement provision stating that bank has ''no liability to'' the consumer if it follows the provisions of the contract), *https://files.consumerfinance.gov/f/documents/cfpb_bank-of-america_consent-order_2022-05.pdf.*

[198] 15 U.S.C. 1692i(a).

[199] 45 CFR 149.420(c)(2)(i).

[200] HHS Supporting Statement—Part A, Requirements Related to Surprise Billing: Qualifying Payment Amount, Notice, and Consent, Disclosure on Patient Protections Against Balance Billing, and State Law Opt-in (CMS–10780/OMB control number: 0938–1401) at 16.

[201] *See* CFPB Bulletin 2022–01, ''Medical Debt Collection and Consumer Reporting Requirements in Connection with the No Surprises Act,'' 87 FR 3025 (Jan. 20, 2022).

the debt collector could seek to enforce an arbitration agreement the hospital may enter into with the consumer. In addition, in a different medical debt context, debt collectors could seek to enforce arbitration agreements in long-term care facility admission contracts. If a debt collector uses an arbitration agreement in that context, its use may raise a question about whether the consumer was given a choice to accept the arbitration agreement as is required by HHS regulations and whether the arbitration agreement complies with other requirements in the HHS regulations.[202]

Student Loan Servicing Market [203]

As in the consumer debt collection market discussed above, student loan servicers may attempt to rely on waivers or other covered terms and conditions in creditor contract clauses to defend against legal actions by consumers. Examples of waivers that may pose risks to consumers include terms and conditions attempting to waive dischargeability of loans prior to the filing of a bankruptcy petition. In addition, depending on the facts and circumstances and applicable law, student loan servicers may use creditor contracts to compel arbitration of claims consumers file in court.[204] As noted above, while class actions can provide relief to student loan borrowers, arbitration agreements in private student loan contracts can be used to block that relief. Further, as with creditors and their debt collectors discussed above, loan servicers also could attempt to use terms and conditions for payment authorizations that attempt to limit or waive consumers' rights to cancel these payments—including in circumstances that may violate the anti-waiver provision in EFTA section 914.

Remittance Market [205]

Remittance transfer service agreements may contain rights waivers that are prohibited by statute. The Bureau recently resolved an enforcement action for violations of EFTA's anti-waiver provision by a remittance provider.[206] In addition, the Bureau recently reported that examiners found multiple instances of such violations in remittance transfer service agreements with consumers in direct violation of the law. Specifically, examiners found terms and conditions that expressly limited consumer rights under EFTA section 916 to bring legal action against the institution and to recover costs and attorney's fees.[207]

In addition, with respect to arbitration agreements and waivers of collective legal action, the Bureau's Arbitration Study noted an example of $5.5 million in monetary relief in a Federal class action settlement in the remittances market.[208]

3. Making Information Collected in the Registry Publicly Available Would Serve the Public Interest

The public transparency provisions in proposed § 1092.303, described in the section-by-section analysis in part V below, also accomplish core elements of the Bureau's mission.

Congress anticipated that the insights the Bureau would gain from mandatory market monitoring should at times become available to a wider audience than just Bureau employees. Not only did Congress mandate that the Bureau ''publish not fewer than 1 report of significant findings of its monitoring . . . in each calendar year,'' but it also instructed that the Bureau may make non-confidential information available to the public ''as is in the public interest.'' [209] Congress gave the Bureau discretion to determine the format of publication, authorizing the Bureau to make the information available ''through aggregated reports or other appropriate formats designed to protect confidential information in accordance with [specified protections in this section].'' [210] These instructions regarding public release of market monitoring information align with one of the Bureau's ''primary functions'' mentioned above—to ''publish[ ] information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets.'' [211] CFPA section 1022(c)(7)(B) similarly contemplates that publishing registry information for this purpose can be beneficial to consumers, authorizing the Bureau to ''publicly disclose registration information to facilitate the ability of consumers to identify covered persons that are registered with the Bureau.'' [212]

The Bureau believes that publication of registration information is in the public interest for a variety of reasons as discussed below and in the section-by-section analysis of proposed § 1092.303.

Other regulators would be able to quickly access the centralized, publicly-accessible database, facilitating their efficient prioritization of oversight of supervised nonbanks that, in their judgment, use particularly risky covered terms and conditions. These regulators could associate the data the Bureau publishes with other information they have about supervised nonbanks, providing a better picture of their practices. This oversight would be particularly valuable when the covered terms and conditions limit private enforcement or exercise of rights. Some regulators also may identify published covered terms and conditions explicitly prohibited by laws they enforce or supervise, including some of the laws discussed in part II.B above and similar laws. This information may spur action by those regulators to enjoin or otherwise stop further use of those covered terms and conditions. However, as discussed in part VII.E below, the registry already would disincentivize use of expressly prohibited covered terms and conditions. Thus, it is uncertain how prevalent use of expressly prohibited covered terms and conditions would be in the registry.

More broadly, use of form contracts and covered terms and conditions have long been topics of public debate in consumer finance markets and beyond, informing adoption of the legal protections applicable to consumer financial products and services offered in markets supervised by the Bureau discussed in part II.B and the broader public policy they reflect. The registry would provide reliable, comprehensive, and periodically updated data about this matter of significant public import. For example, regulators, legislatures, courts, the legal profession, researchers, universities, and other non-governmental organizations, the press, and the general public would be able to use data from the registry to monitor trends and to identify high-risk areas affecting consumers in markets for consumer financial products and services. Indeed, as described above,

[202] *See* 42 CFR 483.70(n)(2).

[203] The Bureau supervises the student loan servicing market pursuant to its rule defining larger participants in that market. *See* 12 U.S.C. 5514(a)(1)(B) & 5514(a)(2); 12 CFR 1090.106.

[204] *See, e.g., Howard* v. *Navient Solutions, LLC,* 2018 WL 5112634 at *4 (W.D. Wa. 2018) (granting student loan servicer's motion to compel arbitration of consumer's claims based on arbitration provision in original promissory note).

[205] The Bureau supervises the remittance market (International Money Transfer Market) pursuant to its rule defining larger participants in that market. *See* 12 U.S.C. 5514(a)(1)(B) & 5514(a)(2); 12 CFR 1090.107.

[206] *In re Choice Money Transfer, Inc.,* Admin. Proc. 2022–CFPB–0009 (Oct. 4, 2022), ¶¶ 79–83 (consent order citing a waiver of liability that was inconsistent than rights conferred by regulations implementing EFTA).

[207] *See* Supervisory Highlights (Spring 2022) at sec. 2.8.2.

[208] Arbitration Study sec. 8 at 25.

[209] 12 U.S.C. 5512(c)(3).

[210] 12 U.S.C. 5512(c)(3)(B).

[211] 12 U.S.C. 5511(c)(3).

[212] 12 U.S.C. 5512(c)(7)(B).

some statutory consumer legal protections either specifically contemplate waivers or are silent on the topic. A registry of waivers could highlight legal protections that are at risk of being undermined.

Currently, there appears to be no similar database of covered terms and conditions available to the public with widespread coverage of one or more markets for consumer financial products and services. The public appears to have access to only limited data, such as form contracts used by certain private student lenders registered in the few States that collect and publish the entire form contract, form contracts for first-lien mortgages on site-bult homes insured, guaranteed, or eligible for purchase in Federal mortgage programs, and to some degree, form contracts marketed by form providers for automobile finance transactions. As a result, a comprehensive, periodically-updated database focused on the use of covered terms and conditions would substantially inform that debate and more fully ground it in data.[213]

Other benefits exist as well. For example, other regulators, researchers, consumer advocacy organizations, the press, and others could review this information and, where it indicates a concern, potentially educate consumers about identifying and managing these risks. Those activities could complement the Bureau's consumer education functions. Based on information gleaned from trends in the information collected, researchers, non-governmental organizations, and other regulators could provide timely and well-informed consumer education materials. And companies that do not include covered terms or conditions in their contracts may consider using their absence from being required to register and other information in the registry from competitors to market their consumer financial products or services as potentially less risky to consumers.

Similarly, publication of registration information would facilitate the ability of consumers to identify supervised nonbank covered persons that are registered with the Bureau. CFPA section 1022(c)(7)(B) contemplates that publishing registry information for this purpose can be beneficial to consumers.[214] Publishing registration information identifying the supervised nonbanks that use covered terms and conditions could help consumers when disputes or problems arise. When a consumer has a dispute with a supervised registrant giving rise to a potential legal claim, the consumer or their representative could quickly check the Bureau's website to see if the supervised registrant was identified as using covered terms or conditions for that type of consumer financial product or service.[215] Reviewing information in a published registry would not be a substitute for reviewing the covered form contract. But the registry can be a resource that may be easier for consumers to perform an initial check quickly, before obtaining and reviewing their entire contract. It also may identify additional covered terms or conditions that may affect to the consumer's account or transaction.

All of the above groups and the rest of the general public also would have access to identifying information collected on the nonbank itself, affording a better understanding of which specific nonbanks are subject to supervision and examination by the Bureau.

Finally, publication would formally align the proposed nonbank registration system with the Federal government's emphasis on making government data available to and usable by the public, by default, to the greatest extent possible.[216]

D. Other Alternatives Considered

As explained in part II.C and in the section-by-section analysis in part V, the Bureau has considered a number of alternatives to the scope of the rule and the coverage of particular provisions. In addition to those alternatives, the Bureau has considered several other alternatives.

The Bureau considered proposing that supervised nonbanks submit their covered form contracts, instead of providing information about them. That alternative might reduce burdens on some registrants, who would not have to review their contracts in order to provide standardized data. However, that type of registry would result in a much greater volume of information collected and published. As discussed in this part II above, the Bureau is concerned that terms and conditions waiving or limiting enforcement of consumer legal protections may not receive adequate attention by consumers or the public. Publication of additional information unrelated to those types of terms could reduce the attention to those type of terms in the registry. At the same time, the Bureau also lacks the resources to engage in an annual review of the full text of all of the standard contracts of every nonbank subject to its supervisory authority. In particular, the Bureau lacks the resources to extract from such standard contracts the standardized data on the clauses of concern described in the proposal. Therefore, collecting this data from the supervised registrants themselves would establish a registration system that is more effective.

The Bureau also has considered alternative means of collecting information relating to use of covered terms and conditions, including requesting the information on an *ad hoc* basis from supervised entities, whether during examinations or through an order pursuant to CFPA section 1022(c)(4)(B)(ii). However, these alternatives generally would be infeasible for accomplishing the goals of the proposed rule. As discussed in the impacts analysis in part VII, there are thousands of nonbanks subject to the Bureau's supervisory authority. By contrast, the Bureau's supervision program historically has been designed to conduct slightly more than 100 on-site examinations per year, and less than 1,000 overall exam events per year.[217] In addition, as discussed in this part II above, existing systems do not generate a comprehensive list of persons the Bureau may supervise.[218] In addition,

[213] The Bureau's recent proposal to register orders also, in conjunction with data gathered under this proposal, can help the public to understand when contract terms and conditions limiting private action are associated with conduct that leads to public orders. *See* Nonbank Registration—Orders Proposal.

[214] 12 U.S.C. 5512(c)(7)(B).

[215] This information could indicate whether the consumer's covered terms and conditions were typical of those offered to other consumers. But the consumer's form contract itself (which a consumer's representative may already have) typically would be used with many consumers by its very nature. And arbitration agreements generally do not allow class actions, as discussed elsewhere in this part II. Thus, for these and other reasons discussed in part VII.E, a significant increase in class action litigation as a result of the proposal is unlikely. Indeed, a chief purpose of the proposal is to increase public oversight of covered terms and conditions precisely because of the limitations covered terms and conditions impose on private enforcement.

[216] *See, e.g.,* Open, Public, Electronic and Necessary Government Data Act, in title II of Public Law 115–435 (Jan. 14, 2019); Office of Management & Budget, M–19–18, ''Federal Data Strategy—A Framework for Consistency'' (June 4, 2019), *https://www.whitehouse.gov/wp-content/uploads/2019/06/M-19-18.pdf* (last visited Dec. 7, 2022).

[217] *See* CFPB Annual Performance Plan and Report FY 2022 at Table 2.2.1.1 (on-site exams) & Table 2.2.1.2 (all supervisory events with significant activity), *https://files.consumerfinance.gov/f/documents/cfpb_performance-plan-and-report_fy22.pdf.*

[218] For markets where the Bureau has information about many of the participants, the Bureau also has considered the alternative of issuing orders on a recurring basis, which might approximate an annual collection. However, a general plan for such orders, even if recurring, would not establish a rule that creates predictability, reliability, and certainty that a rule provides. For example, the proposed rule would require nonbanks to collect the relevant information. Absent that requirement in regulation,

an important purpose of the proposal is to facilitate an assessment of the adequacy of applicable legal protections for consumers whose contracts contain covered terms and conditions. These legal protections are not *ad hoc* or time-limited. Furthermore, the Bureau's need to consider their adequacy as part of its monitoring and supervisory work is similarly ongoing, and so is best served by a system that collects information on a recurring basis. In addition, these alternatives would not be as effective at informing the Bureau's ongoing prioritization of its supervisory resources for examining nonbank covered persons. Nonbank covered persons' use of covered terms and conditions may change over time, as business structures, product offerings, and markets evolve. In the Bureau's experience and expertise, supervised registrants frequently make changes in terms and conditions in their form contracts, including to alter or add covered terms or conditions. Doing a one-time collection or performing point-in-time collections would be less useful to the Bureau's continuous prioritization. And for the same reasons, it would be less useful to the public as well.

Further, the Bureau has considered the alternative of not specifying in the rule whether information collected would be publicly released. After all, the Bureau has authority to publicly release information under CFPA section 1022(c)(3) without first promulgating a rulemaking. In addition, the information collection under proposed § 1092.302 would enable the Bureau to monitor for risks to consumers and to prioritize its resources based on risk indicators, even without publication of the information as described in proposed § 1092.303. Thus, the information collection requirements in proposed § 1092.302 can operate independently of the publication requirements in proposed § 1092.303.

However, the Bureau is proposing to specify expectations about public release in the rule. Without specifying these expectations, the rule itself would lack transparency, and submitters of information, and the public (consumers, competitors, and researchers, among others) would be less certain about how the Bureau will use and disclose the information. In addition, by including in the proposed regulation its plans to disclose the data, the Bureau will gain the benefit of public comment on those plans in the rulemaking process, including comment on the degree to which the submitters of collected information may keep that information confidential (a topic on which the Bureau requests comment in the section-by-section analysis of proposed § 1092.303 below). In any event, the Bureau requests comment on whether there is an important reason for nondisclosure of the information collected when disclosure otherwise would be permitted by law.

Finally, this proposal reflects a priority on establishing a system by rule for the collection of information on the use of covered terms and conditions from supervised nonbanks as a subset of covered persons. One of the reasons for prioritizing coverage of supervised nonbanks is the need to identify them, as discussed in this part II.C.2 above. As discussed in the impacts analysis in part VII of the proposal, the Bureau estimates that there are thousands of nonbanks subject to its supervisory authority under CFPA section 1024(a). In addition, there is no comprehensive registry of identifying information for nonbanks subject to the Bureau's supervisory authority across supervised markets. Further, given resource constraints, the Bureau does not regularly examine each of the thousands of nonbanks subject to its supervisory authority under CFPA section 1024. Rather, under CFPA section 1024(b)(2), the Bureau must implement a risk-based program for supervision of these nonbanks. By contrast, Federal prudential regulators track and already publicize information about the identity and size of depository institutions.[219] These include depository institutions subject to the Bureau's supervisory authorities under CFPA sections 1025 and 1026. The Bureau also publicly identifies the fewer than 200 large depository institutions subject to its supervisory authority under CFPA section 1025, and it has procedures for regularly supervising them.[220] In light of all these considerations, the Bureau is prioritizing this proposal to establish a registration system for identifying those nonbanks that use covered terms or conditions and monitoring and assessing the associated risks to consumers as discussed in this part II above.[221] This proposal does not affect how the Bureau can apply its functions for monitoring and assessing risks posed by covered terms and conditions used by depository institutions and credit unions subject to its authority under CFPA sections 1022, 1025, and 1026.

III. Outreach

The Bureau received feedback from external stakeholders in developing this proposal. The following is a brief summary of that effort.

A. State Agencies and Tribal Governments

As required by CFPA sections 1022(c)(7) and 1024(b)(7),[222] the Bureau consulted with State agencies and Tribal governments, including agencies involved in supervision of nonbanks and agencies charged with law enforcement, in crafting the proposed registration requirements and system.[223] In developing this proposal, the Bureau considered the input it received from State agencies and Tribal governments. This input included concerns State agencies expressed regarding possible duplication between any registration system the Bureau might build and existing registration systems. This input also included concerns Tribal governments expressed regarding maintaining Tribal sovereignty.

B. Federal Regulators

Before proposing a rule under the Federal consumer financial laws, including CFPA sections 1022(c) and 1024(b), the Bureau must consult with

supervised nonbanks could find responding to an order more burdensome.

[219] *See, e.g.,* FDIC Bank Find Suite, *https://banks.data.fdic.gov/bankfind-suite/bankfind;* Federal Financial Institutions Examinations Council National Information Center, *https://www.ffiec.gov/NPW;* OCC Financial Institutions Lists, *https://www.occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/index-financial-institution-lists.html;* Credit Union Locator, *https://mapping.ncua.gov/.*

[220] *See* CFPB, List of Depository Institutions and Depository Affiliates under CFPB Supervision, *https://www.consumerfinance.gov/compliance/supervision-examinations/institutions/;* CFPB Supervision and Examination Manual, Overview at 5 (describing Bureau's approach to setting regular examination schedules for large depository institutions), *https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_2022-09.pdf.*

[221] In prioritizing this proposal, the Bureau also has considered other factors, including the following: The Bureau's existing regulations already require depository institutions to submit to the Bureau information about their agreements in certain markets, such as credit cards and prepaid accounts. The Bureau makes these agreements publicly available at *https://www.consumerfinance.gov/credit-cards/agreements/* and *https://www.consumerfinance.gov/data-research/prepaid-accounts/.* In addition, CFPA sections 1022 and 1024 do not expressly authorize the Bureau to establish a registration system for depository institutions, which are excluded from the Bureau's registration authority under section 1022(c)(7)(A) and excluded from the scope of section 1024(b)(7). There is no parallel registration provision in the Bureau's authorities over depository institutions generally.

[222] 12 U.S.C. 5512(c)(7)(C); 12 U.S.C. 5514(b)(7)(D).

[223] During the rulemaking process for issuing rules under the Federal consumer financial laws, Bureau policy is to consult with appropriate Tribal governments. *See https://files.consumerfinance.gov/f/201304_cfpb_consultations.pdf.*

appropriate prudential regulators or other Federal agencies regarding consistency with prudential, market, or systemic objectives administered by such agencies.[224] In developing this proposal, the Bureau consulted with prudential regulators and other Federal agencies and considered the input it received.

IV. Legal Authority

The Bureau is issuing this proposal pursuant to its authority under the CFPA.[225]

A. CFPA Sections 1022(b) and (c)

CFPA section 1022(b)(1) authorizes the Bureau to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' [226] Among other statutes, the CFPA—*i.e.,* title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)—is a Federal consumer financial law.[227] Accordingly, in issuing the proposed rule, the Bureau would be exercising its authority under CFPA section 1022(b) to prescribe rules that carry out the purposes and objectives of the CFPA and prevent evasions thereof. CFPA section 1022(b)(2) prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).[228] For a discussion of the Bureau's standards for rulemaking under CFPA section 1022(b)(2), see part VII below.

CFPA sections 1022(c)(1)–(4) authorize the CFPB to prescribe rules to collect information from covered persons for purposes of monitoring for risks to consumers in the offering or provision of consumer financial products or services. More specifically, CFPA section 1022(c)(1) requires the Bureau to support its rulemaking and other functions by monitoring for risks to consumers in the offering or provision of consumer financial products or services, including developments in the markets for such products or services.[229] CFPA section 1022(c)(2) authorizes the Bureau authorizes the Bureau to allocate resources to perform monitoring required by section 1022(c)(1) by considering ''likely risks and costs to consumers associated with buying or using a type of consumer financial product or service,'' ''understanding by consumers of the risks of a type of consumer financial product or service,'' ''the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers,'' ''rates of growth in the offering or provision of a consumer financial product or service,'' ''the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers,'' and ''the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.'' [230] CFPA section 1022(c)(4)(A) authorizes the Bureau to conduct monitoring required by section 1022(c)(1) by ''gather[ing] information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers.[231] The Bureau is authorized to gather this information by, among other things, requiring covered persons participating in markets for consumer financial products and services to file annual or special reports, or answers in writing to specific questions, that furnish information ''as necessary for the Bureau to fulfill the monitoring . . . responsibilities imposed by Congress.'' [232] The Bureau may require such reports to be filed ''in such form and within such reasonable period of time as the Bureau may prescribe by rule or order. . . .'' [233]

CFPA section 1022(c)(7)(A) further authorizes the Bureau to ''prescribe rules regarding registration requirements applicable to a covered person, other than an insured depository institution, insured credit union, or related person.'' [234] Section 1022(c)(7)(B) provides that, ''[s]ubject to rules prescribed by the Bureau, the Bureau may publicly disclose registration information to facilitate the ability of consumers to identify covered persons that are registered with the Bureau.'' [235] The Bureau interprets section 1022(c)(7)(B) as authorizing it to publish registration information required by Bureau rule under section 1022(c)(7)(A) so that consumers may identify the nonbank covered persons on which the Bureau has imposed registration requirements.

Finally, section 1022(c)(3) authorizes the Bureau to publicly release information obtained pursuant to CFPA section 1022(c), subject to limitations specified therein.[236] Specifically, section 1022(c)(3) states that the Bureau ''may make public such information obtained by the Bureau under [section 1022] as is in the public interest, through aggregated reports or other appropriate formats designed to protect confidential information in accordance with [specified protections in section 1022].'' [237] Information submitted to the Bureau's registry is protected by, among other things, section 1022(c)(8), which states that ''[I]n . . . publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under [the Freedom of Information Act, 5 U.S.C. 552(b)] or [the Privacy Act of 1974, 5 U.S.C. 552a], or any other provision of law, is not made public under [the CFPA].'' [238]

B. CFPA Section 1024(b)

As explained above, section 1024(b) of the CFPA authorizes the Bureau to exercise supervisory authority over certain nonbank covered persons.[239] Section 1024(b)(1) requires the Bureau to periodically require reports and conduct examinations of persons subject to its supervisory authority to assess compliance with Federal consumer

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[224] 12 U.S.C. 5512(b)(2)(B).

[225] Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law, 111–203, 124 Stat. 376 (2010).

[226] 12 U.S.C. 5512(b)(1).

[227] 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the provisions of title X of the Dodd-Frank Act).

[228] 12 U.S.C. 5512(b)(2).

[229] 12 U.S.C. 5512(c)(1).

[230] 12 U.S.C. 5512(c)(2)(A)–(F).

[231] 12 U.S.C. 5512(c)(4)(A).

[232] 12 U.S.C. 5512(c)(4)(B)(ii) (''In order to gather information described in subparagraph (A), the Bureau may . . . require covered persons and service providers participating in consumer financial services markets to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions, furnishing information described in paragraph (4), as necessary for the Bureau to fulfill the monitoring, assessment, and reporting responsibilities imposed by Congress.'').

[233] *Id.*

[234] 12 U.S.C. 5512(c)(7)(A).

[235] 12 U.S.C. 5512(c)(7)(B).

[236] 12 U.S.C. 5512(c)(3) & 5512(c)(7)(B).

[237] 12 U.S.C. 5512(c)(3)(B).

[238] 12 U.S.C. 5512(c)(8).

[239] The nonbank covered persons over which the Bureau has supervisory authority are listed in CFPA section 1024(a)(1). They include covered persons that: offer or provide origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans; are larger participants of a market for consumer financial products or services, as defined by Bureau rule; the Bureau has reasonable cause to determine, by order, that the covered person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services; offer or provide private education loans; or offer or provide payday loans. 12 U.S.C. 5514(a)(1).

financial law, obtain information about the activities and compliance systems or procedures of persons subject to its supervisory authority, and detect and assess risks to consumers and to markets for consumer financial products and services.[240] Section 1024(b)(2) requires that the Bureau establish a risk-based nonbank supervision program. In particular, section 1024(b)(2) requires that the Bureau exercise its supervisory authority over nonbank covered persons based on its assessment of risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable: ''(A) the asset size of the covered person; (B) the volume of transactions involving consumer financial products or services in which the covered person engages; (C) the risks to consumers created by the provision of such consumer financial products or services; (D) the extent to which such institutions are subject to oversight by State authorities for consumer protection; and (E) any other factors that the Bureau determines to be relevant to a class of covered persons.'' [241]

CFPA section 1024(b)(7) in turn identifies three independent sources of Bureau rulemaking authority. First, section 1024(b)(7)(A) requires the Bureau to prescribe rules to facilitate the supervision of nonbank covered persons subject to the Bureau's supervisory authority and assessment and detection of risks to consumers.[242] Second, section 1024(b)(7)(B) authorizes the Bureau to require nonbank covered persons subject to its supervisory authority to ''generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.'' [243] This section authorizes the Bureau to require nonbank covered persons subject to its supervisory authority to create reports regarding their activities for submission to the Bureau. ''Records'' is a broad term encompassing any ''[i]nformation that is inscribed on a tangible medium or that, having been stored in an electronic or other medium, is retrievable in perceivable form,'' or any ''documentary account of past events.'' [244] Section 1024(b)(7)(B) thus authorizes the Bureau to require nonbank covered persons subject to its supervisory authority to ''generate''—*i.e.,* create [245]—reports and then ''provide'' them to the Bureau.[246]

The third source of authority, CFPA section 1024(b)(7)(C), authorizes the Bureau to prescribe rules regarding nonbank covered persons subject to its supervisory authority ''to ensure that such persons are legitimate entities and are able to perform their obligations to consumers.'' [247] Under this section, the Bureau may prescribe substantive rules to ensure that supervised entities are willing and able to comply with their legal, financial, and other obligations to consumers, including those imposed by Federal consumer financial law. The term ''obligations'' encompasses ''anything that a person is bound to do or forbear from doing,'' including duties ''imposed by law, contract, [or] promise.'' [248] As discussed in the Bureau's recent proposal to establish a nonbank registration for certain orders, the Bureau construes the phrase ''legitimate entities'' as encompassing an inquiry into whether an entity takes seriously its duty to ''[c]omply[ ] with the law.'' [249]

While each of the three subparagraphs of section 1024(b)(7) discussed above operates as independent sources of rulemaking authority, the subparagraphs also overlap in several respects, such that a particular rule may be (and, in the case of this proposal, is) authorized by more than one of the subparagraphs. For example, rules requiring the generation, provision, or retention of records generally will be authorized under both subparagraphs 1024(b)(7)(A) and (B). That is so because subparagraph 1024(b)(7)(B) makes clear that the Bureau's authority under subparagraph 1024(b)(7)(A) to prescribe rules to facilitate supervision and assessment and detection of risks to consumers extends to requiring covered persons subject to the Bureau's supervisory authority ''to generate, provide or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.'' [250]

V. Section-by-Section Analysis

Part 1092

Subpart A—General

Proposed subpart A is identical to proposed subpart A in the Bureau's separate proposal relating to the registration of certain orders.[251] The Bureau is proposing a common, identical subpart to be shared between the two rulemakings due to the commonality of provisions regarding authority and purpose, submission and use of registration information, and severability. However, the Bureau would consider separate or independent subparts if warranted, based on public comments received in each rulemaking. The Bureau seeks comment on both approaches, *i.e.,* common or separate subparts for the two rules, specifically including comments on whether subpart A should remain separate from subpart C.

Section 1092.100 Authority and Purpose

100(a) Authority

Proposed § 1092.100(a) would set forth the legal authority for proposed 12

[240] 12 U.S.C. 5514(b)(1), provides: ''The Bureau shall require reports and conduct examinations on a periodic basis of persons described in subsection (a)(1) for purposes of—(A) assessing compliance with the requirements of Federal consumer financial law; (B) obtaining information about the activities and compliance systems or procedures of such person; and (C) detecting and assessing risks to consumers and to markets for consumer financial products and services.''

[241] 12 U.S.C. 5514(b)(2).

[242] 12 U.S.C. 5514(b)(7)(A) (''The Bureau shall prescribe rules to facilitate supervision of persons described in subsection (a)(1) and assessment and detection of risks to consumers.'').

[243] 12 U.S.C. 5514(b)(7)(B) (''The Bureau may require a person described in subsection (a)(1), to generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.'').

[244] *Record, Black's Law Dictionary* (11th ed. 2019); *accord, e.g., Andrews* v. *Sirius XM Radio Inc.,* 932 F.3d 1253, 1259 (9th Cir. 2019) (citing *Black's Law Dictionary's* and *Webster's Third New International Dictionary's* definitions of ''record'').

[245] *See Generate, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/generate* (defining ''generate'' as ''to bring into existence'').

[246] The Bureau's authority under section 1024(b)(7)(B) to require generation of records complements its authority under section 1024(b)(1) to ''require reports . . . on a periodic basis'' from nonbank covered persons subject to its supervisory authority. 12 U.S.C. 5514(b)(1).

[247] 12 U.S.C. 5514(b)(7)(C) (''The Bureau may prescribe rules regarding a person described in subsection (a)(1), to ensure that such persons are legitimate entities and are able to perform their obligations to consumers. Such requirements may include background checks for principals, officers, directors, or key personnel and bonding or other appropriate financial requirements.'').

[248] *Obligation, Black's Law Dictionary* (11th ed. 2019).

[249] *Legitimate, Black's Law Dictionary* (11th ed. 2019) (defining ''legitimate'' as ''[c]omplying with the law; lawful''); *see also Legitimate, Webster's Second New International Dictionary* (1934) (defining ''legitimate'' as ''[a]ccordant with law or with established legal forms and requirements; lawful''); *Legitimate, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/legitimate* (defining ''legitimate'' as ''accordant with law or with established legal forms and requirements''). *See also* Nonbank Registration—Orders Proposal at 21.

[250] 12 U.S.C. 5514(b)(7)(B); *see also, e.g., Barton* v. *Barr,* 140 S. Ct. 1442, 1453 (2020) (''redundancies . . . in statutory drafting'' may reflect ''a congressional effort to be doubly sure''); *Atlantic Richfield Co.* v. *Christian,* 140 S. Ct. 1335, 1350 n.5 (2020) (concluding that ''Congress employed a belt and suspenders approach'' in statute); *Marx* v. *Gen. Revenue Corp.,* 568 U.S. 371, 383–85 (2013) (statutory language is ''not . . . superfluous if Congress included it to remove doubt'' about an issue).

