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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

RIN 2105–AF12

Revisions to Civil Penalty Amounts; Correction

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

ACTION: Correcting amendments.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, DOT published a final rule on January 6, 2023, to provide the 2023 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations. This rule corrects errors in that rulemaking by making the statutorily required adjustment to an unadjusted FAA penalty and updating a table heading.

DATES: Effective February 2, 2023.

FOR FURTHER INFORMATION CONTACT: Elizabeth Kohl, Attorney-Advisor, Office of the General Counsel, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, *elizabeth.kohl@dot.gov*.

SUPPLEMENTARY INFORMATION: This rule corrects errors in DOT's final rule, published on January 6, 2023 (88 FR 1114), in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, providing the 2023 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations. Specifically, the final rule specified the updated applicable minimum penalty for violation of hazardous materials transportation law relating to training in 49 U.S.C. 5123(a)(3) of $582 (and the prior year's penalty of $540) in the preamble of the final rule, but the penalty specified in the regulatory text was not updated and remained as $540 (the prior year's penalty also remained unadjusted at $508). In addition, a table heading in Table 1 to § 13.301 was not updated from ''2021 Minimum penalty amount'' to ''2022 Minimum penalty amount.'' DOT publishes this final rule to correct those errors.

Regulatory Analysis and Notices

DOT has determined that the regulatory reviews and analyses conducted in support of the January 6, 2023, final rule remain unchanged because of this final rule.

List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

Accordingly, the Department of Transportation amends 14 CFR part 13 by making the following correcting amendments:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. The authority citation for part 13 continues to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 note; 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44701–44704, 44709–44710, 44713, 44725, 44742, 44802 (note), 46101–46111, 46301, 46302 (for a violation of 49 U.S.C. 46504), 46304–46316, 46318–46320, 46501–46502, 46504, 46507, 47106, 47107, 47111, 47122, 47306, 47531–47532; 49 CFR 1.83.

■ 2. Amend § 13.301 in paragraph (c), table 1, by revising the heading of the third column and the entry for ''49 U.S.C. 5123(a)(3)'' to read as follows:

§ 13.301 Inflation adjustments of civil monetary penalties.

* * * * *

(c) * * *

TABLE 1 TO § 13.301—MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR CERTAIN VIOLATIONS

United States Code citation	Civil monetary penalty description	2022 Minimum penalty amount	New adjusted minimum penalty amount for violations occurring on or after January 6, 2023	2022 Maximum penalty amount	New adjusted maximum penalty amount for violations occurring on or after January 6, 2023
*	*	*	*	*	*
49 U.S.C. 5123(a)(3) ...	Violation of hazardous materials transportation law relating to training	$540	$582	$89,678	$96,624
*	*	*	*	*	*

Signed under authority provided by 28 U.S.C. 2461 note and 49 CFR 1.27 in Washington, DC, on January 27th, 2023.

John E. Putnam,

General Counsel, U.S. Department of Transportation.

[FR Doc. 2023–02153 Filed 2–1–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0991; Project Identifier AD–2022–00155–T; Amendment 39–22299; AD 2023–01–05]

RIN 2120–AA64

Airworthiness Directives; Learjet, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Learjet, Inc., Model 45 airplanes. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing inspection program to incorporate reduced inspection intervals for the anti-ice manifold assembly. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 9, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 9, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0991; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Learjet, Inc., One Learjet Way, Wichita, KS 67209–2942; telephone 316–946–2000; fax 316–946–2220; email *ac.ict@aero.bombardier.com;* website *bombardier.com.*
- 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–2022–0991.

FOR FURTHER INFORMATION CONTACT: Adam Hein, Aerospace Engineer, Mechanical Systems and Propulsion Section, FAA, Wichita ACO Branch, 1801 S Airport Road, Wichita, KS 67209; telephone (316) 946–4116; email: *adam.hein@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Learjet, Inc., Model 45 airplanes. The NPRM published in the **Federal Register** on August 11, 2022 (87 FR 49556). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. In the NPRM, the FAA proposed to require revising the existing inspection program to incorporate reduced inspection intervals for the anti-ice manifold assembly.

The FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Learjet, Inc., Model 45 airplanes. The SNPRM published in the **Federal Register** on November 10, 2022 (87 FR 67834). The SNPRM was prompted by a determination that additional airplanes needed to be added to the applicability. The SNPRM proposed to require revising the existing inspection program to incorporate reduced inspection intervals for the anti-ice manifold assembly and to add airplanes to the applicability. The FAA is issuing this AD to address metal fragments breaking off the anti-ice manifold assembly due to fatigue, which could block a duct in the anti-ice system and result in an unannunciated loss of ice protection and subsequent loss of control of the airplane.

Related Rulemaking

The FAA issued AD 2001–03–05, Amendment 39–12109 (66 FR 10353, February 15, 2001) (AD 2001–03–05), for certain Learjet Model 45 airplanes. AD 2001–03–05 requires, among other actions, revising the existing Learjet 45 maintenance program to incorporate additional inspections and maintenance practices for the anti-ice manifold assembly, including a 600-hour repetitive inspection interval of an earlier design/part number of the anti-ice manifold. Since the FAA issued AD 2001–03–05, the anti-ice manifold was redesigned, and the inspection interval was extended to 1,200 flight hours. The design approval holder subsequently determined that the design improvements made to the anti-ice manifold assembly did not fully address the original issue of vane cracking, so the 1,200-hour inspection on the redesigned part is insufficient. However, the FAA determined that a repetitive inspection interval of 600 flight hours is sufficient to address the unsafe condition. Therefore, this AD requires revising the existing inspection program to incorporate a reduced 600-hour inspection interval for the redesigned part. Accomplishing the required actions in this AD terminates the requirements of paragraph (c) of AD 2001–03–05.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from two individuals who supported the SNPRM without change.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Learjet 40 Maintenance Manual Temporary Revision (TR) 04–33 and Learjet 45 Maintenance Manual TR 04–48, both dated January 18, 2022. This service information specifies reduced inspection intervals for the anti-ice manifold assembly. These documents are distinct since they apply to different airplane configurations. 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**.

Costs of Compliance

The FAA estimates that this AD affects 481 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection program revision	1 work-hour × $85 per hour = $85	$0	$85	$40,885

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:

2023–01–05 Learjet, Inc.: Amendment 39–22299; Docket No. FAA–2022–0991; Project Identifier AD–2022–00155–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 9, 2023.

(b) Affected ADs

This AD affects AD 2001–03–05, Amendment 39–12109 (66 FR 10353, February 15, 2001) (AD 2001–03–05).

(c) Applicability

This AD applies to Learjet, Inc., Model 45 (Learjet 40), Model 45 (Learjet 45), Model 45 (Learjet 70), and Model 45 (Learjet 75) airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before January 18, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 36, Pneumatic.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address metal fragments breaking off the anti-ice manifold assembly due to fatigue, which could block a duct in the anti-ice system and result in an unannunciated loss of ice protection and subsequent loss of control of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

(1) For Learjet 40 and 45 variants: Within 60 days after the effective date of this AD, revise the existing inspection program by incorporating the information in Learjet 40 Maintenance Manual Temporary Revision (TR) 04–33 or Learjet 45 Maintenance Manual TR 04–48, both dated January 18, 2022, as applicable. The initial compliance time for the inspection is at the applicable time specified in paragraph (g)(1)(i) or (ii) of this AD.

(i) For airplanes with more than 600 flight hours since the most recent inspection of the anti-ice manifold assembly was performed as of the effective date of this AD: Do the inspection within 100 flight hours or 60 days after the effective date of this AD, whichever occurs first.

(ii) For airplanes with 600 flight hours or less since the most recent inspection of the anti-ice manifold assembly was performed as of the effective date of this AD: Do the inspection within 600 flight hours after the most recent inspection or within 100 flight hours after the effective date of this AD, whichever occurs later.

(2) For Learjet 70 and 75 variants: Within 60 days after the effective date of this AD, revise the existing inspection program to incorporate the information identified in figure 1 to paragraph (g)(2) of this AD. The initial compliance time for the inspection is at the applicable time specified in paragraph (g)(2)(i) or (ii) of this AD.

Figure 1 to paragraph (g)(2)—*Anti-Ice Inspection Tasks*

IRN number	Task Description	Task interval	Model/Serial Effectivity
3010006	**Anti-ice Manifold - Perform Borescope Inspection	600 flight hours (T)	Learjet 70/75: 45-0368, 45-0446 45-0456 through 45-2000, 45-2129, 45-2134 through 45-4000

(i) For airplanes with more than 600 flight hours since the most recent inspection of the anti-ice manifold assembly was performed as of the effective date of this AD: Do the inspection within 100 flight hours or 60 days after the effective date of this AD, whichever occurs first.

(ii) For airplanes with 600 flight hours or less since the most recent inspection of the anti-ice manifold assembly was performed as of the effective date of this AD: Do the inspection within 600 flight hours after the most recent inspection or within 100 flight hours after the effective date of this AD, whichever occurs later.

(h) No Alternative Actions or Intervals

After the existing inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals, may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k) of this AD.

(i) Terminating Action for Paragraph (c) of AD 2001–03–05

Accomplishing the revision of the existing inspection program required by paragraph (g) of this AD terminates the requirements of paragraph (c) of AD 2001–03–05.

(j) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the airplane can be inspected, provided the airplane is restricted from flying into known icing conditions.

(k) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(l) Related Information

For more information about this AD, contact Adam Hein, Aerospace Engineer, Mechanical Systems and Propulsion Section, FAA, Wichita ACO Branch, 1801 S Airport Road, Wichita, KS 67209; telephone (316) 946–4116; email: *adam.hein@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) Learjet 40 Maintenance Manual Temporary Revision 04–33, dated January 18, 2022.

(ii) Learjet 45 Maintenance Manual Temporary Revision 04–48, dated January 18, 2022.

(3) For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, KS 67209–2942; telephone 316–946–2000; fax 316–946–2220; email *ac.ict@aero.bombardier.com;* website *bombardier.com.*

(4) 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.

(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, *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on January 6, 2023.

Christina Underwood,

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

[FR Doc. 2023–02006 Filed 2–1–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1166; Project Identifier MCAI–2022–00407–T; Amendment 39–22297; AD 2023–01–03]

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 A330–200, A330–200 Freighter, A330–300, A330–800, A330–900, A340–200, and A340–300 series airplanes. This AD was prompted by a determination that certain landing gear parts have been manufactured with improper material or using a deviating manufacturing process. This AD requires replacing each affected part with a serviceable part, and for certain airplanes, re-assessing any previously repaired main landing gear (MLG) sliding piston, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also limits 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 9, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 9, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1166; 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 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 material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–1166.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@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 SAS Model A330–200, A330–200 Freighter, A330–300, A330–800, A330–900, A340–200, and A340–300 series airplanes. The NPRM published in the **Federal Register** on September 19, 2022 (87 FR 57153). The NPRM was prompted by AD 2022–0049, dated March 21, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0049) (also referred to as the MCAI). The MCAI states that certain landing gear parts have been

manufactured with improper material and/or using a deviating manufacturing processes. This condition, if not corrected, could lead to nose landing gear (NLG) or MLG structural fatigue failure and subsequent collapse of a landing gear, possibly resulting in damage to the airplane and injury to occupants.

In the NPRM, the FAA proposed to require replacing each affected part with a serviceable part, and for certain airplanes, re-assessing any previously repaired MLG sliding piston, as specified in EASA AD 2022–0049. The NPRM also proposed to limit the installation of affected parts under certain conditions. The FAA is issuing this AD to address possible NLG or MLG structural fatigue failure and subsequent collapse, which could result in damage to the airplane and injury to occupants.

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.

The FAA received an additional comment from American Airlines. The following presents the comment received on the NPRM and the FAA's response.

Request To Allow Maintenance Records Review for Identification of Affected Parts

American Airlines (AAL) requested that operators be allowed to use a maintenance records review for identifying affected parts. AAL asserted that a maintenance records review is usually permitted for identifying affected parts ''provided the part number and serial number of each component can be conclusively identified by that review.'' AAL added that it asked EASA about this issue and EASA stated that ''. . . any method, which is acceptable to the NAA responsible for AD enforcing, is acceptable'' for determining whether a part is affected. AAL noted that it does not believe the EASA response allows FAA operators to use a maintenance records review.

The FAA agrees to clarify. This AD does not directly require determining whether or not a part is affected, but instead requires actions for airplanes that have an affected part installed and limits the installation of affected parts. Therefore, operators may use any method they choose, including a records review, for determining whether they have an affected part, provided the part number and serial number can be conclusively determined. Since the determination is not an AD requirement, the FAA has not changed this AD regarding this issue.

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 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 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

EASA AD 2022–0049 specifies procedures for replacing each affected part with a serviceable part before exceeding the applicable revised life limit, and, for airplanes with a previously repaired MLG sliding piston, re-assessing the repaired part, which involves obtaining and following instructions from the FAA, EASA, or Airbus SAS's EASA Design Organization Approval (DOA). This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 128 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 49 work-hours × $85 per hour = $4,165 (per MLG).	Up to $692,323 (per MLG)	Up to $696,489 (per MLG)	Up to $89,150,592.
Up to 11 work-hours × $85 per hour = $935 (NLG).	Up to $260,410	Up to $261,346	Up to $33,452,288.

* The FAA notes that not every MLG or NLG will need to be replaced on every airplane and that operators may have serviceable parts in stock, thereby reducing the costs on U.S. operators. Depending on the flight hours and landings on the landing gear, the FAA estimates that the replacement period for all affected MLG and NLG will be more than two years. Additionally, the FAA has received no definitive data on which to base the cost estimates for the re-assessment actions 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:

2023–01–03 Airbus SAS: Amendment 39–22297; Docket No. FAA–2022–1166; Project Identifier MCAI–2022–00407–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 9, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (7) of this AD, certificated in any category.

(1) Model A330–201, –202, –203, –223, –243 airplanes.

(2) Model A330–223F and –243F airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A330–841 airplanes.

(5) Model A330–941 airplanes.

(6) Model A340–211, –212, and –213 airplanes.

(7) Model A340–311, –312, and –313 airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that certain landing gear parts have been manufactured with improper material or using a deviating manufacturing processes. The FAA is issuing this AD to address possible nose landing gear (NLG) or main landing gear (MLG) structural fatigue failure and subsequent collapse, which could result 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 paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0049, dated March 21, 2022 (EASA AD 2022–0049).

(h) Exceptions to EASA AD 2022–0049

(1) Where the affected part and serviceable part definitions in EASA AD 2022–0049 refer to ''the SB,'' replace the text ''the SB'' with ''Airbus Service Bulletin A330–32–3302, dated January 18, 2022; or Airbus Service Bulletin A340–4321, dated January 18, 2022; as applicable.''

(2) Where EASA AD 2022–0049 refers to its effective date, this AD requires using the effective date of this AD.

(3) The ''Remarks'' section of EASA AD 2022–0049 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

(j) Additional Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov*.

(k) 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 this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0049, dated March 21, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0049, 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 material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *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. 2023–02007 Filed 2–1–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0513; Project Identifier MCAI–2021–01162–T; Amendment 39–22241; AD 2022–24–01]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain

Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. This AD was prompted by reports that the thrust reverser correction factors presented in certain airplane flight manual (AFM) performance charts for landing on contaminated runways do not provide sufficient margin for stopping distances in certain conditions. This AD requires revising the existing AFM to correct the affected performance charts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 9, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 9, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0513; 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 service information identified in this final rule, contact Bombardier, Inc., Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* internet bombardier.com.
- 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–2022–0513.

FOR FURTHER INFORMATION CONTACT: Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. The NPRM published in the **Federal Register** on May 9, 2022 (87 FR 27533). The NPRM was prompted by AD CF–2021–35, dated October 26, 2021, issued by Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states the thrust reverser correction factors presented in certain AFM performance charts for landing on contaminated runways do not provide sufficient margin for stopping distances in certain conditions. If not corrected, use of the affected performance charts could lead to longitudinal runway excursions.

In the NPRM, the FAA proposed to require revising the existing AFM to correct the affected performance charts. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–0513.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from TCCA. The following presents the comment received on the NPRM and the FAA's response.

Request for Updating the AFM Revision Number

TCCA requested that the reference to Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 39, dated August 16, 2021, be updated to Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 42, dated May 19, 2022; and the reference to Bombardier Global 5000 Featuring Global Vision Flight Deck (GVFD) Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 39, dated August 16, 2021, be updated to Bombardier Global 5000 Featuring Global Vision Flight Deck (GVFD) Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022. TCCA stated that Revisions 40 and 41 introduced errors in Figures 07–35–02 and 07–35–04, which have been corrected in Revision 42.

The FAA partially agrees. The FAA does not agree with mandating Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 42, dated May 19, 2022; and Bombardier Global 5000 Featuring Global Vision Flight Deck (GVFD) Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022, in this AD. TCCA issued CF–2022–49 on August 23, 2022 (TCCA AD CF–2022–49) to mandate the incorporation of Figure 07–35–02 of Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 42, dated May 19, 2022; and Figure 07–35–04 of Bombardier Global 5000 Featuring Global Vision Flight Deck (GVFD) Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 202; which are in supplement 35 of the AFMs. TCCA AD CF–2022–49 also added airplanes to the applicability. In order to mandate Revision 42 of these AFMs, the FAA would need to issue a supplemental NPRM.

The FAA does not consider that delaying this action is warranted. Only paragraphs (g)(3)(viii) and (g)(5)(viii) of the proposed AD refer to supplement 35 of the AFMs specified in TCCA AD CF–2022–49. However, the proposed AD specifies to incorporate Revision 39 of the AFMs, which do not include any errors in the figures identified by TCCA. The proposed AD would not allow operators to incorporate the figures in Revision 40 and 41 of the AFM as those figures are not identical to the figures in Revision 39 of the AFMs specified in paragraphs (g)(3) and (5) of the proposed AD.

The FAA has added Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 42, dated May 19, 2022, to paragraph (g)(3) of this AD; and Bombardier Global 5000 Featuring Global Vision Flight Deck (GVFD) Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022, to paragraph (g)(5) of this AD; as an optional source of service information for revising the AFM as specified in paragraphs (g)(3) and (5) of this AD. For this AD, operator may incorporate Figures 07–35–02 and 07–35–04 of either Revision 39 or 42 of the AFMs specified in paragraphs (g)(3)(viii) and (g)(5)(viii) of this AD.

The FAA is considering further rulemaking to correspond with TCCA AD CF–2022–49 and mandate incorporating Figure 07–35–02 of Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 42, dated May 19, 2022; and Figure 07–35–04 of Bombardier Global 5000 Featuring Global Vision Flight Deck (GVFD) Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022.

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 and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service information, which specifies revised AFM limitations and corrections to the performance charts for landing on contaminated runways. These documents are distinct since they apply to different airplane models and configurations.

The following sections and supplements are of the Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1, Revision 109, dated August 16, 2021. (For obtaining these sections and supplements of the Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1, use Document Identification No. GL 700 AFM–1.)

- Section 06–03 Take-Off Performance, of Chapter 6—Performance. This section includes Paragraph C., Wet Runway Take-Off Field Length, of Section 2., Take-Off Performance—Slat Out/Flap 6°; and Paragraph C., Wet Runway Take-Off Field Length, of Section 3., Take-Off Performance—Slat Out/Flap 16°.
- Section 06–08 Performance Data for Operation in Icing Conditions, of Chapter 6—Performance. This section includes Paragraph B., Effects of Cowl Anti-Ice On; and Paragraph C., Effects of Wing and Cowl Anti-Ice On/Ice Accumulation; of Section 2., Performance Corrections.
- Supplement 3, Operation on Contaminated Runways, of Chapter 7—Supplements.
- Supplement 5, Improved Climb Performance, of Chapter 7—Supplements. This supplement includes Paragraph A., Improved Climb Performance, of Section 6—Performance.
- Supplement 20, Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements. This supplement includes Paragraph B., Take-Off Field Length; and Paragraph G., Operation in Icing Conditions; of Section 6—Performance.

The following sections and supplements are of the Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1A, Revision 109, dated August 16, 2021. (For obtaining these sections and supplements of the Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1A, use Document Identification No. GL 700 AFM–1A.)

- Section 06–03 Take-Off Performance, of Chapter 6—Performance. This section includes Paragraph C., Wet Runway Take-Off Field Length, of Section 2., Take-Off Performance—Slat Out/Flap 6°; and Paragraph C., Wet Runway Take-Off Field Length, of Section 3., Take-Off Performance—Slat Out/Flap 16°.
- Section 06–08 Performance Data for Operation in Icing Conditions, of Chapter 6—Performance. This section includes Paragraph B., Effects of Cowl Anti-Ice On; and Paragraph C., Effects of Wing and Cowl Anti-Ice On/Ice Accumulation; of Section 2., Performance Corrections.
- Supplement 3—Operation on Contaminated Runways, of Chapter 7—Supplements.
- Supplement 5—Improved Climb Performance, of Chapter 7—Supplements. This supplement includes Paragraph A., Improved Climb Performance, of Section 6—Performance.
- Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements. This supplement includes Paragraph B., Take-Off Field Length; and Paragraph G., Operation in Icing Conditions; of Section 6—Performance.

The following sections and supplements are of the Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 39, dated August 16, 2021. (For obtaining these sections and supplements of the Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, use Document Identification No. GL 6000 AFM.)

- Section 06–03 Take-Off Performance, of Chapter 6—Performance. This section includes Paragraph C., Wet Runway Take-Off Field Length, of Section 2., Take-Off Performance—Slat Out/Flap 6°; and Paragraph C., Wet Runway Take-Off Field Length, of Section 3., Take-Off Performance—Slat Out/Flap 16°.
- Section 06–08 Performance Data for Operation in Icing Conditions, of Chapter 6—Performance. This section includes Paragraph B., Effects of Cowl Anti-Ice On; and Paragraph C., Effects of Wing and Cowl Anti-Ice On/Ice Accumulation; of Section 2., Performance Corrections.
- Supplement 3—Operation on Contaminated Runways, of Chapter 7—Supplements.
- Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements. This supplement includes Paragraph B., Take-Off Field Length; and Paragraph G., Operation in Icing Conditions; of Section 6—Performance.
- Supplement 35—Operation on Wet Grooved Runways, of Chapter 7—Supplements. This supplement includes Paragraph A., Take-off on Wet Grooved Runways, of Section 6—Performance.

The following sections and supplements are of the Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 42, dated May 19, 2022. (For obtaining these sections and supplements of the Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, use Document Identification No. GL 6000 AFM.)