[251] Nonbank Registration—Orders Proposal. That proposal also would establish specific registration requirements in subpart B of part 1092.

CFR part 1092, including all subparts. Proposed § 1092.100 would refer to CFPA sections 1022(b) and (c) and 1024(b),[252] which are discussed in sections II.C and IV of the proposal above.

100(b) Purpose

Proposed § 1092.100(b) would explain that the purpose of this part is to prescribe rules regarding nonbank registration requirements, to prescribe rules concerning the collection of information from registered entities, and to provide for public release of that information as appropriate.

Section 1092.101 General Definitions

Proposed § 1092.101 would define terms that are used elsewhere in proposed part 1092 of the rules. Proposed § 1092.101(a) would define the terms ''affiliate,'' ''consumer,'' ''consumer financial product or service,'' ''covered person,'' ''Federal consumer financial law,'' ''insured credit union,'' ''person,'' ''related person,'' ''service provider,'' and ''State'' as having the meanings set forth in the CFPA, 12 U.S.C. 5481. Some of these terms would be used only in subpart B if the Bureau adopts its separate proposal relating to the registration of certain orders.[253]

Proposed § 1092.101(b) would define the term ''Bureau'' as a reference to the Consumer Financial Protection Bureau.

Proposed § 1092.102(c) would clarify that the terms ''include,'' ''includes,'' and ''including'' throughout part 1092 would denote non-exhaustive examples covered by the relevant provision.[254]

Proposed § 1092.101(d) would define the term ''nonbank registration system'' to mean the Bureau's electronic registration system identified and maintained by the Bureau for the purposes of part 1092. Proposed § 1092.101(e) would define the term ''nonbank registration system implementation date'' to mean, for a given requirement or subpart of part 1092, the date(s) determined by the Bureau to commence the operations of the nonbank registration system in connection with that requirement or subpart. The Bureau currently anticipates that the nonbank registration system implementation date with respect to proposed subpart C would occur sometime after the effective date of the proposed rule and no earlier than January 2024. The actual nonbank registration system implementation date would depend, in significant part, upon the Bureau's ability to develop and launch the required technical systems that will support the submission and review of applicable filings. For subpart C, the Bureau also would establish an annual registration date as defined in proposed § 1092.301(f). As discussed in the section-by-section analysis of proposed § 1092.301(f), the annual registration date will occur after the system implementation date for subpart C.

In connection with setting both the nonbank registration system implementation date and the annual registration date, the Bureau seeks comment on how much time entities would need to comply with the requirements of part 1092 and to register with the nonbank registration system including under subpart C. The Bureau would set these dates after considering feedback provided by commenters regarding the time registrants would need to implement the requirements of this part including its subpart C. In particular, the Bureau would provide advance public notice regarding the nonbank registration system implementation date with respect to subpart C and the annual registration date to enable entities subject to subpart C to prepare and submit timely filings to the nonbank registration system.

Section 1092.102 Submission and Use of Registration Information

102(a) Filing Instructions

Proposed § 1092.102(a) would provide that the Bureau shall specify the form and manner for electronic filings and submissions to the nonbank registration system that are required or made voluntarily under part 1092. The Bureau would issue specific guidance for filings and submissions. The Bureau anticipates that its filing instructions may, among other things, specify information that filers must submit to verify that they have authority to act on behalf of the entities for which they are purporting to register. The Bureau proposes to accept electronic filings and submissions to the nonbank registration system only and does not propose to accept paper filings or submissions.

Proposed § 1092.102(a) also would state that the Bureau may provide for extensions of deadlines or time periods prescribed by the proposed rule for persons affected by declared disasters or other emergency situations. Such situations could include natural disasters such as hurricanes, fires, or pandemics, and also could include other emergency situations or undue hardships including technical problems involving the nonbank registration system. For example, the Bureau could defer deadlines during a presidentially-declared emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or a presidentially-declared pandemic-related national emergency under the National Emergencies Act (50 U.S.C. 1601 *et seq.*). The Bureau would issue guidance regarding such situations. The Bureau seeks comment on the types of situations that may arise in this context, and about appropriate mechanisms for addressing them.

102(b) Coordination or Combination of Systems

Proposed § 1092.102(b) would provide that in administering the nonbank registration system, the Bureau may rely on information a person previously submitted to the nonbank registration system under part 1092. This proposed section would clarify, for example, that the registration process for proposed subpart C may take account of information previously submitted, such as in a prior annual registration under subpart C or, if applicable, a registration of certain orders and related information under subpart B.

Proposed § 1092.102(b) also would provide that in administering the nonbank registration system, the Bureau may coordinate or combine systems with State agencies as described in CFPA sections 1022(c)(7)(C) and 1024(b)(7)(D). Those statutory provisions provide that the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate. This proposed section would clarify that the Bureau may develop or rely on such systems as part of maintaining the nonbank registration system and may also rely on previously submitted information. The Bureau seeks comment on the types of coordinated or combined systems that would be appropriate and the types of information that could be obtained from or provided to State agencies. For example, as discussed in part II.C above, some States have begun implementing public registries for private student loan agreements. The Bureau requests comment on whether the proposed nonbank registration system should identify whether a covered form contract also appears in such State registries, and whether and how the Bureau's nonbank registration should utilize information already collected by State registries in the

[252] 12 U.S.C. 5512(b), (c); 12 U.S.C. 5514(b).

[253] Nonbank Registration—Orders Proposal.

[254] *See, e.g., Christopher* v. *SmithKline Beecham Corp.,* 567 U.S. 142, 162 (2012) (use of ''includes'' indicates that ''the examples enumerated in the text are intended to be illustrative, not exhaustive'').

process of registering covered terms and conditions in covered form contacts.

102(c) Bureau Use of Registration Information

Proposed § 1092.102(c) would provide that the Bureau may use the information submitted to the nonbank registration system under this part to support its objectives and functions, including in determining when to exercise its authority under CFPA section 1024 to conduct examinations and when to exercise its enforcement powers under subtitle E of the CFPA.

The Bureau proposes to establish the nonbank registration system under its registration and market-monitoring rulemaking authorities under CFPA section 1022(b)(1), (c)(1)–(4) and (c)(7), and under its supervisory rulemaking authorities under CFPA section 1024(b)(7)(A), (B), and (C). As discussed in greater detail in part II.C above, the Bureau would be able to use the information submitted under the nonbank registration system to monitor for risks to consumers in the offering or provision of consumer financial products or services, and to support all of its functions as appropriate, including its supervisory, rulemaking, enforcement, and other functions. Among other things, the Bureau may rely on the information submitted under this part as it considers whether to initiate supervisory activity at a particular entity, in determining the frequency and nature of its supervisory activity with respect to particular entities or markets, in prioritizing and scoping its supervisory, examination, and enforcement activities, and otherwise in assessing and detecting risks to consumers. In particular, the Bureau may consider this information in developing its risk-based supervision program and in assessing the risks posed to consumers in relevant product markets and geographic markets and the factors described in 12 U.S.C. 5514(b)(2) with respect to particular covered persons, and for enforcement purposes.[255]

Proposed § 1092.102(c) also would provide that part 1092, and registration under that part, would not alter any applicable process whereby a person may dispute that it qualifies as a person subject to Bureau authority. For example, 12 CFR 1090.103 establishes a Bureau administrative process for assessing a person's status as a larger participant under CFPA section 1024(a)(1)(B) and (2) and 12 CFR part 1090. As specified in 12 CFR 1090.103(a), if a person receives a written communication from the Bureau initiating a supervisory activity pursuant to CFPA section 1024, such person may respond by asserting that the person does not meet the definition of a larger participant of a market covered by 12 CFR part 1090 within 45 days of the date of the communication. Section 1090.103 of part 1090 establishes a process for review and determination by a Bureau official regarding the person's larger participant status. Section 1090.103(c) of part 1090 provides that, in reaching that determination, the Bureau official shall review the person's affidavit and related information, as well as any other information the official deems relevant.

Under proposed § 1092.102(c), a person may submit such an assertion regarding the person's status as a larger participant under 12 CFR 1090.103 notwithstanding any registration or information submitted to the nonbank registration system under part 1092, including any submission of identifying information. Submission of such assertions regarding larger participant status to the Bureau under 12 CFR 1090.103, including the Bureau's processes regarding the treatment of such assertions and the effect of any determinations regarding the person's supervised status, would be governed by the provisions of 12 CFR part 1090. The Bureau may use the information provided to the nonbank registration system in connection with making any determination regarding a person's supervised status under 12 CFR 1090.103, along with the affidavit submitted by the person and other information as provided in that section. However, the submission of information to the nonbank registration system would not prevent a person from also submitting other information under 12 CFR 1090.103.

Section 1092.103 Severability

Proposed § 1092.103 would provide that the provisions of the proposed rule are separate and severable from one another, and that if any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect. This is a standard severability clause of the kind that is included in many regulations to clearly express agency intent about the course that is preferred if such events were to occur. The Bureau has carefully considered the requirements of the proposed rule, both individually and in their totality, including their potential costs and benefits to covered persons and consumers. In the event a court were to stay or invalidate one or more provisions of this rule as finalized, the Bureau would want the remaining portions of the rule as finalized to remain in full force and legal effect.

Subpart B—Reserved

Subpart B of part 1092 would be reserved for rules relating to the registration of orders. Those rules are the subject of a separate proposal.[256]

Subpart C—Use of Form Contracts To Impose Certain Terms and Conditions That Seek To Waive or Limit Consumer Legal Protections

The Bureau proposes that subpart C of part 1092 specify requirements for supervised nonbanks to register in the nonbank registration system their identifying information and information about certain terms and conditions in form contracts they use that seek to waive consumer legal protections or limit private enforcement or exercise of consumer rights, defined in proposed § 1092.301(c) as covered terms or conditions. The Bureau requests comment on each of the provisions of proposed subpart C, including whether they should be modified and whether proposed subpart C should include additional provisions, and if so, what the modifications or additions should be and why.

Section 1092.300 Scope

Proposed § 1092.300 would describe the scope of subpart C of part 1092 in two parts. First, subpart C would require supervised nonbanks to collect and submit information to the Bureau's nonbank registration system regarding their use of form contracts to impose certain terms and conditions that seek to waive or limit consumer legal rights and other applicable legal protections. Second, subpart C would provide for the Bureau to make this information

[255] *See, e.g.,* 12 U.S.C. 5514(b)(2)(C), (D), and (E) (providing that in prioritizing examinations the Bureau shall take into account ''the risks to consumers created by the provision of such consumer financial products or services,'' ''the extent to which such institutions are subject to oversight by State authorities for consumer protection,'' and ''any other factors that the Bureau determines to be relevant to a class of covered persons''). Depending upon the circumstances, the Bureau may consider registration under this part to be a risk factor under these provisions for those covered persons subject to the proposed rule. *See also, e.g.,* 12 U.S.C. 5565(c)(3)(D) and (E) (providing that in determining the amount of civil money penalties the Bureau shall take into account ''the history of previous violations'' and ''such other matters as justice shall require'').

In exercising its authorities under any of these provisions, the Bureau may take into account any risks that it identifies in connection with a covered person's registration with the nonbank registration system and any information submitted under the proposed rule.

[256] Nonbank Registration—Orders Proposal.

publicly available when permitted by law.

Section 1092.301 Definitions

Proposed § 1092.301 would define key terms used in subpart C.

301(a) Administrative Information

Proposed § 1092.301(a) would define the term administrative information, for purposes of subpart C, to include contact information and other information submitted or collected in the nonbank registration system to facilitate administration of the nonbank registration system including nonregistration notices submitted to the nonbank registration system under proposed § 1092.302(d). Some of the information submitted or collected in the nonbank registration system would be for purely administrative purposes. For example, proposed § 1092.302(a) would require a supervised registrant to submit contact information for a person to whom the Bureau could direct its questions about registration. In addition, notices by persons that they believe in good faith that they are not required to register certain information due to not being covered by subpart C also generally would be administrative in nature. As discussed in the section-by-section analysis in proposed § 1092.302(d) and in the impacts analysis in part VII, these notices would help the Bureau to understand who is not registering and why, and facilitate guidance the Bureau may provide.

Under proposed § 1092.303, the Bureau would publish information collected pursuant to subpart C, subject to certain exceptions in proposed § 1092.303(b), including an exception for administrative information. Administrative information is separate from identifying information, defined in proposed § 1092.301(e), and is separate from information regarding the use of covered terms and conditions by supervised registrants, collected under proposed § 1092.302(a). Information collected for a purely administrative purpose should not be made publicly available. The identifying information collected under proposed § 1092.302(a) already would facilitate the ability of consumers to identify covered persons for purposes of the Bureau's authority in CFPA section 1022(c)(7)(B) to publicly disclose registration information discussed in part II.C.3 above.[257] Including administrative information with other information the Bureau publishes pursuant to proposed § 1092.303 also is unlikely to serve the public interest for purposes of the Bureau's authority to publish information under CFPA section 1022(c)(3) discussed in part II.C.3 above.[258] The publication of administrative information may not in all instances be especially useful to external users of the system. Administrative information is likely to include information such as time and date stamps, contact information, and administrative questions. The Bureau may need such information to work with personnel at nonbanks and in order to administer the nonbank registration system. Even in the case of nonregistration notices, they would not be required to include information about the use of covered terms or conditions collected under proposed § 1092.302(a). Publishing such information would not be in the public interest because it is unclear what use the public would have for such information and likely would be counterproductive to the goals of ensuring compliance with the proposal.

Proposed § 1092.301(a) would define the term administrative information to clarify the scope of that exception to publication in proposed § 1092.303(b). The Bureau seeks comment on the proposed definition of administrative information in proposed § 1092.301(a) and on the Bureau's proposal not to publish administrative information as reflected in proposed § 1092.303(b).

301(b) Covered Form Contract

The proposal would require supervised registrants to provide information to the nonbank registration system relating to covered form contracts they use in offering or providing consumer financial products or services as relevant to proposed § 1092.301(g). Proposed § 1092.301(b) would define a covered form contract as any written agreement between a covered person and a consumer that has two features: (1) It was drafted prior to the transaction for use in multiple transactions between a business and different consumers; and (2) It contains a covered term or condition as defined in proposed § 1092.301(c).

The Bureau proposes to use the term covered form contract as a reference to the overall written agreement that contains a covered term or condition. By using this term, the proposal would be more precise as to the information the agency would collect, and, as applicable, distinguish the contract provision at issue from the contract itself.

Under proposed § 1092.301(b), the Bureau would limit the information collection to information about covered terms or conditions contained in written agreements, including paper and electronic versions.[259] The Bureau interprets the term ''written agreement'' as including electronic form contracts such as website terms of use that govern the offering or provision of consumer financial products or services. A given transaction therefore may be subject to multiple covered form contracts, such as website terms of use for online applications, a transaction agreement for approved applicants, and an arbitration agreement that may be provided separately. The Bureau also interprets the term ''written agreement'' for purposes of proposed § 1092.301(b) as potentially including agreements reached orally that are recorded or otherwise documented in writing. For example, as Bureau guidance has clarified, phone recordings evidencing assent to a standard-form preauthorized payment authorization may be considered a written authorization.[260] However, such a written agreement would not necessarily constitute a covered form contract. As described in proposed § 1092.301(b)(1), discussed below, a covered form contract also must have been drafted prior to the transaction for use in multiple transactions.[261]

Proposed § 1092.301(b) is not itself limited to agreements between the supervised registrant and the consumer. Rather, proposed § 1092.301(b), if the conditions in proposed § 1092.301(b)(1) and (2) are also present, could reach any written agreement between a consumer and a covered person as that term is defined in the CFPA, and without regard to whether the covered person is excluded from authorities under CFPA sections 1027 or 1029. While those covered persons are not covered by the rule or in some cases subject to the authority of the Bureau, the agreements they enter into potentially could be subject to the rule when used by a

[257] 12 U.S.C. 5512(c)(7)(B).

[258] 12 U.S.C. 5512(c)(3).

[259] The Bureau does not propose to collect information about oral agreements that have no written component. For such oral agreements, it is unclear these are used to seek to waive or limit enforcement of applicable legal protections; it also may be burdensome for the supervised registrant to generate responsive information concerning oral agreements for purposes of the proposed rule.

[260] *See* CFPB Compliance Bulletin 2015–06 (Nov. 23, 2015), *https://files.consumerfinance.gov/f/201511_cfpb_compliance-bulletin-2015-06-requirements-for-consumer-authorizations-for-preauthorized-electronic-fund-transfers.pdf.*

[261] In addition, as described in proposed § 1092.301(h)(6), registration would not be required by persons who, in the previous calendar year, entered into covered form contracts containing any covered term or condition fewer than 1,000 times and did not obtain a court or arbitrator decision on the enforceability of a covered term or condition.

supervised registrant. For example, if an agreement meeting the definition of covered form contract also contained covered terms and conditions under proposed § 1092.301(c) (which must relate to a consumer financial product or service described in proposed § 1092.301(g)), and those covered terms or conditions are also used by a supervised registrant, as discussed in the section-by-section analysis of proposed § 1092.301(i), then the supervised registrant would be required to comply with proposed § 1092.302.

As discussed in part II, risks to consumers posed by certain contractual terms and conditions may be magnified through the use of adhesion contracting, or ''take-it-or-leave-it'' non-negotiable contracting processes. And many covered form contracts will be entered into in this way. The Bureau also recognizes that the definition of covered form contract in proposed § 1092.301(b) would cover contracts even if they include terms and conditions that may be, in some sense, negotiated. For example, even if a consumer and a lender bargain over the price of credit, the resulting loan agreement typically still would be a covered form contract. Even if the lender offers the consumer an opportunity to opt out of a covered term or condition as defined in proposed § 1092.301(c), the resulting contract typically still would be a covered form contract. As discussed in the section-by-section analysis of proposed § 1092.301(b)(1), the Bureau is concerned about potential risks to consumers from the use of covered terms and conditions that the company drafts, even if they are in contracts that appear to include some aspects of consumer choice. Such terms, conditions, and choices are defined in advance by the company, not the consumer. And, depending on the facts and circumstances, these choices may be constrained; for example, some negative options may not present meaningful choices.[262] The Bureau therefore is not proposing to expressly limit the definition of a covered form contract to contracts that do not reflect any negotiation.

However, proposed § 1092.301(b)(1) would limit the covered terms or conditions about which the proposal would collect information to those that are drafted prior to the transaction for use in multiple transactions between a business and different consumers. This component of the proposed definition of covered form contract borrows from the definition of a ''standard contract term'' from the Restatement.[263] As the Restatement explains, this definition ''focuses on the pre-drafting factor, which captures a key feature of consumer contracts: their multi-transaction application. Pre-drafting also implies that there is no negotiation between the business and the consumer over the language of those terms.'' Under this approach, even optional terms are standard contract terms if drafted in advance by the business ''because the method for specifying their content is set up by the business and has a multi-transaction application.'' [264] This limitation on the proposed definition of a covered form contract would provide clarity and thus reduce potential burden. Contracts which are truly non-standard—where the business and the consumer can unilaterally modify any pre-drafted content of the proposed agreement—would not be covered form contracts as defined by the proposal. For example, based on the clarification in proposed § 1092.301(b)(1), supervised registrants would not be required to collect or submit information about unique contracts that consumers specifically drafted or attempted to draft. Nor would the proposal cover handwritten modifications by individual consumers to covered terms and conditions, because these would not be contained in the covered form contract drafted for use in multiple transactions. As a result, the information collection requirement under proposed § 1092.302(a) would not require supervised registrants to track or report on such *ad hoc,* nonstandard variances.

In addition, based on this component of the definition in proposed § 1092.301(b)(1), proposed § 1092.302(a) would collect only information on standard terms that businesses draft to use in multiple transactions with more than one consumer. Thus, if a business drafted a contract prior to a transaction for use by a single consumer to engage in multiple transactions, such as a contract to establish an open-end credit line for a single consumer that is not the same contract used for other consumers, under proposed § 1092.301(b)(2), that contract would not be a covered form contract if the business did not draft the contract for use in transactions with other consumers as well.

Further, settlement agreements resolving specific legal actions typically would not be covered by proposed § 1092.301(b) for several reasons. First, many settlement agreements are drafted for the particular claims involved and may be unique to that case; these types of settlement agreements would not be drafted for use in multiple settlements with different consumer parties within the meaning of proposed § 1092.301(b)(1). In addition, for class action settlements, members of a class generally are not ''parties'' to the settlement agreement.[265] The Bureau is not proposing to include these types of settlement agreements in the registration requirements in subpart C because they typically differ, in process and substance, from the covered form contracts used to offer the products or services in the first place. For example, in formal proceedings, consumers may be represented by counsel or others. Indeed, under Federal Rule of Civil Procedure 23 and State analogues, the terms of a consumer class action settlement must be negotiated at arms-length between the defendant and attorneys representing the interests of consumers. Courts review the settlement process and terms for compliance with these and other requirements.[266] Under the Class Action Fairness Act, appropriate Federal and State regulators also receive information about class action settlements proposed in Federal court, including in cases removed from State court due to a higher amount in controversy.[267]

The Bureau requests comment on the definition of covered form contract in proposed § 1092.301(b), including on whether the proposal should instead define covered form contracts with reference to their negotiability, similar to the definition of that ''form contract'' in the Consumer Review Fairness Act: ''a contract with standardized terms . . . imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms.'' [268] However, as discussed above, the Bureau is proposing to cover form contracts that may present some element of choice, for which the

[262] FTC Enforcement Policy Statement Regarding Negative Option Marketing, 85 FR 60822, 60823 (Nov. 4, 2021) (discussing how negative option marketing and contracting are ''widespread in the marketplace'' and that FTC and States ''regularly bring cases challenging a variety of harmful negative option practices'').

[263] Restatement sec. 1(5).

[264] *Id.* sec. 1 cmt. 4.

[265] *See, e.g.,* Fed. R. Civ. P. 23 (generally distinguishing between parties and class members).

[266] *See, e.g.,* Fed. R. Civ. P. 23(e)(2) (requiring that the court consider, *inter alia,* that the proposal was ''negotiated at arm's length'' and that ''the class representatives and class counsel have adequately represented the class''). Almost all States have adopted class action procedures analogous to Federal Rule 23. *See* Marcy Hogan Greer, ''A Practitioner's Guide to Class Actions,'' at 142 (A.B.A. 2010).

[267] 28 U.S.C. 1715 (providing for notification of proposed class action settlements to appropriate Federal and State officials), *codified by* Class Action Fairness Act (CAFA), Public Law 109–2, 119 Stat. 4 (2005).

[268] 15 U.S.C. 45b(a)(3).

Restatement definition may be a better model.

301(c) Covered Term or Condition

As discussed in the section-by-section analysis of proposed § 1092.301(b) above, for a contract to be a covered form contract, it must, among other things, contain a covered term or condition. Proposed § 1092.301(c) would define a covered term or condition as a clause, term, or condition that expressly purports to establish a covered limitation on consumer legal protections, as that term is defined in proposed § 1092.301(d), applicable to a consumer financial product or service described in proposed § 1092.301(g). In particular, the definition would apply to those consumer financial products or services offered or provided by covered persons specified in CFPA section 1024(a), including those supervised under larger participant rules adopted under that authority.

If a term or condition expressly seeks to establish a covered limitation on consumer legal protections, it would be covered irrespective of its legal validity or enforceability. For example, an arbitration agreement in a loan agreement with a servicemember that violates the MLA would still be a covered term or condition. At the same time, the proposed definition would only cover those terms and conditions that expressly attempt to establish the covered limitation. If a term or condition does not expressly attempt to establish the covered limitation, it would not be covered, even if it may contradict or violate an applicable legal protection. For example, an interest rate in a loan agreement with a servicemember that violates the MLA interest rate cap would not necessarily be a covered term or condition, unless it expressly seeks to impose a covered limitation on consumer legal protections. As discussed in the section-by-section analysis of proposed § 1092.301(d)(7), the Bureau understands that these definitions generally would exclude the collection of terms or conditions that may constitute implied waivers. For the reasons discussed there, however, at this time the Bureau proposes to limit the information collection to express waivers.

In addition, in the context of automobile finance agreements, to the extent that a limitation on protections in the sale also purports to establish a covered limitation on legal protections the consumer may have, including recourse, against a finance company purchasing the associated retail installment contract, then that limitation also may qualify as a covered term or condition under proposed § 1092.301(c).

301(d) Covered Limitation on Consumer Legal Protections

As discussed in part II above, the Bureau is concerned with potential risks posed by terms or conditions that seek to waive consumer legal protections or limit the ability of consumers to enforce or exercise rights. The Bureau is proposing to collect information about supervised registrants' use of these terms and conditions. In particular, proposed § 1092.301(d) would define eight specific types of terms and conditions, each described below, about which the nonbank registration system would collect the information described in proposed § 1092.302(a). In general, these terms and conditions expressly seek to waive applicable legal protections or place express limitations on their exercise or enforcement. These terms and conditions may extinguish or seek to extinguish certain applicable legal protections including obligations of supervised nonbanks under Federal consumer financial law. These limitations also may affect when, where, or how a consumer may file or participate in a legal action, or whether a consumer may file a legal action at all. These limitations also may affect the ability of the consumers to assert their rights and protections through filing reviews and complaints. As a result, the Bureau is concerned that these types of terms and conditions may pose potential risks to consumers as described in more detail in part II of the proposal above.

There may be overlap in definitions of the types of covered terms and conditions. As a result, some terms and conditions may fall into more than one category. The proposal and information collections pursuant to proposed § 1092.302(a) would account for that possibility. The Bureau requests comment on the proposal's inclusion of each term or condition described in each paragraph in proposed § 1092.301(d), including on the relationship or overlap between each of these proposed terms and conditions.

The Bureau also seeks comment on whether certain definitions of covered terms or conditions should be narrowed to apply only when the legal protection limited is a Federal consumer financial law. As proposed, the definitions in proposed § 1092.301(d), as incorporated into the definition of a covered term or condition in proposed § 1092.301(c), would apply to any limitation on a consumer legal protection applicable to a consumer financial product or service described in proposed § 1092.301(g). This approach may be more administrable for supervised registrants, avoiding the need for them to make determinations about which types of applicable legal protections are affected by specific terms and conditions. Some terms and conditions, such as arbitration agreements, limits on time, forum, or venue for legal actions, and liability limits may apply generally, and not be tied to a specific applicable legal protection. Other terms and conditions may explicitly affect legal protections other than Federal consumer financial law, but also could raise risks to consumers under Federal consumer financial law. For example, using unenforceable or prohibited terms or conditions (even if only unenforceable or prohibited by a law other than Federal consumer financial law) may risk deceiving consumers, as discussed in part II above. By collecting information about waivers and limitations on all legal protections applicable to the consumer financial products and services described in proposed § 1092.301(g), the definitions in proposed § 1092.301(d) would provide an integrated understanding of the regulation of a given consumer financial product or service, consistent with the monitoring purposes of informing different Bureau functions as discussed in part II.C.1 above.

Proposed § 1092.301(d)(1) would define a covered limitation on consumer legal protections to include precluding the consumer from bringing a legal action after a certain period of time. Deadlines for consumers to file legal actions to enforce legal protections generally are set by statute, such as in many cases State laws specifying statutes of limitation. There is a risk that terms or conditions may seek to set deadlines that are earlier than the default deadline set by statutory law. As discussed in part II above, in some cases a contract may set a deadline so early that it is unenforceable. But whether or not the contractual deadline is enforceable, this type of term or condition may pose potential risks to consumer. For example, if the consumer would have had more time under the statute of limitations law to enforce the applicable legal protection, then the term or condition would be taking away that additional time during which the consumer could have enforced the applicable legal protection. That loss of time to enforce rights may pose potential risks to consumers, raising the need for greater public oversight to protect those rights. Proposed § 1092.301(d)(1) is not limited, however,

to terms and conditions that clearly set deadlines earlier than applicable law. It may be burdensome for supervised registrants to evaluate all potentially applicable statutes of limitation and assess whether the deadline set by the contract is earlier than the most likely applicable statute of limitation. For example, such an analysis may involve review of multiple statutes of limitation potentially under the laws of multiple States. Therefore, the Bureau is proposing a definition that would be broader and likely simpler for supervised registrants to implement. If a contract specifies a deadline, it would be a covered limitation for purposes of subpart C, regardless of what the underlying limitation would have been absent the contractual deadline. The Bureau requests comment on this approach and whether proposed § 1092.301(d)(1) should be more limited, and if so, how and why, and whether proposed § 1092.301(d)(1) should be expanded, and if so, how and way. For example, the Bureau requests comment on whether the final rule should limit proposed § 1092.301(d)(1) to only terms and conditions that set deadlines that are shorter than applicable law, or deadline that often may be unreasonable and therefore unenforceable (such as six months or less—the time period identified in the Restatement as discussed part II.B.5 above).

In addition, the Bureau requests comment on whether proposed § 1092.301(d)(1) should be expanded to cover standard terms and conditions that also may have an effect on when a consumer can file a legal action, such as terms and conditions that impose pre-filing requirements not otherwise specified in the law before a consumer can file a legal action. Terms and conditions that impose pre-filing requirements may have the effect of shortening the overall time period during which the consumer may be eligible for file a legal action because they purport to make the consumer ineligible to file a legal action until after certain steps are completed. Pre-filing requirements in some arbitration agreements also have spurred some consumers to claim they are so onerous as to be unconscionable.[269] In addition, the MLA expressly prohibits ''onerous legal notice provisions'' in consumer credit contracts subject to the MLA.[270] For these reasons, the Bureau requests comment on the degree of risk that pre-filing requirements may pose, including to the ability of consumers to meet other deadlines for filing legal action, whether set by a State statute of limitations or a covered term or condition in a contract.

Proposed § 1092.301(d)(2) would define a covered limitation on consumer legal protections to include specifying a forum or venue where a consumer must bring a legal action in court. The Bureau understands that State and Federal laws often already specify standards for determining where a consumer may file a legal action in court, and that it therefore is not legally necessary for a contract to make that determination. Thus, to the extent a supervised registrant seeks to set a requirement of this nature in a covered form contract, there is a risk that requirement may limit the otherwise available legal options of the consumer. Because proposed § 1092.301(d)(8) would separately identify the existence of arbitration agreements, proposed § 1092.301(d)(2) would not apply to arbitration agreements. Arbitration agreements also identify the forum to act as administrator of the arbitration, as well as in some cases a particular venue or place for the arbitration to be conducted, if not online. As discussed in the section-by-section analysis of proposed § 1092.302(a), the Bureau requests comment on whether the nonbank registration system should also collect forum or venue requirements for arbitration agreements pursuant to proposed § 1092.301(d)(2).