- Section 06–03 Take-Off Performance, of Chapter 6—Performance. This section includes Paragraph C., Wet Runway Take-Off Field Length, of Section 2., Take-Off Performance—Slat Out/Flap 6°; and Paragraph C., Wet Runway Take-Off Field Length, of Section 3., Take-Off Performance—Slat Out/Flap 16°.
- Section 06–08 Performance Data for Operation in Icing Conditions, of Chapter 6—Performance. This section includes Paragraph B., Effects of Cowl Anti-Ice On; and Paragraph C., Effects of Wing and Cowl Anti-Ice On/Ice Accumulation; of Section 2., Performance Corrections.
- Supplement 3—Operation on Contaminated Runways, of Chapter 7—Supplements.
- Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements. This supplement includes Paragraph B., Take-Off Field Length; and Paragraph G., Operation in Icing Conditions; of Section 6—Performance.
- Supplement 35—Operation on Wet Grooved or Wet Porous Friction Course Runways, of Chapter 7—Supplements. This supplement includes Paragraph A., Take-off on Wet Grooved or Wet PFC Runways, of Section 6—Performance.

The following sections and supplements are of the Bombardier Global 5000 Airplane Flight Manual—Publication No. CSP 700–5000–1, Revision 70, dated August 16, 2021. (For obtaining these sections and

supplements of the Bombardier Global 5000 Airplane Flight Manual—Publication No. CSP 700–5000–1, use Document Identification No. GL 5000 AFM.)

• Section 06–03 Take-Off Performance, of Chapter 6—Performance. This section includes Paragraph C., Wet Runway Take-Off Field Length, of Section 2., Take-Off Performance—Slat Out/Flap 6°; and Paragraph C., Wet Runway Take-Off Field Length, of Section 3., Take-Off Performance—Slat Out/Flap 16°.

• Section 06–08 Performance Data for Operation in Icing Conditions, of Chapter 6—Performance. This section includes Paragraph B., Effects of Cowl Anti-Ice On; and Paragraph C., Effects of Wing and Cowl Anti-Ice On/Ice Accumulation; of Section 2., Performance Corrections.

• Supplement 3—Operation on Contaminated Runways, of Chapter 7—Supplements.

• Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements. This supplement includes Paragraph B., Take-Off Field Length; and Paragraph G., Operation in Icing Conditions; of Section 6—Performance.

The following sections and supplements are of the Bombardier Global 5000 Featuring Global Vision Flight Deck (GVFD) Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 39, dated August 16, 2021. (For obtaining these sections and supplements of the Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, use Document Identification No. GL 5000 GVFD AFM.)

• Section 06–03 Take-Off Performance, of Chapter 6—Performance. This section includes Paragraph C., Wet Runway Take-Off Field Length, of Section 2., Take-Off Performance—Slat Out/Flap 6°; and Paragraph C., Wet Runway Take-Off Field Length, of Section 3., Take-Off Performance—Slat Out/Flap 16°.

• Section 06–08 Performance Data for Operation in Icing Conditions, of Chapter 6—Performance. This section includes Paragraph B., Effects of Cowl Anti-Ice On; and Paragraph C., Effects of Wing and Cowl Anti-Ice On/Ice Accumulation; of Section 2, Performance Corrections.

• Supplement 3—Operation on Contaminated Runways, of Chapter 7—Supplements.

• Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements. This supplement includes Paragraph B., Take-Off Field Length; and Paragraph G., Operation in Icing Conditions; of Section 6—Performance.

• Supplement 35—Operation on Wet Grooved Runways, of Chapter 7—Supplements. This supplement includes Paragraph A., Take-off on Wet Grooved Runways, of Section 6—Performance.

The following sections and supplements are of the Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022. (For obtaining these sections and supplements of the Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, use Document Identification No. GL 5000 GVFD AFM.)

• Section 06–03 Take-Off Performance, of Chapter 6—Performance. This section includes Paragraph C., Wet Runway Take-Off Field Length, of Section 2., Take-Off Performance—Slat Out/Flap 6°; and Paragraph C., Wet Runway Take-Off Field Length, of Section 3., Take-Off Performance—Slat Out/Flap 16°.

• Section 06–08 Performance Data for Operation in Icing Conditions. This section includes Paragraph B., Effects of Cowl Anti-Ice On; and Paragraph C., Effects of Wing and Cowl Anti-Ice On/Ice Accumulation; of Section 2., Performance Corrections.

• Supplement 3—Operation on Contaminated Runways, of Chapter 7—Supplements.

• Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements. This supplement includes Paragraph B., Take-Off Field Length; and Paragraph G., Operation in Icing Conditions; of Section 6—Performance.

• Supplement 35—Operation on Wet Grooved or Wet Porous Friction Course Runways, of Chapter 7—Supplements. This supplement includes Paragraph A., Take-off on Wet Grooved or Wet PFC Runways, of Section 6—Performance.

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 the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 408 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$34,680

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–24–01 Bombardier, Inc.: Amendment 39–22241; Docket No. FAA–2022–0513; Project Identifier MCAI–2021–01162–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 9, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, serial numbers 9001 through 9860 inclusive, 9862 through 9871 inclusive, 9873 through 9879 inclusive, 60005, 60024, 60030, 60032, 60037, 60043, 60045, and 60049.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Unsafe Condition

This AD was prompted by reports that the thrust reverser correction factors presented in certain airplane flight manual (AFM) performance charts for landing on contaminated runways do not provide sufficient margin for stopping distances in certain conditions. The FAA is issuing this AD to address incorrect AFM performance charts, which if not corrected, could lead to longitudinal runway excursions.

(f) Compliance

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

(g) AFM Revision

Within 30 days after the effective date of this AD: Do the applicable actions specified in paragraph (g)(1) through (5) of this AD.

(1) For Model BD–700–1A10 airplanes with a Global Express marketing designation: Revise the existing AFM to incorporate the information specified in paragraphs (g)(1)(i) through (viii) of this AD. These sections and supplements are of the Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1, Revision 109, dated August 16, 2021.

(i) Paragraph C., Wet Runway Take-Off Field Length, of Section 2., Take-Off Performance—Slat Out/Flap 6°, of the Take-Off Performance section of Chapter 6—Performance.

(ii) Paragraph C., Wet Runway Take-Off Field Length, of Section 3., Take-Off Performance—Slat Out/Flap 16°, of the Take-Off Performance section of Chapter 6—Performance.

(iii) Paragraph B., Effects of Cowl Anti-Ice On, of Section 2., Performance Corrections, of the Performance Data for Operation in Icing Condition section of Chapter 6—Performance.

(iv) Paragraph C., Effects of Wing and Cowl Anti-Ice On/Ice Accumulation, of Section 2., Performance Corrections, of the Performance Data for Operation in Icing Condition section of Chapter 6—Performance.

(v) Supplement 3—Operation on Contaminated Runways, of Chapter 7—Supplements.

(vi) Paragraph A., Improved Climb Performance, of Section 6—Performance, of Supplement 5—Improved Climb Performance, of Chapter 7—Supplements.

(vii) Paragraph B., Take-Off Field Length, of Section 6—Performance, of Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements.

(viii) Paragraph G., Operation in Icing Conditions, of Section 6—Performance, of Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements.

Note 1 to paragraph (g)(1): For obtaining these sections and supplements of the Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1, use Document Identification No. GL 700 AFM–1.

(2) For Model BD–700–1A10 airplanes with a Global Express XRS marketing designation: Revise the existing AFM to incorporate the information specified in paragraphs (g)(2)(i) through (viii) of this AD. These sections and supplements are of the Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1A, Revision 109, dated August 16, 2021.

(i) Paragraph C., Wet Runway Take-Off Field Length, of Section 2., Take-Off Performance—Slat Out/Flap 6°, of the Take-Off Performance section of Chapter 6—Performance.

(ii) Paragraph C., Wet Runway Take-Off Field Length, of Section 3., Take-Off Performance—Slat Out/Flap 16°, of the Take-Off Performance section of Chapter 6—Performance.

(iii) Paragraph B., Effects of Cowl Anti-Ice On, of Section 2., Performance Corrections, of the Performance Data for Operation in Icing Condition section of Chapter 6—Performance.

(iv) Paragraph C., Effects of Wing and Cowl Anti-Ice On/Ice Accumulation, of Section 2., Performance Corrections, of the Performance Data for Operation in Icing Condition section of Chapter 6—Performance.

(v) Supplement 3—Operation on Contaminated Runways, of Chapter 7—Supplements.

(vi) Paragraph A., Improved Climb Performance, of Section 6—Performance, of Supplement 5—Improved Climb Performance, of Chapter 7—Supplements.

(vii) Paragraph B., Take-Off Field Length, of Section 6—Performance, of Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements.

(viii) Paragraph G., Operation in Icing Conditions, of Section 6—Performance, of Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements.

Note 2 to paragraph (g)(2): For obtaining these sections and supplements of the Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1A, use Document Identification No. GL 700 AFM–1A.

(3) For Model BD–700–1A10 airplanes with a Global 6000 marketing designation: Revise the existing AFM to incorporate the information specified in paragraphs (g)(3)(i) through (viii) of this AD. These sections and supplements are of the Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 39, dated August 16, 2021 (Bombardier Global 6000 AFM, Revision 39); or Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 42, dated May 19, 2022 (Bombardier Global 6000 AFM, Revision 42).

(i) Paragraph C., Wet Runway Take-Off Field Length, of Section 2., Take-Off Performance—Slat Out/Flap 6°, of the Take-Off Performance section of Chapter 6—Performance.

(ii) Paragraph C., Wet Runway Take-Off Field Length, of Section 3., Take-Off Performance—Slat Out/Flap 16°, of the Take-Off Performance section of Chapter 6—Performance.

(iii) Paragraph B., Effects of Cowl Anti-Ice On, of Section 2., Performance Corrections, of the Performance Data for Operation in Icing Condition section of Chapter 6—Performance.

(iv) Paragraph C., Effects of Wing and Cowl Anti-Ice On/Ice Accumulation, of Section 2., Performance Corrections, of the Performance Data for Operation in Icing Condition section of Chapter 6—Performance.

(v) Supplement 3—Operation on Contaminated Runways, of Chapter 7—Supplements.

(vi) Paragraph B., Take-Off Field Length, of Section 6—Performance, of Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements.

(vii) Paragraph G., Operation in Icing Conditions, of Section 6—Performance, of Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements.

(viii) Paragraph A., Take-off on Wet Grooved Runways, of Section 6—Performance, of Supplement 35—Operation on Wet Grooved Runways, of Chapter 7—Supplements of Bombardier Global 6000 AFM, Revision 39; or Paragraph A., Take-off on Wet Grooved or Wet PFC Runways, of Section 6—Performance, of Supplement 35—

Operation on Wet Grooved or Wet Porous Friction Course Runways, of Chapter 7—Supplements of Bombardier Global 6000 AFM, Revision 42.

Note 3 to paragraph (g)(3): For obtaining these sections and supplements of the Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, use Document Identification No. GL 6000 AFM.

(4) For Model BD–700–1A11 airplanes with a Global 5000 marketing designation: Revise the existing AFM to incorporate the information specified in paragraphs (g)(4)(i) through (vii) of this AD. These sections and supplements are of the Bombardier Global 5000 Airplane Flight Manual—Publication No. CSP 700–5000–1, Revision 70, dated August 16, 2021.

(i) Paragraph C., Wet Runway Take-Off Field Length, of Section 2., Take-Off Performance—Slat Out/Flap 6°, of the Take-Off Performance section of Chapter 6—Performance.

(ii) Paragraph C., Wet Runway Take-Off Field Length, of Section 3., Take-Off Performance—Slat Out/Flap 16°, of the Take-Off Performance section of Chapter 6—Performance.

(iii) Paragraph B., Effects of Cowl Anti-Ice On, of Section 2., Performance Corrections, of the Performance Data for Operation in Icing Condition section of Chapter 6—Performance.

(iv) Paragraph C., Effects of Wing and Cowl Anti-Ice On/Ice Accumulation, of Section 2., Performance Corrections, of the Performance Data for Operation in Icing Condition section of Chapter 6—Performance.