Proposed § 1092.301(d)(3) would define a covered limitation on consumer legal protections to include limiting the ability of the consumer to file a legal action seeking relief for other consumers or to participate in or seek to participate in a legal action filed by others. The Bureau is concerned that, in circumstances where consumers likely would not seek legal relief individually, but may claim relief in collective actions, potential risks may arise when they are prohibited by contract from doing so. For example, there is a risk that small-dollar harms affecting larger numbers of consumers may go unremedied; and public regulators such as the Bureau may wish to prioritize their oversight role to transactions when this risk is present. For example, the Bureau could use information indicating that private class action relief is cutoff, in conjunction with other information used to assess risk, to decide whether to prioritize examination of a given supervised nonbank in response to certain consumer complaints. This type of information also could inform the Bureau's use of its other functions discussed in part II.C above. Accordingly, proposed § 1092.301(d)(3) would include limits on (including waivers of) the consumer's ability to participate in a legal action where one or more parties seek or obtain class treatment pursuant to Federal Rule of Civil Procedure 23, any analogous State process, or rules providing for class arbitration. Proposed § 1092.301(d)(3) also would cover limitations on (including waivers of) the consumer's ability to participate in legal actions through procedures such as representative actions, joinder, intervention, or consolidation. A standard term or condition specifying such limits would be covered by proposed § 1092.301(d)(3) even if it appears in an arbitration agreement described in proposed § 1092.301(d)(8). This approach will avoid supervised registrants having to determine whether these types of limitations are part of an arbitration agreement. This approach also will ensure that the Bureau obtains information about these types of limitations on the same basis regardless of whether they appear in arbitration agreements, while still taking into account the existence of an arbitration agreement.

On the other hand, the Bureau understands that any arbitration agreement—even absent such a limitation—may be construed as limiting class actions. For example, the U.S. Supreme Court recently held that arbitration agreements generally do not authorize class arbitration unless by affirmative consent of the parties.[271] Therefore, arbitration agreements that do not evince affirmative consent of the parties to class arbitration also, by their very nature, may limit the ability of consumers to participate in class actions filed in court. In its experience and expertise, the Bureau has found that it is exceedingly rare, if ever the case, that a supervised registrant has included a provision in an arbitration agreement expressly authorizing class arbitration. Thus, under current law, arbitration agreements reported under proposed § 1092.301(d)(8) discussed below often, if not always, would not permit class actions, even when the supervised registrant does not report the use of an express class waiver under proposed

[269] *See, e.g., Bielski* v. *Coinbase, Inc.,* 2022 WL 1062049 at *3 (N.D. Cal. Apr. 8, 2022) (describing virtual currency exchange operator's form contract terms and conditions that seek to require the consumer to follow specific procedures for engaging in the company's informal and formal complaint processes before proceeding to arbitration or small claims court), *cert granted Coinbase, Inc.* v. *Bielski,* 2022 WL 17544994 (U.S. Dec. 9, 2022); *Suski* v. *Marden-Kane, Inc.,* 2022 WL 103451 at *1 (N.D. Cal. Jan. 11, 2022) (same).

[270] 10 U.S.C. 987(e), implemented at 32 CFR 232.8(c).

[271] *See generally Lamps Plus, Inc.* v. *Varela,* 139 S. Ct. 1407, 1410 (2019) (acknowledging that class arbitration can occur on the consent of the parties).

§ 1092.301(d)(3). As a result, the Bureau is not proposing to separately collect information on the degree to which arbitration agreements contain such an authorization. The Bureau requests comment on whether there is data indicating that a significant number of supervised registrants use arbitration agreements that do authorize class arbitration, and if so, whether the proposed § 1092.302(a) should be broadened to require supervised registrants to review their arbitration agreements and report whether they contain a class arbitration authorization.

Proposed § 1092.301(d)(4) would define a covered limitation on consumer legal protections to include limiting liability to the consumer in a legal action including by capping the amount of recovery or the type of remedy. Just as applicable law generally defines statutes of limitation and standards for where a consumer may file a legal action, applicable legal protections generally define the scope of a firm's liability to the consumer including what remedies are available to the consumer in a civil action in court. The Bureau is concerned about risks to consumers from terms and conditions that take away potentially-available relief. Risks may arise when consumers are unable to exercise otherwise available rights to seek consequential damages, statutory damages, punitive damages, or other forms of relief such as declaratory or injunctive relief, as well as to recover attorneys' fees when the law so permits. The Bureau also believes proposed § 1092.301(d)(4) would cover liquidated damages clauses which set a specific amount, or maximum amount, recoverable to a certain type of injury. While liquidated damages clauses may be based on estimates made in advance of relief available in the future, they nonetheless can serve as a limit on actual relief available. To the extent that these types of limitations described in proposed § 1092.301(d)(4) appear within an arbitration agreement described in proposed § 1092.301(d)(8), these types of limitations would be separately reportable from the existence of an arbitration agreement as a different type of covered term or condition under proposed § 1092.302(a). This will avoid supervised registrants having to determine whether these types of limitations are part of an arbitration agreement, and will ensure that the Bureau obtains information about these types of limitations on liability on the same basis regardless of whether they appear in arbitration agreements.

Proposed § 1092.301(d)(4) would cover liability limits including when they are permitted by law. For example, the Bureau is aware that some covered form contracts include a standard term or condition that states that ''[t]o the extent permitted by law'' the seller has ''no responsibility'' for remedies such as consequential damages or lost profits of the consumer. This would be a limit on liability to the consumer within the meaning of proposed § 1092.301(d)(4).[272]

However, the Bureau does not anticipate that proposed § 1092.301(d)(4) generally would cover terms and conditions that allow the prevailing party to recover attorney's fees. These provisions do not limit the liability of the provider to the consumer, but rather expand that liability in certain circumstances, while also potentially establishing an obligation on the consumer to pay the attorney's fees of the provider in other circumstances. In any event, the Bureau's 2015 Arbitration Study found that terms and conditions requiring consumers to pay the legal fees of the company if it prevails were rare, generally used in less than 1% of the agreements sampled.[273] The Bureau requests comment on the prevalence of these provisions, the degree to which they alter the underlying legal protections (such as laws governing the recovery of attorney's fees), and the degree to which they pose a risk of limiting consumer enforcement despite their authorizing the consumer to recover legal fees if the consumer prevails.

Proposed § 1092.301(d)(5) would define a covered limitation on consumer legal protections to include waiving a cause of action by the consumer, including by stating that a person is not responsible to the consumer for a harm or violation of law or that a consumer is exclusively responsible for the injury. If a legal protection applicable to the offering or providing of a consumer financial product or service would hold a supervised registrant accountable for a particular injury, there risks to consumers can arise when a term or condition takes away that form of accountability. For example, as discussed in part II.C. above, some lenders have included terms or conditions in form contracts that seek to disclaim responsibility for bank fees caused by their payment processing practices. Proposed § 1092.301(d)(5) therefore would cover waivers of causes of action for violation of legal protections. Operating in conjunction with the definition of a covered term or condition in proposed § 1092.301(c), proposed § 1092.301(d)(5) would make these waivers reportable under proposed § 1092.302(a) if the waived legal protection applies to the offering or provision of a consumer financial product or service described in proposed § 1092.301(g).[274]

Proposed § 1092.301(d)(6) would define a covered limitation on consumer legal protections to include limiting the ability of the consumer to engage in certain types of communications about the consumer financial products or services offered by the supervised registrant. Proposed § 1092.301(d)(6) would cover limitations on any written, oral, or pictorial review, assessment, complaint, or other similar analysis or statement. Non-disparagement clauses (also referred to as so-called gag clauses) generally would fall into this category, whether they limit reviews or assessments posted online for the public to see, complaints filed with government regulators, or otherwise. The term ''limitation'' is broad and would encompass provisions that outright prohibit these types of analysis and statements by consumers, as well as provisions that impose a penalty for making such analysis or statements or that require consumers to grant the business exclusive intellectual property rights in the content of their analysis or statements.[275]

As discussed above in part II.C.2, some consumer complaints may be an indicator of violations or risks of violation of applicable legal protections. And the Consumer Review Fairness Act separately protects a consumer's right to complain, generally prohibiting the use of non-disparagement terms and conditions in form contracts for the sale of goods and services. As a result, these terms or conditions may limit consumer protections, such as those afforded under the Consumer Review Fairness

[272] However, as explained above, coverage of a limitation imposed by a term or condition under proposed § 1092.301(d) alone does not determine whether that triggers a reporting obligation under the proposal. To be a reportable as a covered term or condition, the term or condition must affect legal protections applicable to consumer financial products and services as relevant to proposed § 1092.301(g), and the clause must be used as defined in proposed § 1092.301(i) by a supervised registrant as defined in proposed § 1092.301(h). Through these integrated definitions, proposed subpart C would ensure that the information reported has a meaningful nexus to the offering or provision of consumer financial products and services when subject to the scope of the Bureau's supervisory authority.

[273] Arbitration Study sec. 2 Table 14.

[274] *See* proposed § 1092.301(c) (limiting the definition of covered term or condition to those that impose a limitation on a legal protection applicable to the offering or provision of a consumer financial product or service).

[275] *See generally* 15 U.S.C. 45b(b)(1) (Consumer Review Fairness Act listing these three types of invalid contractual limitations that impede consumer reviews).

Act or related laws,[276] limit recourse consumers may have through complaints concerning violations of applicable legal protections, or both.

And whether or not a statute expressly prohibits a contract from including a term or condition of this type, the term or condition generally may have the effect of restricting the flow of information about potential concerns with the consumer financial product or service—whether through public online review fora, or through consumer complaints filed with regulators. Collecting consumer complaints is a primary function of the Bureau under CFPA section 1021(c)(2). The Bureau relies on consumer complaints for, among other purposes, its risk-based supervision program.[277] Other reviews consumers post may qualify as field market intelligence, which the Bureau may consider in its risk-based supervision program.[278] And both consumer complaints to the Bureau and publicly posted consumer reviews are information the Bureau may consider in its role in monitoring the markets for risks to consumers. These contract terms carry the potential to discourage consumers from providing this information, which could understate or obscure the risk profile of a supervised registrant. It is therefore important for the Bureau's supervisory prioritization and examination work and for its market monitoring to be able to assess when this may be happening.

Notably, the statutory prohibition against non-disparagement clauses in the Consumer Review Fairness Act includes certain exceptions, generally allowing contractual provisions that prohibit disclosure or submission of, or reserve the right to remove trade secrets or commercial or financial information obtained from a person and considered privileged or confidential, certain personnel and medical files, certain information compiled for law enforcement purposes, content containing computer viruses and other potentially damaging code, and content that is clearly false or misleading, is unrelated to the goods or services offered, contains personal information or likeness of another person, or is libelous, harassing, abusive, obscene, vulgar, sexually explicit, or is inappropriate with respect to race, gender, sexuality, ethnicity, or other intrinsic characteristic.[279] The Bureau requests comment on whether proposed § 1092.301(d)(6) should be narrowed to explicitly include these types of exceptions or whether the nonbank registration system should allow supervised registrants to identify when limitations in a term or condition covered by proposed § 1092.301(d)(6) are only those that would qualify for an exception from the Consumer Review Fairness Act. The Bureau preliminarily believes that a more detailed criteria for proposed § 1092.301(d)(6) that includes these exceptions could be more burdensome for supervised registrants to apply. Under proposed § 1092.302(a)(3)(iv)(F), the proposal would collect the text of the term containing the limitation. To the extent the limitation fell within the statutory exclusions described above, the Bureau may be able to identify that when assessing the risk posed by the term.

Proposed § 1092.301(d)(7) would define a covered limitation on consumer legal protections to include waiving, whether by extinguishing or causing the consumer to relinquish or agree not to assert, any other identified consumer legal protection including any specified right, defense, or protection afforded to the consumer under Constitutional law, a statute or regulation, or common law. This sort of catch-all provision would capture other terms or conditions not already covered by proposed § 1092.301(d)(1) through (6) that expressly waive or expressly attempt to waive an identified legal protection of the consumer.

There are different ways a term or condition could waive or attempt to waive a ''consumer legal protection'' for purposes of proposed § 1092.301(d)(7). A term or condition may waive or attempt to waive an identified legal right the consumer might exercise, or a legal obligation the supervised registrant owes to the consumer. This could include, for example, a waiver of a right to a jury trial, or a waiver of a substantive legal protection such as a right to receive a disclosure.

Proposed § 1092.301(d)(7) would explicitly cover express waivers that extinguish, or in which a consumer relinquishes, rights or other applicable legal protection.[280] In addition, proposed § 1092.301(d)(7) would cover a consumer's express agreement not to assert rights or other applicable legal protections.[281] For example, as discussed in part II.C.2 above, in 2020 the Bureau resolved an enforcement action over a provision in an automobile loan extension agreement affecting at least tens of thousands of consumers. The loan extension agreement included a term and condition that required the consumer to ''agree that [the consumer] will not file for bankruptcy protection within 120 days[.]'' [282] This term did not use the word ''waive'' or ''waiver'' in its text. However, the express language of this term or condition, at least for the 120-day period, purported to extinguish the identified protection (bankruptcy protection), which is a legal protection. As the Bureau concluded, the agreements ''created the net impression consumers could not file for bankruptcy.'' [283] On that basis, the Bureau indicated that the term may be reasonably understood to be a ''waiver of an individual's right to file for bankruptcy [that] is void as against public policy.'' [284] Thus proposed § 1092.301(d)(7) expressly applies to this type of waiver, just as a number of anti-waiver statutes discussed in part II.B expressly apply to agreements not to assert rights or protections.

Proposed § 1092.301(d)(7) refers to waivers of ''other'' consumer legal protections to simplify the regulation and reduce burden by distinguishing the coverage of proposed § 1092.301(d)(7) from the other subparagraphs of proposed § 1092.301(d). As a result, if a term or condition already is covered by an earlier category under proposed § 1092.301(d)(1) through (6), then it would not be necessary for supervised registrants to determine whether the term or condition also would be covered by the catch-all.

In addition, an arbitration agreement would not be *per se* covered by proposed § 1092.301(d)(7). But if an arbitration agreement specifies waivers, those waivers may fall separately under proposed § 1092.301(d)(1) through (6), as applicable, or otherwise under proposed § 1092.301(d)(7). For example, if an arbitration agreement classified under proposed § 1092.301(d)(8) discussed below also expressly refers to a waiver of a right to a jury trial, the jury trial waiver would be separately reportable under proposed § 1092.301(d)(7).

Proposed § 1092.301(d)(7) would act as a sort of catch-all, but it would not extend to implied waivers, which might arise from a term or condition that violates a consumer legal protection but

[276] *See also* CFPB Bulletin 2022–05.

[277] *See generally* CFPB Examination Manual at 11 (describing prioritization process).

[278] *Id.*

[279] 15 U.S.C. 45b(b)(2)–(3).

[280] *See, e.g., Waiver, Black's Law Dictionary* (11th ed. 2019) (common definition of ''waiver'' including ''relinquishment'' of a legal right or advantage).

[281] *See, e.g., id.* (common definition of ''waiver'' also including ''abandonment'' of a legal right or advantage).

[282] *In re Nissan Motor Acceptance Corporation,* Admin. Proc. 2020–BCFP–0017 (Consent order filed Oct. 13, 2020), ¶ 47.

[283] *Id.* ¶ 49.

[284] *Id.* ¶ 50.

does not expressly purport to accomplish a waiver of that legal protection. As discussed in the section-by-section analysis of proposed § 1092.301(c) above, the Bureau is not seeking in this proposal to require supervised registrants to evaluate the legality of all terms and conditions for potential implied waivers. The Bureau requests comment on that approach. For example, the Bureau requests comment on whether proposed § 1092.301(d) should be expanded to cover clauses purporting to obtain the agreement of the consumer to a limitation or restriction that is inconsistent with the applicable legal protections. As discussed in part II above, for example, the Bureau has identified instances of agreements containing terms or conditions that purport to block the ability of consumers to take specified action. These terms or conditions do not necessarily clarify that action may amount to an exercise of certain potentially applicable consumer rights—such as a right, under certain appellate and agency precedents, to revoke consent to receive debt collection calls. The degree to which proposed § 102.301(d)(7) would cover those terms or conditions will depend in part on whether they identify a consumer legal protection that is being waived, relinquished, or the consumer is agreeing not to assert.

For some other agreements, for other reasons, it is unlikely they would contain express waivers. For example, agreements to receive electronic disclosures and other electronic communications commonly are used in the marketplace. In particular, when consumer disclosures required by statute, regulation, or other rule must be in writing, the consumer may consent to receive electronic disclosures pursuant to the process specified in the Electronic Signatures in Global and National Commerce (E-Sign) Act.[285] The E-Sign Act states that it does not ''limit, alter, or otherwise affect any'' requirement of law ''other than a requirement that contracts or other records be written, signed, or in nonelectronic form.'' [286] Because the E-Sign Act expressly affects existing legal requirements, the Bureau does not understand an agreement that forgoes receipt of a disclosure in nonelectronic form, when the agreement complies with the E-Sign Act, would constitute an express waiver of a written disclosure right for purposes of proposed § 1092.301(d)(7). Rather, the E-Sign Act clarifies that a compliant consent agreement ''satisfies the requirement that such information be in writing[.]'' [287] The Bureau requests comment on whether it should expand the scope of proposed § 1092.301(d)(7) or otherwise clarify that subpart C may cover E-Sign Act consent to receive electronic disclosures and communications, and if so, for what types of agreements, why, and how.

And in situations involving legitimate uncertainty over the coverage of a particular term or condition under subpart C, supervised nonbanks could file a notice of non-registration as described in proposed § 1092.302(d). Still, terms and conditions that may be characterized as purported implied waivers also can pose risk to consumers, including a risk of deceiving consumers about their underlying legal rights. Notwithstanding that risk, the Bureau has not proposed that subpart C would cover these types of terms and conditions. The Bureau's preliminary assessment is that the burden of identifying these types of terms and conditions may be relatively higher, depending not just on identifying a limitation or restriction in the term or condition, but on its relationship to all potentially applicable legal protections that are not expressly identified in the text of the term or condition. There also may be more uncertainty about when a contract condition is inconsistent with an applicable legal protection. To the extent that a commenter nonetheless believes these types of terms and conditions should be covered, the Bureau requests comment on how to clearly define these terms and conditions in a manner that could be implemented to allow supervised registrants to detect the clauses without significant burden.

The Bureau also requests comment on whether proposed § 1092.301(d)(7) is sufficiently clear to identify which terms and conditions are covered by it, and whether additional clarifications would be useful, and if so, what clarifications.

Finally, proposed § 1092.301(d)(8) would cover arbitration agreements, defined as a term or condition requiring that a consumer bring any type of legal action in arbitration. Because these agreements require consumers to assert certain privately-actionable legal claims only in arbitration, they by definition limit how consumers can bring legal action by removing the option of asserting those claims in court.

The Bureau considered, but is not proposing, covering other types of terms and conditions that may, to one degree or another, affect the ability of consumers to enforce or exercise applicable legal protections. For example, the Bureau notes that the proposal would not identify a choice of law provision as itself a covered limitation on applicable consumer legal protections. These clauses also can alter the rights of consumers, particularly when providers choose laws less favorable to the consumer that bear little relation to the transaction. Nevertheless, the Bureau believes that requiring registration of all uses of choice of law provisions would lack utility, as these clauses are nearly universal, and the Bureau understands that they may present lower risk in some circumstances, such as when they are used to provide clarity and certainty without limiting consumer rights or ability to vindicate rights.

The Bureau proposes that if a provider uses any one or more of the covered terms and conditions, then the proposed rule would require the supervised registrant to submit data on choice of law provisions governing the covered term(s) or condition(s) as discussed in the section-by-section analysis of proposed § 1092.302(a). Under this approach, if a provider does not use any of the covered terms or conditions defined in proposed § 1092.301(d), but does use a choice of law provision, then it would not be required to register or submit information collected under proposed § 1092.302(a).

The Bureau believes that this approach strikes the right balance to help it monitor for risks to consumers and inform the Bureau's risk-based supervision program because there is a need to identify and understand the use of choice of law clauses in contexts that already pose risks to consumers. Conditioning the reporting of a choice of law clause on the existence of other terms and conditions defined in proposed § 1092.301(d) is appropriate because a provider using a choice of law provision that poses significant risks to consumers is likely to also use one or more of the other covered terms or conditions addressed by the proposed rule. While the other clauses may be very common, one purpose of the proposed rule is to understand and track how common; by contrast, the Bureau is already confident that choice of law clauses are ubiquitous if not universal. The Bureau seeks comment on this approach, and whether it should instead require registration of choice of law provisions, even when a provider does not use any of the covered terms or conditions defined in proposed § 1092.301(d).

[285] 15 U.S.C. 7001 *et seq.*

[286] 15 U.S.C. 7001(b)(1).

[287] 15 U.S.C. 7001(c)(1).

The Bureau requests comment on its proposed definition in § 1092.301(d), including on whether modifications or additions to the definition are necessary to accomplish the objectives of the proposal.

301(e) Identifying Information

Proposed § 1092.301(e) would define the term identifying information. This term describes the scope of identifying information a supervised registrant would be required to submit pursuant to proposed § 1092.302(a). Proposed section § 1092.301(e) would limit this information to information that is already available to the supervised registrant, and which uniquely identifies the supervised registrant. As described in proposed § 1092.301(e), this information would include, to the extent already available to the supervised registrant, the supervised registrant's legal name(s), State of incorporation or organization, headquarters and principal place of business addresses, and unique identifiers issued by a government agency or standards organization. Examples of addresses that entities may be required to provide under proposed § 1092.302(a) include addresses used for conducting business with consumers, including both physical addresses and electronic addresses such as internet website addresses. Examples of the identifiers issued by a government agency or standards organization that entities may be required to provide under proposed § 1092.302(a) include the Nationwide Multistate Licensing System and Registry identifier (NMLSR ID), the HMDA Reporter's Identification Number (HMDA RID), the Legal Entity Identifier (LEI) issued by a utility endorsed by the LEI Regulatory Oversight Committee or endorsed or otherwise governed by the Global LEI Foundation (GLEIF, or any successor of the GEIF), and a Federal Tax Identification number.[288]

This information will help the Bureau identify supervised registrants with specificity, including ensuring that the Bureau can relate their submissions to other registries and databases where applicable, such as the NMLS, and HMDA submissions. Furthermore, upon publication, this information will facilitate the ability of consumers to identify covered persons that are registered with the Bureau, as discussed in part II.C.3 above.

The proposal would not require the entity to obtain an identifier. Thus, for example, if the nonbank registration system were to ask about a particular type of identifier and that type of identifier had not been assigned to the supervised registrant, then the Bureau expects that the supervised registrant would be able to indicate the identifier is not applicable.

The Bureau seeks comment on these proposed types of identifying information, and other types of identifying information that the nonbank registration system might collect and publish.

301(f) Annual Registration Date

Proposed § 1092.301(f) would define the annual registration date as the day during the calendar year by which a supervised registrant must complete its annual registration required by proposed § 1092.302(a). As explained in proposed § 1092.301(f), annual registration dates would not occur until after the nonbank registration system implementation date defined pursuant to proposed § 1092.101(e). When the Bureau issues filing instructions as described in proposed § 1092.102(a), the Bureau would set the precise timing for the annual registration date and any extensions to that date during emergencies. Proposed § 1092.301(f) also would provide that the Bureau will specify the annual registration date under proposed subpart C including the process for filing for an automatic extension of the annual registration date for up to 30 days. The Bureau's filing instructions under proposed § 1092.102(a) would clarify the process for obtaining such an extension. The Bureau seeks comment on the process, length, and frequency for automatic extensions under this proposed provision.

301(g) Supervised Nonbank

The proposal generally would apply to nonbank covered persons that are subject to supervision by the Bureau under its statutory authorities in CFPA section 1024(a). Proposed § 1092.301(g) would define the term supervised nonbank by reference to the relevant provisions of the CFPA that establish the Bureau's supervisory authority over nonbank covered persons in CFPA section 1024(a). For clarity, proposed § 1092.301(g) would reiterate, as provided in the CFPA, that persons are not supervised nonbanks with respect to activities that are excluded from the supervisory authority of the Bureau under one or more of the provisions of CFPA section 1027 or section 1029.

301(h) Supervised Registrant

Proposed § 1092.301(h) would define the term supervised registrant as those supervised nonbanks that are subject to proposed subpart C. The term would cover supervised nonbanks, as defined in proposed § 1092.301(g), that are subject to the Bureau's supervisory authority under CFPA section 1024(a) and are not specifically excluded from coverage of this proposal by one or more of the exclusions in the paragraphs in proposed § 1092.301(h). Under the proposed definition of ''supervised registrant,'' the Bureau need not have previously exercised its authority to require reports from, or conduct examinations of, a particular supervised nonbank for that entity to qualify as a supervised registrant. A supervised nonbank would qualify as a supervised registrant if the Bureau could require reports from, or conduct examinations of, that entity because it is a covered person described in CFPA section 1024(a)(1). Such an entity would be ''subject to supervision and examination'' within the meaning of the proposal even if the Bureau has never previously exercised its authority to require reports or conduct examinations with respect to that entity.

Proposed § 1092.301(h)(1) and (2) would clarify that certain governments, as described in these subparagraphs, would not be covered by the proposal. Proposed § 1092.301(h)(1) would clarify that an agency of the Federal government, as defined in 28 U.S.C. 2671, would not be covered by the proposal. The Bureau has other avenues of collaborating with Federal agencies and, out of considerations of comity, does not seek to subject other Federal agencies to an information collection requirement in this proposal.

For parity, comity, and other reasons described below, proposed § 1092.301(h)(2) also would exclude certain other types of governmental bodies. Specifically, proposed § 1092.301(h)(2) would exclude a State as defined in CFPA section 1002(27), which includes a federally-recognized Indian Tribe.[289] The Bureau also collaborates with State and Tribal regulators and does not seek to subject their governments to an information requirement in this proposal. Governmental bodies described in proposed § 1092.301(h)(2) generally are

[288] The Bureau's HMDA Regulation C specifies the collection of a LEI or GLEIF for reporters subject to that rule. *See* 12 CFR 1003.4(a)(1)(i)(A).

[289] In this proposal, when the Bureau uses the term ''Tribe,'' it is referring to any federally-recognized Indian Tribe, as defined by the Secretary of the Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1998, 25 U.S.C. 5131(a).

immune from private suit already.[290] Therefore, the Bureau does not have the same concerns about the risk that terms and conditions in form contracts would limit availability of suit, given that the law itself already limits such suits against these persons.

There may be some uncertainty about when a particular supervised nonbank is a State (including for purposes of the CFPA, a Tribe) and thus enjoys the sovereign immunity from private suit typically conferred upon a State (including a Tribe). Such an entity could register under the proposal, since, as clarified in proposed § 1092.102(c), registration is without prejudice to the ability of the entity to dispute that it is subject to the Bureau's authority over it. Or, if the entity has a good faith basis to believe it is a State (including a Tribe), such as by virtue of enjoying its sovereign immunities, it could voluntarily file with the nonbank registration system a notice of nonregistration as described in proposed § 1092.302(d). At the same time, courts have found that immunities are not available to some providers of consumer financial products or services subject to the Bureau's supervisory authority, notwithstanding their claims to have a nexus with a State or a Tribe.[291] In those circumstances, the entities could face private enforcement, and covered terms or conditions purporting to limit private enforcement would pose the types of risks to consumers as described in this proposal.[292] Therefore, the Bureau is not proposing an exemption for all State or Tribe-affiliated businesses, regardless of whether they are part of the State (including a Tribe). The Bureau requests comment on this approach.

The Bureau also requests comment on whether the exemption in proposed § 1092.301(h)(2) should be limited in some way. For example, although State and Tribal governments generally have sovereign immunity from private suit, that immunity may be waived by the government itself or in some cases by law, such as a clear statement in a Federal statute.[293] The Bureau requests information on how common it is for waivers of sovereign immunity to occur in the provision of supervised consumer financial products or services, and whether the exemption in § 1092.301(h)(2) should not apply when the sovereign immunity has been waived.

In addition, for clarity and administrability, proposed § 1092.301(h)(2) would not subject State and Tribal governments to a partial registration requirement. However, the Bureau requests comment on whether the Bureau should finalize a different approach, under which a State or a Tribe should be required to register covered terms or conditions that are not expressly framed as limitations on private suit. Such terms could include, for example, outright waivers of legal protections that do not establish a private right of action in the first place or non-disparagement clauses impeding exercise of rights. Even when entities are not subject to private suit in the first place, these terms or conditions may pose risks to consumers.

The Bureau also requests comment on whether the exclusions in proposed § 1092.301(h) should be broadened to include other governments, and if so, which ones and why. The Bureau understands the local governments do not enjoy the same degree of sovereign immunity as States and Tribes.

Proposed § 1092.301(h)(3) would clarify that the proposal would not cover nonbank persons who are subject to the Bureau's supervisory authority solely in either of two capacities. First, proposed § 1092.301(h)(3)(i) would clarify that the proposal would not cover nonbank persons who are subject to the Bureau's supervisory authority solely under CFPA section 1024(e), section 1025(d), or section 1026(e), which describe the Bureau's supervisory authority over service providers to supervised persons. The Bureau is prioritizing in this proposal the registration of nonbank covered persons subject to its supervisory authority under CFPA section 1024(a). The Bureau believes that it can achieve the anticipated benefits described above without extending its coverage to entities solely supervised as service providers subject to supervision under CFPA section 1024. Registering entities solely supervised as service providers may introduce complexity and would add burden and broaden the scope of the nonbank registration system in a manner the Bureau is not prepared to do at this initial stage of nonbank registration rulemaking. In any event, if a person is a service provider to a supervised person and also is itself supervised under CFPA section 1024(a), then the proposal already would cover that person. For example, the proposal would apply to a larger participant in the consumer debt collection market including when the debt collector is acting as a service provider to a payday lender or a credit card issuer.

Second, proposed § 1092.301(h)(3)(ii) would clarify that the proposal would not cover an entity that is subject to the Bureau's supervisory authority solely in its capacity as an entity supervised for a period of two years or less pursuant to an order issued by the Bureau pursuant to 12 U.S.C. 5514(a)(1)(C). For example, proposed § 1092.301(h)(3)(ii) would exclude a person supervised by the Bureau solely based on a consent agreement by which an entity may voluntarily consent to the Bureau's supervisory authority as described in 12 CFR part 1091. The Bureau already will have identified such an entity, likely will have plans to examine it under that order based on its determination that the entity's conduct poses risks to consumers, and the Bureau may obtain information about its covered terms and conditions through the normal examination process. At the same time, given the limited duration of such an order, if the proposed rule were to apply to it, it may only be subject to registration for one annual registration date. For these reasons, the registration information for such an entity may be less useful to the Bureau's risk-based non-bank supervision program. Collection of that information also would generate only a discrete amount of information about a single entity, typically in a market not otherwise generally supervised and subject to the proposal. For these reasons, the Bureau is not proposing to cover these entities under this proposed rule. However, the Bureau requests comment on this approach, including whether the final rule should not include this exemption, should include an exemption for all such orders even when they result in supervisory authority for a longer period of time, or should include a provision that would allow such an order itself to subject the entity to the rule, whether in whole or in part (for example,

[290] In proposed § 1092.301(h)(2), the Bureau specifically identifies a ''Tribe'' as an entity included in the exemption. Because sovereign immunity only applies to the sovereign, the Bureau believes that an entity that is eligible for the sovereign immunity conferred upon a Tribe would be considered the ''Tribe'' for purposes of proposed § 1092.301(h)(2).

[291] *See, e.g., Great Plains Lending, LLC* v. *Department of Banking,* 259 A.3d 1128, 1134 (Conn. 2021) (holding that Great Plains Lending, LLC, had established sovereign immunity, but that there was insufficient evidence to conclude that another lender formerly known as American Web Loan, Inc., had sovereign immunity, and remanding on that issue); *Solomon* v. *American Web Loan,* 375 F.Supp.3d 638, 660 (E.D. Va. 2021) (holding that American Web Loan did not share tribe's sovereign immunity).

[292] *Solomon* v. *American Web Loan, Inc.,* Case No. 17cv0145 (E.D. Va.) (Final Approval Order for Class Action Settlement July 9, 2021), *https://www.awlsettlement.com/* (last visited Dec. 6, 2022).

[293] *See, e.g., Michigan* v. *Bay Mills Indian Cmty.,* 572 U.S. 782, 790 (2014) (citing *C&L Enters, Inc.* v. *Citizen Band Potawatomi Tribe of Okla.,* 532 U.S. 411 (2001)).

registration but not publication), which determinations would be made in the orders themselves on an order-by-order basis. For example, under that alternative, if an order that established supervisory authority for a two-year period were renewed for another two-year period, then if the original order did not subject the entity to the rule, the renewal order could do so.

Proposed § 1092.301(h)(4) would exclude natural persons from the requirements of proposed subpart C. Many supervised nonbanks are not natural persons. However, some natural persons may fall within the scope of the provisions of CFPA section 1024(a), including those that broker mortgages. For example, a natural person may act in the capacity as sole proprietor of a sole proprietorship that is not incorporated as a distinct legal entity. Such a natural person could qualify as being subject to the Bureau's supervisory authority, which applies to supervised covered persons, a term defined in CFPA section 1002(6) by reference to ''any person'' which, under CFPA section 1002(19) includes an ''individual.'' The Bureau does not believe, however, that individual natural persons typically would be likely to enter into a significant number of covered form contracts with consumers. Such persons might qualify for the exclusion from subpart C under proposed § 1092.301(h)(5) for persons with receipts of less than $1 million, or for the exclusion under proposed § 1092.301(h)(6) for persons with *de minimis* levels of use of covered terms and conditions. Yet there still may be burden involved in analyzing the regulation and assessing eligibility for these exclusions. The Bureau requests comment on this exclusion, including any data on whether natural persons enter into large numbers of covered form contracts containing covered terms or conditions and have receipts of over $1 million from offering or providing these consumer financial products or services.

Proposed § 1092.301(h)(5) would exclude supervised nonbanks with less than $1 million in annual receipts resulting from offering or providing all consumer financial products and services as relevant under proposed § 1092.301(g). For purposes of this exclusion, proposed § 1092.301(h)(5)(i) would clarify that the term ''annual receipts'' has the same meaning as that term has in 12 CFR 1090.104(a), including the provisions of that definition at 12 CFR 1090.104(a)(i) regarding receipts, 12 CFR 1090.104(a)(ii) regarding period of measurement, and 12 CFR 1090.104(a)(iii) regarding annual receipts of affiliated companies.

In addition, for purposes of this exclusion, proposed § 1092.301(h)(5)(ii) would clarify that receipts that count toward determining larger participant status under a larger participant rule would count toward this exclusion, even if the person ultimately did not qualify as a larger participant. This clarification would address the example of a person offering or providing both consumer mortgages, private student loans, or payday loans, on the one hand, and consumer financial products or services identified in a larger participant rule, on the other hand. In that example, even if the person did not meet the threshold for larger participant status under the larger participant rule, the receipts from offering or providing the consumer financial product or service covered by the larger participant rule still would count as receipts for purposes of the exclusion in this proposal.

Under this proposed definition, the exclusion would be based on the receipts resulting from offering or providing all consumer financial products and services as relevant under proposed § 1092.301(g), including such receipts from affiliated companies as defined in the Bureau's regulations at 12 CFR 1090.101. The receipts test in proposed § 1092.301(h)(5) does not refer to when the underlying consumer contract that generated the receipt was entered into, or whether the underlying consumer contract that generated the receipt was a covered form contract or included a covered term or condition. Therefore, if a supervised nonbank earned receipts in the previous calendar year from a consumer financial product or service as relevant under proposed § 1092.301(g) originally offered or provided in prior years, those receipts still would count toward the threshold. In addition, if a supervised nonbank earned receipts in the previous calendar year from consumer financial products or services as relevant under proposed § 1092.301(g) that were not subject to covered terms and conditions in covered form contracts, those receipts still would count toward the threshold.

The Bureau is proposing the exemption in proposed § 1092.301(h)(5) for two reasons. First, consumer financial product and service providers with significantly lower levels of receipts generally may pose lower risks because they engage with fewer consumers, obtain less money from those consumers, or both. Second, the information collection burdens on entities with receipts of $1 million or less, on a relative basis, generally would be higher than such burdens on larger entities.[294]

The Bureau requests comment on this approach, including whether the exemption in proposed § 1092.301(h)(5) should apply on a fiscal-year basis, as an alternative to the proposed calendar-year basis or as an additional basis for exemption, and why or why not. The calendar-year measurement generally would align with the period used to define reporting obligations under proposed § 1092.302(a). However, the Bureau notes that receipts calculations for larger participant determinations in the debt collection and consumer reporting markets are on a fiscal-year basis, as provided for in part 1090. The Bureau also requests comment on whether the proposed exemption should be automatically adjusted for inflation, such as every five years or at some other interval.

Proposed § 1092.301(h)(6) would exclude supervised nonbanks that, together with their affiliates, engaged in no more than a *de minimis* level of use of covered terms or conditions in the previous calendar year. In general, risks to consumers from covered terms and conditions may be greater for covered terms and conditions used more frequently, such as in more transactions or with more consumers. Relatedly, as discussed in the section-by-section analysis of the definition of a covered form contract in proposed § 1092.301(b)(1), the proposal would focus on risks related to terms and conditions in form contracts used repeatedly in multiple transactions. The Bureau also recognizes the burdens of the information collection discussed in more detail in parts VII, VIII, and IX. By

[294] *See* 12 U.S.C. 5514(b)(2)(A), (B) (requiring the Bureau to take into consideration ''the asset size of the covered person'' and ''the volume of transactions involving consumer financial products or services in which the covered person engages''). Furthermore, while the Bureau does not believe that it needs to rely on its authority under 12 U.S.C. 5512(b)(3) to exempt classes of covered persons from rules in proposing this small-entity exclusion. The Bureau believes that the exclusion would be warranted as an exercise of its section 1022(b)(3) exemption authority, to the extent that provision was applicable. *See* 12 U.S.C. 5512(b)(3). As under 12 U.S.C. 5514(b)(2), an entity-size-based exclusion accords with 12 U.S.C. 5512(b)(3)(B)(i) and (ii), which instruct the Bureau to consider ''the total assets of the class of covered persons'' and ''the volume of transactions . . . in which the class of covered persons engage'' in issuing exemptions. 12 U.S.C. 5512(b)(3)(B)(i)–(ii). In addition, given the relatively limited scope of the harm to consumers that entities with annual receipts not exceeding $1 million would generally be able to cause, the Bureau does not believe that the factor articulated in 12 U.S.C. 5512(b)(3)(B)(iii) (''existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protection'') warrants not proposing the proposed small-entity exclusion.

not proposing to collect information about supervised nonbanks' relatively infrequent use of covered terms and conditions, the proposal seeks to balance that burden in light of the potentially lower risks from infrequent use. For these reasons, proposed § 1092.301(h)(6) would exclude from the definition of supervised registrant those supervised nonbanks engaged in no more than a *de minimis* level of use of covered terms or conditions.

Under proposed § 1092.301(h)(6), if a supervised registrant meets two conditions, its use of covered terms and conditions would qualify as *de minimis.* First, the supervised registrant must not have entered into covered form contracts containing any covered term or condition 1,000 or more times during the previous calendar year. Proposed § 1092.301(i)(1) describes the ways in which a supervised registrant would enter into a covered form contract for purposes of subpart C. This test would count the number of times the supervised registrant entered into covered form contracts in the previous calendar year, for consumer financial products and services as relevant under proposed § 1092.301(g).[295] Entering into covered form contracts for a consumer financial product or service subject to a larger participant rule would count toward this threshold even if the person did not qualify as a larger participant. In addition, regardless of how many covered terms and conditions are contained in the covered form contract, each time the supervised registrant enters into the covered form contract would count only once toward the 1,000-use cutoff for this component of the proposed *de minimis* threshold. As a result, if a supervised registrant entered into only one covered form contract, that covered form contract contained multiple covered terms or conditions, and the supervised registrant entered into the contract 999 or fewer times, it would satisfy this component. As noted in the section-by-section analysis of proposed § 1092.301(c), some transactions may be governed by multiple covered form contracts. For that reason, the Bureau seeks comment on whether this component of the proposed exclusion should be revised to be based on the number of times the supervised registrant entered into all form contracts for the same consumer financial product or services. The Bureau also requests comment on whether to adopt a different threshold for what is a *de minimis* number of times for a supervised registrant to enter into a covered term or condition.

Second, the supervised registrant must not have received, as a party to a legal action, court or arbitrator decision(s) ruling on the enforceability of a covered term or condition in the previous calendar year. Such decisions could include orders or opinions terminating, dismissing, staying, deferring, suspending, restricting, limiting liability for a claim filed by the consumer pursuant to a covered term or condition in a covered form contract. As discussed in the section-by-section analysis of proposed § 1092.301(i)(2) below, administrative tribunals are less likely to be charged with ruling on the enforceability of a contract term; for that reason, proposed § 1092.301(h)(6)(ii) would not cover administrative decisions.

The Bureau requests comment on whether a *de minimis* use exclusion is appropriate, and if not, why not. The Bureau also requests comment on its proposed levels of use to define *de minimis* use. For the component of the threshold related to decisions in legal actions, the Bureau requests comment on whether the final rule should adopt a higher threshold, or a different threshold for individual and putative or certified class actions, and if so, what the threshold(s) should be and why. The Bureau is not proposing a different threshold for these different types of cases. Even decisions in individual legal actions may have precedential, authoritative, or persuasive impact beyond the individual case, whether for other courts, arbitrators, or the public. For that reason, such decisions may have impact beyond those consumers who are party to an individual legal action or potential members of a class action.

Proposed § 1092.301(h)(7) would exclude supervised nonbanks whose use of covered terms or conditions in covered form contracts in the previous calendar year was limited to entering into contracts for residential mortgages in a form made publicly available on the internet required for insurance or guarantee by a Federal agency or purchase by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (or its successors), or the Government National Mortgage Association. This exclusion would not apply if the supervised nonbank used covered terms or conditions for consumer financial products or services as relevant to proposed § 1092.301(g) that were different from or in addition to any covered terms and conditions that appeared in these published form contracts. In addition, this exclusion would not apply if the person obtained a court or arbitrator decision in the previous calendar year regarding the enforceability of a covered term or condition in a covered form contract as described in proposed § 1092.301(i)(2).

The Bureau is proposing this exclusion because, as discussed in the impacts analysis in part VII, these standard federally-adopted contracts are publicly-available on the internet websites of Federal agencies or enterprises overseen by Federal agencies and are in general use throughout the market for first-lien mortgages on site-built homes that are insured, guaranteed, or purchased by these Federal agencies or enterprises supervised by Federal agencies. Covered terms and conditions may appear in these covered form contracts. However, the Bureau and the general public already have access to these contracts on the websites of these Federal agencies or the enterprises they oversee. The Bureau already can use that information as part of its market monitoring and risk assessments. It therefore does not propose to require registration from supervised nonbanks whose sole use of covered terms or conditions consists of entering into those contracts. The exemption in proposed § 1092.301(h)(7) would not apply, however, if the supervised nonbank obtained a court or arbitrator decision enforcing a covered term in such a covered form contract. The Bureau and the public do not have general knowledge of all such decisions, and the value in collecting information about them from a risk monitoring and assessment perspective therefore is similar to the value of registering decisions related to covered terms and conditions in other covered form contracts. In addition, if the supervised nonbank uses covered terms and conditions contained in covered form contracts, other than the contracts described in proposed § 1092.301(h)(7), then the entity would not be eligible for this exemption. For entities not eligible for an exemption in proposed § 1092.301(h), the Bureau is not proposing a blanket exclusion for the

[295] This would include activity subject to an order under CFPA section 1024(a)(1)(C) that is not excluded by proposed § 1092.301(h)(3)(ii), because that activity falls within the definition of covered term or condition in proposed § 1092.301(c). Proposed § 1092.301(c) covers the described terms or conditions when they apply to a consumer financial product or service ''described in'' proposed § 1092.301(g). When a supervised registrant's consumer financial product or service is specified in an order issued under CFPA section 1024(a)(1)(C), then for the supervised registrant, that consumer product or service would be one that is ''described in'' proposed § 1092.301(g) for purposes of the definition in proposed § 1092.301(c).

contracts described in proposed § 1092.301(h)(7) because the incremental burden from registering an additional contract (compared to the burden of registering overall) should not be significant, particularly as the nonbank registration system can streamline how it collects information about supervised registrants' use of these type of standard form contracts that have widespread market usage.

Finally, proposed § 1092.301(h)(8) would clarify that the proposal would not cover a person who is a covered person solely by virtue of being a related person as defined in CFPA section 1002(25).[296] Under CFPA section 1002(25), certain persons are ''deemed to mean a covered person for all purposes of any provision of Federal consumer financial law[.]'' [297] However, CFPA section 1022(c)(7)(A) excludes related persons from the type of covered persons covered by Bureau rules regarding registration issued under CFPA section 1022(c)(7) authority. As discussed in part II.C and part IV above, the Bureau is proposing this rule in part under separate authorities under CFPA sections 1022 and 1024. However, for clarity, the Bureau is not proposing to cover persons who are not subject to its CFPA section 1022(c)(7)(A) authority. Therefore, it is proposing to exclude related persons in this rule, to the extent that they are not covered persons for any other reason than being deemed covered persons pursuant to CFPA section 1002(25). Similar to the operation of the exclusion for related persons in the Bureau's recent proposal for registration of certain nonbank orders,[298] this exclusion generally would not apply to a supervised nonbank who offers or provides consumer financial products or services described in CFPA section 1024(a)(1) (as recited in proposed § 1092.301(g)), even if it also happens to be a related person for other reasons.

301(i) Use of a Covered Term or Condition

The proposal would collect information about supervised registrants' use of covered terms and conditions in covered form contracts. Supervised registrants may use terms and conditions in different ways. Supervised registrants may typically use covered terms and conditions by placing them in contracts between the consumer and the supervised registrant. In other circumstances, supervised registrants may seek to enforce covered terms and conditions in a covered form contract that they did not enter into as a party. For example, as discussed in part II, under some legal precedents, a larger participant debt collector or student loan servicer may seek to enforce a covered term or condition in a loan agreement between the consumer and the creditor.

The enforcement of covered terms and conditions may signal risk to consumers that is different than the risks presented by placing the covered terms or conditions in the covered form contract. Namely, the degree to which a covered term or condition dissuades or chills private enforcement of an applicable legal protection depends on whether there are in fact instances of non-compliance with the applicable legal protection that could lead to private enforcement. If a consumer files a legal action, then that may indicate that a consumer is claiming there are such instances. If a court or arbitrator then enforces the covered term or condition, then that decision on its face restricts the ability of the consumer to enforce an applicable legal protection when they have determined they would do so. In addition, as discussed in the section-by-section analysis of proposed § 1092.301(d)(6) above, a non-disparagement clause covered by proposed § 1092.301(d)(6) may similarly chill public comment or complaint about a supervised registrant's practices, which in turn may make potential violations or risks of violations of applicable legal protections more difficult to uncover. Accordingly, proposed § 1092.301(i) would define the term ''use'' in this context to include both entering into a contract that contains the covered terms or conditions and obtaining decisions about the enforceability of covered terms and conditions.

First, as described in proposed § 1092.301(i)(1), a supervised registrant would use a covered term or condition for purposes of subpart C if it ''enters into'' a covered form contract containing the covered term or condition. Proposed § 1092.301(i)(1) would list the covered examples of this type of use. The examples in proposed § 1092.301(i)(1) include providing a new consumer financial product or service, acquiring or purchasing a consumer financial product or service, or adding a covered term or condition to a consumer financial product or service, as described in more detail in proposed § 1092.301(i)(1).[299]

Proposed § 1092.301(i)(1)(iii) would clarify that one way a supervised nonbank would enter into a covered form contract is to acquire a consumer financial product or service that is subject to a covered form contract. That would be the case even if the seller is not subject to the Bureau's supervisory authority. For example, a larger participant automobile finance lender would enter into a covered form contract for purposes of proposed § 1092.301(i)(1)(iii) when it acquires a covered retail installment sales form contract from an automobile dealer excluded from supervisory authority of the Bureau under CFPA section 1029(a).

In addition, proposed § 1092.301(i)(1)(v) would clarify that another way a supervised registrant may enter into a covered form contract is to add a covered form contract to a pre-existing consumer financial product or service. For example, a loan servicer or debt collector may engage in servicing or collection of a debt originated under a consumer contract that the servicer or debt collector had not entered into at the time of origination of the loan. But as part of its servicing or debt collection activities, the servicer or debt collector may enter into an agreement with the consumer such as for a payment plan, a payment authorization, a debt modification or settlement, or some other type of agreement. If the agreement is a covered form contract, then the servicer or debt collector has entered into that covered form contract for purposes of proposed § 1092.301(i)(1).

Second, as described in proposed § 1092.301(i)(2), subpart C would cover an additional type of use of covered terms or conditions—obtaining decisions by a court or arbitrator on the enforceability of a covered term or condition. This type of ''use'' could affect a supervised registrant's obligations under the proposal in two ways. First, this type of use would affect a supervised registrant's eligibility for the *de minimis* exclusion from subpart C, as discussed in the section-by-section analysis of proposed § 1092.301(h)(6) above. In addition, when the supervised registrant is not eligible for the *de minimis* exclusion, the Bureau would collect certain limited information about this type of use as described in proposed § 1092.302(a)(4).

Proposed § 1092.301(i)(2) would define the type of event that would be

[296] 12 U.S.C. 5481(25).

[297] 12 U.S.C. 5481(25)(B).

[298] *See* Nonbank Registration—Orders Proposal, proposed § 1092.201(d)(1).

[299] This proposed definition and related examples would not reach terms or conditions affecting all goods and services. The definition of covered term and condition in proposed § 1092.301(c) reaches only limitations applicable to those consumer financial products and services subject to the Bureau's supervisory authority listed in proposed § 1092.301(g).

the subject of information collection under proposed § 1092.302(a)(4). The Bureau seeks to define an event or events that would be a meaningful indicator of potentially significant risk to a consumer who has asserted a claim in a legal action (or in the case of non-disparagement clauses, faces a claim against them), while also defining an event or events that supervised registrants could ascertain without incurring significant burdens. Court or arbitrator decisions to enforce or not enforce a covered term or condition would be both a notable event in the supervised registrant's administration of covered terms or conditions, and a relatively definitive indicator of risk posed by those terms or conditions. The section-by-section analysis of proposed § 1092.302(a)(4) below explains the value of this information from a risk monitoring and assessment perspective.

Many decisions covered by proposed § 1092.301(i)(2) are not readily available to the public, such as through electronic legal research. Decisions in individual arbitrations generally are confidential, and decisions in lawsuits filed in court are not always searchable. Some court decisions may be publicly available such that the Bureau and the public could conduct legal research to determine when covered terms and conditions were enforced. However, the supervised registrant is in the best position to know and to readily access decisions in the legal actions brought against or by them.

The Bureau is not proposing to define ''use'' more broadly. For example, proposed § 1092.301(i)(2) would not cover steps taken by the supervised registrant to enforce covered terms or conditions, such as through filing a pleading that a court or arbitrator either has not decided or has rejected. Based on the narrower definition in proposed § 1092.301(i)(2), which would cover only decisions on such requests, proposed § 1092.302(a)(4) would pose a lower information collection burden than if it were collecting information about the broader range of attempts at enforcement (such as motions practice) regardless of whether the motion resulted in a decision. Supervised registrants would not need to review all pleadings in a legal action to identify responsive information. Instead, supervised registrants would need to be aware of the decisions of the court or arbitrator.

In addition, proposed § 1092.301(i)(2) would not cover administrative decisions. While courts and arbitrators may generally apply State common law of contracts to rule on enforceability of terms, administrative agencies may be less likely to serve that general role of applying State common law of contracts to rule on enforceability of covered terms and conditions. The Bureau seeks comment on this approach, including on the likelihood that administrative decisions may have a bearing on the enforceability of covered terms and conditions.

Section 1092.302 Registration and Submission of Information Regarding Use of Covered Terms and Conditions

302(a) Requirements To Register and Annually Submit Information to the Nonbank Registration System

Proposed § 1092.302(a) would establish requirements for supervised registrants to annually register in the nonbank registration system and provide information about their use of covered terms and conditions in covered form contracts. Proposed § 1092.302(a) would require that, each calendar year by the annual registration dates, supervised registrants must identify themselves or update their identifying information and administrative information in the nonbank registration system. Proposed § 1092.302(a)(1) and (2) would require the supervised registrant to specify the supervised products as relevant to proposed § 1092.301(g) for which the supervised registrant used covered terms or conditions in the previous calendar year and the States or other jurisdictions where it offered those products or services. Proposed § 1092.302(a)(3) and (4), would further require that supervised registrants provide information to the nonbank registration system about their use of those covered terms and conditions by providing standardized data.

The Bureau requests comment on the general requirements of proposed § 1092.302(a), including the requirement to register and update registration information annually. The Bureau requests comment on whether registration and registration updates should be required or permitted more or less often, and if so, why and in what circumstances. For example, the Bureau requests comment on whether, and if so, why and when supervised registrants should be required or allowed to update the registry upon a change in their identifying information, such as a result of a merger or acquisition, or a change in their use of a previously-registered covered term or condition or a change in use of a form contract containing covered terms or conditions. To the extent such updates are permitted or required, the Bureau also requests comment on how and when the updates should be published pursuant to proposed section § 1092.303 below.

The Bureau also requests comment on whether the nonbank registration system should include pre-completed selections for standard form contracts that have widespread market usage. For example, as discussed in the section-by-section analysis of proposed § 1092.301(h)(7), some mortgage lenders using certain form contracts for federally-related mortgages may be required to register in circumstances where exclusions in proposed § 1092.301(h) do not apply. Because the form contracts are widely accessible on Federal agency and government-sponsored enterprise websites, the Bureau may be able to pre-populate answers to the questions posed by the nonbank registration system for these contracts. That would reduce the incremental burden of registering any covered terms or conditions in these contracts. The Bureau requests comment on what other covered form contracts may be in such widespread usages that would be amenable to similar burden-reducing information collection methods. The Bureau requests commenters provide examples of these covered form contracts.

In addition, the Bureau requests comment on the benefits and burdens involved in identifying the States or other jurisdictions where the supervised registrant offered the consumer financial products or services identified pursuant to proposed § 1092.302(a)(1). In addition, the Bureau requests comment on whether the final rule should clarify what qualifies as a State where the consumer financial product or service is offered. The Bureau does not believe significant uncertainty on this issue is likely. If, for example, an online lender in one State offers loans to consumers in the State where it is located as well as to consumers in other States, for purposes of subpart C, the lender presumably would be offering or providing loans in all of these States where the loans would be available.

Proposed § 1092.302(a)(3) would collect additional types of data more specifically related to each of the covered terms and conditions contained in covered form contracts entered into by the supervised registrant. Proposed § 1092.302(a)(3) would require the supervised registrant to identify which consumer financial products and services identified pursuant to proposed § 1092.302(a)(1) are affected by each covered term or condition, and in which States listed pursuant to proposed § 1092.302(a)(2). Proposed § 1092.302(a)(3) also would require the supervised registrant to provide six

additional types of data on its use of the covered term or condition.

First, proposed § 1092.302(a)(3)(i) would collect brand name and trade names the supervised registrant used to provide the supervised consumer financial product or service. Second, proposed § 1092.302(a)(3)(ii) would collect the legal names of any persons, other than a consumer and the supervised registrant, that typically entered into the applicable covered form contract such as other named parties. The information described in proposed § 1092.302(a)(3)(i) and (ii) would help the Bureau to more clearly identify the products and services and other covered persons to which the information collected relates.

Absent the data collected by proposed § 1092.302(a)(3)(i), the remaining data collected under proposed § 1092.302(a) may be associated only with corporate entity names that may be difficult to match to other information related to a brand name or trade name. Thus, the data collected by proposed § 1092.302(a)(3)(i) would facilitate use of the data for the Bureau's market monitoring and supervisory purposes as described in part II.C.

Absent the data collected by proposed § 1092.302(a)(3)(ii), the Bureau may have greater difficulty identifying when the remaining data collected under proposed § 1092.302(a) is partially duplicative of information provided by other supervised registrants. For example, if a nonbank lender covered by subpart C registers terms and conditions in a covered form contract to which an unaffiliated loan broker or loan servicer covered by subpart C is also a party, then without the information collected by proposed § 1092.302(a)(3)(ii), the Bureau may be unable to identify that the terms and conditions registered relate to the same agreement.

Furthermore, the Bureau anticipates that publication of this information under proposed § 1092.303 would similarly help other regulators and the public to more clearly identify the products and services to which the information collected relates.

Third, proposed § 1092.302(a)(3)(iii) would collect information on each category of covered limitation on consumer legal protections that is included in the covered form contract. Because each of the types of covered limitations listed in proposed § 1092.301(d) may pose different risks, it would be useful to collect information about which types of covered terms or conditions the supervised registrant used. This information also would identify situations where a supervised registrant is using multiple types of covered terms or conditions for a given consumer financial product or service, which may shed light on distinct risks or magnify risks.

Fourth, for each type of covered limitation on consumer legal protections described in proposed § 1092.301(d)(1) through (7) contained in the covered form contract, proposed § 1092.302(a)(3)(iv) would collect certain information about the limitation. For limitations described in proposed § 1092.301(d)(1) (precluding the consumer from bringing a legal action after a certain period of time), proposed § 1092.301(d)(2) (specifying a forum or venue where a consumer must bring a legal action in court), and proposed § 1092.301(d)(3) (limiting the ability of the consumer to file a legal action seeking relief for other consumers or to seek to participate in a legal action filed by others), supervised registrants may be able to provide specific information about the limitations' content in a more standardized form, without incurring significant burdens. By collecting the standardized information described below, the Bureau also would be able to monitor and assess risks posed by these limitations and compare limitations across consumer financial products and services in a more efficient manner. Because the risks posed by these terms or conditions vary not just by their type or combination, but also by their content, collecting information about their content would facilitate closer monitoring and more careful risk assessment.

Accordingly, for limitations described in proposed § 1092.301(d)(1) (precluding the consumer from bringing a legal action after a certain period of time), proposed § 1092.302(a)(3)(iv)(A) would collect the specified time period, within ranges specified by the Bureau, for the consumer to bring a legal action. For limitations described in proposed § 1092.301(d)(2) (specifying a forum or venue where a consumer must bring a legal action in court), proposed § 1092.302(a)(3)(iv)(B) would collect the name and, as applicable, place, of the forum or venue for the consumer to bring a legal action. For limitations described in proposed § 1092.301(d)(3) (limiting the ability of the consumer to file a legal action seeking relief for other consumers or to seek to participate in a legal action filed by others), proposed § 1092.302(a)(3)(iv)(C) would collect information about what type of legal action the consumer is prohibited from filing and, as applicable, what type of participation the consumer is prohibited from engaging in vis-à-vis legal action filed by others. This could include specifying, for example, whether the consumer is prohibited from engaging or participating in joinder, intervention, representative action, a class action, or some combination of these or others.

For limitations described in proposed § 1092.301(d)(4) (limiting liability to the consumer in a legal action, including by capping the amount of recovery or type of remedy), proposed § 1092.301(d)(5) (waiving a cause of legal action by the consumer, including by stating a person is not responsible to the consumer for a harm or violation of law), proposed § 1092.301(d)(6) (limiting the ability of the consumer to make any written, oral, or pictorial review, assessment, complaint, or other similar analysis or statement concerning the offering or provision of consumer financial products or services by the supervised registrant), and proposed § 1092.301(d)(7) (waiving any other identified consumer legal protection, including any specified right, defense, or protection afforded to the consumer under Constitutional law, a statute or regulation, or common law), an efficient, low-burden way to collect relevant information to monitor and assess the risk posed by the term or condition would be for the supervised registrant to submit the text of the relevant contract term or condition. For contracts stored electronically, the supervised registrant could type or electronically paste the text quickly into the nonbank registration system. For contracts not stored electronically, the supervised registrant could type the text in their nonbank registration system submission or potentially submit an image that contains or can be converted to readable text. For these types of covered limitations on consumer legal protections, collection of the covered term or condition itself would pose a lower burden on supervised registrants than requiring the supervised registrant to describe or otherwise characterize the limitation. The latter approach could call upon the supervised registrant to make burdensome legal judgments about the scope of what may be a complex legal provision, for example. By contrast, the Bureau would be better able to monitor and assess risks posed by these limitations when it can review their text.

Proposed § 1092.302(a)(3)(iv) would not propose to collect information about the contents of an arbitration agreement covered by proposed § 1092.301(d)(8). There is substantial information available about the generalized risks posed by arbitration agreements, including those discussed in part II and the section-by-section analysis of proposed § 1092.301(d)(8) above. These risks include that class actions are not

available and decisions in individual arbitration generally are not public. These risks remain in particular after the Bureau's 2017 rulemaking to address them was voided by a joint resolution of Congress signed by the President.[300] The Bureau therefore believes at this time that it would be unnecessary to impose additional information collection burdens because the baseline risks posed by arbitration agreements described above (as distinct from any other covered terms or conditions that they may contain) are unlikely to vary. And to the extent an arbitration agreement contains one of the limitations described in proposed § 1092.301(d)(1)–(7), supervised registrants already would provide information about that limitation separately.