(v) Supplement 3—Operation on Contaminated Runways, of Chapter 7—Supplements.

(vi) Paragraph B., Take-Off Field Length, of Section 6—Performance, of Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements.

(vii) Paragraph G., Operation in Icing Conditions, of Section 6—Performance, of Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements.

Note 4 to paragraph (g)(4): For obtaining these sections and supplements of the Bombardier Global 5000 Airplane Flight Manual—Publication No. CSP 700–5000–1, use Document Identification No. GL 5000 AFM.

(5) For Model BD–700–1A11 airplanes with a Global 5000 featuring Global Vision Flight Deck (GVFD) marketing designation: Revise the existing AFM to incorporate the information specified in paragraphs (g)(5)(i) through (viii) of this AD These sections and supplements are of the Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 39, dated August 16, 2021 (Bombardier Global 5000 GVFD AFM, Revision 39); or Bombardier 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022 (Bombardier Global 5000 GVFD AFM, Revision 42).

(i) Paragraph C., Wet Runway Take-Off Field Length, of Section 2., Take-Off Performance—Slat Out/Flap 6°, of the Take-Off Performance section of Chapter 6—Performance.

(ii) Paragraph C., Wet Runway Take-Off Field Length, of Section 3., Take-Off Performance—Slat Out/Flap 16°, of the Take-Off Performance section of Chapter 6—Performance.

(iii) Paragraph B., Effects of Cowl Anti-Ice On, of Section 2., Performance Corrections, of the Performance Data for Operation in Icing Condition section of Chapter 6—Performance.

(iv) Paragraph C., Effects of Wing and Cowl Anti-Ice On/Ice Accumulation, of Section 2., Performance Corrections, of the Performance Data for Operation in Icing Condition section of Chapter 6—Performance.

(v) Supplement 3—Operation on Contaminated Runways, of Chapter 7—Supplements.

(vi) Paragraph B., Take-Off Field Length, of Section 6—Performance, of Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements.

(vii) Paragraph G., Operation in Icing Conditions, of Section 6—Performance, of Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements.

(viii) Paragraph A., Take-off on Wet Grooved Runways, of Section 6—Performance, of Supplement 35—Operation on Wet Grooved Runways, of Chapter 7—Supplements of Bombardier Global 5000 GVFD AFM, Revision 39; or Paragraph A., Take-off on Wet Grooved or Wet PFC Runways, of Section 6—Performance, of Supplement 35—Operation on Wet Grooved or Wet Porous Friction Course Runways, of Chapter 7—Supplements of Bombardier Global 5000 GVFD AFM, Revision 42.

Note 5 to paragraph (g)(5): For obtaining these sections and supplements of the Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, use Document Identification No. GL 5000 GVFD AFM.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Additional Information

(1) Refer to TCCA AD CF–2021–35, dated October 26, 2021, for related information. This TCCA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–0513.

(2) For more information about this AD, contact Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(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 this AD specifies otherwise.

(i) Section 06–03 Take-Off Performance, of Chapter 6—Performance, of Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1, Revision 109, dated August 16, 2021.

Note 6 to paragraph (j)(2)(i): This note applies to paragraphs (j)(2)(i) through (v) of this AD. For obtaining these sections and supplements of the Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1, use Document Identification No. GL 700 AFM–1.

(ii) Section 06–08 Performance Data for Operation in Icing Conditions, of Chapter 6—Performance, of Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1, Revision 109, dated August 16, 2021.

(iii) Supplement 3, Operation on Contaminated Runways, of Chapter 7—Supplements, of Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1, Revision 109, dated August 16, 2021.

(iv) Supplement 5, Improved Climb Performance, of Chapter 7—Supplements, of Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1, Revision 109, dated August 16, 2021.

(v) Supplement 20, Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements, of Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1, Revision 109, dated August 16, 2021.

(vi) Section 06–03 Take-Off Performance, of Chapter 6—Performance, of Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1A, Revision 109, dated August 16, 2021.

Note 7 to paragraph (j)(2)(vi): This note applies to paragraphs (j)(2)(vi) through (x) of this AD. For obtaining these sections and supplements of the Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1A, use Document Identification No. GL 700 AFM–1A.

(vii) Section 06–08 Performance Data for Operation in Icing Conditions, of Chapter 6—Performance, of Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1A, Revision 109, dated August 16, 2021.

(viii) Supplement 3—Operation on Contaminated Runways, of Chapter 7—Supplements, of Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1A, Revision 109, dated August 16, 2021.

(ix) Supplement 5—Improved Climb Performance, of Chapter 7—Supplements, of Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1A, Revision 109, dated August 16, 2021.

(x) Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements, of Bombardier Global Express Airplane Flight Manual—Publication No. CSP 700–1A, Revision 109, dated August 16, 2021.

(xi) Section 06–03 Take-Off Performance, of Chapter 6—Performance, of Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 39, dated August 16, 2021.

Note 8 to paragraph (j)(2)(xi): This note applies to paragraphs (j)(2)(xi) through (xx) of this AD. For obtaining these sections and supplements of the Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, use Document Identification No. GL 6000 AFM.

(xii) Section 06–08 Performance Data for Operation in Icing Conditions, of Chapter 6—Performance, of Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 39, dated August 16, 2021.

(xiii) Supplement 3—Operation on Contaminated Runways, of Chapter 7—Supplements, of Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 39, dated August 16, 2021.

(xiv) Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements, of Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 39, dated August 16, 2021.

(xv) Supplement 35—Operation on Wet Grooved Runways, of Chapter 7—Supplements, of Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 39, dated August 16, 2021.

(xvi) Section 06–03 Take-Off Performance, of Chapter 6—Performance, of Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 42, dated May 19, 2022.

(xvii) Section 06–08 Performance Data for Operation in Icing Conditions, of Chapter 6—Performance, of Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 42, dated May 19, 2022.

(xviii) Supplement 3—Operation on Contaminated Runways, of Chapter 7—Supplements, of Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 42, dated May 19, 2022.

(xix) Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements, of Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 42, dated May 19, 2022.

(xx) Supplement 35—Operation on Wet Grooved Runways, of Chapter 7—Supplements, of Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 42, dated May 19, 2022.

(xxi) Section 06–03 Take-Off Performance, of Chapter 6—Performance, of Bombardier Global 5000 Airplane Flight Manual—Publication No. CSP 700–5000–1, Revision 70, dated August 16, 2021.

Note 9 to paragraph (j)(2)(xxi): This note applies to paragraphs (j)(2)(xxi) through (xxiv) of this AD. For obtaining these sections and supplements of the Bombardier Global 5000 Airplane Flight Manual—Publication No. CSP 700–5000–1, use Document Identification No. GL 5000 AFM.

(xxii) Section 06–08 Performance Data for Operation in Icing Conditions, of Chapter 6—Performance, of Bombardier Global 5000 Airplane Flight Manual—Publication No. CSP 700–5000–1, Revision 70, dated August 16, 2021.

(xxiii) Supplement 3—Operation on Contaminated Runways, of Chapter 7—Supplements, of Bombardier Global 5000 Airplane Flight Manual—Publication No. CSP 700–5000–1, Revision 70, dated August 16, 2021.

(xxiv) Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements, of Bombardier Global 5000 Airplane Flight Manual—Publication No. CSP 700–5000–1, Revision 70, dated August 16, 2021.

(xxv) Section 06–03 Take-Off Performance, of Chapter 6—Performance, of Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 39, dated August 16, 2021.

Note 10 to paragraph (j)(2)(xxv): This note applies to paragraphs (j)(2)(xxv) through (xxxiv) of this AD. For obtaining these sections of the Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, use Document Identification No. GL 5000 GVFD AFM.

(xxvi) Section 06–08 Performance Data for Operation in Icing Conditions, of Chapter 6—Performance, of Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 39, dated August 16, 2021.

(xxvii) Supplement 3—Operation on Contaminated Runways, of Chapter 7—Supplements, of Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 39, dated August 16, 2021.

(xxviii) Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements, of Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 39, dated August 16, 2021.

(xxix) Supplement 35—Operation on Wet Grooved Runways, of Chapter 7—Supplements, of Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 39, dated August 16, 2021.

(xxx) Section 06–03 Take-Off Performance, of Chapter 6—Performance, of Bombardier 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022.

(xxxi) Section 06–08 Performance Data for Operation in Icing Conditions, of Chapter 6—Performance, of Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022.

(xxxii) Supplement 3—Operation on Contaminated Runways, of Chapter 7—Supplements, of Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022.

(xxxiii) Supplement 20—Operations at Airport Elevations Above 10,000 Feet, of Chapter 7—Supplements, of Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022.

(xxxiv) Supplement 35—Operation on Wet Grooved Runways, of Chapter 7—Supplements, of Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022.

(3) For service information identified in this AD, contact Bombardier, Inc., Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* internet *bombardier.com*.

(4) 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.

(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 24, 2023.

Christina Underwood,

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

[FR Doc. 2023–02009 Filed 2–1–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1413; Project Identifier MCAI–2021–00077–E; Amendment 39–22302; AD 2023–01–08]

RIN 2120–AA64

Airworthiness Directives; Continental Aerospace Technologies GmbH Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Continental Aerospace Technologies GmbH TAE 125–02–99 and TAE 125–02–114 model reciprocating engines. This AD was prompted by manufacturer reports of fractured main bearing studs. This AD requires the removal and replacement of certain main bearing studs. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 9, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 9, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1413; 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 service information identified in this final rule, contact Continental Aerospace Technologies GmbH, Platanenstrasse 14, 09356 Sankt Egidien, Germany; phone: +49 37204 696 0; email: *support@continentaldiesel.com;* website: *continentaldiesel.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2022–1413.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; email: *barbara.caufield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Continental Aerospace Technologies GmbH TAE 125–02–99 and TAE 125–02–114 model reciprocating engines. The NPRM published in the **Federal Register** on November 09, 2022 (87 FR 67572). The NPRM was prompted by AD 2021–0022, dated January 18, 2021, issued by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union (referred to after this as ''the MCAI''). The MCAI states that the manufacturer has received reports of fractured main bearing studs. A fractured main bearing stud provides improper support to the crankshaft and increases crankshaft clearance, resulting in crankshaft sensor failures and potential crankshaft fracture. The manufacturer is investigating the root cause of main bearing stud failures. To address this unsafe condition, Continental Aerospace Technologies GmbH published service information to identify the serial numbers (S/Ns) of the affected engines and specify procedures for replacement of certain main bearing studs. The MCAI specifies actions to replace main bearing studs and specifies certain main bearing studs that are not to be installed onto any engine. This condition, if not addressed, could result in engine in-flight shutdown and forced landing, damage to the airplane, and injury to the occupants.

In the NPRM, the FAA proposed to require the removal of certain main bearing studs from service and replacement with parts eligible for installation. The NPRM also proposed to prohibit the installation of certain main bearing studs. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1413.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Continental Aerospace Technologies GmbH Service Bulletin (SB) CG 125–1027 P1, Revision 1, dated May 28, 2021. This service information identifies the S/Ns of the affected engines and specifies procedures for replacing the main bearing studs. The FAA also reviewed Continental Aerospace Technologies GmbH Repair Instruction RI–05–0017–04, Revision 4, dated April 1, 2021. This service information provides instructions for replacing the main bearing studs.

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**.

Costs of Compliance

The FAA estimates that this AD affects 92 engines installed on aircraft of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace main bearing studs.	16 work-hours × $85 per hour = $1,360	$5,500	$6,860	$631,120

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–01–08 Continental Aerospace Technologies GmbH (Type Certificate previously held by Technify Motors GmbH and Thielert Aircraft Engines GmbH): Amendment 39–22302; Docket No. FAA–2022–1413; Project Identifier MCAI–2021–00077–E.

(a) Effective Date

This airworthiness directive (AD) is effective March 9, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Continental Aerospace Technologies GmbH (Type Certificate previously held by Technify Motors GmbH and Thielert Aircraft Engines GmbH) TAE 125–02–99 and TAE 125–02–114 model reciprocating engines with an engine serial number (S/N) identified in Models Affected, Continental Aerospace Technologies GmbH Service Bulletin (SB) CG 125–1027 P1, Revision 1, dated May 28, 2021.

(d) Subject

Joint Aircraft System Component (JASC) Code 7200, Engine (Turbine/Turboprop).

(e) Unsafe Condition

This AD was prompted by manufacturer reports of fractured main bearing studs. The FAA is issuing this AD to prevent failure of the main bearing stud. The unsafe condition, if not addressed, could result in engine in-flight shutdown and forced landing, damage to the airplane, and injury to the occupants.

(f) Compliance

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

(g) Required Actions

(1) For Group 1 and Group 2 engines, before exceeding the applicable compliance time in Table 1 to paragraph (g)(1) of this AD, remove all main bearing studs from service if one or more main bearing studs with part number (P/N) 05–7211–K009801 and batch number B180703/1, B184216/1, B184216/2, or B191277/1 are installed on the engine and replace with parts eligible for installation in accordance with Instructions, paragraphs 4.2 through 4.2.17 of Continental Aerospace Technologies GmbH Repair Instruction RI–05–0017–04, Revision 4, dated April 1, 2021 (Continental Aerospace Technologies GmbH RI–05–0017–04, Revision 4).

TABLE 1 TO PARAGRAPH (g)(1)—MAIN BEARING STUD REPLACEMENT

Group	Flight hours (FHs) since new	Compliance time
1	100 FHs or less	Before exceeding 115 FHs since new, or during the next scheduled maintenance, whichever occurs first after the effective date of this AD.
1	More than 100 FHs.	Before exceeding 15 FHs from the effective date of this AD, or during the next scheduled maintenance, whichever occurs first after the effective date of this AD.
2	100 FHs or less	Before exceeding 200 FHs since new, or during the next scheduled maintenance whichever occurs first after the effective date of this AD.
2	More than 100 FHs.	Before exceeding 100 FHs from the effective date of this AD, or during the next scheduled maintenance, whichever occurs first after the effective date of this AD.

Note 1 to paragraph (g)(1): FHs since new indicated in Table 1 to paragraph (g)(1) of this AD are FHs accumulated by the engine since first installation on an airplane, on the effective date of this AD.

(2) For engines not installed on an airplane as of the effective date of this AD, before further flight, remove all main bearing studs if one or more main bearing studs with P/N 05–7211–K009801 and batch number B180703/1, B184216/1, B184216/2, or B191277/1 are installed on the engine and replace with parts eligible for installation in accordance with Instructions, paragraphs 4.2 through 4.2.17 of Continental Aerospace Technologies GmbH RI–05–0017–04, Revision 4.

(h) Installation Prohibition

After the effective date of this AD, do not install onto any engine a main bearing stud with P/N 05–7211–K009801 and batch number B180703/1, B184216/1, B184216/2, or B191277/1.

(i) Definitions

(1) For the purpose of this AD, Group 1 engines are affected engines installed on single-engine airplanes, with main bearing stud with P/N 05–7211–K009801 and batch number B180703/1, B184216/1, B184216/2, or B191277/1 installed on the engine, and affected engines installed on twin-engine airplanes, with main bearing stud with P/N 05–7211–K009801 and batch number B180703/1, B184216/1, B184216/2, or B191277/1 installed on both engines.

(2) For the purpose of this AD, Group 2 engines are affected engines installed on twin-engine airplanes, with main bearing stud with P/N 05–7211–K009801 and batch number B180703/1, B184216/1, B184216/2, or B191277/1 installed on only one engine.

(3) For the purpose of this AD, parts eligible for installation are any main bearing studs that do not have P/N 05–7211–K009801 and batch number B180703/1, B184216/1, B184216/2, or B191277/1.

(j) Alternative Methods of Compliance (AMOCs)

The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in § 39.19. In accordance with § 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(2) of this AD and email to: *ANE-AD-AMOC@faa.gov.* 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.

(k) Additional Information

(1) Refer to European Union Aviation Safety Agency (EASA) AD 2021–0022, dated January 18, 2021, for related information. This EASA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1413.

(2) For more information about this AD, contact Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; email: *barbara.caufield@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) Continental Aerospace Technologies GmbH Service Bulletin CG 125–1027 P1, Revision 1, dated May 28, 2021.

(ii) Continental Aerospace Technologies GmbH Repair Instruction RI–05–0017–04, Revision 4, dated April 1, 2021.

(3) For Continental Aerospace Technologies GmbH service information identified in this AD, contact Continental Aerospace Technologies GmbH, Platanenstrasse 14, 09356 Sankt Egidien, Germany; phone: +49 37204 696 0; email: *support@continentaldiesel.com;* website: *continentaldiesel.com.*

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

(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 6, 2023.

Christina Underwood,

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

[FR Doc. 2023–02154 Filed 2–1–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0027; Project Identifier AD–2022–01586–E; Amendment 39–22319; AD 2023–02–12]

RIN 2120–AA64

Airworthiness Directives; Continental Aerospace Technologies, Inc. Reciprocating Engines With a Certain Superior Air Parts, Inc. Intake Valve Installed

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Continental Aerospace Technologies, Inc. (Continental) GTSIO–520, IO–470, IO–520, IO–550, IOF–550, LIO–470, LIO–520, LTSIO–520, O–470, TSIO–470, TSIO–520, TSIO–550, TSIOF–550, and TSIOL–550 model reciprocating engines with a certain Superior Air Parts, Inc. (SAP) cylinder assembly or intake valve installed. The affected cylinder assemblies and intake valves are installed as a replacement part under parts manufacturer approval (PMA) on certain affected Continental engines. This AD was prompted by three intake valve failures on reciprocating engines that resulted in engine damage and emergency landing or aborted takeoff. This AD requires replacement of the affected engine intake valve. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 17, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 17, 2023.

The FAA must receive comments on this AD by March 20, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2023–0027; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Superior Air Parts, Inc., 621 S Royal Lane, Suite 100, Coppell, TX 75019; phone: (800) 420–4727; email: *sales@superiorairparts.com;* website: *superiorairparts.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also

available at *regulations.gov* by searching for and locating Docket No. FAA–2023–0027.

FOR FURTHER INFORMATION CONTACT:

Justin Carter, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Parkway, Fort Worth, TX 76177; phone: (817) 222–5146; email: *justin.carter@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA received reports of three intake valve failures on GTSIO–520, IO–550, and TSIO–520 model reciprocating engines. The intake valve failure on the GTSIO–520 engine resulted in no loss of engine power, while the IO–550 engine experienced engine damage and aborted takeoff. The intake valve failure on the TSIO–520 engine resulted in engine damage and an emergency landing. Subsequent metallurgical analysis revealed that the intake valve material on SAP part number (P/N) SA539988, with lot number 19077 O, was out of specification and did not meet the minimum requirement for elongation; a condition that may cause rupture of the valve stem surface and valve head surface. SAP shipped the affected intake valves installed in cylinder assemblies between January 20, 2022 and March 22, 2022. SAP also shipped individual affected intake valves between January 20, 2022 and May 18, 2022. The affected cylinder assemblies and intake valves may be installed on certain Continental GTSIO–520–C, –D, –E, –F, –H, –K, –L, –M, and –N; IO–470–A, –C, –D, –E, –F, –G, –H, –J, –K, –L, –LO, –M, –N, –P, –R, –S, –T, –U, –V, and –VO; IO–520–A, –B, –BA, –BB, –C, –CB, –D, –E, –F, –J, –K, –L, –M, –MB, –N, –NB, and –P; IO–550–A, –B, –C, –D, –E, –F, –G, –L, –N, –P, and –R; IOF–550–B, –C, –D, –E, –F, –L, –P, and –R; LIO–470–A; LIO–520–P; LTSIO–520–AE; O–470–A, –E, –G, –G–CI, –H, –J, –K, –K–CI, –L, –L–CI, –M, –M–CI, –N, –P, –R, –S, –T, and –U; TSIO–470–B, –C, and –D; TSIO–520–A, –AE, –AF, –B, –BB, –BE, –C, –CE, –D, –DB, –E, –EB, –G, –H, –J, –JB, –K, –KB, –L, –LB, –M, –N, –NB, –P, –R, –T, –U, –UB, –VB, and –WB; TSIO–550–A, –B, –C, –E, –G, and –K; TSIOF–550–D, –J, and –K; and TSIOL–550–A, and –C model reciprocating engines. This condition, if not addressed, could result in failure of the engine, in-flight shutdown, and loss of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed SAP Mandatory Service Bulletin MSB22–01 A, dated December 16, 2022 (SAP MSB22–01 A). This service information provides a listing of the affected cylinder assemblies and affected engines. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

AD Requirements

This AD requires the removal from service and replacement of any affected engine intake valve installed, except as discussed under ''Differences Between the AD and the Service Information.''

Differences Between the AD and the Service Information

SAP MSB22–01 A specifies to remove and replace the affected intake valve before further flight, while this AD requires removal and replacement of the affected intake valve within 30 days from the effective date of this AD.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because the urgency of the unsafe condition requires removal of any affected intake valve installed within 30 days from the effective date of this AD. The material used to manufacture the intake valves was out of specification and did not meet the minimum requirement for elongation, a condition that may cause rupture of the valve stem surface and valve head surface. Intake valve rupture could lead to failure of the engine, in-flight shutdown, and loss of the airplane. Three intake valve failures on affected reciprocating engines have already been reported, which resulted in engine damage, emergency landing, and aborted takeoff. As the affected intake valve must be replaced within 30 days from the effective date of this AD, the compliance time for the required actions is shorter than the time necessary to allow for public comment and for the FAA to publish a final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0027 and Project Identifier AD–2022–01586–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD 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 AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they

will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Justin Carter, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Parkway, Fort Worth, TX 76177. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 450 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove affected cylinder assembly	4 work-hours × $85 per hour = $340	$0	$340	$153,000
Remove and inspect intake valve for existence of lot number 19077 O.	4 work-hours × $85 per hour = $340	0	340	153,000

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace affected intake valve	1 work-hours × $85 per hour = $85	$106	$191

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

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:

2023–02–12 Continental Aerospace Technologies, Inc.: Amendment 39–22319; Docket No. FAA–2023–0027; Project Identifier AD–2022–01586–E.

(a) Effective Date

This airworthiness directive (AD) is effective February 17, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Continental Aerospace Technologies, Inc. (Continental) GTSIO–520, IO–470, IO–520, IO–550, IOF–550, LIO–470, LIO–520, LTSIO–520, O–470, TSIO–470, TSIO–520, TSIO–550, TSIOF–550, and TSIOL–550 model reciprocating engines listed in the Application Table, page 1, of Superior Air Parts, Inc. (SAP) Mandatory Service Bulletin MSB22–01 A, dated December 16, 2022 (SAP MSB22–01 A) with an installed:

(1) SAP cylinder assembly having a part number (P/N) and serial number listed in Table 1 of SAP MSB22–01 A, installed on or after January 20, 2022; or

(2) Cylinder assembly that was repaired and installed on or after January 20, 2022, with a SAP intake valve having P/N SA539988 and lot number 19077 O; or

(3) SAP intake valve with P/N SA539988 and lot number 19077 O.