The Bureau requests comment on this approach. For example, the Bureau notes that some arbitration agreements may allow consumers to obtain judicial review of the validity of the arbitration agreement itself, while others may contain a delegation provision requiring that only the arbitrator may decide the validity of the arbitration agreement. In addition, some arbitration agreements could specify unusual administrators. The Bureau requests comment on whether it should collect information about whether reported arbitration agreements contain such delegation clauses, and about the identity of the arbitration administrator, including information about the potential value and burdens of such information collection.

Fifth, proposed § 1092.302(a)(3)(v) would collect information about the State or other jurisdiction identified in any choice of law provisions in the covered form contract, as applicable. The applicable law specified in the covered form contract may be important contextual information for assessing the risk posed by the covered form contract and the covered terms or conditions in the covered form contract. For example, as discussed in part II above, some laws prohibit or void certain contract terms, while others do not. By collecting information about the chosen law, the Bureau can assess whether a contract term or condition may be prohibited by that law, or if the supervised registrant may have selected a law that has the effect of avoiding a prohibition or limitation on the term or condition that exists under a different law.

Sixth, proposed § 1092.302(a)(3)(vi) would collect information necessary for the Bureau identify and obtain form contracts provided by form providers to supervised registrants. Proposed § 1092.302(a)(3)(vi) would collect the name of the form contract provider and other information necessary to identify the form contract, such as the complete copyrighted name including any form number and date of the contract. The information collected pursuant to proposed § 1092.302(a)(3)(vi) would help the Bureau to identify and obtain these agreements. The Bureau could use these agreements to simplify registration of terms and conditions contained in those contracts. As discussed above, the Bureau may be able to prepopulate the nonbank registration system with information about certain form contracts used by multiple market participants. To the extent the Bureau is able to obtain a specific form contract and prepopulate the nonbank registration system with information about that contract, and the supervised registrant uses that contract without modification, the Bureau requests comment on whether the final rule should permit supervised registrants to simply identify their use of that contract pursuant to proposed § 1092.302(a)(3)(vi), as an alternative to providing the specific information about that contract required by proposed § 1092.302(a)(3)(iii)–(v).

In addition, by identifying those terms and conditions that are contained in form provider contracts, the Bureau could more efficiently identify supervised registrants that use potentially unique or outlier terms and conditions. Accordingly, the information collected pursuant to proposed § 1092.302(a)(3)(vi) also would facilitate the Bureau's monitoring of risks to consumers and assessment of risks for prioritization of its risk-based supervision program.

Finally, the Bureau requests comment on whether it should publish the name of the form provider and the citation to the specific form contract, pursuant to proposed § 1092.303.

Proposed § 1092.302(a)(4) would obtain information about the degree to which supervised registrants obtained court or arbitration rulings during the previous year regarding the enforceability of covered terms or conditions. In particular, pursuant to proposed § 1092.302(a)(4), the nonbank registration system would ask basic questions, such as binary questions about whether courts or arbitrators issued decisions ruling on the enforceability of a covered term in legal actions by consumers, as defined in proposed § 1092.301(i)(2). The information collected would further assist the Bureau in monitoring and assessing risks, by informing judgments about whether the terms or conditions are lawful and hence enforceable.

If a supervised registrant received one or more such decisions, proposed § 1092.302(a)(4) also would require the supervised registrant to identify which type of covered term or condition was at issue in the decision, and whether the ruling enforced or declined to enforce the covered term or condition. This information would clarify the type of risk posed by the decision. In the case of a ruling declining to enforce the covered term or condition, this could indicate that the term was unenforceable in that case, posing a risk that consumers may have been misled to believe otherwise. By contrast, a ruling enforcing a covered term or condition could be a concrete indication that claims a consumer affirmatively asserted in court or arbitration were being limited by a term or condition found to be lawful in that case.

In many cases, information about decisions collected under proposed § 1092.302(a)(4) would relate to claims filed by the consumer as described in proposed § 1092.301(i)(2). However, proposed § 1092.302(a)(4) also would apply to certain actions the supervised registrant brought against the consumer. In particular, if a supervised registrant used a non-disparagement term or condition described in proposed § 1092.302(d)(6) to obtain a decision on its enforceability from a court or arbitrator, then that decision also would be subject to proposed § 1092.302(a)(4).

The Bureau requests comment on how the legal departments or legal function of supervised registrants track the legal actions filed against or by supervised registrants and the decisions courts or arbitrators issue in those legal actions. The Bureau considered proposing to require supervised registrants to quantify the number of times they attempted to enforce covered terms or conditions. However, the Bureau is concerned that to identify such a number, legal staff at supervised registrants may need to review the pleadings in all legal actions filed against or by them in a calendar year. Proposed § 1092.302(a)(4) therefore takes a more limited approach to avoid this higher burden on supervised registrants.

The Bureau requests comment on whether proposed § 1092.302(a)(4) also should require the supervised registrant to identify the citation for or court issuing each decision ruling on the enforceability of a covered term or condition. For example, this could help

[300] *See* 82 FR 55500 (Nov. 22, 2017) (discussing Congressional Review Act revocation of Bureau's 2017 Arbitration Agreements rule), *https://www.federalregister.gov/documents/2017/11/22/2017-25324/arbitration-agreements.*

the Bureau to locate the relevant decisions as well as to identify multiple decisions in the same case, such as different decisions on appeal over time. The Bureau also requests comment on whether similar information should be collected related to arbitration decisions and, in the case of any confidential arbitration decisions, whether such information should be excluded from information the Bureau would publish under proposed § 1092.303. Finally, the Bureau requests comment on whether proposed § 1092.302(a)(4) should be expanded to require or allow supervised registrants to report when decisions are pending appeal or the like.

The Bureau also requests comment on whether proposed § 1092.302(a)(4) should be expanded to require a supervised registrant to identify any orders registered under rules for subpart B that the Bureau is separately proposing [301] when the order refers to the use of a covered term or condition in a covered form contract as a basis for a finding of a violation of law covered by subpart B. For example, if an order is not issued by a court or arbitrator, then it would not already be covered by the information collection in proposed § 1092.302(a)(4). Thus, the Bureau seeks comment on whether proposed § 1092.302(a)(4) should be expanded to cover agency orders, and if so, whether exclusions in proposed § 1092.301(h) should be similarly adjusted to account for agency orders.

Finally, the Bureau requests comment on whether proposed § 1092.302(a) more broadly should identify additional or different categories of information to be collected by the nonbank registration system, including but not limited to the text of the standard covered terms or conditions used by the supervised registrant beyond those described in proposed § 1092.301(c)(4) through (7), the text of the covered form contract in which covered terms or conditions appear, or both. Such additional or different categories also could relate to the contracting process, such as whether the supervised registrant uses an electronic contracting process pursuant to the E-Sign Act requirements, including those discussed in the section-by-section analysis of proposed § 1092.301(d)(7) above.

302(b) Supervised Registrant's Collection and Reporting of Information; Scope of Initial Registration; Corrections to Registration Information

Proposed § 1092.302(b) would set forth certain standards related to the information supervised registrants must collect and report pursuant to this subpart.

Proposed § 1092.302(b)(1) would clarify that for the period while a supervised registrant qualifies as a supervised registrant, it must collect the information necessary to comply with the reporting requirements in proposed § 1092.302(a). For periods when persons are not supervised registrants, the rule would not place requirements on those persons. For example, a debt collector that is not a larger participant would not be required to collect information about its use of covered form contracts. If that debt collector later becomes a larger participant in the market for consumer debt collection and also is not eligible for an exclusion from the definition of supervised registrant in proposed § 1092.301(h), then the debt collector would be subject to proposed § 1092.302(b)(1) at the time it becomes a supervised registrant. Similarly, under proposed § 1092.302(b)(1), upon exit from the Bureau's supervisory authority, a person would no longer be required to collect the information covered by proposed subpart C. The Bureau requests comment on proposed § 1092.302(b)(1) including on whether it should include a similar requirement to retain records used to submit registration information under subpart C, and if so, for how long.[302]

Proposed § 1092.302(b)(2) would clarify that supervised registrants do not need to collect or report information related to periods that predate when they become subject to subpart C, as determined by the effective date of the rule.[303] Proposed § 1092.302(b)(2) would provide examples. For example, proposed § 1092.302(b)(i) would clarify that, for registrations providing information about activities in the calendar year that includes the effective date, supervised registrants would satisfy the requirements of proposed § 1092.302(a) by submitting information that relates to the portion of that calendar year after the effective date. Therefore, the Bureau anticipates that, in the first year when it accepts registrations (assuming that is in the calendar year after the effective date), the information provided may relate to only a portion of the previous calendar year. This approach would afford supervised registrants advance time to prepare to collect the information they will need to report. In addition, to the extent that supervised registrants do not want to report certain contract terms or conditions, they would have the option of updating their contracts before the effective date of the subpart. For example, if a supervised registrant had a covered form contract that included a waiver of rights that is prohibited by an anti-waiver provision of a statute, the supervised registrant could fix that non-compliant contract provision before it becomes subject to mandatory reporting under proposed subpart C. As discussed in the analysis of impacts of the proposal in part VII, some supervised registrants would have an incentive to make such corrections before the effective date.

Proposed § 1092.302(b)(2)(ii) would provide another example, where a nonbank became a larger participant in the middle of the calendar year before the annual registration date. This could happen, for example, for participants in debt collection or consumer reporting markets where the larger participant test is based on receipts during the fiscal year, if the supervised registrant's fiscal year is not the calendar year. In that case, as described in proposed § 1092.302(b)(2)(ii), its submission of data required by proposed § 1092.302(a) would only need to cover the period between the date it became a larger participant under the applicable test in part 1090 and the end of the calendar year.

Proposed § 1092.302(b)(3) would provide that supervised registrants that are affiliates of one another will make their submissions either jointly or in combination, as set forth in filing instructions the Bureau issues under proposed § 1092.102(a). As noted in proposed § 1092.101(a), the term ''affiliate'' has the meaning in CFPA section 1002(1): ''any person that controls, is controlled by, or is under common control with another

[301] *See* Nonbank Registration—Orders Proposal.

[302] *See* 12 U.S.C. 5514(b)(7)(A)–(C) (provisions, discussed in part IV above, authorizing the Bureau to prescribe rules to facilitate supervision and assessing and detecting risks to consumers, as well as to ensure that supervised nonbanks ''are legitimate entities and are able to perform their obligations to consumers). *See also* 12 U.S.C. 5512(b)(1) (provision, discussed in part IV above, authorizing Bureau to prescribe rules as necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws and to prevent evasions thereof). *See, e.g.,* Nonbank Registration—Orders Proposal (proposed § 1092.203(e) (relying on these authorities to propose a record retention requirement in connection with registration of certain orders in Bureau's nonbank registration system); CFPB Final Rule, Debt Collection Practices (Regulation F), 85 FR 76734, 76859 (Nov. 30, 2020) (relying on these authorities to impose a record retention requirement in connection with debt collection rule).

[303] The nonbank registration system implementation date defined in proposed § 1092.101(e) is a separate date that serves a different function. The nonbank registration system implementation date would define when the filing process begins, and not necessarily the time period to which those filings relate.

person.'' [304] Proposed § 1092.302(b)(3) would further clarify that for subpart C, the term ''control,'' for purposes of determining who is an affiliate, would have the meaning set forth in part 1090 of the Bureau's regulations.[305] The Bureau believes those definitions may facilitate compliance by establishing a standard for what constitutes ''control''—one that has been in place for several years in the Bureau's larger participant rules.

The Bureau anticipates the possibility of joint or combined submissions because that may be the most efficient manner to register supervised registrants that have affiliates. It is necessary for the Bureau's monitoring and supervision risk assessment to understand the scope of an enterprise involved in supervised markets. That information affects, among other things, the entity or entities the Bureau may choose to examine. Rather than requiring each affiliate to make a separate registration, proposed § 1092.302(b)(3) envisions registering a group of affiliated entities at once or at least in combination. The alternative could be more burdensome. Not only would each affiliate have to register separately, but each affiliate would have to submit duplicative information—namely, the identity all its affiliates.

Proposed § 1092.302(b)(4) would clarify that a supervised registrant must correct an information submission within 30 days of when it becomes aware of or has reason to believe that the submitted information was and remains inaccurate. Proposed § 1092.302(b)(4) would clarify that the process for making corrections will be described in the filing instructions the Bureau issues pursuant to proposed § 1092.102(a). Proposed § 1092.302(b)(4) also would clarify that the Bureau may direct a supervised registrant to correct errors or other non-compliant submissions to the nonbank registration system. Under proposed § 1092.302(b)(4), the Bureau could direct corrections at any time and in its sole discretion.

With respect to the potential for errors in submissions to the nonbank registration system, the Bureau also requests comment on whether subpart C should provide that a supervised registrant would not violate the requirements of proposed subpart C as a result of an error in collecting or reporting information, if the error was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such an error. For example, there is a *bona fide* error provision in another information reporting system the Bureau administers under Regulation C.[306] The Bureau also proposed a similar provision in its small business lending data reporting proposal.[307] The Bureau is not proposing a similar exception here because, unlike data collected under Regulation C and the Bureau's small business lending data reporting proposal, the data collected under § 1092.302 of this proposal generally would not be as complex, extensive, or statistical, and thus less prone to error. In addition, even in the absence of such a provision, supervised registrants may still have sufficient incentives to establish compliance systems both to avoid violations and to mitigate risks associated with any inadvertent violations that do occur.[308] However, the Bureau requests comment on whether this type of provision would provide incentives for supervised registrants to establish procedures to comply with the requirements of proposed subpart C, and/or would reduce burden on supervised registrants by reducing the risk of penalties in the event of inadvertent errors. The Bureau also requests comment on what types of *bona fide* errors, if any, might be likely to occur often.

302(c) Notification by a Previously-Supervised Registrant That It Is No Longer Covered by This Subpart

Under proposed § 1092.302(c), the nonbank registration system would accept notification from previously-registered supervised registrants that they are no longer covered by proposed subpart C. The notifications would be voluntary since the Bureau is not seeking, through proposed subpart C, to impose information reporting requirements on entities who are no longer supervised by the Bureau.

Some supervised nonbanks may exit supervised markets, ceasing to be supervised nonbanks. If a person is no longer a supervised nonbank, then under the proposed rule it would not be required to register or update its registration when it is not a supervised nonbank. For example, an entity that is not a supervised registrant as of the annual registration date would not be required to report information concerning the previous calendar year, even if it was a supervised registrant for some or all of that time period. However, some supervised nonbanks that registered previously may wish to update the nonbank registration system so that it is clear that they are no longer offering the consumer financial product or service that led them to register or that they are no longer a larger participant in the relevant market. Proposed § 1092.302(c) would provide a means of doing so. Such notices also would facilitate the Bureau's administration of the nonbank registration system by clarifying the reasons why an entity is no longer registering under proposed subpart C. Absent the notification described in proposed § 1092.302(c), there may be uncertainty over whether a previously-registered supervised registrant failed to comply with the annual update requirements in proposed § 1092.302(a).

The Bureau seeks comment on whether to require the notice described in proposed § 1092.302(c), and if so, why, in what circumstances.

302(d) Notification by Certain Persons of Non-Registration Under This Subpart

Under proposed § 1092.302(d), the nonbank registration system would accept voluntary notifications of non-registration from persons who have a good-faith basis to believe that they are not a supervised registrant, or that certain contracts or terms or conditions are not covered by subpart C. Notices filed under proposed § 1092.302(d) also would be defined as administrative information under proposed § 1092.301(a) and therefore not subject to publication under proposed § 1092.303(b). Proposed § 1092.302(d) would clarify that the person would be required to comply with the registration requirements of proposed § 1092.302 promptly if the person becomes aware of facts or circumstances that would not permit it to continue representing that it has a good faith basis to believe that it is not a supervised registrant or that the contract or terms or conditions in question are covered by this subpart.

The Bureau is proposing § 1092.302(d) for several reasons. First, while determining whether a company qualifies as a ''supervised registrant'' should be straightforward in most cases, some persons may be uncertain about whether they are a supervised registrant. Similarly, when supervised registrants offer multiple products or services with multiple contracts, it should be straightforward in most cases to

[304] 12 U.S.C. 5481(1).

[305] *See* 12 CFR 1090.101 (paragraph (2) of the definition of ''affiliated company'' defining three types of control).

[306] 12 CFR 1003.6(b).

[307] 86 FR 56356, 56503–04 (Oct. 8, 2021) (section-by-section analysis of proposed 12 CFR 1002.112(b)).

[308] *See, e.g.,* CFPB Bulletin 2020–01, Responsible Conduct: Self-Assessing, Self-Reporting, Remediating, and Cooperating (Mar. 6, 2020) (identifying self-assessment factors that Bureau considers when determining how to resolve violations of law via supervisory and enforcement tools).

determine which products or services are for consumer financial product or service as relevant under § 1092.301(g). However, some supervised registrants may be uncertain about whether some of their products or services are consumer financial products or services described in proposed § 1092.301(g). Finally, it should be straightforward in most cases to determine which terms or conditions are covered terms or conditions as defined in proposed § 1092.301(c), including whether they impose limitations described in proposed § 1092.301(d). However, some supervised registrants may be uncertain about whether some of their terms or conditions are covered terms or conditions.

Even when persons in these circumstances have a good faith basis to believe they are not a supervised registrant, or that certain products and services they offer or provide are not consumer financial products or services described in proposed § 1092.301(g), or that certain terms or conditions in their form contracts are not required to be registered, the Bureau considered whether to propose that they annually register if they did not want to incur the risk of violating the requirements of subpart C. But that approach could impose burden on persons who ultimately are not supervised registrants or who ultimately are not using covered terms or conditions contained in covered form contracts. The Bureau therefore proposes an alternative option for these persons. Rather than facing the burden of registration, such an entity could elect to file a notice under proposed § 1092.302(d).

When a person makes a non-frivolous filing under proposed § 1092.302(d) stating that it has a good faith basis to believe that it is not a supervised registrant or that it uses a contract or terms or conditions that are not covered by subpart C, the Bureau would not bring an enforcement action against that person based on the person's failure to comply with proposed § 1092.302 unless the Bureau has first notified the person that the Bureau believes the person does in fact qualify as a supervised registrant or that its contract or terms or conditions are covered by subpart C and has subsequently provided the person with a reasonable opportunity to comply with proposed § 1092.302.

Notices filed under proposed § 1092.302(d) also may reduce uncertainty by the Bureau about why certain entities are not registering or are not registering certain terms or conditions under subpart C. These notices also may provide the Bureau with information about how market participants are interpreting the scope of subpart C, about the potential need for the Bureau to instruct certain unregistered entities to register or to instruct certain registered entities to register additional terms or conditions, and about the potential need for guidance or rulemaking clarifying the scope of subpart C.

The Bureau requests comment on proposed § 1092.302(d) including on whether the final rule for the nonbank registration system should specify information that a filer must provide to describe its good faith basis to believe subpart C does not apply. For example, the Bureau requests comment on whether the filer should provide information that supports its determination, such as any court decisions or an affidavit, as well as any information that may contradict its position, such as a court decision holding that the entity is not outside the scope of subpart C.

The Bureau has considered an alternative to proposed § 1092.302(d) under which entities that do *not* file such a notice with the Bureau still could avoid penalties for non-compliance with proposed § 1092.302 if in fact they could establish a good faith belief that they did not qualify as supervised registrants subject to proposed § 1092.302. Under this alternative, entities would maintain such good faith belief so long as the Bureau had not made clear that proposed § 1092.302 would apply to them. The Bureau seeks comment on whether it should finalize this alternative instead. It also seeks comment on whether, if it finalized this alternative, entities would require additional guidance on the circumstances pursuant to which an entity could no longer legitimately assert a good faith belief that proposed § 1092.302 would not apply to its conduct. While the Bureau anticipates that such circumstances would certainly include entity-specific notice from the Bureau that proposed § 1092.302 applies, the Bureau does not believe such notice should be required to terminate a good faith defense to registration. Among other circumstances, the Bureau anticipates that at least formal Bureau interpretations of (for example) subpart C or the provisions of CFPA section 1024(a)(1) would generally suffice to terminate such belief.[309]

The Bureau also seeks comment on whether it should decline to finalize proposed § 1092.302(d) and on whether it should not adopt the potential alternative to that provision.

Section 1092.303 Publication of Information Regarding Supervised Registrants' Use of Covered Terms and Conditions

303(a) Publication of Information Collected Under This Subpart

In proposed § 1092.303(a), the Bureau proposes to publish and maintain a publicly-available source of identifying information about supervised registrants and information about covered terms and conditions that supervised registrants use. This could occur, for example, on the Bureau's publicly-available internet website. Under proposed § 1092.303(a), the Bureau would make this information available to the public on a periodic basis within a timeframe it determines in its discretion.

The Bureau has preliminarily determined that publication of supervised registrants' identifying information would facilitate the ability of consumers to identify covered persons that are registered with the Bureau.[310]

In addition, the Bureau preliminarily believes that publication of additional information about supervised registrants and their use of covered terms and conditions would be in the public interest.[311] Proposed § 1092.303(a) would formally align the proposed nonbank registration system with the Federal government's emphasis on making government data available to and usable by the public, by default, to the greatest extent possible.[312] It also would provide supervised registrants, other regulators, and the general public with clarity as to the public availability of data collected under proposed subpart C.

Further, the Bureau has preliminarily determined that making the data collected publicly available would further the rationale of the proposal—namely, enhancing oversight of and awareness of supervised registrants' use of covered terms and conditions in covered form contracts, as discussed in part II.C.3 above. Regulators at all levels of government (not just the Bureau) could use the information the Bureau makes publicly available to set priorities. Researchers could analyze the

[309] 12 U.S.C. 5514(a)(1).

[310] 12 U.S.C. 5512(c)(7)(B).

[311] 12 U.S.C. 5512(c)(3)(B).

[312] *See, e.g.,* Open, Public, Electronic and Necessary Government Data Act, in title II of Public Law 115–435 (Jan. 14, 2019); Office of Management & Budget, M–19–18, Federal Data Strategy—A Framework for Consistency (June 4, 2019), *https://www.whitehouse.gov/wp-content/uploads/2019/06/M-19-18.pdf* (last visited Dec. 7, 2022).

information the Bureau makes publicly available to gain valuable insight into the issues addressed in the nonbank registration system. For example, they could produce reports that may inform consumers and the public more broadly of potential risks posed by covered terms and conditions, or otherwise use the public data to promote private innovation. The public registry could broadly inform public debate about use of contracts of adhesion in consumer finance markets and beyond and help ground that debate in data. The public registry also could enable education of consumers about which consumer financial products and services contain covered terms or conditions that the consumers may or may not want. The Bureau requests comment on how industry may use the published information, such as by better understanding the terms or conditions used by other firms.

Finally, publication may help to promote government accountability by making public certain information that the Bureau can use to prioritize its resources. Publication also would help the public to understand the impact of the Bureau's nonbank registry initiative more broadly.

The Bureau seeks comment on potential costs and benefits of making data from the nonbank registry system publicly available on a periodic basis. In particular, the Bureau seeks comment on whether it should not finalize the provisions in proposed § 1092.303, whether it should not publicize some of the information collected pursuant to proposed § 1092.302 (beyond administrative information or information not permitted to be disclosed by law), or whether there may be approaches to publishing the information that would mitigate confusion about the registry. CFPA section 1022(c)(7) recognizes that it may be in the public interest for consumers to know who is registered with the Bureau. However, there may be some uncertainty over the degree to which consumers would use the publicized information and, when they do, over how consumers could interpret such information. For example, consumers might view a supervised nonbank's registration in the Bureau's nonbank registration system as an indicator that their covered terms and conditions pose a substantial risk. (On that note, the Bureau requests comment about whether to not publish information on certain terms or conditions to the extent the risk they may pose to consumers is negligible or *de minimis,* and if so, which covered terms may meet that standard in which circumstances and how the Bureau would assess whether the risk is at such a level.) Or consumers may misunderstand registration to mean that registered entities are ''legitimate,'' that registration itself serves as an endorsement by the Bureau, or that all registered entities are regularly examined by the Bureau. While registration might indicate that the entity is complying with subpart C, it would not in and of itself establish the entity's legitimacy or serve as a Bureau endorsement in any way. And, as discussed in part II.C.2, there are many more nonbanks subject to the Bureau's supervisory authority than are regularly examined by the Bureau—a fact that consumers may not appreciate. Moreover, proposed subpart C would not constitute a licensing system or an authorization by the Bureau for the supervised registrant to engage in offering of supervised consumer financial products or services. For these reasons, the Bureau continues to evaluate the possibility that publishing information collected under proposed subpart C has the potential to create confusion, which, to the extent it occurs, is unlikely to serve the public interest. If the Bureau finalizes proposed § 1092.303, it would consider options for publishing the information in a manner that mitigates this risk.

303(b) Scope of Information Released Publicly by the Bureau

Proposed § 1092.303(b) would require the Bureau to publish information collected by proposed subpart C by default.

However, proposed § 1092.303(b) would clarify that, consistent with CFPA section 1022(c)(8), the Bureau would not publish information protected from public disclosure under Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). CFPA section 1022(c)(8) states that ''[i]n . . . publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under [the FOIA, 5 U.S.C. 552(b)] or [the Privacy Act of 1974, 5 U.S.C. 552a], or any other provision of law, is not made public under [the CFPA].'' While much of the information submitted to the nonbank registry under proposed subpart C would not be legally protected from public disclosure, some of the information may be confidential commercial information subject to Exemption 4 of the FOIA.[313]

Exemption 4 protects from disclosure ''trade secrets and commercial or financial information obtained from a person and [that is] privileged or confidential.'' [314] Courts construe data to be ''commercial information'' where the submitter has a ''commercial interest'' in them.[315] The Bureau therefore believes that information submitted to the nonbank registry system that describes supervised registrants' ongoing business operations is likely to qualify as ''commercial information.'' Furthermore, courts have interpreted information to be ''confidential'' under Exemption 4 if it is customarily and actually kept private by the submitter.[316] Some of the information submitted to the nonbank registry may meet this standard and therefore be protected by Exemption 4.

The Bureau requests comment on whether institutions customarily and actually keep private information collected under proposed § 1092.302, including any information collected under proposed § 1092.302(a) such as information about arbitrator decisions described by proposed § 1092.302(a)(4), and information about certain affiliate relationships that may be collected pursuant to proposed § 1092.302(b)(3). Where applicable, the Bureau asks that such comments address each category of information listed in proposed § 1092.302 with specificity, including descriptions of practices related to how each category is (or is not) maintained and/or protected from disclosure.

If the Bureau determines that information submitted to the nonbank registry may be protected from disclosure by FOIA Exemption 4, the Bureau instead would publish the data in an aggregated format that does not directly or indirectly identify the source of the information.[317] The Bureau believes that publication of this data is in the public interest, for the same reasons as described above, even if the

[313] Information subject to publication under proposed § 1092.303 appears unlikely to be subject to legal protections from public disclosure, other than perhaps the information protected by FOIA Exemption 4. The Bureau requests comment on whether additional legal protections may apply to information the Bureau proposes to be included in the public registry.

[314] 5 U.S.C. 552(b)(4).

[315] *See Pub. Citizen Health Research Group* v. *FDA,* 704 F.2d 1280, 1290 (D.C. Cir. 1983).

[316] *See Food Marketing Institute* v. *Argus Leader Media,* 139 S. Ct. 2356, 2363 (2019).

[317] *See* 12 CFR 1070.41(c) (''The CFPB may, in its discretion, disclose materials that it derives from or creates using confidential information to the extent that such materials do not identify, either directly or indirectly, any particular person to whom the confidential information pertains.'').

data is published in aggregated form to protect confidentiality.

Because the Bureau is relying in part on its supervisory authority in CFPA section 1024 to require submission of information to the nonbank registration system, information collected under the proposed rule could be construed to be ''confidential supervisory information'' as defined in the Bureau's confidentiality rules at 12 CFR 1070.2(i). The public release of information required by proposed § 1092.303(b) would be authorized by the Bureau's confidentiality rules at 12 CFR 1070.45(a)(7). That provision permits the Bureau to disclose confidential information ''[a]s required under any other applicable law.'' The Bureau does not believe that the information proposed to be published under § 1092.303(b) would raise the concerns generally addressed by the Bureau's general restrictions on disclosure of confidential supervisory information. For example, after accounting for any confidential business information protected by FOIA Exemption 4 and excluding administrative information as defined in proposed § 1092.301(a), disclosure of the remaining information would not reveal institutions' proprietary or privileged information; would not impede the confidential supervisory process; and would not present risks to the financial system writ large. The Bureau's alternative for information subject to FOIA Exemption 4—to publish it in a format that does not directly or indirectly identify the source of the information—is consistent with how the Bureau treats confidential information generally, including confidential supervisory information.[318]

Proposed § 1092.303(b) also would clarify that the Bureau would not publish administrative information, as defined in proposed § 1092.301(a). The proposal defines that term to include contact information and other information submitted or collected in the nonbank registration system to facilitate administration of the nonbank registration system, including nonregistration statements filed under proposed § 1092.302(d). The purposes for this information are limited—for example, so the Bureau can contact the supervised registrant with questions about the registration. As also discussed in the section-by-section analysis of proposed § 1092.301(a), the proposal would not publicize this information because the Bureau does not believe publication would be of use to the general public. Therefore, the Bureau preliminarily concludes that release of administrative information would not be in the public interest. The Bureau seeks comment on its proposal not to publish administrative information, including whether the release of administrative information would be in the public interest.

Finally, proposed § 1092.303(b) would clarify that the Bureau retains discretion not to publish information that has been corrected or is subject to correction, as well as information that is not required to be submitted under subpart C or is otherwise not in compliance with part 1092. For example, the Bureau does not believe it would be in the public interest to publish or continue to publish previously published inaccurate information for which it has received or issued a correction notice as described in proposed § 1092.302(b)(4). In addition, persons could submit unauthorized or inadvertent filings, or filings regarding terms and conditions that would not require registration under the proposal, or other inaccurate or inappropriate filings. The Bureau believes it would require flexibility not to publish such information to maintain the accuracy and integrity of the nonbank registration system and the data that would be published by the Bureau.

VI. Proposed Effective Date of Final Rule

The Administrative Procedure Act generally requires that rules be published not less than 30 days before their effective date.[319] The Bureau proposes that, once issued, the final rule for this proposal would be effective 30 days after it is published in the **Federal Register**. However, as described in the proposal, registration would be required by an annual registration date that comes at a later time, after the nonbank registration system implementation date, which is likely to be no earlier than January 2024. The Bureau seeks comment on the proposed effective date including whether it should be at a different time, and if so, when and why.

VII. Dodd-Frank Act Section 1022(b)(2) Analysis

A. Overview

In developing the proposed rule, the Bureau has considered the potential benefits, costs, and impacts of the proposed rule as required by section 1022(b)(2) of the Consumer Financial Protection Act (CFPA).[320] The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data and analysis that could help refine the Bureau's analysis of the benefits, costs, and impacts. In developing the proposed rule, the Bureau has consulted, or offered to consult with, the appropriate prudential regulators and other Federal agencies, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies as required by CFPA section 1022(b)(2)(B). The Bureau also has consulted with State agencies and Tribal governments [321] as required by CFPA sections 1022(c)(7)(C) and 1024(b)(7)(D).

The Bureau is proposing this rule to establish a registration system for supervised nonbanks that use form contracts to impose covered terms and conditions. The purposes of this nonbank registration system would be to support monitoring of risks to consumers in the offering or provision of consumer financial products and services, to facilitate supervision of nonbanks and assess and detect risks to consumers as authorized by CFPA section 1024(b), and to publicly release the information collected in the public interest, as authorized by CFPA section 1022(c). The registration system for nonbanks that use certain standard terms and conditions in consumer contracts would increase transparency and oversight in areas where certain standard terms and conditions limit private enforcement and increase transparency for the public when consumers are waiving rights.

The policy embodied in the proposed rule can be broken into three parts.

First, under the proposed rule, subject to certain exclusions, supervised nonbanks that use covered terms and conditions would be required to register annually using a nonbank registration system established by the Bureau. As part of the registration process, these supervised registrants would be required to submit three separate types of information: identifying information, administrative information, and information related to their use of covered contract terms and conditions.

Second, the Bureau would use information acquired through the

[318] *See id.*

[319] 5 U.S.C. 553(d).

[320] Specifically, CFPA section 1022(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in CFPA section 1026; and the impact on consumers in rural areas.

[321] CFPA section 1002(27) defines ''State'' to include ''any federally recognized Indian Tribe, as defined by the Secretary of the Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1(a)).''

nonbank registration system to facilitate the Bureau's monitoring functions and supervisory processes.

Third, the Bureau would publish each of the types of nonbank registration information, except for administrative information, on its website and potentially in other forms, to the maximum extent permitted by applicable law.

We analyze these three parts separately below.

B. Data Limitations and the Quantification of Benefits, Costs, and Impacts

The discussion below relies on information that the Bureau has obtained from other regulatory agencies and publicly available sources, as well as Bureau expertise. These sources form the basis for the Bureau's consideration of the likely impacts of the proposed rule. The Bureau provides its best estimates of the potential benefits and costs to consumers and covered persons of this proposal, given available data. However, as discussed further below, the data with which to quantify the potential costs, benefits, and impacts of the proposed rule generally are limited.

In light of these data limitations, the analysis below generally provides a qualitative discussion of the benefits, costs, and impacts of the proposed rule. General economic principles and the Bureau's expertise in markets for consumer financial products and services, together with the limited data that are available, provide insight into these benefits, costs, and impacts. The Bureau requests additional data or studies that could help quantify the benefits and costs to consumers and covered persons of the proposed rule.

C. Baseline for Analysis

In evaluating the potential benefits, costs, and impacts of the proposed rule, the Bureau takes as a baseline the current legal framework regarding the use of covered terms and conditions. Under the baseline legal framework, supervised nonbanks are subject to certain prohibitions and restrictions on the use of covered terms and conditions, including explicit statutory and regulatory restrictions, as well as a prohibition on UDAAPs, as discussed in part II above. Supervised nonbanks also are not obliged to annually register with the Bureau. Nor are they required by rule to provide information to the Bureau concerning their use of covered terms and conditions.[322] Much of the information that would be acquired by the Bureau as a result of the proposed rule is not in the Bureau's possession or available from any other source. As a result, it is not used currently by the Bureau to monitor, assess, or address the risks to consumers presented by covered terms and conditions. Furthermore, much of this information is not currently published by the Bureau and therefore is not available to other regulators or the general public.[323]

A few nonbanks currently are required to report their entire contract, including any covered terms and conditions, under State laws which govern one supervised market—private student loan origination—in a few states.[324] In addition, in the mortgage lending market, most residential mortgages for site-built homes are either eligible for purchase by government-sponsored enterprises or for insurance by Federal agencies [325] that generally require the use of standard-form promissory notes that are published on websites for a commercial audience.[326] For these firms, the costs, benefits, and impacts of the proposed rule will generally be smaller than described below.

[322] Some nonbanks may be required to provide sample contracts as a part of examination by the Bureau. The Bureau's examination procedures generally describe how contracts are sampled. For individual exams, information requests vary and may not include all contracts covered by this rule. Furthermore, in contrast to the proposed rule, any information on contracts obtained through examinations is confidential and generally is not made publicly available in non-aggregated form.

[323] Part II.C above discusses examples of Bureau supervisory or enforcement matters that identified risks from the use of covered terms and conditions at certain supervised nonbanks. These are made public through *Supervisory Highlights* or the public enforcement actions the Bureau brings.

[324] There are general requirements in Colorado, Maine, and Louisiana for private student lenders to provide model loan agreements that regulators make or will make publicly-accessible. In addition, Illinois has adopted legislation to collect these agreements.

[325] CFPB 2021 Mortgage Market Trends Report at Table 1 (reporting fewer than 10% of total 2021 originations for 1–4 family residential mortgages were not conventional conforming or FHA/VA/FSA/RHS-insured), *https://files.consumerfinance.gov/f/documents/cfpb_data-point-mortgage-market-activity-trends_report_2022-09.pdf.*

[326] *See, e.g.,* Fannie Mae Selling Guide B8–3–01, Notes for Conventional Mortgages (09/02/2020) & Fannie Mae Legal Documents (July 2021), *https://singlefamily.fanniemae.com/fannie-mae-legal-documents* (last visited Dec. 7, 2022).; HUD Single Family Mortgage Promissory Notes, *https://www.hud.gov/program_offices/housing/sfh/model_documents* (last visited Dec. 7, 2022).

D. Coverage of the Proposed Rule

This proposed rule would affect nonbank covered persons subject to the supervisory authority of the Bureau under 12 U.S.C. 5514(a), and not excluded from the supervisory authority of the Bureau pursuant to 12 U.S.C. 5517 or 12 U.S.C. 5519 (defined in proposed § 1092.301(g) as supervised nonbanks). Supervised nonbanks that may be covered by the rule may offer or provide several types of consumer financial products and services. Subject to the foregoing statutory exclusions, supervised nonbanks include any nonbank covered person that:

(1) Offers or provides a residential mortgage-related product or service as described in 12 U.S.C. 5514(a)(1)(A);

(2) Offers or provides any private educational consumer loan as described in 12 U.S.C. 5514(a)(1)(D);

(3) Offers or provides any consumer payday loan as described in 12 U.S.C. 5514(a)(1)(E);

(4) Is a larger participant in any market as defined by rule in part 1090 pursuant to 12 U.S.C. 5514(a)(1)(B); [327] or

(5) Is subject to an order issued by the Bureau pursuant to 12 U.S.C. 5514(a)(1)(C).

The Bureau seeks comment on any other entities that may be affected by the proposed rule.

All Bureau-supervised nonbanks in the markets described above that use covered terms and conditions potentially would be affected by the proposed rule, except for persons excluded by proposed § 1092.301(h). Among other exclusions, proposed § 1092.301(h) would exclude natural persons, persons (together with affiliates) with less than $1 million in annual receipts from the offering or provisions of the consumer financial products or services described above, persons (together with affiliates) using covered terms in no more than a *de minimis* manner, and persons whose sole use of covered terms and conditions is in publicly-available residential mortgage contracts required for insurance, guarantee, or purchase by Federal agencies or Federal government-

[327] Under current Bureau regulations, larger participant markets include: consumer reporting, consumer debt collection, student loan servicing, international money transfers, and automobile financing.

sponsored enterprises.[328] Many of the costs, benefits, and impacts of the proposed rule will not be applicable to entities that both do not enter into contracts containing covered terms or conditions, and do not enforce these terms or conditions appearing in contracts of others.[329]

The Bureau seeks comment on any other entities that may be affected by the proposed rule.

Under existing law, there is no system or central registry that comprehensively identifies nonbanks that are subject to the Bureau's supervisory authority. Furthermore, as discussed above, supervised nonbanks currently are not required to register with the Bureau regarding their use of covered terms or conditions. Without comprehensive information on the number of supervised nonbanks, including the number of supervised nonbanks using covered terms or conditions in covered form contracts, the Bureau cannot precisely estimate the number of entities that will be affected by the proposed rule. Moreover, the Bureau cannot precisely estimate the number of consumers or accounts that will be affected by the proposed rule.

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[328] The proposed *de minimis* exemption has two components: entering into covered form contracts containing covered terms and conditions less than 1,000 times in the previous calendar year *and* not obtaining a court or arbitrator decision on the enforceability of covered of terms and conditions (whether enforcing or rejecting enforcement). Proposed § 301(h) also includes exemptions for a Federal agency, a State (including a Tribe), persons supervised solely as service providers under Bureau supervisory authorities, and persons to the extent they meet the definition of ''related person'' in 12 U.S.C. 5481(25).

[329] In general, supervised nonbanks not using covered terms or conditions will need to understand the rule and verify that they are exempt. This will generally be a one-time cost, as nonbanks are able to verify that future contracts do not include covered terms or conditions in the normal course of business.

Table 1: Potential Scope of Proposed Rule

Market	NAICS Code(s)	NAICS Name(s)	NAICS Entities	NAICS Entities > $1MM Revenue
Statutory Markets				
Residential Mortgages	522292, 522310, 522390	Real Estate Credit, Mortgage and Nonmortgage Loan Brokers, Other Activities Related to Credit Intermediation	11,430	3,275
Private Educational Loans	522291	Consumer Lending	2,642	789
Payday Loans	522390	Other Activities Related to Credit Intermediation	3,304	688
Larger Participant Markets				
Consumer Reporting	561450	Credit Bureaus	284	131
Consumer Debt Collection	561440	Collection Agencies	2,570	1,254
Student Loan Servicing	522390	Other Activities Related to Credit Intermediation	3,304	688
International Money Transfers	522320	Financial Transactions Processing, Reserve, and Clearinghouse Activities	2,550	874
Automobile Financing	522220	Sales Financing	2,033	997
Other Nonbanks Subject to Bureau Orders	N/A		25	25
Total			**21,714**	**7,345**

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Table 1 presents the best estimate available to the Bureau of the number of affected entities under the proposed rule.[330] The estimate is based on the most recent Economic Census data.[331] Table 1 presents entity counts for the 6-digit North American Industry Classification System (NAICS) codes that generally include the markets supervised by the Bureau, including counts for entities with more than $1 million in revenue reported in the 2017 Economic Census. The markets defined by NAICS codes are broader than the markets supervised by the Bureau.[332] Moreover, Table 1 counts an unknown number of entities active in markets over which the Bureau exercises larger participant supervisory authority, but which are not supervised because they are not larger participants under existing Bureau rules in part 1090, generally because they fall below a size threshold. Although some supervised nonbanks may fall outside the NAICS codes listed in Table 1, the Bureau believes their number to be small. In particular, the Bureau believes that the number of these supervised nonbanks is smaller than the number of entities counted in Table 1 that are not subject to the Bureau's supervisory authority. As such, the Bureau considers the estimates in Table 1 to be an upper bound on the number of currently-supervised nonbanks potentially covered by the proposed rule.[333] The Bureau seeks comment on NAICS codes not included in Table 1 that include a significant number of entities affected by the proposed rule.

In addition, the penultimate row of Table 1 presents an estimate of the number of nonbanks that would be subject to the Bureau's supervisory authority pursuant to orders the Bureau may issue in the future.[334]

As noted above, Table 1 likely overestimates the number of current larger participants subject to the Bureau's supervisory authority. In any event, any nonbank covered persons not currently subject to the Bureau's supervisory authority that become subject to its authority pursuant to a future larger participant rule generally would incur the same costs the Bureau describes and estimates below on a per-entity basis. Similarly, the benefits described below generally would increase as more entities become subject to the registration requirement and provide information about the covered terms and conditions in their specific form contracts.

Given that some supervised nonbanks may not use covered terms and conditions, Table 1 is likely to overestimate the number of entities subject to the registration requirements of the proposed rule. The Bureau does not have sufficient data to precisely estimate the number of supervised nonbanks that use covered terms and conditions, which is one problem the proposed rule seeks to remedy. However, based on available information, the Bureau believes that the use of covered terms and conditions is widespread, although prevalence of specific terms may vary widely by market.[335] The Bureau seeks any additional input or data on this issue.

Some nonbanks that the Bureau has not previously examined may not know if they are subject to the Bureau's supervisory jurisdiction. The Bureau anticipates that nonbanks facing legitimate uncertainty about their status as supervised nonbanks under the proposed rule will choose to notify the Bureau on a confidential basis that they are not registering, due to the low burden of providing that basic information and the specific option to do so described in proposed § 1092.302(d). Unfortunately, no information exists on the number of unsupervised nonbanks facing legitimate uncertainty over whether they are subject to Bureau supervision. However, such nonbanks still are most likely to be in the Economic Census industries defined by the NAICS codes listed in Table 1, and therefore accounted for in the analysis. The Bureau seeks comment or data on the extent and impact of potential uncertainty regarding a nonbank's status (such as whether it is a larger participant) and registration requirements, and on alternatives which might reduce the impact of this uncertainty.

E. Potential Benefits and Costs to Consumers and Covered Persons

This section describes the benefits and costs to consumers and covered persons that the Bureau expects to occur if the proposed rule is adopted. Each of the three components of the rule, described above, is analyzed in detail separately.

The Bureau anticipates that the primary benefit of the proposed rule is increased compliance by those entities using covered terms and conditions to avoid complying with underlying law including Federal consumer financial laws regulating the supervised registrant's business practices (apart from the use of covered terms and conditions, discussed separately below). The proposed rule would incentivize firms to comply through at least two mechanisms. First, the proposed registry would enable the Bureau to better target its limited monitoring, supervision, and enforcement resources to entities posing a risk of violation of Federal consumer financial law. Upon publication of the information collected in the registry, other public regulators, including those who have a shared role in enforcing Federal consumer financial law, also could use the information to calibrate the prioritization of their resources. Consumers would benefit from increased compliance as a result of this public scrutiny in circumstances where consumers' ability to protect themselves through private enforcement is impeded.

Second, a public registry of covered terms and conditions contained in covered form contracts will increase compliance by helping public regulators to detect terms or conditions prohibited by law. As discussed in part II.B above, some provisions of law expressly prohibit certain covered terms and conditions, expressly render certain

[330] The number of entities in the ''total'' row in Table 1 is less than the sum of the rows above it because some NAICS codes appear in multiple markets, for example, ''Other Activities Related to Credit Intermediation'' appears three times.

[331] These entity counts include only firms operating for the entire year, for which there are reliable estimates of annual receipts. *See* U.S. Census Bureau, ECN Core Statistics Economic Census: Establishment and Firm Size Statistics for the U.S., Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S. (2017), *https://data.census.gov/table?d=ECN+Core+Statistics+Economic+Census:+Establishment+and+Firm+Size+Statistics+for+the+U.S.&tid=ECNSIZE2017.EC1700SIZEREVFIRM.*

[332] The full definitions of each of the 2017 NAICS codes in Table 1 can be identified at *https://www.census.gov/naics/.*

[333] That is, any undercounting of impacted entities outside the NAICS codes listed in Table 1 is likely to be more than offset by an overcounting due to the broader delineation of markets defined by NAICS codes relative to the larger participant markets.

[334] Currently, the Bureau estimates that very few entities are subject to supervision solely due to a pre-existing consent order. However, the Bureau has recently announced plans to use this authority and anticipates that the number of entities in this category will increase. Given that orders generally remain in force for two to five years, and the proposal includes an exemption for such orders with a duration of two years or less, it is unlikely that more than 25 entities would be covered in any given year. *See* Consumer Financial Protection Bureau, CFPB Invokes Dormant Authority to Examine Nonbank Companies Posing Risks to Consumers (Apr. 25, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-invokes-dormant-authority-to-examine-nonbank-companies-posing-risks-to-consumers/.*

[335] There has been some variance in the use of arbitration agreements across markets. *See* Consumer Financial Protection Bureau, Arbitration Study (Mar. 2015), *https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.*

covered terms and conditions void and unenforceable, or both. As also illustrated by some of the examples discussed in part II.C above, other provisions of law, such as the CFPA's prohibition against UDAAPs, also may prohibit or limit the use of certain covered terms and conditions. Although such illegal terms generally are unenforceable, they still sometimes may be used. The Bureau does not possess data on the frequency of use of such terms, but as discussed in part II above, these terms and conditions are in fact used today. And when used in prohibited circumstances such as those generally described in part II above, these terms and conditions likely still have a chilling effect on consumers' ability to enforce or exercise their rights or otherwise protect their interests. As discussed in more detail below including in part VII.E.2, the Bureau believes that supervised nonbanks currently using prohibited covered terms and conditions often would remove them from their contracts, thus benefitting consumers.

The primary costs of the proposed rule would affect supervised nonbanks that use covered terms or conditions. These entities would incur the cost of time spent by employees to read and understand the requirements of the proposed rule, and then gather and submit the required registration information. This would include locating and identifying information sought by the proposed rule about the supervised nonbanks' use of covered terms and conditions in covered form contracts regarding the offering or provision of consumer financial products or services in markets the Bureau supervises. This information would include standardized data regarding certain covered terms and conditions (*i.e.,* limitations on time, place, forum, or venue for filing legal action, on filing actions seeking relief for other consumers, on participation in legal action filed by others, and arbitration agreements) and the text of other covered terms and conditions (liability limits, waivers of causes of action, non-disparagement clauses, and other waivers). This information also would include a limited amount of additional information about each form contract—the States in which the contract is used, the legal names of any persons other than a consumer and the supervised registrant that typically entered into the covered form contract, and any governing law specified in the contract. If the terms or conditions are contained in a form contract from a form provider, the name of the provider and citation to the contract also would be collected. Finally, the supervised nonbank would need to locate any court and arbitrator decisions on enforcement of these terms and conditions and report about the frequency and results of these decisions. As discussed below, covered supervised nonbanks may also bear some indirect costs related to increased incentives to comply with laws specifically governing the use of covered terms and conditions.

If finalized as proposed, the rule would affect supervised nonbanks as long as it is in effect. However, the costs, benefits, and impacts of any rule are difficult to predict far into the future. Therefore, the analysis below of the benefits, costs, and impacts of the proposed rule is most likely to be accurate for the first several years following implementation of the proposed rule.

1. Registration and Submission of Information Regarding Covered Terms and Conditions Contained in Covered Form Contracts

This section VII.E.1 discusses the costs and benefits to consumers and covered persons of the first part of the rule outlined in part VII.A above: registration and submission of information regarding covered terms and conditions contained in covered form contracts.

Costs

To precisely quantify the costs to covered persons, the Bureau would need representative data on the operational costs that supervised nonbanks incur to locate, identify, gather, and submit registration information regarding their use of covered terms and conditions in covered form contracts. Given that no such registry currently exists, the Bureau does not believe that data on this specific type of reporting cost are likely to be available from any source. The Bureau has made reasonable effort to gather data on reporting costs, generally, and the discussion below uses this information to quantify certain likely costs of the proposed rule. The Bureau believes that the following discussion of the costs of registration and submission of information regarding covered terms or conditions in covered form contracts accounts for most elements of cost, given the extent of available data. However, these calculations may not fully quantify the costs to covered persons, especially given the potential for wide variation in use of covered terms or conditions in covered form contracts by supervised nonbanks across a diverse set of industries. The Bureau requests comment on any additional impacts as well as information that would inform its cost estimates.

In general, the costs would fall into four subcategories: the cost of understanding the proposed rule, the cost of identifying covered terms and conditions in covered form contracts that the nonbanks enter into, the cost of identifying and reporting on the nature of court and arbitrator decisions on the enforceability of covered terms and conditions, and the cost of entering all the related information, as well as the nonbank's identifying information and administrative information,[336] into the registration system. If a supervised nonbank does not directly enter into agreements with consumers and did not obtain arbitrator or court decisions on the enforceability of a covered term or condition—which may be the case for some servicers or debt collectors—then its costs in the second and subsequent categories would be limited to the time needed to confirm that fact.

The first step to register as required by the proposed rule is to read the filing instructions and understand the requirements of the proposed rule as reflected in the filing instructions. The Bureau anticipates issuing guidance in the filing instructions to assist with this step, and that supervised nonbanks will generally not read the final rule in its entirety. Based on the Bureau's experience, this will generally take roughly 60 minutes for a typical firm. Some firms may have higher costs. For example, as part of the time to understand the registration requirements, some nonbanks may take time to analyze whether they are supervised by the Bureau or otherwise exempt from the proposed rule. Some of these nonbanks may be permitted to notify the Bureau that they believe in good faith they are not supervised or eligible for an exclusion from the definition of supervised registrant. These nonbanks, to the extent they may use covered terms or conditions, may consult an in-house attorney on whether they have a good faith basis to file a notice of non-registration.[337] The Bureau requests comment on which types of consumer financial products and services over which there would be such uncertainty as to coverage by the proposed rule, as well as the costs of

[336] The cost of entering required administrative information, such as contact information, would be minimal and generally is accounted for below as part of the cost of entering related identifying information.

[337] And if they file such a notice, the cost of that would be less than the cost of full registration in steps 4 and 5 of Table 2 discussed below.

determining whether to file such a notice and of filing the notice.

The second step requires supervised registrants to identify certain information regarding covered terms and conditions in each of their covered form contracts for the offering or provision of consumer financial products or services in Bureau-supervised markets. These covered terms and conditions appear in contracts in standardized language, and therefore often can be identified relatively quickly by skimming or searching, without reading the contract in its entirety. Based on comments it receives on the proposal or other feedback, the Bureau also may issue guidance documents to assist with this step. The time involved in identifying required information is likely to depend on how firms maintain information regarding their use of consumer contracts, and the Bureau therefore expects the burden to decline as firms gain experience with the registration process and adapt their record-keeping practices to more efficiently track the information required by the proposed rule. The Bureau also is proposing to collect information on firms' use of covered terms and conditions in contracts purchased from third-party providers. Although the Bureau believes the burden of identifying and submitting information on covered terms and conditions already would be small, if the Bureau allowed simplified reporting of common purchased contracts,[338] some firms may choose to minimize their burden by purchasing their contracts instead of writing them in house. In addition, in the years following the first year of registration, supervised registrants will need to identify only information needed to update their existing registration—*i.e.,* any new covered form contracts that contain covered terms or conditions, any new or amended covered terms or conditions in previously-registered covered form contracts, or removals or modifications of previously-registered covered terms or conditions. The time needed to do that will be shorter than in the first year of registration. Therefore, the Bureau assesses that, on average, this step will take less than 45 minutes per contract each year for supervised registrants using ten or fewer contracts, and less than 30 minutes per contract each year for supervised registrants using more than ten contracts. Some firms may use uncommon covered terms and conditions that cannot be readily identified or determined to be covered for purposes of registration. For such firms, this step may take additional time, including in circumstances where the firm ultimately decides it has a good faith basis to determine the term or condition is not covered and thus may instead file a voluntary notice of non-registration of that term or condition under proposed § 1092.302(d). The Bureau requests comment on the types and specific examples of covered terms and conditions that might be difficult to detect or determine coverage and on steps the Bureau could take to reduce this burden.

The third step requires supervised registrants to identify whether courts or arbitrators have issued decisions on the enforceability of covered terms or conditions, such as by ruling on requests to enforce these covered terms and conditions. If, during the previous calendar year, supervised registrants know they did not receive a court decision of this type, such as a decision dismissing, staying, or capping liability for a claim filed by the consumer on the basis of a covered term or condition, or ruling on a request to enforce a non-disparagement clause, they can answer no. If supervised registrants are aware of any covered court or arbitrator decisions, then they can answer yes. The Bureau believes that most supervised registrants retain records of legal action and can readily ascertain whether or not they had any covered court or arbitrator decisions. Furthermore, the Bureau believes that the majority of registrants will not have any covered court or arbitration decisions and will be able to complete this step in under 20 minutes. Registrants with covered decisions will be required to compile those decisions and identify the presence or absence of language related to covered terms or conditions contained in covered form contracts. For decisions that would be covered, supervised registrants must note what product or service and term or condition was at issue in the decision, and how the court or arbitrator ruled (*i.e.,* to enforce the term or condition or not). The Bureau assesses that this is likely to take less than 120 minutes. Therefore, the Bureau assesses that, on average, supervised registrants will require less than 70 minutes to find and consult the relevant records to complete this step.[339] Large entities may have more complex legal activities and may be more likely to have qualifying court or arbitrator decisions and the Bureau therefore assesses that this step will take 140 minutes for firms with 250 or more separate contracts.

Finally, supervised registrants must submit the information they have gathered to the online registration system. There would be a one-time cost of creating an account to register in the nonbank registration system, which would involve, among other steps, verifying the identity of the individual performing the registration for the supervised registrant as well as their authority to act on behalf of the supervised registrant for purposes of the nonbank registration. For supervised registrants already registered with the Bureau, for example through the Consumer Response Company Portal, the time involved should be minimal. For entities that have not already been verified, this process may take significantly more time. The burden of verification will depend on the exact policies and procedures laid out in the filing instructions and cannot be precisely estimated at this time. However, the Bureau expects that, on average, this step will take under five hours of employee time to complete. Registrants may occasionally need to reverify, for example due to reorganization or employee turnover. The Bureau expects that, on average, registrants will not need to go through the verification process more than once every five years. Therefore, the amortized annual burden of verification is likely to be less than 60 minutes on average.

Each year during periodic registrations, there would be a cost for providing or updating basic identifying information for the supervised registrant, including information about any affiliate relationships with other supervised registrants, and for providing or updating information regarding the covered terms and conditions. Submitting this information is likely to take less than 60 minutes for most firms, and up to 90 minutes for large, complex firms. In addition, the Bureau estimates that once the relevant information on each covered form contract is gathered, inputting this information into the registration system is likely to take less than roughly 20 minutes per contract. These estimates include time supervised registrants likely would spend to verify that the registration is complete and accurate. Proposed § 1092.302(b)(4) would require correction of incorrect registration information, but it is uncertain how often errors would occur. The Bureau requests comment on that

[338] As discussed in the section-by-section analysis of proposed § 1092.302(a)(3)(vi), the Bureau requests comment on this option.

[339] Under the conservative assumption that at least 50% of registrants do not have covered court or arbitration decisions in a given calendar year, we compute this as: 0.5*20 + 0.5*120 = 70 minutes, or twice that amount for large, complex firms.

issue, and also seeks comment and data on how a possible *bona fide* error provision discussed in the section-by-section analysis of proposed § 1092.302(b)(4) may affect the procedures established to ensure the accuracy of information submitted, and the related expected costs.

The Bureau requests comment, data, or other information that would help inform its estimates of the time required to complete the tasks described above.

The Bureau assesses the average hourly base wage rate for each reporting requirement at $43.60 per hour. This is the mean hourly wage for employees in four major occupational groups assessed to be most likely responsible for the registration process: Management ($59.31/hr); Legal Occupations ($54.38/hr); Business and Financial Operations ($39.82/hr); and Office and Administrative Support ($20.88/hr).[340] The average hourly wage of $43.60 is multiplied by the private industry benefits factor of 1.42 to get a fully loaded wage rate of $61.90/hr.[341] The Bureau includes these four occupational groups in order to account for the mix of specialized employees that may assist in the registration process. The Bureau assesses that the registration process will generally be completed by office and administrative support employees that are generally responsible for the registrant's paperwork and other administrative tasks. Employees specialized in business and financial operations or in legal occupations are likely to provide information and assistance with the registration process. Senior officers and other managers are likely to review the registration information before it is submitted and may provide additional information. The Bureau requests any information that would inform its estimate of the average hourly compensation of employees required to register under the proposed rule.

Table 2: Burden and Cost of Registration and Submission

Description of Task	Simple (10 contracts)	Intermediate (25 contracts)	Complex (250 contracts)
1. Read proposed rule, understand requirement, and analyze definitions	60 minutes	60 minutes	60 minutes
2. Identify covered terms and conditions	450 minutes	750 minutes	7,500 minutes
3. Identify decisions on enforcement of covered terms and conditions	70 minutes	70 minutes	140 minutes
4. Fill out and file identifying information	120 minutes	120 minutes	150 minutes
5. Fill out and file contract registration	200 minutes	500 minutes	5,000 minutes
Total time burden:	900 minutes	1500 minutes	12,850 minutes
Avg. wage rate	$61.90	$61.90	$61.90
Total Cost	**$929**	**$1,548**	**$13,257**

The direct registration cost for a given supervised nonbank will depend on its complexity in general and, most importantly, on the number of different covered form contracts it uses. Table 2 presents the estimated direct registration cost for supervised nonbanks at three different levels of complexity, based on the assumptions described above. For supervised nonbanks covered by exclusions to the rule in proposed § 1092.301(h), they would only need to complete step 1 in Table 2 to ascertain that fact. For other supervised nonbanks that complete steps 2 and 3 without identifying covered terms and conditions in covered form contracts they enter into or decisions on enforcement of covered terms, they would not need to complete steps 4 or 5.

The total direct cost of registration depends on how many supervised nonbanks fall into each of the three representative categories of contract complexity. For illustrative purposes, Table 3 reports estimates of how many of the estimated number of supervised nonbanks reported in Table 1 may fall into each category, based on their total revenue as reported in the Economic Census. The Bureau believes that revenue is a reasonable and transparent indicator of the number of contracts used by supervised nonbanks, and therefore appropriate for estimating the average time burden and cost of registration. However, some supervised nonbanks with relatively low revenue may use many covered form contracts, or vice versa. The Bureau requests any information that could inform its estimates of the distribution of registration costs across supervised nonbanks.

The Bureau has considered the possibility that covered nonbanks pass on some or all of the costs described above to consumers. As described below, the nature of these costs makes it unlikely that consumers will bear a

[340] *See* U.S. Bureau of Labor Statistics, National Occupational Employment and Wage Estimates United States (May 2021), *https://www.bls.gov/oes/current/oes_nat.htm.*

[341] As of March 2022, the ratio between total compensation and wages for private industry workers is 1.42. *See* U.S. Bureau of Labor Statistics, Employer Costs for Employee Compensation: Private industry dataset, (March 2022), *https://www.bls.gov/web/ecec/ecec-private-dataset.xlsx.*

significant portion of the direct costs of registration under the proposed rule. According to standard theory of the firm, profit-maximizing firms will fully absorb any one-time costs or fixed costs, unless these costs are sufficiently large that it is no longer profitable to offer a given product or service. Firms may pass on, fully or in part, an increase in their variable cost to consumers through higher prices.[342] Therefore, consumers could experience modestly higher prices if registration costs depend on the number of times a given contract is used. However, because the registration costs very likely do not depend on the number of times a given covered form contract is used, the Bureau considers these costs to be fixed costs at the product or service level. Therefore, the Bureau believes that the provisions of the proposed rule requiring registration and submission of information regarding covered terms and conditions will not lead to increased prices for consumers.