(d) Subject

Joint Aircraft System Component (JASC) Code 7160, Engine Air Intake System.

(e) Unsafe Condition

This AD was prompted by three intake valve failures on reciprocating engines that resulted in engine damage and emergency

landing or aborted takeoff. The FAA is issuing this AD to prevent failure of the engine intake valve. The unsafe condition, if not addressed, could result in failure of the engine, in-flight shutdown, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) For engines with an affected SAP cylinder assembly installed, as identified in paragraph (c)(1) of this AD, within 30 days from the effective date of this AD, remove the affected cylinder assembly and replace any affected intake valve with an intake valve that is eligible for installation.

(2) For engines with an affected repaired cylinder assembly installed, as identified in paragraph (c)(2) of this AD, within 30 days from the effective date of this AD, inspect the affected cylinder assembly for installation of any intake valve marked with lot number 19077 O. If, during any inspection required by this paragraph, an intake valve is identified with lot number 19077 O, before further flight, replace the affected intake valve with an intake valve that is eligible for installation.

(3) For engines with an affected SAP intake valve installed, as identified in paragraph (c)(3) of this AD, within 30 days from the effective date of this AD, remove the affected intake valve and replace with an intake valve that is eligible for installation.

(h) Definitions

(1) For the purpose of this AD, an ''intake valve that is eligible for installation'' is an intake valve that is not SAP P/N SA539988 and lot number 19077 O.

(i) No Reporting Requirement

Although SAP MSB22–01 A specifies to submit certain information and send certain parts to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are prohibited.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(l) Related Information

For more information about this AD, contact Justin Carter, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Parkway, Fort Worth, TX 76177; phone: (817) 222–5146; email: *justin.carter@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) Superior Air Parts, Inc. Mandatory Service Bulletin MSB22–01 A, dated December 16, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact SAP, 621 S Royal Lane, Suite 100, Coppell, TX 75019; phone: (800) 420–4727; email: *sales@superiorairparts.com;* website: *superiorairparts.com.*

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

(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 25, 2023.

Christina Underwood,

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

[FR Doc. 2023–02152 Filed 2–1–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31470; Amdt. No. 4046]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 2, 2023. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 2, 2023.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is

listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for Part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on January 20, 2023.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
23–Feb–23	GA	Butler	Butler Muni	2/0453	1/6/23	RNAV (GPS) RWY 1, Amdt 2.
23–Feb–23	NC	Clinton	Clinton-Sampson County	2/8503	1/10/23	RNAV (GPS) Z RWY 24, Orig-B.
23–Feb–23	NC	Clinton	Clinton-Sampson County	2/8504	1/10/23	VOR/DME–A, Amdt 6B.
23–Feb–23	NC	Clinton	Clinton-Sampson County	2/8511	1/10/23	RNAV (GPS) Y RWY 24, Amdt 1C.
23–Feb–23	AK	Anchorage	Merrill Fld	3/1211	1/10/23	RNAV (GPS)-A, Amdt 1B.
23–Feb–23	OR	Burns	Burns Muni	3/1213	1/5/23	RNAV (GPS) RWY 30, Orig-C.
23–Feb–23	OR	Burns	Burns Muni	3/1215	1/5/23	VOR RWY 30, Amdt 3B.
23–Feb–23	MN	New Ulm	New Ulm Muni	3/2518	1/12/23	RNAV (GPS) RWY 15, Orig-C.

[FR Doc. 2023–02178 Filed 2–1–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31469; Amdt. No. 4045]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 2, 2023. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 2, 2023.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for Part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on January 20, 2023.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 23 February 2023

Bullhead City, AZ, KIFP, RNAV (GPS) RWY 16, Amdt 3
Key West, FL, KEYW, RADAR 1, Amdt 5A
Calhoun, GA, KCZL, RNAV (GPS) RWY 17, Amdt 2
Calhoun, GA, KCZL, RNAV (GPS) RWY 35, Amdt 1D
Columbus, GA, KCSG, ILS OR LOC RWY 6, Amdt 26
Columbus, GA, KCSG, RNAV (GPS) RWY 6, Amdt 1
Columbus, GA, KCSG, RNAV (GPS) RWY 13, Amdt 1
Columbus, GA, KCSG, RNAV (GPS) RWY 24, Amdt 1
Columbus, GA, KCSG, VOR–A, Amdt 23C, CANCELED
Champaign/Urbana, IL, KCMI, ILS OR LOC RWY 32R, Amdt 14
Moline, IL, KMLI, Takeoff Minimums and Obstacle DP, Amdt 3
Jeffersonville, IN, KJVY, RNAV (GPS) RWY 36, Orig
Portland, IN, KPLD, RNAV (GPS) RWY 9, Amdt 2
Portland, IN, KPLD, RNAV (GPS) RWY 27, Amdt 2
Portland, IN, KPLD, Takeoff Minimums and Obstacle DP, Amdt 1
Baltimore, MD, KMTN, ILS OR LOC RWY 33, Orig
Baltimore, MD, KMTN, LDA RWY 33, Orig-B, CANCELED
Baltimore, MD, KMTN, RNAV (GPS) RWY 33, Amdt 2
Mexico, MO, KMYJ, RNAV (GPS) RWY 6, Amdt 2
Jefferson, NC, KGEV, LOC RWY 28, Amdt 4
Jefferson, NC, KGEV, RNAV (GPS) RWY 28, Amdt 2
Newark, NJ, KEWR, ILS OR LOC RWY 22L, ILS RWY 22L (SA CAT I), ILS RWY 22L (CAT II), ILS RWY 22L (CAT III), Amdt 14
Newark, NJ, KEWR, ILS OR LOC RWY 22R, Amdt 7
Newark, NJ, KEWR, RNAV (GPS) RWY 22R, Amdt 2
Newark, NJ, KEWR, RNAV (GPS) Z RWY 22L, Amdt 3
New York, NY, KLGA, ILS OR LOC RWY 4, Amdt 38A
New York, NY, KLGA, RNAV (GPS) X RWY 31, Orig-A
New York, NY, KLGA, RNAV (GPS) Y RWY 4, Amdt 4A
Pendleton, OR, KPDT, RNAV (GPS) RWY 29, Amdt 1
Greenville, SC, KGYH, ILS OR LOC RWY 5, Amdt 6
Greenville, SC, KGYH, RNAV (GPS) RWY 5, Amdt 1
Greenville, SC, KGYH, RNAV (GPS) RWY 23, Amdt 1
Dallas, TX, KRBD, RNAV (GPS) RWY 13, Orig
Greenville, TX, KGVT, RNAV (GPS) RWY 35, Amdt 1B
Yakima, WA, KYKM, RNAV (RNP) Y RWY 27, Orig-D

Rescinded: On December 27, 2022 (87 FR 79247), the FAA published an Amendment in Docket No. 31463, Amdt No. 4039, to Part 97 of the Federal Aviation Regulations under section 97.37. The following entries for, Natchez, MS, effective February 23, 2023, is hereby rescinded in its entirety:

Natchez, MS, KHEZ, Takeoff Minimums and Obstacle DP, Orig-A

[FR Doc. 2023–02177 Filed 2–1–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM11–6–000]

Annual Update to Fee Schedule for the Use of Government Lands by Hydropower Licensees

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: In accordance with the Commission's regulations, the Commission, by its designee, the Executive Director, issues this annual update to the fee schedule in the appendix to the part, which lists per-acre rental fees by county (or other geographic area) for use of government lands by hydropower licensees.

DATES:

Effective date: This rule is effective February 2, 2023.

Applicability dates: The updates to appendix A to part 11, with the fee schedule of per-acre rental fees by county (or other geographic area), are from October 1, 2022, through September 30, 2023 (Fiscal Year 2023).

FOR FURTHER INFORMATION CONTACT: Raven A. Rodriguez, Financial Management Division, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6276, *Raven.Rodriguez@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Annual Update to Fee Schedule

Section 11.2 of the Commission's regulations provides a method for computing reasonable annual charges for recompensing the United States for the use, occupancy, and enjoyment of its lands by hydropower licensees.[1] Annual charges for the use of government lands are payable in advance, and are based on an annual schedule of per-acre rental fees published in appendix A to part 11 of the Commission's regulations.[2] This notice updates the fee schedule in appendix A to part 11 for fiscal year 2023 (October 1, 2022, through September 30, 2023).

Effective Date

This final rule is effective February 2, 2023. The provisions of 5 U.S.C. 804, regarding Congressional review of final rules, do not apply to this final rule because the rule concerns agency procedure and practice and will not substantially affect the rights or obligations of non-agency parties. This final rule merely updates the fee schedule published in the Code of Federal Regulations to reflect scheduled adjustments, as provided for in § 11.2 of the Commission's regulations.

List of Subjects in 18 CFR Part 11

Public lands.

By the Executive Director.

Issued: January 17, 2023.

William Foster,

Chief Financial Officer, Office of the Executive Director.

In consideration of the foregoing, the Commission amends appendix A to part 11, chapter I, title 18, Code of Federal Regulations, as follows.

[1] *Annual Charges for the Use of Government Lands,* Order No. 774, 78 FR 5256 (January 25, 2013), FERC Stats. & Regs. ¶ 31,341 (2013).

[2] 18 CFR part 11 (2018).

PART 11—ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

■ 1. The authority citation for part 11 is revised to read as follows:

Authority: 16 U.S.C. 792–828c; 42 U.S.C. 7101–7352.

■ 2. Appendix A to Part 11 is revised to read as follows:

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023

State	County	Fee/acre/yr
Alabama	Autauga	$60.57
	Baldwin	159.94
	Barbour	61.34
	Bibb	77.11
	Blount	98.95
	Bullock	58.84
	Butler	67.41
	Calhoun	116.64
	Chambers	69.03
	Cherokee	87.00
	Chilton	96.94
	Choctaw	56.31
	Clarke	62.60
	Clay	77.11
	Cleburne	95.05
	Coffee	72.33
	Colbert	73.21
	Conecuh	58.84
	Coosa	62.96
	Covington	73.73
	Crenshaw	68.51
	Cullman	109.25
	Dale	82.66
	Dallas	51.51
	DeKalb	108.09
	Elmore	82.30
	Escambia	67.52
	Etowah	105.37
	Fayette	60.60
	Franklin	67.33
	Geneva	68.02
	Greene	53.59
	Hale	62.08
	Henry	70.87
	Houston	97.05
	Jackson	83.56
	Jefferson	121.23
	Lamar	51.07
	Lauderdale	99.61
	Lawrence	104.28
	Lee	114.00
	Limestone	113.51
	Lowndes	52.14
	Macon	64.47
	Madison	145.76
	Marengo	55.13
	Marion	64.25
	Marshall	121.72
	Mobile	130.15
	Monroe	65.82
	Montgomery	73.07
	Morgan	120.95
	Perry	60.65
	Pickens	69.44
	Pike	71.97
	Randolph	86.72
	Russell	69.80
	Shelby	109.22
	St. Clair	117.49
	Sumter	51.42
	Talladega	90.90
	Tallapoosa	78.43
	Tuscaloosa	92.41
	Walker	82.93
	Washington	55.65
	Wilcox	49.94
	Winston	75.95