The Bureau also has considered the degree to which the proposed rule may induce supervised nonbanks to discontinue certain products or services due to the cost of registering and submitting information regarding covered terms and conditions contained in covered form contracts. That outcome is not the rationale or stated goal of the rule, but the Bureau is considering the extent of its likelihood here. Given the small fixed costs associated with these provisions, as described above, a firm or product line would need to be on the threshold of unprofitability for the proposed rule to induce exit. The Bureau believes there are very few, if any, firms with over $1 million in revenues for which the proposed rule would be a decisive factor in their exit decision. Therefore, the proposed rule is unlikely to lead to a significant reduction in the offering of specific products and services. However, the Bureau does not have adequate information with which to quantify the identity or number of products or services that could or might be discontinued as a result of this proposed rule, and therefore cannot quantify the resulting impact, if any, on consumers.

If it is cheaper to remove a given covered term or condition than to maintain it, then profit maximization implies that the firm will remove that covered term or condition from its contracts. As a result, under the proposed rule, if the cost of registering a given covered term or condition minus the benefits of maintaining it in a covered form contract for a particular product or service exceeds a firm's costs of removing the term from supervised nonbanks' contracts, profit maximization implies that the firm will remove that term from its contracts.[343] To the extent that any covered terms or conditions removed by supervised registrants were disadvantageous to consumers, consumers will benefit and some supervised registrants may be impacted. To quantify these impacts, the Bureau would need information regarding the costs and benefits to supervised nonbanks of including covered terms and conditions in their contracts. In its 2017 arbitration agreement rule, which did not take effect, the Bureau found that many firms often view the benefits of arbitration agreements to significantly exceed their costs.[344] Similar data on the costs and benefits to firms from other covered terms and conditions is not available. The costs of removing covered terms and conditions are discussed in part VII.E.2 below and should be considered an upper bound on the costs described here, because supervised nonbanks always have the option to register contracts instead of removing covered terms and conditions.

Table 3: Estimates of Total Direct Cost of Registration

Entity Type	Entity Count[345]	Total Burden (Hours)	Total Burden ($1000s)
Simple	5,566	83,490	5,168
Intermediate	1,383	34,575	2,140
Complex	396	84,810	5,250
Total	**7,345**	**202,875**	**12,558**

Benefits

When separated out from the monitoring and supervisory uses (analyzed separately in part VII.E.2 below) and the publication provision (analyzed separately in part VII.E.3 below), the registration and information submission provision alone is unlikely to provide any benefits for affected firms.

For consumer financial services and products offered by supervised nonbanks, the main benefit derived from registration under the proposed rule is the Bureau's enhanced monitoring and supervision based on the information collection regarding covered terms and conditions contained in covered form contracts. This consumer protection activity by the Bureau via this proposed rule and its beneficial effects for consumers are described in detail in the following part VII.E.2.

2. Use of Information for Bureau's Market Monitoring and Supervision Processes

The Bureau can use the information collected under the proposal for

[342] Fixed costs are defined as costs required to provide a product or service and which do not depend on the number of consumers or accounts, or on the size or volume of transactions. Variable costs are defined as costs which change as the quantity of the good or service provided by the firm changes.

[343] That is, if (cost of registration)—(benefits of contract term) > (cost of removing term).

[344] 82 FR at 33397.

[345] The Economic Census provides firms counts for revenue ranges. Here, firms with $1–10MM in revenue are assumed to be ''simple,'' with 10 different contracts on average. Firms with over $100MM in revenue are assumed to be ''complex'' with 250 different contracts on average. In addition to the Economic Census data, the Bureau assumes that the estimated 25 nonbanks subject to supervision due to orders are large and therefore complex. For details burden and cost estimates, see Table 2.

monitoring and supervisory processes. The publication component, while a monitoring process, is discussed separately in part VII.E.3 below.

Costs

The costs to covered persons of the Bureau's use of information collected under the proposal through its monitoring and supervisory processes may differ depending on the degree to which any covered terms and conditions that supervised nonbanks use are prohibited by law, including Federal consumer financial law (whether enumerated consumer laws and implementing regulations discussed in part II.B or the prohibition against UDAAPs such as in the examples discussed in part II.C). Most of these costs can be grouped into two categories, each of which relates to changes in the probability of supervision by the Bureau. First, as discussed below, some firms may face incentives to modify the covered terms and conditions in their covered form contracts in response to the proposed rule. Firms choosing to modify their covered terms and conditions in their covered form contracts face a direct paperwork cost of modifying their form contracts, as well as potential impacts from changes to their form contracts. For example, to the extent supervised nonbanks use prohibited covered terms and conditions, there may be specific impacts from these firms' discontinuing use of prohibited covered terms and conditions in covered form contracts they enter into with consumers in the future. Second, some nonbanks may experience costs from an increased likelihood of examination by the Bureau due to the Bureau's use of the information collected under the proposed rule. As discussed below, this increase likely would be at least partially offset by forgone examinations of other supervised nonbanks.

With respect to the first category of cost—of removing prohibited covered terms and conditions, in addition to the prohibition against UDAAPs, Federal, State, and Tribal laws include a number of express prohibitions of the use of a number of covered terms and conditions.[346] Despite these express prohibitions and the prohibition against UDAAPs, the Bureau and other regulators have identified violations of some of these prohibitions linked to contract terms and conditions purporting to waive consumer protections and limit their exercise or enforcement by consumers. Although these types of prohibited contract terms and conditions generally are unenforceable, the fact that some supervised nonbanks include them in their contracts strongly suggests that these entities obtain some economic benefit from them. For example, such terms may deter consumers from pursuing remedies by deceiving them into believing that they no longer have the right purported to be waived or limited.

Under the proposed rule, supervised nonbanks would be required to register covered terms and conditions, including any covered terms or conditions that are expressly prohibited or whose use may constitute UDAAPs. The Bureau believes that supervised nonbanks currently using prohibited covered terms or conditions in their form contracts generally would choose to remove them (from the form contracts for future use) prior to registration. Under the proposal (*see* proposed § 1092.302(b)(2)(i)), if a supervised registrant removes a covered term or condition before the effective date of the final rule, a supervised registrant would not be required to register that term or condition. This impact may impose two types of costs on supervised nonbanks. First, supervised nonbanks will lose any benefits they were obtaining from the use of prohibited covered terms or conditions. Second, supervised nonbanks may incur administrative costs to identify and remove any prohibited covered terms or conditions from their form contracts slated for future use. Supervised nonbanks may accomplish the removal directly to form contracts they draft and periodically update, or through implementing updated form contracts they purchase from form providers who periodically update their form contracts based on changes in law.[347] The Bureau does not have any systematic data with which to estimate the prevalence of prohibited covered terms and conditions, and therefore cannot fully quantify either of these costs. At baseline, these terms and conditions already are prohibited, whether explicitly or under UDAAP. Thus, firms already have an incentive not to use them. Regardless of their prevalence, prohibited covered terms and conditions generally are unenforceable, and only of value to the firms using them to the extent they mislead consumers into believing otherwise and thus chill consumers' enforcement or exercise of rights. Therefore, the Bureau believes the impact of no longer using prohibited covered terms and conditions on supervised nonbanks is likely to be small.

Covered terms and conditions that are not expressly prohibited by law, or that are not *per se* prohibited (such as where the presence of a UDAAP may depend on facts and circumstances beyond the text of the term or condition), also may be indicators of risk to consumers and use of these covered terms and conditions also may inform the Bureau's supervision priorities. The Bureau therefore also considers the impact of nonbanks' incentives to modify the covered terms or conditions contained in their covered form contracts in response to changes in the probability of examination by the Bureau. The impact of changes to Bureau supervision, and examination prioritization in particular, is discussed below. As discussed below, given Bureau resource constraints and the high number of supervised nonbanks, the baseline likelihood of examination in a given year is low for the average supervised nonbank. Examination priorities depend on many factors other than use of covered terms and conditions and it is unlikely that a supervised nonbank could significantly decrease their likelihood of examination, in absolute terms, by modifying their covered terms or conditions in their covered form contracts.[348] For most supervised nonbanks, the cost of the examination process is primarily the employee time necessary to respond to the Bureau's information requests and is unlikely to exceed roughly $35,000.[349] Therefore, the incentive for a typical supervised nonbank to modify their contracts in order to manipulate their probability of examination is relatively weak.

Some subset of supervised nonbanks engaged in activities that, if supervised, likely would lead to enforcement may have stronger incentives to modify their

[346] For examples, see the discussion in parts II.A and II.C of the preamble.

[347] As noted in the discussion of benefits of this second component of impact, the Bureau believes that existing widely-used form provider contracts, in general, are unlikely to contain expressly prohibited covered terms or conditions.

[348] The Bureau does not currently have access to the information that would be collected by the proposed rule, and therefore has not developed policies or procedures for incorporating this information into its examination priorities. To the extent that the relationship between use of covered terms and conditions and the Bureau's examination priorities is not public, supervised nonbanks' incentives to influence the Bureau's priorities by modifying their contracts will be further weakened.

[349] *See, e.g.,* CFPB, Final Rule Defining Larger Participants of the Automobile Financing Market and Definition Certain Automobile Leasing Activity as a Financial Product or Service, 80 FR 37496, 37520 (June 30, 2015) (estimating cost of examination for larger participant automobile finance company would be $27,611, or $33,834 when adjusted for inflation using the 2022Q3 GDP Implicit Price Deflator).

contracts. These incentives may be particularly high if such supervised nonbanks are unknown to the Bureau at baseline, as they may face a relatively larger increase in the probability of examination upon registration. In theory, such firms could choose to avoid this increase, and the prospect of increased public oversight generally, by removing all covered terms and conditions from their contracts. However, it is uncertain whether these firms would act on the incentive, for example, by removing their arbitration agreements. Such a move essentially would trade an increased risk of public oversight for an increased risk of private enforcement including class actions. And firms engaged in activities likely to lead to enforcement may be equally concerned about creating new exposure to class actions. The Bureau requests comment on supervised nonbanks' incentives to modify the covered terms or conditions in their covered form contracts in response to the proposed rule including, where relevant, specific examples of covered terms and conditions that firms may modify and a description of what modifications may occur and why.

For the unknown share of supervised nonbanks that may choose to review and modify the covered terms or conditions contained in their covered form contracts for future use, the Bureau assesses the cost to be less than 5 hours per contract. This process would involve a mix of managerial, legal, business, and administrative employees, with an average fully loaded hourly wage of $61.90, calculated as described above. Therefore, the cost for supervised nonbanks using expressly prohibited covered terms and conditions could range from $3,095 for a firm using 10 contracts containing such terms to $77,375 for a firm using 250 contracts. The Bureau believes this would be a one-time cost because, after the effective date of the final rule, supervised nonbanks may simply choose to refrain from including expressly prohibited covered terms and conditions in their new contracts. Amortized over the first five years of the rule, the cost of changing a form contract would range from approximately $620.00 to $15,500 annually. To quantify the total impact, the Bureau would need information on how many supervised nonbanks would have a strong incentive to modify their form contracts, generally because they contain prohibited covered terms and conditions.[350] The Bureau also would need to know how many supervised nonbanks draft their own form contracts, as opposed to purchasing them from third parties. Form contract providers appear less likely to use prohibited terms and conditions, and, if that is so, would be less likely to have an incentive to modify their contracts as a result of the proposed rule. Furthermore, the form contract providers would bear the cost of these modifications. To the extent that these costs are passed through to supervised nonbanks as higher prices, the impact on any individual business that is a customer of the form contract provider is likely to be negligible. The Bureau seeks comment or data on the use of form contracts purchased from third parties. In particular, the Bureau seeks information on the prevalence of third-party form contracts in different markets and for supervised nonbanks of different sizes.

With respect to the second category of cost—the direct costs of monitoring and examination by the Bureau that may specifically result from the proposed rule, pursuant to its authorities under CFPA section 1022, as discussed in part II.C.1 above, the Bureau may consider both risks and costs to consumers, and consumer understanding of risks, as factors in allocating its monitoring resources. A major purpose of the proposed rule is to use the nonbank registration system to facilitate the Bureau's monitoring and supervisory processes. The information collected under the proposed rule will have at least two distinct effects on supervised nonbanks' costs related to Bureau supervision and enforcement. First, the Bureau would use the registration information to prioritize markets or entities where applicable legal protections are often waived, or where private enforcement or exercise of consumer rights is weakened, by the use of covered terms and conditions. Second, the registry of supervised nonbanks independently would improve the Bureau's ability to determine which nonbanks are subject to its supervisory authority. To the extent a nonbank would not have been examined but for the adoption of the proposed rule, the costs of an examination of that nonbank could be similar to the costs estimated in the Bureau's larger participant rules, adjusted for inflation.[351] However, most supervised nonbanks would not go from no likelihood of examination to definitely being examined as a result of the proposed rule. Rather, for a given supervised nonbank, the examination cost resulting from the proposed rule generally would be the cost of an examination multiplied by the marginal change in probability of an examination. The Bureau cannot quantify the change in likelihood of such an examination without the information collected by the proposed rule and the opportunity to develop and test methods for incorporating this information into Bureau decision making. However, the Bureau conducts a limited number of supervisory actions per year. A modest increase in the number of actions due to increased efficiency will not noticeably change the probability that any given entity is supervised. Individual supervised nonbanks may experience larger changes in the probability of supervisory action due to improvements in how the Bureau prioritizes supervision. Therefore, the cost of any exam conducted due to the rule generally would be offset by other, lower-priority exam work not conducted. That is, to the extent that the costs of supervisory action are similar across entities, the proposed rule would reallocate the costs of being examined across supervised nonbanks but is unlikely to increase significantly the overall costs to all supervised nonbanks of being examined.

The Bureau has considered the possibility that supervised nonbanks would pass through some of the costs described above to consumers, generally by raising prices. Although the Bureau lacks sufficient data to quantify the extent to which consumers may ultimately bear some of the impacts on firms discussed above, economic theory and available evidence suggest that the impact on consumers is likely to be small. As discussed in part VII.E.1. above, firms generally are only able to pass increased costs through to consumers if those costs vary depending on the number of units sold. Although the incentive to modify a contract may depend on the number of times it is used, many of the costs described above are paid for each covered form contract, regardless of the number of times the covered form contract is used, and therefore are unlikely to be passed through to consumers. Because firm size is taken into account in the Bureau's examination prioritization, costs

[350] As discussed above, some supervised nonbanks also may have an incentive to modify or remove covered terms and conditions that are not expressly prohibited. For example, a supervised nonbank may believe that modifying or removing a specific term or condition would lead to decreased likelihood of Bureau supervision.

[351] *See, e.g.,* CFPB, Final Rule Defining Larger Participants of the Automobile Financing Market and Definition Certain Automobile Leasing Activity as a Financial Product or Service, 80 FR 37496, 37520 (June 30, 2015) (estimating cost of examination for larger participant automobile finance company would be $27,611).

associated with the probability of supervision arguably are variable costs that could be passed through to consumers. However, as discussed above, the proposed rule does not increase the total resources available to the Bureau for supervision and will generally reallocate the costs of examination across supervised nonbanks. Because firms pass through decreases as well as increases in marginal cost to consumers, this implies that prices for consumers are unlikely to increase on net. Consumers' ability to substitute towards firms offering lower prices will further mitigate any increase in consumer prices related to the costs described in this section.

Benefits

The Bureau does not have data on the prevalence of covered waivers and other covered terms and conditions that are expressly prohibited by Federal, State, and Tribal laws, or on the prevalence of covered terms and conditions that may constitute UDAAPs. As against that baseline, which the Bureau lacks data to quantify, the Bureau believes that the proposed rule will significantly reduce the use of prohibited covered terms and conditions. Even when they are generally unenforceable, covered terms and conditions still harm consumers by chilling private action because many consumers are unaware that such covered terms and conditions are prohibited. For example, when a consumer complains about a particular practice or harm, a firm using a prohibited covered waiver may incorrectly claim that the consumer waived their rights and thus has no rights to enforce. In light of what the covered waiver states and the likelihood of the firm standing behind it if a consumer complains, a reasonable consumer may believe that they have waived their rights, and not pursue further action.

As discussed above, the Bureau believes that the obligation to register covered terms and conditions will significantly reduce the use of prohibited covered terms and conditions. Although the Bureau has documented examples of the use of prohibited covered waivers and other covered terms and conditions, the Bureau is unaware of any systematic data that would enable it to estimate the prevalence of prohibited covered terms or conditions or their harm to consumers. Therefore, the Bureau cannot quantify the benefit from incentivizing firms to remove prohibited covered terms and conditions from their contracts. The Bureau requests any additional information that would improve its understanding of this benefit.

Some firms may be using prohibited covered terms or conditions unintentionally, for example because they have purchased a contract from a vendor. Because such firms did not choose to include expressly prohibited covered terms or conditions in their contracts, the legal risks associated with using them may exceed the benefits. Such firms may therefore benefit from the proposed rule, as any advantages lost by removing prohibited covered terms and conditions (which the form provider may do, or the supervised registrant may do by modifying the form contract or using a different contract) are outweighed by the benefit of reduced legal risk. The Bureau does not have systematic data on the unintentional use of prohibited covered terms and conditions, or on the expected benefits or costs of using prohibited covered terms and conditions. Therefore, the Bureau cannot quantify this benefit. Because form providers typically review developments in the law and update their form contracts accordingly, and market the form contracts as legally tested and updated, the likelihood of a prohibited covered term or condition in a form contract furnished by a form contract provider may be relatively low.

Covered terms and conditions that are not prohibited also may deprive consumers of legal rights or other legal protections or undermine those legal rights or other legal protections by placing limits on how consumers enforce them (*e.g.,* by limiting the timing, venue, forum, or recovery for legal actions, or ability to file complaints) or complain about matters related to potential noncompliance with them.[352] By extinguishing or diminishing the adequacy of applicable consumer legal protections, these covered terms and conditions weaken firms' incentives to comply with applicable legal protections including Federal consumer financial law. Therefore, the Bureau believes that markets or firms where these covered terms and conditions are more prevalent likely are relatively riskier for consumers. The proposed rule will allow the Bureau to target its monitoring, supervision, enforcement, and other resources to riskier markets and firms. The possibility of such increased supervision as well as its reality will increase firms' incentives to comply with applicable legal protections including Federal consumer financial law and reduce harm to consumers.

Because their use is not generally prohibited in supervised markets outside of certain mortgage agreements and lending to servicemembers as discussed in part II above, arbitration agreements may be a common example of covered terms or conditions generally not prohibited by law. As discussed in the Bureau's section 1022(b) analysis of the provisions of its 2017 final rule (which did not take effect) that would have prohibited use of arbitration agreements from blocking class actions, arbitration agreements (which often may be enforceable under the Federal Arbitration Act) pose a risk of reducing deterrence for violation of, and thereby increasing noncompliance with, Federal consumer financial law and other applicable legal protections.[353]

Apart from data about the prevalence of arbitration agreements discussed in part II.C.2 above, the Bureau does not have systematic data on the use of covered terms and conditions that are not expressly prohibited by law, the relationship between these covered terms and conditions and risky or potentially illegal activity, the resulting harm to consumers, or the extent to which risky or potentially illegal activity would be deterred by changes to Bureau prioritization. Therefore, the Bureau is unable to quantify this benefit.

In addition to enhancing the Bureau's process for prioritizing supervision of individual entities, the information collected by the proposed rule will improve the Bureau's general understanding of the role of covered terms and conditions in supervised markets and their effects on consumers. The proposed rule would give the Bureau high-quality information on the use of covered terms and conditions in several significant markets in which the Bureau monitors for risks to consumers. The proposed registry would improve the Bureau's monitoring for potential risks to consumers arising from the use of specific covered terms and conditions, their use at specific types of firms, and broader patterns in the use of covered terms and conditions. Such monitoring, in turn, would help inform the Bureau's other functions, including not only its supervisory function, but also its consumer education, market research, and enforcement functions. Through exercise of those functions, the Bureau may identify and publicize linkages from the use of particular

[352] There may be relatively few situations where contractual limitations on complaints are not prohibited by law. *See* CFPB Bulletin 2022–05 (describing likelihood that contractual limits on complaints will constitute UDAAPs).

[353] 82 FR at 33410.

covered terms and conditions, or patterns of use of covered terms and conditions, and specific benefits or harms to consumers (whether through the use of covered terms and conditions that are prohibited by applicable legal protections, or through the undermining of applicable legal protections by the use of covered terms and conditions generally). Those activities likely would improve the functioning of the broader market for consumer financial products and services. Because market participants typically benefit from well-functioning markets, the proposed rule is likely to have positive effects on both consumers and supervised nonbanks. The Bureau does not have data to quantify these benefits.

Because the proposed rule would not require entities to register if they do not use covered terms and conditions, and the proposal would not require entities to submit information about their revenues or volume of activity in the supervised markets, the Bureau would need additional data on non-users to precisely estimate the prevalence of covered terms and conditions overall or within a given market. However, the proposed rule still would provide a valuable source of information on questions of interest to the Bureau and the general public. For example, in part due to lack of comprehensive data, the Bureau does not have good estimates of how consumers value covered terms and conditions. Similarly, precisely how market concentration and competition between firms impacts use of covered terms and conditions offered to consumers is generally poorly understood. The proposed rule will provide evidence that will shed light on these and other questions, which may inform or precipitate future Bureau publications or policy initiatives. For example, as the Bureau learns more about the effects of certain covered terms and conditions, it may issue guidance to improve consumers' understanding of their rights and ability to make informed decisions about the contracts they enter into or about their rights under contracts they already entered into. Firms using covered terms and conditions in covered form contracts also may benefit from a better understanding of how these terms and conditions are used and how they are perceived by consumers. Without the data to be collected by the proposed registry, the Bureau cannot anticipate, or quantify, these benefits.

Firms that are complying with the law (by both not using covered terms and conditions that are prohibited, and by adhering to underlying applicable legal protections despite any use of covered terms and conditions), are often at a competitive disadvantage relative to firms that do not comply with the law. As discussed above, the information collected by the proposed rule is likely to improve the Bureau's ability to target supervisory action towards those firms that may be using covered terms and conditions in a manner that facilitates violating Federal consumer financial law. To the extent that this improvement induces more firms to comply with Federal consumer financial law, firms which were previously compliant will benefit. As noted above, the Bureau does not have systematic data on the use of all covered terms and conditions, the number of firms currently not complying with consumer protection law, or the harm to compliant firms from their competitors' noncompliance. The Bureau is therefore unable to quantify this benefit to firms. Improved targeting of the Bureau's monitoring and supervision processes also may benefit firms that do not use covered terms and conditions or use them in a manner that does not facilitate violation of Federal consumer financial law, as they would be, on the margin, less likely to bear the costs of supervision or enforcement actions, as discussed above. Without the data proposed to be collected by the registry or the opportunity to develop, test, and implement procedures for using this data to inform Bureau prioritization, the Bureau is unable to quantify this benefit.

3. Publication of Registration Information Pursuant the Bureau's Market Monitoring Authority Costs

The publication requirement in proposed § 1092.303 would allow information about covered terms and conditions that are already available to existing customers of supervised registrants to be centralized on the Bureau's public website. This could make the information more accessible than it might otherwise be. However, in the section 1022(b) analysis impacts of the Bureau's recent proposal to register certain public orders against covered persons, the Bureau observed that publication of certain public orders in a centralized fashion would be unlikely to change the behavior of most consumers.[354] Similarly, as explained at the end of this part VII.E.3 below, the publication of information that would be required by this proposal is likely to have a minimal impact on consumer behavior, so the impact of this proposed provision on most affected entities likely would not be significant.

For the reasons discussed in part VII.E.2 above, firms are likely to remove covered terms or conditions that are prohibited by law, before being required to register them under the proposed rule. Some firms' use of covered terms and conditions that are not prohibited by law still may be so controversial among consumers or the general public that their publication on the Bureau's public website could impose a significant impact on these firms. However, even under the baseline with no rule, covered terms and conditions generally are available and can become the subject of scrutiny by public regulators and the public at large. Publication may increase the incentive at the margin to remove covered terms and conditions, to the extent the Bureau, through its supervisory work, would not have found a given covered term or condition to violate or risk violating Federal consumer financial law.

With respect to the covered terms and conditions that are registered (which likely would be largely terms and conditions that are not prohibited), even if controversial, their publication is unlikely to result in a significant increase in private class actions. As discussed in part II, these remaining covered terms and conditions reflect risks to consumers due to their potential to undermine applicable legal protections magnified by their creation through form contracts often entered into with limited consumer understanding. It is possible some of these remaining terms and conditions may, in conjunction with other facts or circumstances, also violate the prohibition against UDAAP or other protections enforced by other regulators or privately. However, with respect to the potential for significant increased private enforcement, through class actions in particular, that appears unlikely. Consumers' ability to participate in class actions is limited by several of the covered terms and conditions, and especially in light of the prevalence of arbitration agreements discussed in part II above. As a result, in the context of current law governing the covered terms and conditions, the Bureau's publication of information collected by the proposal is unlikely to result in a significant increase in class action litigation across markets supervised by the Bureau.

The Bureau requests comments and information that would inform the Bureau's estimates of the impacts of publication on covered entities.

[354] Nonbank Registration—Orders Proposal, at 169 (citing research on impacts of consumer disclosures).

Although the Bureau is not proposing the registry to signal an endorsement of supervised registrants or their safety, some consumers may interpret registration as a signal of legitimacy or safety.[355] Unregistered firms may experience costs if consumers interpret their absence from the registry as a signal that they are relatively more likely to be illegitimate or risky.[356] There is also some potential for harm to consumers who do not understand the information conveyed by registration and, for example, pay less attention to other indicators of a firm's business practices. The Bureau is in a position to minimize these costs by designing a public-facing registration system that can educate those consumers who might access it on the significance of the published information.

On the other hand, consumers might interpret published information on a supervised registrant's use of covered terms and conditions in covered form contracts as a signal that their products or services are risky. As discussed below, consumers are unlikely to directly-access the registry, but its information could be used to heighten public awareness. This signal potentially generated by publication in the registry generally is unlikely to impose costs such as by altering the ability of firms to attract or retain customers, except potentially in limited circumstances. In general, the use of many types of covered terms and conditions is widespread and that the presence of many well-known firms on the registry would not negatively affect their ability to attract or retain customers. In addition, the registry may identify certain other covered terms and conditions that are not prohibited but which are outliers and are unusually risky. Depending on the competitive environment that firms face, they may choose to adjust their use of such terms and conditions, weighing the cost associated with a risk of losing trust with their customers or potential customers against the value they believe those terms and conditions to provide. Finally, as discussed above, to the extent that supervised nonbanks are using prohibited covered terms and conditions, they are likely to remove those before registration. However, if a supervised registrant does continue to use prohibited covered terms and conditions, then, as discussed above, Bureau supervisory or enforcement action already may become more likely; otherwise, to the extent the term is prohibited by State or Tribal law, then the publication of this type of registration information under the proposed rule could increase the visibility of that practice; the resulting increased public scrutiny of such a prohibited practice might reduce that firm's ability to attract or retain customers.

In a baseline with no rule, consumers have the opportunity to review the terms and conditions of contracts for products or services they are considering at point of sale, but may rarely do so, as discussed in part II above. The publication of information collected under the proposal on the Bureau website would offer consumers an alternative, centralized way to access this information and facilitate comparisons across competing firms. While the Bureau does not have sufficient data to quantify this impact, a large body of research has shown that consumers often pay little attention even to important product attributes.[357] For that reason, the Bureau does not anticipate making the centralized registry directly accessible to consumers would have significant impact on supervised registrants. Unlike core financial deal terms like price or payment terms, covered terms and conditions often are distant in time and probability, and often may directly affect only a minority of consumers of a given product or service. In addition, consumers may not appreciate how covered terms and conditions may weaken compliance incentives generally, which can have broader impacts on product and service delivery overall. Therefore, covered terms and conditions are unlikely to be decisive factors in consumers' choices at the point of sale. Because consumers already have access to the contract at point of sale, the public registry centralizing this information on the Bureau's website would have limited additional impact. Well-designed information disclosures can be effective at directing consumer attention; for example, one study found that providing payday loan borrowers with information about the costs of payday loans reduced payday loan borrowing.[358] However, effective information disclosures are typically more direct (*e.g.*, disclosing the costs of payday loans to payday loan borrowers) and more timely (*e.g.*, disclosed to payday loan borrowers at the time they are obtaining a payday loan) than the information that would be published under the proposed rule. Therefore, the Bureau believes that the proposed publication of registration information is likely to have a minimal impact on consumer behavior, and so the associated impact on supervised nonbanks also will be minimal.

The Bureau has considered the possibility that supervised nonbanks would pass through some of the costs described above to consumers, generally by raising prices. As discussed in the previous sections, firms' ability to shift the burden on increased costs to consumers depends on the nature of those costs, especially whether they vary depending on the number of customers or units sold. Some of the effects described above could potentially make it more or less difficult for some registrants to attract new customers. In the long-run, customer acquisition costs are arguably a component of variable cost, and potentially could lead to higher prices. However, for the reasons discussed above, the impact of the proposed publication of registration information is likely to have a minimal impact on consumer behavior, so even if these costs were fully passed through the impact on consumers would be minimal.

Benefits

Under the proposed rule, the registration information (except for administrative information) would be published on the Bureau's public website to the extent permitted by applicable laws. This would benefit the public by facilitating the use of registration information by other public regulators. Recognizing the value of contract registration, some individual States have established registration systems for one market.[359] The proposed registration system would provide nationwide, standardized information on covered terms and conditions in covered form contracts across a broader set of supervised markets. Other Federal agencies and public regulators in States without

[355] All else equal, use of covered terms and conditions in covered form contracts is an indicator that a firm is potentially risky, rather than safe. It is also only one among many indicators of risk to consumers, and should not be relied on exclusively to determine a firm's riskiness to consumers.

[356] For example, enough firms purport to be supervised by the Securities and Exchange Commission (SEC) that the SEC maintains a public list of *unregistered* entities known as the PAUSE program.