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
Alaska	Aleutian Islands	0.92
	Statewide	49.24
Arizona	Apache	4.56
	Cochise	33.23
	Coconino	3.51
	Gila	6.45
	Graham	10.74
	Greenlee	25.84
	La Paz	33.41
	Maricopa	153.08
	Mohave	13.91
	Navajo	3.66
	Pima	8.73
	Pinal	45.81
	Santa Cruz	33.05
	Yavapai	27.36
	Yuma	153.06
Arkansas	Arkansas	64.52
	Ashley	59.25
	Baxter	55.08
	Benton	132.63
	Boone	53.97
	Bradley	67.30
	Calhoun	53.05
	Carroll	56.31
	Chicot	60.83
	Clark	49.57
	Clay	88.25
	Cleburne	60.15
	Cleveland	86.65
	Columbia	47.56
	Conway	52.03
	Craighead	94.45
	Crawford	62.82
	Crittenden	78.85
	Cross	69.00
	Dallas	39.91
	Desha	66.62
	Drew	59.23
	Faulkner	78.62
	Franklin	52.50
	Fulton	38.23
	Garland	107.00
	Grant	73.95
	Greene	86.79
	Hempstead	51.27
	Hot Spring	56.98
	Howard	58.46
	Independence	47.07
	Izard	41.91
	Jackson	68.98
	Jefferson	66.89
	Johnson	57.17
	Lafayette	52.15
	Lawrence	73.42
	Lee	64.97
	Lincoln	63.10
	Little River	49.43
	Logan	51.17
	Lonoke	75.41
	Madison	64.15
	Marion	49.92
	Miller	52.78
	Mississippi	70.35
	Monroe	57.80
	Montgomery	53.21
	Nevada	48.44
	Newton	49.88
	Ouachita	45.68
	Perry	56.47
	Phillips	65.23
	Pike	53.40
	Poinsett	78.23
	Polk	60.58
	Pope	65.72
	Prairie	59.79
	Pulaski	80.44
	Randolph	60.11
	Saline	70.11
	Scott	50.24

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Searcy	38.55
	Sebastian	68.45
	Sevier	54.63
	Sharp	43.65
	St. Francis	63.64
	Stone	44.29
	Union	56.61
	Van Buren	56.39
	Washington	105.08
	White	56.90
	Woodruff	66.62
	Yell	55.18
California	Alameda	46.31
	Alpine	29.80
	Amador	29.03
	Butte	78.48
	Calaveras	23.16
	Colusa	51.92
	Contra Costa	45.11
	Del Norte	54.19
	El Dorado	64.69
	Fresno	74.03
	Glenn	58.10
	Humboldt	20.14
	Imperial	72.57
	Inyo	4.04
	Kern	48.10
	Kings	70.48
	Lake	42.72
	Lassen	13.94
	Los Angeles	121.09
	Madera	71.41
	Marin	38.20
	Mariposa	13.45
	Mendocino	24.95
	Merced	85.28
	Modoc	12.75
	Mono	12.52
	Monterey	48.02
	Napa	287.76
	Nevada	48.39
	Orange	124.44
	Placer	43.76
	Plumas	14.98
	Riverside	118.25
	Sacramento	65.48
	San Benito	23.26
	San Bernardino	129.67
	San Diego	151.26
	San Francisco	506.77
	San Joaquin	97.89
	San Luis Obispo	49.18
	San Mateo	63.67
	Santa Barbara	67.65
	Santa Clara	53.02
	Santa Cruz	139.15
	Shasta	19.02
	Sierra	11.09
	Siskiyou	19.98
	Solano	59.62
	Sonoma	144.59
	Stanislaus	101.79
	Sutter	62.08
	Tehama	28.11
	Trinity	12.52
	Tulare	76.42
	Tuolumne	24.21
	Ventura	166.17
	Yolo	63.24
	Yuba	53.58
Colorado	Adams	28.08
	Alamosa	36.90
	Arapahoe	39.34
	Archuleta	54.03
	Baca	13.65
	Bent	12.01
	Boulder	218.82
	Broomfield	95.16
	Chaffee	88.34
	Cheyenne	14.59

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Clear Creek	54.95
	Conejos	29.37
	Costilla	21.15
	Crowley	8.86
	Custer	33.82
	Delta	83.78
	Denver	1,109.32
	Dolores	31.04
	Douglas	117.45
	Eagle	57.60
	El Paso	24.49
	Elbert	26.56
	Fremont	40.66
	Garfield	41.76
	Gilpin	73.56
	Grand	38.28
	Gunnison	44.68
	Hinsdale	32.05
	Huerfano	16.75
	Jackson	23.03
	Jefferson	134.30
	Kiowa	13.12
	Kit Carson	21.22
	La Plata	39.32
	Lake	35.77
	Larimer	80.72
	Las Animas	10.48
	Lincoln	12.25
	Logan	20.68
	Mesa	96.14
	Mineral	59.90
	Moffat	13.91
	Montezuma	21.08
	Montrose	53.84
	Morgan	30.20
	Otero	13.06
	Ouray	53.16
	Park	29.24
	Phillips	29.45
	Pitkin	132.59
	Prowers	14.03
	Pueblo	17.89
	Rio Blanco	23.90
	Rio Grande	54.36
	Routt	54.68
	Saguache	33.04
	San Juan	27.99
	San Miguel	25.94
	Sedgwick	23.55
	Summit	73.54
	Teller	35.21
	Washington	19.11
	Weld	45.01
	Yuma	28.43
Connecticut	Fairfield	284.31
	Hartford	424.75
	Litchfield	298.21
	Middlesex	392.74
	New Haven	618.71
	New London	302.03
	Tolland	255.57
	Windham	248.96
Delaware	Kent	212.12
	New Castle	254.31
	Sussex	226.84
Florida	Alachua	156.40
	Baker	91.62
	Bay	40.96
	Bradford	95.39
	Brevard	100.39
	Broward	661.79
	Calhoun	43.01
	Charlotte	143.30
	Citrus	158.34
	Clay	114.34
	Collier	94.83
	Columbia	87.09
	Dade	747.85
	DeSoto	100.01
	Dixie	74.33

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Duval	150.23
	Escambia	123.93
	Flagler	111.13
	Franklin	117.84
	Gadsden	84.99
	Gilchrist	106.26
	Glades	86.03
	Gulf	28.66
	Hamilton	77.18
	Hardee	106.58
	Hendry	97.85
	Hernando	209.44
	Highlands	78.00
	Hillsborough	233.20
	Holmes	66.58
	Indian River	114.72
	Jackson	73.77
	Jefferson	69.25
	Lafayette	60.39
	Lake	158.40
	Lee	243.75
	Leon	85.19
	Levy	92.02
	Liberty	78.20
	Madison	70.43
	Manatee	155.44
	Marion	221.94
	Martin	87.79
	Monroe	117.84
	Nassau	74.77
	Okaloosa	95.11
	Okeechobee	84.33
	Orange	168.38
	Osceola	77.48
	Palm Beach	167.32
	Pasco	143.00
	Pinellas	1,147.52
	Polk	121.09
	Putnam	79.42
	Santa Rosa	107.08
	Sarasota	183.62
	Seminole	165.17
	St. Johns	169.88
	St. Lucie	119.34
	Sumter	120.32
	Suwannee	88.22
	Taylor	72.89
	Union	74.33
	Volusia	205.86
	Wakulla	68.30
	Walton	75.30
	Washington	76.28
Georgia	Appling	83.31
	Atkinson	74.46
	Bacon	105.54
	Baker	56.98
	Baldwin	55.51
	Banks	137.98
	Barrow	168.13
	Bartow	154.49
	Ben Hill	63.31
	Berrien	80.21
	Bibb	102.72
	Bleckley	66.15
	Brantley	74.85
	Brooks	89.64
	Bryan	78.90
	Bulloch	73.44
	Burke	72.90
	Butts	99.92
	Calhoun	77.28
	Camden	73.46
	Candler	81.03
	Carroll	122.72
	Catoosa	141.10
	Charlton	62.23
	Chatham	130.21
	Chattahoochee	75.85
	Chattooga	90.82
	Cherokee	222.44

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Clarke	198.34
	Clay	60.69
	Clayton	214.23
	Clinch	102.13
	Cobb	292.95
	Coffee	77.33
	Colquitt	84.82
	Columbia	114.16
	Cook	77.90
	Coweta	123.72
	Crawford	103.31
	Crisp	78.59
	Dade	102.08
	Dawson	179.05
	Decatur	83.59
	DeKalb	1,203.43
	Dodge	66.67
	Dooly	74.92
	Dougherty	99.21
	Douglas	171.67
	Early	65.87
	Echols	71.57
	Effingham	83.33
	Elbert	100.64
	Emanuel	53.62
	Evans	69.21
	Fannin	151.34
	Fayette	139.52
	Floyd	124.77
	Forsyth	202.03
	Franklin	147.39
	Fulton	488.80
	Gilmer	196.34
	Glascock	40.82
	Glynn	395.16
	Gordon	167.82
	Grady	96.41
	Greene	91.95
	Gwinnett	239.47
	Habersham	183.59
	Hall	239.29
	Hancock	53.64
	Haralson	121.80
	Harris	110.82
	Hart	144.16
	Heard	92.59
	Henry	191.85
	Houston	103.10
	Irwin	83.31
	Jackson	163.34
	Jasper	89.26
	Jeff Davis	64.23
	Jefferson	66.41
	Jenkins	67.18
	Johnson	53.67
	Jones	71.95
	Lamar	89.77
	Lanier	77.69
	Laurens	53.74
	Lee	86.77
	Liberty	135.62
	Lincoln	80.13
	Long	86.18
	Lowndes	139.77
	Lumpkin	151.93
	Macon	82.49
	Madison	145.23
	Marion	60.90
	McDuffie	76.77
	McIntosh	60.82
	Meriwether	83.64
	Miller	83.13
	Mitchell	94.92
	Monroe	84.08
	Montgomery	66.26
	Morgan	119.82
	Murray	129.95
	Muscogee	128.28
	Newton	114.75
	Oconee	185.52

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Oglethorpe	111.62
	Paulding	148.23
	Peach	147.85
	Pickens	218.70
	Pierce	73.77
	Pike	125.57
	Polk	92.72
	Pulaski	68.49
	Putnam	107.85
	Quitman	59.15
	Rabun	211.29
	Randolph	72.62
	Richmond	94.36
	Rockdale	181.03
	Schley	73.03
	Screven	56.41
	Seminole	80.54
	Spalding	131.31
	Stephens	148.05
	Stewart	53.05
	Sumter	73.31
	Talbot	70.13
	Taliaferro	84.41
	Tattnall	99.33
	Taylor	53.31
	Telfair	56.67
	Terrell	71.87
	Thomas	93.33
	Tift	81.39
	Toombs	71.28
	Towns	140.95
	Treutlen	48.28
	Troup	83.23
	Turner	79.08
	Twiggs	61.98
	Union	147.98
	Upson	101.39
	Walker	108.69
	Walton	145.23
	Ware	65.77
	Warren	76.46
	Washington	54.00
	Wayne	53.33
	Webster	62.62
	Wheeler	46.90
	White	208.36
	Whitfield	158.59
	Wilcox	66.87
	Wilkes	88.39
	Wilkinson	52.56
	Worth	77.00
Hawaii	Hawaii	153.21
	Honolulu	547.84
	Kauai	198.46
	Maui	253.35
Idaho	Ada	125.77
	Adams	20.50
	Bannock	25.83
	Bear Lake	19.03
	Benewah	25.60
	Bingham	33.64
	Blaine	33.46
	Boise	18.95
	Bonner	66.59
	Bonneville	38.55
	Boundary	63.26
	Butte	27.15
	Camas	17.73
	Canyon	108.96
	Caribou	24.54
	Cassia	42.18
	Clark	23.21
	Clearwater	32.65
	Custer	36.05
	Elmore	32.95
	Franklin	30.75
	Fremont	36.59
	Gem	37.22
	Gooding	79.55
	Idaho	21.74