[357] For one review of this research, see Benjamin Handel and Joshua Schwartzstein, *Frictions or Mental Gaps: What's Behind the Information We (Don't) Use and When Do We Care?,* Journal of Economic Perspectives (2018), vol. 32(1), at 155–178.

[358] See Marianne Bertrand and Adair Morse, *Information Disclosure, Cognitive Biases, and Payday Borrowing,* The Journal of Finance (2011), vol. 66(6), at 1865–1893.

[359] For example, Colorado, Louisiana, Maine, and Illinois require private student lenders to register their standard terms and conditions.

preexisting contract registration systems would be able to use the Bureau's registry to inform and improve their supervision and enforcement activities. Public regulators in States with preexisting contract registration systems would benefit from the additional context provided by national data, as well as data focused specifically on the use of covered terms and conditions.

The benefits of making the Bureau registry available to other public regulators are analogous to the benefits of the Bureau's own use of the registry discussed above. The two primary benefits are incentivizing firms to ensure that their contracts do not use prohibited covered terms or conditions and facilitating risk-based monitoring, supervision, and enforcement of applicable law. Many of the laws prohibiting waivers discussed in parts II.B and II.C are enforced by other Federal and State agencies. Because the Bureau cannot enforce many of these laws, the proposed rule would not incentivize firms to remove covered terms and conditions prohibited by those laws unless they were used in circumstances that constituted a UDAAP or registration information were shared with the other agencies responsible for enforcement. For the reasons discussed above, quantifying these benefits is not possible without data on the prevalence of prohibited clauses and the harm they do to consumers.

To the extent that consumers are more willing to trust firms subject to Bureau supervision, the public registry identifying nonbanks in part on the basis that they are subject to the Bureau's supervisory authority may provide a benefit to firms that may partially offset costs associated with publication of their risky covered terms and conditions. The Bureau does not have sufficient data, for example, on how Bureau supervision affects consumers' attitudes towards firms or consumers' choices, for it to quantify this benefit. Some supervised nonbanks covered by the proposed rule already would have a license at the State level. Many State licensing regimes also provide an online search function, and firms may advertise their license number either because it is required or because it is beneficial. In addition, firms would need to take care to avoid deceptive practices and other problematic statements in conveying the significance of their registration to consumers.[360] For these reasons, any benefits from publicizing their registration with the Bureau are likely to be incremental at best.

One alternative to publication is the establishment of confidential data-sharing agreements with individual public regulators. This would permit use of the Bureau registry by other regulators without making it available to the public or to other firms, including potential competitors. However, the process of establishing memoranda of understanding with other regulators at the Federal, State, Tribal, and local levels specifically covering the proposed registry would require public resources and impose costs for public regulators, and therefore may lead to incomplete sharing of information and significant reductions in the benefit to consumers. Furthermore, as described above, the Bureau believes that publication of registration information will not impose significant costs on firms that would justify these reductions.

Furthermore, publication of registration information is likely to provide benefits to the public beyond improved compliance with applicable law and strengthened public enforcement of consumers' rights. For example, academics, journalists, and consumer advocacy groups may use registry information to produce articles or reports which increase consumers' understanding of their rights. The Bureau does not have sufficient information to quantify the value of additional consumer education resulting from the publication of registration information.

In addition, the Bureau is proposing to collect information on firms' use of covered form contracts containing covered terms and conditions purchased from third-party providers. If this type of information is published by the Bureau, firms using these contracts may benefit if consumers and public regulators perceive them as following an industry standard. Publication of this type of information may also have an impact on the contract provider industry by providing additional information on the market for contracts. This may improve contract providers' understanding of the market for contracts, including new market opportunities. The Bureau seeks comment on the potential impacts of collecting and publishing information on covered terms and conditions in covered form contracts sold by third-party form contract providers.

F. Potential Specific Impacts of the Proposed Rule

1. Insured Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

There will be no direct effect on insured depository institutions or credit unions with $10 billion or less in total assets, as the rule applies only to supervised nonbanks. There may be certain indirect impacts, as described below.

Some smaller depository institutions may partner with nonbanks to offer loans, such as payday loans, in supervised markets. Proposed § 1092.302(a)(2)(iii)(B) would require supervised payday lenders to identify the legal names of parties to their covered agreements. The Bureau requests data on how often payday lenders' agreements identify smaller depository institutions as parties in the payday lenders' agreements with consumers. If the payday lender's agreement identifies the smaller depository institution as a party, then that information would be reported under the proposal to the Bureau and potentially the public under the publication provisions of the proposal. It is uncertain whether such reporting and publication would have even an indirect effect on the smaller depository institution, however.

An additional indirect impact on some insured depository institutions or insured credit unions with $10 billion or less in total assets may be possible in two separate contexts. First, to the extent that they are affiliated with a supervised registrant, a cost to the affiliate—such as the cost of registration and submission of information—may be an indirect cost to the insured depository institution or insured credit union. Second, to the extent they compete with a supervised registrant, a cost to the competitor—such as the cost of registration and submission of information—may be an indirect benefit to them because they do not incur that cost under the proposal. But as noted above, even for supervised registrants, the Bureau does not anticipate that the cost of the proposed rule will be significant in most cases. Therefore, the Bureau anticipates that these types of indirect impacts on any such insured depository institutions or insured credit unions with $10 billion or less in total assets would be even less significant.

[360] *Cf.* Consumer Financial Protection Circular 2022–02, ''Deceptive representations involving the name or logo of deposit insurance'' (May 17, 2022) (discussing risks of deception in falsely characterizing the status of deposit products as insured by a Federal regulator); CFPB Order to Terminate Sandbox Approval Order, *In re Payactiv, Inc.* (June 30, 2022) (rescinding regulatory approval under TILA due to statements by regulated entity ''wrongly suggesting the CFPB had endorsed [the entity] or its products'').

2. Impact of the Proposed Provisions on Consumer Access to Credit

The proposed rule could potentially reduce consumer access to credit if costs associated with the proposed rule were passed through to consumers as higher prices or led covered persons to discontinue certain products or services. As discussed above, the available data, combined with economic theory, suggests that such effects will be negligible. Moreover, bank and nonbank entities that would not be directly affected by the proposed rule could provide financial products and services to consumers who would otherwise obtain these financial products and services from affected nonbank covered persons. Therefore, the Bureau believes that the proposed rule will not have a significant negative impact on consumer access to credit.

By improving the Bureau's ability to conduct its consumer education, regulation, market monitoring, and supervision activities, the proposed rule would likely improve the functioning on the broader market for consumer financial products and services. Therefore, the proposed rule may have positive effects on consumer access to consumer financial products and services provided in conformity with applicable legal obligations designed to protect consumers.

3. Impact of the Proposed Provisions on Consumers in Rural Areas

Broadly, the Bureau believes that the analysis above of the impact of the proposed rule on consumers in general provides an accurate analysis of the impact of the proposed rule on consumers in rural areas. If consumers in rural areas are relatively less reliant on affected nonbanks, the impact of the rule on consumers in rural areas would be smaller than the impact on those in non-rural areas. Because the Bureau lacks high-quality data on the rural market share of supervised nonbanks that would be affected by the proposed rule, the Bureau cannot judge with certainty the relative impact of the rule on rural areas. However, for certain large and well-studied industries, including mortgage and auto lending, the Bureau has evidence of the lesser rural impact.[361] Based on this evidence, the Bureau believes that the impact of the proposed rule would likely be relatively smaller in rural areas.

VIII. Regulatory Flexibility Act Analysis

A. Overview

The Regulatory Flexibility Act of 1980 (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Dodd-Frank Act Wall Street Reform and Consumer Protection Act of 2010, as well as the Small Business Jobs Act of 2010, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[362] The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[363] Potentially affected small entities include those in the markets described in Table 1 above.

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.

For the reasons discussed below, the Bureau has determined, and the undersigned has certified, that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, and that an IRFA is, therefore, not required.

B. Impacts of the Proposed Rule on Small Entities

As discussed in the 1022(b)(4) analysis above, the costs to supervised nonbanks associated with registration under the proposed rule are small. The direct cost to supervised nonbanks is the employee time spent by to gather and submit registration information. Required information includes identifying and administrative information, as well as information regarding the covered terms and conditions in registrants' covered form contracts. This information should be readily accessible to all entities affected and providing it through the nonbank registration system should be straightforward. While the Bureau cannot precisely quantify this cost, it believes this will generally take on average 15 to 25 hours of employee time per small entity annually, as reflected in Table 2 above, based on the Bureau's estimate that small entities generally have a consumer contracting system of simple or intermediate complexity.[364] Firms would not need to purchase new hardware or software and would not need to employ or train specialized personnel to comply with the proposed rule.

The Bureau believes that indirect costs, primarily related to increased incentives for compliance with applicable consumer protection law including Federal consumer financial law, are also likely to be small. For example, some supervised nonbanks may choose to conduct a compliance audit of their covered terms and conditions in their covered form contracts, to ensure there are no waivers or other covered terms or conditions subject to the various express legal prohibitions mentioned in part II.B above and there are no covered terms or conditions that constitute UDAAPs under Bureau decisions and guidance such as those discussed in part II.C above. As discussed in the 1022(b)(4) analysis, this often would involve review of only relatively easily-identified terms and conditions and would not require an audit of the whole contract. Small entities in some supervised markets, such as mortgage and automobile finance, typically purchase their contracts from vendors, who may bear the cost of conducting such audits. These are fixed costs and therefore unlikely to be passed on to small entities. Regardless of the method of ascertaining information contained in contracts and to determine compliance with the law and this proposed regulation, the business cost to review contracts and remove prohibited terms would be a one-time cost and is unlikely to be significant when amortized over

[361] For evidence on the mortgage market, see Julapa Jagtiana, Lauren Lambie-Hanson, and Timothy Lambie-Hanson, *Fintech Lending and Mortgage Credit Access,* The Journal of FinTech (2021), vol. 1(1). For evidence on the auto loan market, see Donghoon Lee, Michael Lee, and Reed Orchinik, *Market Structure and the Availability of Credit: Evidence from Auto Credit,* MIT Sloan Research Paper *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3966710.*

[362] 5 U.S.C. 601–12. The Bureau is not aware of any small governmental units or not-for-profit organizations to which the proposal would apply. Proposed § 1092.301(h) would exclude governmental units, unless, in the case of a State, Tribe, or arm of a State or Tribe, the U.S. Congress has abrogated their immunities.

[363] 5 U.S.C. 601(3) (the Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment).

[364] See the 1022(b)(4) analysis above for a detailed description of this burden. Table 2 reports the estimated burden for each task involved in the proposed registration, for firms at varying levels of complexity.

five years and, in any event, is an existing requirement under existing consumer protection law, separate and apart from the requirements that would be imposed by this proposed rule. Moreover, to the extent that the Bureau prioritizes supervision of entities which pose risks to a larger number of consumers, these indirect costs are likely to be even smaller for small entities.

The 1022(b)(4) analysis above finds that, even for complex entities using many different contracts, it is unlikely that the direct costs of registration under the proposed rule exceed approximately $13,250 annually. Because entities with under $1 million in receipts are exempt from registration, the impact of the rule would be less than 1.3% of receipts for all affected registrants, and therefore not significant. The Bureau believes that this estimate is likely to overstate the cost to most small entities. The estimated direct costs of registration for a supervised registrant using 10–25 different contracts range from more than $900 to less than $1,600 annually, or 0.09–0.16% of annual receipts. The Bureau believes that this lower estimate is most likely to be appropriate for small entities.

For some small entities, the impact may be larger than average and in extreme cases may rise to the level of a significant economic impact. However, the Bureau believes that such cases would be rare, and that the number of small entities experiencing a significant economic impact under the proposed rule would not be substantial.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies generally are required to seek approval from the Office of Management and Budget (OMB) for information collection requirements prior to implementation. Under the PRA, the Bureau may neither conduct nor sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB.

The information collection requirements in this proposed rule would be mandatory. Certain information collected under this proposed rule would not be made available to the public, in accordance with applicable law.

The collections of information contained in this proposed rule, and identified as such, have been submitted to OMB for review under section 3507(d) of the PRA. A complete description of the information collection requirements (including the burden estimate methods) is provided in the information collection request (ICR) that the Bureau is submitting to OMB under the requirements of the PRA. Please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Bureau of Consumer Financial Protection. Send these comments by email to *oira_submission@omb.eop.gov* or by fax to 202–395–6974. If you wish to share your comments with the Bureau, please send a copy of these comments as described in the **ADDRESSES** section above. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at *www.regulations.gov* as well as on OMB's public-facing docket at *www.reginfo.gov.*

Title of Collection: Registry of Supervised Nonbanks that Use Form Contracts to Impose Terms and Conditions that Seek to Waive or Limit Consumer Legal Protections.

OMB Control Number: 3170–00XX.

Type of Review: Request for approval of a new information collection.

Affected Public: Private sector.

Estimated Number of Respondents: 7,345.

Estimated Total Annual Burden Hours: approximately 15–210 depending on complexity of entity's contracting with consumers.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this proposal will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

If applicable, the notice of final rule will display the control number assigned by OMB to any information collection requirements proposed herein and adopted in the final rule.

List of Subjects in 12 CFR Part 1092

Administrative practice and procedure, Consumer protection, Credit, Intergovernmental relations, Law enforcement, Nonbank registration, Registration, Reporting and recordkeeping requirements, Trade practices.

Authority and Issuance

■ For the reasons set forth above, the Bureau proposes to add part 1092 to chapter X in title 12 of the Code of Federal Regulations, to read as follows:

PART 1092—NONBANK REGISTRATION

Subpart A—General

Sec.
1092.100 Authority and purpose.
1092.101 General definitions.
1092.102 Submission and use of registration information.
1092.103 Severability.

Subpart B—[Reserved]

Subpart C—Use of Form Contracts To Impose Terms and Conditions That Seek To Waive or Limit Consumer Legal Protections.

1092.300 Scope.
1092.301 Definitions.
1092.302 Registration and submission of information regarding supervised registrants' use of covered terms and conditions.
1092.303 Publication of information regarding supervised registrants' use of covered terms and conditions.

Authority: 12 U.S.C. 5512(b) and (c); 12 U.S.C. 5514(b).

Subpart A—General

§ 1092.100 Authority and purpose.

(a) *Authority.* The regulation in this part is issued by the Bureau pursuant to section 1022(b) and (c) and section 1024(b) of the Consumer Financial Protection Act of 2010 (CFPA), codified at 12 U.S.C. 5512(b) and (c), and 12 U.S.C. 5514(b).

(b) *Purpose.* The purpose of this part is to prescribe rules governing the registration of nonbanks, and the collection and submission of registration information by such persons, and for public release of the collected information as appropriate.

(1) Subpart A contains general provisions and definitions used in this part.

(2) Subpart B is reserved.

(3) Subpart C sets forth requirements regarding the registration of supervised nonbanks and collection of information regarding their use of form contracts to impose certain terms and conditions that seek to waive or limit consumer rights or other applicable legal protections.

§ 1092.101 General definitions.

For the purposes of this part, unless the context indicates otherwise, the following definitions apply:

(a) *Affiliate, consumer, consumer financial product or service, covered person, Federal consumer financial law, insured credit union, person, related person, service provider,* and *State* have the same meanings as in CFPA section 1002, codified at 12 U.S.C. 5481.

(b) *Bureau* means the Consumer Financial Protection Bureau.

(c) *Include, includes,* and *including* mean that the items named may not encompass all possible items that are covered, whether like or unlike the items named.

(d) *Nonbank registration system* means the Bureau's electronic registration system identified and maintained by the Bureau for the purposes of this part.

(e) *Nonbank registration system implementation date* means, for a given requirement or subpart of this part, the date(s) determined by the Bureau to commence the operations of the nonbank registration system in connection with that requirement or subpart.

§ 1092.102 Submission and use of registration information.

(a) *Filing instructions.* The Bureau shall specify the form and manner for electronic filings and submissions to the nonbank registration system that are required or made voluntarily under this part. The Bureau also may provide for extensions of deadlines or time periods prescribed by this part for persons affected by declared disasters or other emergency situations.

(b) *Coordination or combination of systems.* In administering the nonbank registration system, the Bureau may rely on information a person previously submitted to the nonbank registration system under this part and may coordinate or combine systems in consultation with State agencies as described in 12 U.S.C. 5512(c)(7)(C) and 12 U.S.C. 5514(b)(7)(D).

(c) *Bureau use of registration information.* The Bureau may use the information submitted to the nonbank registration system under this part to support its objectives and functions, including in determining when to exercise its authority under 12 U.S.C. 5514 to conduct examinations and when to exercise its enforcement powers under subtitle E of the CFPA. However, this part does not alter any applicable process whereby a person may dispute that it qualifies as a person subject to Bureau authority.

§ 1092.103 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect.

Subpart B—[Reserved]

Subpart C—Use of Form Contracts To Impose Terms and Conditions That Seek To Waive or Limit Consumer Legal Protections

§ 1092.300 Scope.

This subpart requires supervised nonbanks to collect and submit information to the Bureau's nonbank registration system regarding their use of form contracts to impose certain terms and conditions that seek to waive or limit consumer legal rights and other applicable legal protections. This subpart also describes the information the Bureau will make publicly available, when permitted by law.

§ 1092.301 Definitions.

For the purposes of this subpart, unless the context indicates otherwise, the following definitions apply:

(a) *Administrative information* means contact and other information regarding persons subject to this subpart and other information submitted or collected to facilitate the administration of the nonbank registration system including submissions made pursuant to § 1092.302(d).

(b) *Covered form contract* means any written agreement between a covered person and a consumer that:

(1) Was drafted prior to the transaction for use in multiple transactions between a business and different consumers; and

(2) Contains a covered term or condition.

(c) *Covered term or condition* means any clause, term, or condition that expressly purports to establish a covered limitation on consumer legal protections applicable to the offering or provision of any consumer financial product or service described in paragraph (g) of this section.

(d) *Covered limitation on consumer legal protections* means any covered term or condition in a covered form contract:

(1) Precluding the consumer from bringing a legal action after a certain period of time;

(2) Specifying a forum or venue where a consumer must bring a legal action in court;

(3) Limiting the ability of the consumer to file a legal action seeking relief for other consumers or to seek to participate in a legal action filed by others;

(4) Limiting liability to the consumer in a legal action including by capping the amount of recovery or type of remedy;

(5) Waiving a cause of legal action by the consumer, including by stating a person is not responsible to the consumer for a harm or violation of law;

(6) Limiting the ability of the consumer to make any written, oral, or pictorial review, assessment, complaint, or other similar analysis or statement concerning the offering or provision of consumer financial products or services by the supervised registrant;

(7) Waiving, whether by extinguishing or causing the consumer to relinquish or agree not to assert, any other identified consumer legal protection, including any specified right, defense, or protection afforded to the consumer under Constitutional law, a statute or regulation, or common law; or

(8) Requiring that a consumer bring any type of legal action in arbitration.

(e) *Identifying information* means existing information available to the supervised registrant that uniquely identifies the supervised registrant, which includes legal name(s), State of incorporation or organization, headquarters and principal place of business addresses, and unique identifiers issued by a government agency or standards organization.

(f) *Annual registration date* means, starting after the nonbank registration system implementation date, the day during the calendar year by which a supervised registrant must complete its annual registration required by § 1092.302(a). The annual registration date will be set by filing instructions issued by the Bureau, as described in § 1092.102(a), in which the Bureau may specify the process for filing for an automatic extension of the annual registration date for up to 30 days.

(g) *Supervised nonbank* means a nonbank covered person that is subject to supervision and examination by the Bureau pursuant to 12 U.S.C. 5514(a), except to the extent that such person engages in conduct or functions that are excluded from the supervisory authority of the Bureau pursuant to 12 U.S.C. 5517 or 12 U.S.C. 5519. Subject to the foregoing statutory exclusions, this term includes any nonbank covered person that:

(1) Offers or provides a residential mortgage-related product or service as described in 12 U.S.C. 5514(a)(1)(A);

(2) Offers or provides any private educational consumer loan as described in 12 U.S.C. 5514(a)(1)(D);

(3) Offers or provides any consumer payday loan as described in 12 U.S.C. 5514(a)(1)(E);

(4) Is a larger participant in any market as defined by rule in part 1090 pursuant to 12 U.S.C. 5514(a)(1)(B); or

(5) Is subject to an order issued by the Bureau pursuant to 12 U.S.C. 5514(a)(1)(C).

(h) *Supervised registrant* means, for purposes of this subpart, any supervised nonbank that is subject to supervision and examination by the Bureau pursuant to 12 U.S.C. 5514(a), except for the following:

(1) A Federal agency as defined in 28 U.S.C. 2671;

(2) A State as defined in 12 U.S.C. 5481 including a federally recognized Indian Tribe;

(3) A person that is subject to Bureau supervision and examination solely in the following capacity:

(i) As a service provider under 12 U.S.C. 5514(e), 12 U.S.C. 5515(d), or 12 U.S.C. 5516(e); or

(ii) As an entity that is subject to the Bureau's supervisory authority for a period of no more than two years pursuant to an order issued by the Bureau pursuant to 12 U.S.C. 5514(a)(1)(C), such as an order issued based on a consent agreement by which an entity may consent to the Bureau's supervisory authority as described in 12 CFR part 1091;

(4) A natural person;

(5) A person with less than $1 million in annual receipts resulting from offering or providing all consumer financial products and services as relevant to paragraphs (g)(1) through (5) of this section. For purposes of this exclusion:

(i) The term ''annual receipts'' has the same meaning as that term has in 12 CFR 1090.104(a), including 12 CFR 1090.104(a)(i)–(iii); and

(ii) A person's receipts from offering or providing a consumer financial product or service subject to a larger participant rule described in paragraph (g)(4) of this section count as receipts for purposes of the exclusion in this paragraph (h)(5) regardless of whether the person qualifies as a larger participant;

(6) A person that has not, together with its affiliates, engaged in more than *de minimis* use of covered terms and conditions by either:

(i) Entering into covered form contracts containing any covered term or condition as described in paragraph (i)(1) of this section 1,000 or more times during the previous calendar year; or

(ii) Obtaining, as a party to a legal action, a court or arbitrator decision in the previous calendar year on the enforceability of a covered term or condition in a covered form contract as described in paragraph (i)(2) of this section;

(7) A person that used of covered terms or conditions in covered form contracts in the previous calendar year solely by entering into contracts for residential mortgages on a form made publicly available on the internet required for insurance or guarantee by a Federal agency or purchase by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (or its successors), or the Government National Mortgage Association. This exclusion does not apply if the person obtained a court or arbitrator decision in the previous calendar year on the enforceability of a covered term or condition in a covered form contract as described in paragraph (i)(2) of this section; or

(8) A person who is a covered person solely due to being a related person as defined in 12 U.S.C. 5481(25).

(i) *Use of a covered term or condition* means entering into a covered form contract containing a covered term or condition as described in paragraph (i)(1) of this section or obtaining a court or arbitrator decision ruling on the enforceability of a covered term or condition in a covered form contract as described in paragraph (i)(2) of this section.

(1) *Entering into a covered form contract containing a covered term or condition.* A supervised nonbank enters into a covered form contract containing a covered term or condition when it takes any of the following actions:

(i) Provides to a consumer a new consumer financial product or service that is governed by a covered form contract that contains a covered term or condition;

(ii) Provides to a consumer a new consumer financial product or service that is subject to a pre-existing covered form contract that contains a covered term or condition, and the provider is a party to that covered form contract;

(iii) Acquires or purchases a consumer financial product or service that is subject to a covered form contract that contains a covered term or condition, even if the seller is not subject to supervision under 12 U.S.C. 5514(a)(1) and regardless of whether the seller is subject to the authorities of the Bureau more broadly;

(iv) Adds a covered term or condition to a covered form contract governing an existing consumer financial product or service provided to a consumer; or

(v) Adds a covered form contract containing a covered term or condition to a consumer financial product or service.

(2) *Obtaining court or arbitrator decisions on enforceability of a covered term or condition in a covered form contract.* A supervised registrant engages in use of a covered term or condition when, as a party to a legal action, it obtains an order, opinion, or any other type of decision from a court or arbitrator ruling on the enforceability of a covered term or condition.

§ 1092.302 Registration and submission of information regarding supervised registrants' use of covered terms and conditions.

(a) *Annual registration of supervised registrants regarding their use of covered terms or conditions.* By the annual registration date in each calendar year, a supervised registrant must submit or update in the Bureau's nonbank registration system its identifying information and administrative information, as well as the following information regarding its use of covered terms or conditions in the previous calendar year:

(1) The applicable consumer financial products or services listed in § 1092.301(g) for which the supervised registrant used covered term(s) or condition(s);

(2) Each State or other jurisdiction where the supervised registrant offered or provided the consumer financial products or services listed in paragraph (a)(1) of this section;

(3) For each covered form contract the supervised registrant entered into containing a covered term or condition, which consumer financial products and services identified pursuant to paragraph (a)(1) of this section are affected by the covered term or condition and in which States identified pursuant to paragraph (a)(2) of this section, as well as following information:

(i) All brand names and trade names the supervised registrant used to offer or provide the consumer financial product or service;

(ii) The legal names of any persons other than a consumer and the supervised registrant that typically entered into the applicable covered form contract;

(iii) Each type of covered limitation on consumer legal protection listed in § 1092.301(d) contained in the covered form contract for the consumer financial product or service;

(iv) For each type of covered limitation on consumer legal protections described in § 1092.301(d)(1) through (7), relevant information about the limitation including:

(A) For any limitation on when a consumer may bring a legal action described in § 1092.301(d)(1), the specified time period, within ranges specified by the Bureau, for the consumer to bring a legal action;

(B) For any limitation on where a consumer may bring a legal action in court described in § 1092.301(d)(2), the name and, as applicable, place, of the forum or venue for the consumer to bring a legal action;

(C) For any limitation on the consumer's filing a legal action seeking relief for other consumers or seeking to participate in a legal action filed by others described in § 1092.301(d)(3), the type of legal action and, as applicable, participation to which the limitation applies;

(D) For any limitation on liability to the consumer described in § 1092.301(d)(4), the text of the covered term or condition imposing the limitation on liability;

(E) For any waiver of a cause of action by the consumer as described in § 1092.301(d)(5), the text of the covered term or condition imposing the waiver;

(F) For any limitation on a consumer review, assessment, complaint, or other similar analysis or statement, as described in § 1092.301(d)(6), the text of the covered term or condition imposing the limitation; and

(G) For any other waiver of an identified consumer legal protection as described in § 1092.301(d)(7), the text of the covered term or condition imposing the waiver;

(v) The State or other jurisdiction identified in any choice of law provisions in the covered form contract, as applicable; and

(vi) If a covered term or condition reported under this paragraph (a)(3) is contained in a standard form contract provided by a third party for use by multiple market participants, the name of the form contract provider and other information, such as the complete copyrighted name including any form number and date of the contract, as necessary for the Bureau to identify the precise version of the standard form contract;

(4) Whether the supervised registrant, as a party to a legal action, obtained one or more court or arbitrator decisions regarding enforceability of a covered term or condition in any covered form contract as described in § 1092.301(i)(2) and, if so, the following information related to these decisions:

(i) The consumer financial products or services listed in § 1092.301(g) to which the decision(s) relate;

(ii) The type(s) of covered term(s) or condition(s) listed in § 1092.301(d) at issue in the decision(s); and

(iii) Whether the decision(s) enforced or declined to enforce the covered term(s) or condition(s) at issue.

(b) *Supervised registrant's collection and reporting of information; scope of initial registration; corrections to registration information.*

(1) *General rule.* During the period for which a person qualifies as a supervised registrant, it must collect information necessary to comply with the reporting requirements in paragraph (a)(2) of this section.

(2) *Scope of information submitted on the first annual registration date after a supervised registrant becomes subject to this subpart.* As illustrated by the following examples, supervised registrants are not required to collect or report information prior to becoming subject to this subpart:

(i) When a supervised registrant must submit information in the calendar year after the effective date of subpart C of this part, the requirements of paragraph (a)(2) of this section shall be satisfied by submission of information that covers the portion of the previous calendar year beginning with the effective date.

(ii) If a supervised registrant qualifies as a larger participant under a Bureau rule in part 1090 as of the annual registration date, but the entity was not a larger participant for the entire previous calendar year, then the requirements of paragraph (a)(2) of this section shall be satisfied by submission of information that covers the portion of the previous calendar year during which the entity was a larger participant.

(3) *Registration process for affiliated persons.* Supervised registrants that are affiliates will make their submissions either jointly or in combination, as set forth in filing instructions the Bureau issues pursuant to § 1092.102(a). For purposes of this subpart, the definition of ''control'' for purposes of who is an affiliate shall have the meaning set forth in paragraph (2) of the definition of ''affiliated company'' in 12 CFR 1090.101.

(4) *Correction of submissions to the nonbank registration system.* If any information submitted to the nonbank registration system was inaccurate when submitted and remains inaccurate, the supervised registrant shall file a corrected report in the form and manner specified by the Bureau within 30 calendar days after the date on which such supervised registrant becomes aware or has reason to know of the inaccuracy. In addition, the Bureau may at any time and in its sole discretion direct a supervised registrant to correct errors or other non-compliant submissions to the nonbank registration system.

(c) *Notification by a previously-supervised registrant that it is no longer covered by this subpart.* Any nonbank person that has registered pursuant to paragraph (a) of this section should notify the Bureau if it determines that it is no longer a supervised nonbank.

(d) *Notification by certain persons of non-registration under this subpart.* A person may submit a notice to the nonbank registration system stating that it is not registering pursuant to this section because it has a good faith basis to believe that it is not a supervised registrant, or that it is not registering terms or conditions contained in a contract it used because it has a good faith basis to believe that the contract is not a covered form contract or that the terms or conditions are not covered terms or conditions. Such person shall promptly comply with this section upon becoming aware of facts or circumstances that would not permit it to continue representing that it has a good faith basis to believe that it is not a supervised registrant or that the contract or terms or conditions in question are covered by this subpart.

§ 1092.303 Publication of information regarding supervised registrants' use of covered terms and conditions.

(a) *Publication of information collected under this subpart.* The Bureau shall publish and maintain a publicly-available source of information about supervised registrants and the covered terms and conditions that supervised registrants use. The Bureau will make this information publicly available on a periodic basis within a timeframe it determines in its discretion.

(b) *Scope of information released publicly by the Bureau.* The Bureau shall publish information collected pursuant to this subpart, except for administrative information as defined in § 1092.301(a) and categories of information that are protected from public disclosure under 5 U.S.C. 552(b)(4). The Bureau may choose not to publish information that has been corrected or must be corrected pursuant to § 1092.302(b)(4), or information that is not required to be submitted under this subpart or is otherwise not in compliance with this part. Nothing in this paragraph prohibits publication by the Bureau of aggregated reports that do not identify, either directly or indirectly, the submitter of the information.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

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