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Jefferson	46.57
	Jerome	79.86
	Kootenai	73.06
	Latah	33.61
	Lemhi	33.40
	Lewis	25.97
	Lincoln	48.28
	Madison	55.04
	Minidoka	60.02
	Nez Perce	27.49
	Oneida	21.92
	Owyhee	21.53
	Payette	46.35
	Power	32.62
	Shoshone	88.80
	Teton	52.29
	Twin Falls	58.70
	Valley	34.30
	Washington	17.90
Illinois	Adams	181.56
	Alexander	95.52
	Bond	191.83
	Boone	217.97
	Brown	156.22
	Bureau	229.36
	Calhoun	116.90
	Carroll	224.34
	Cass	178.54
	Champaign	260.00
	Christian	241.05
	Clark	159.29
	Clay	142.91
	Clinton	193.33
	Coles	219.76
	Cook	575.84
	Crawford	146.62
	Cumberland	177.04
	De Witt	234.05
	DeKalb	262.88
	Douglas	253.14
	DuPage	469.02
	Edgar	207.20
	Edwards	149.91
	Effingham	184.26
	Fayette	150.64
	Ford	216.80
	Franklin	124.46
	Fulton	172.82
	Gallatin	148.10
	Greene	172.57
	Grundy	247.47
	Hamilton	134.23
	Hancock	197.88
	Hardin	91.56
	Henderson	194.25
	Henry	220.51
	Iroquois	205.05
	Jackson	150.30
	Jasper	157.22
	Jefferson	116.03
	Jersey	176.65
	Jo Daviess	170.51
	Johnson	103.28
	Kane	294.63
	Kankakee	218.28
	Kendall	252.80
	Knox	204.24
	La Salle	254.64
	Lake	339.03
	Lawrence	157.67
	Lee	241.89
	Livingston	229.67
	Logan	233.85
	Macon	258.13
	Macoupin	200.78
	Madison	242.95
	Marion	136.32
	Marshall	225.34
	Mason	194.87
	Massac	108.02

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	McDonough	204.66
	McHenry	266.25
	McLean	274.71
	Menard	217.86
	Mercer	182.81
	Monroe	185.83
	Montgomery	203.04
	Morgan	230.14
	Moultrie	243.82
	Ogle	239.96
	Peoria	220.23
	Perry	133.45
	Piatt	258.41
	Pike	165.09
	Pope	97.42
	Pulaski	114.50
	Putnam	233.63
	Randolph	151.33
	Richland	147.34
	Rock Island	194.37
	Saline	134.62
	Sangamon	249.23
	Schuyler	153.04
	Scott	181.33
	Shelby	196.65
	St. Clair	206.98
	Stark	232.01
	Stephenson	235.08
	Tazewell	230.84
	Union	118.54
	Vermilion	228.91
	Wabash	154.40
	Warren	225.82
	Washington	179.21
	Wayne	132.94
	White	139.06
	Whiteside	220.23
	Will	248.03
	Williamson	110.31
	Winnebago	199.17
	Woodford	250.37
Indiana	Adams	230.12
	Allen	221.11
	Bartholomew	186.01
	Benton	215.10
	Blackford	183.70
	Boone	211.96
	Brown	122.10
	Carroll	209.68
	Cass	173.64
	Clark	153.39
	Clay	141.85
	Clinton	199.39
	Crawford	86.05
	Daviess	211.93
	Dearborn	135.20
	Decatur	197.00
	DeKalb	154.28
	Delaware	184.48
	Dubois	151.72
	Elkhart	310.89
	Fayette	157.31
	Floyd	151.75
	Fountain	187.24
	Franklin	157.70
	Fulton	175.55
	Gibson	180.34
	Grant	196.33
	Greene	137.73
	Hamilton	243.36
	Hancock	209.79
	Harrison	127.24
	Hendricks	212.43
	Henry	166.52
	Howard	215.97
	Huntington	190.63
	Jackson	147.27
	Jasper	179.56
	Jay	210.96
	Jefferson	115.17

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Jennings	126.94
	Johnson	187.60
	Knox	173.11
	Kosciusko	198.03
	LaGrange	257.24
	Lake	193.74
	LaPorte	204.56
	Lawrence	103.35
	Madison	225.51
	Marion	293.81
	Marshall	174.08
	Martin	108.08
	Miami	187.74
	Monroe	182.70
	Montgomery	194.24
	Morgan	174.91
	Newton	187.26
	Noble	177.84
	Ohio	121.49
	Orange	124.85
	Owen	126.35
	Parke	162.43
	Perry	111.61
	Pike	137.15
	Porter	188.18
	Posey	168.91
	Pulaski	171.05
	Putnam	178.98
	Randolph	178.47
	Ripley	143.60
	Rush	201.78
	Scott	149.30
	Shelby	193.16
	Spencer	128.19
	St. Joseph	224.92
	Starke	139.18
	Steuben	154.00
	Sullivan	138.42
	Switzerland	113.98
	Tippecanoe	251.07
	Tipton	227.15
	Union	176.33
	Vanderburgh	219.89
	Vermillion	157.81
	Vigo	150.88
	Wabash	174.94
	Warren	188.74
	Warrick	151.00
	Washington	125.19
	Wayne	152.75
	Wells	209.82
	White	217.36
	Whitley	176.42
Iowa	Adair	146.12
	Adams	139.33
	Allamakee	149.33
	Appanoose	113.57
	Audubon	191.83
	Benton	206.39
	Black Hawk	243.71
	Boone	222.56
	Bremer	223.26
	Buchanan	220.27
	Buena Vista	224.77
	Butler	200.30
	Calhoun	221.89
	Carroll	224.35
	Cass	164.70
	Cedar	219.55
	Cerro Gordo	205.10
	Cherokee	221.11
	Chickasaw	208.51
	Clarke	119.33
	Clay	223.09
	Clayton	154.92
	Clinton	210.77
	Crawford	189.26
	Dallas	228.23
	Davis	109.41
	Decatur	107.43

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Delaware	217.17
	Des Moines	193.06
	Dickinson	207.84
	Dubuque	241.20
	Emmet	200.66
	Fayette	200.49
	Floyd	205.60
	Franklin	218.32
	Fremont	167.69
	Greene	231.81
	Grundy	253.86
	Guthrie	176.04
	Hamilton	226.73
	Hancock	212.92
	Hardin	218.29
	Harrison	172.13
	Henry	175.09
	Howard	208.29
	Humboldt	225.97
	Ida	205.27
	Iowa	179.23
	Jackson	166.88
	Jasper	181.94
	Jefferson	154.73
	Johnson	224.55
	Jones	194.51
	Keokuk	163.08
	Kossuth	220.50
	Lee	144.33
	Linn	232.68
	Louisa	185.26
	Lucas	95.36
	Lyon	279.06
	Madison	158.36
	Mahaska	173.03
	Marion	161.24
	Marshall	212.34
	Mills	167.41
	Mitchell	219.74
	Monona	160.99
	Monroe	117.51
	Montgomery	158.69
	Muscatine	187.75
	O'Brien	271.76
	Osceola	244.80
	Page	150.03
	Palo Alto	223.90
	Plymouth	239.19
	Pocahontas	225.30
	Polk	247.01
	Pottawattamie	189.54
	Poweshiek	187.42
	Ringgold	107.68
	Sac	221.92
	Scott	267.88
	Shelby	191.47
	Sioux	290.71
	Story	264.50
	Tama	202.73
	Taylor	134.44
	Union	124.55
	Van Buren	130.59
	Wapello	136.23
	Warren	157.46
	Washington	192.47
	Wayne	118.80
	Webster	222.06
	Winnebago	195.27
	Winneshiek	178.84
	Woodbury	206.05
	Worth	194.34
	Wright	211.58
Kansas	Allen	56.12
	Anderson	56.37
	Atchison	84.08
	Barber	39.72
	Barton	43.43
	Bourbon	55.54
	Brown	97.00
	Butler	62.73

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Chase	52.86
	Chautauqua	45.11
	Cherokee	61.16
	Cheyenne	40.85
	Clark	32.83
	Clay	75.01
	Cloud	63.67
	Coffey	50.48
	Comanche	32.06
	Cowley	51.14
	Crawford	55.71
	Decatur	40.33
	Dickinson	59.19
	Doniphan	94.90
	Douglas	112.63
	Edwards	50.98
	Elk	42.73
	Ellis	37.31
	Ellsworth	44.48
	Finney	43.29
	Ford	42.79
	Franklin	66.47
	Geary	63.64
	Gove	35.98
	Graham	35.54
	Grant	43.59
	Gray	44.14
	Greeley	39.17
	Greenwood	46.11
	Hamilton	29.48
	Harper	45.42
	Harvey	87.60
	Haskell	42.24
	Hodgeman	32.53
	Jackson	74.04
	Jefferson	80.32
	Jewell	56.98
	Johnson	104.36
	Kearny	39.88
	Kingman	44.78
	Kiowa	43.45
	Labette	58.67
	Lane	35.24
	Leavenworth	94.62
	Lincoln	47.77
	Linn	70.64
	Logan	37.23
	Lyon	54.99
	Marion	56.48
	Marshall	85.58
	McPherson	75.76
	Meade	40.83
	Miami	85.61
	Mitchell	51.67
	Montgomery	55.60
	Morris	44.86
	Morton	28.32
	Nemaha	83.14
	Neosho	54.30
	Ness	29.98
	Norton	37.64
	Osage	55.10
	Osborne	39.00
	Ottawa	55.62
	Pawnee	45.86
	Phillips	39.88
	Pottawatomie	68.07
	Pratt	56.84
	Rawlins	42.65
	Reno	59.16
	Republic	71.53
	Rice	56.31
	Riley	83.59
	Rooks	34.60
	Rush	35.93
	Russell	37.04
	Saline	65.58
	Scott	41.90
	Sedgwick	95.81
	Seward	39.00

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Shawnee	82.78
	Sheridan	43.26
	Sherman	48.71
	Smith	52.80
	Stafford	49.87
	Stanton	29.43
	Stevens	38.36
	Sumner	50.84
	Thomas	48.32
	Trego	31.56
	Wabaunsee	53.30
	Wallace	37.40
	Washington	67.10
	Wichita	38.75
	Wilson	53.85
	Woodson	45.97
	Wyandotte	186.48
Kentucky	Adair	83.73
	Allen	96.37
	Anderson	103.36
	Ballard	100.60
	Barren	100.27
	Bath	65.70
	Bell	55.40
	Boone	167.13
	Bourbon	158.22
	Boyd	66.95
	Boyle	103.55
	Bracken	69.54
	Breathitt	43.68
	Breckinridge	85.93
	Bullitt	143.67
	Butler	73.71
	Caldwell	92.95
	Calloway	114.74
	Campbell	140.85
	Carlisle	105.72
	Carroll	94.45
	Carter	53.81
	Casey	65.22
	Christian	134.09
	Clark	123.35
	Clay	50.50
	Clinton	77.61
	Crittenden	76.47
	Cumberland	57.15
	Daviess	138.79
	Edmonson	88.47
	Elliott	45.07
	Estill	66.92
	Fayette	406.95
	Fleming	73.57
	Floyd	85.96
	Franklin	110.43
	Fulton	102.27
	Gallatin	79.20
	Garrard	81.20
	Grant	92.11
	Graves	106.48
	Grayson	82.29
	Green	72.24
	Greenup	68.78
	Hancock	82.87
	Hardin	127.88
	Harlan	43.54
	Harrison	86.29
	Hart	85.68
	Henderson	141.86
	Henry	107.48
	Hickman	111.74
	Hopkins	93.87
	Jackson	65.58
	Jefferson	342.28
	Jessamine	184.84
	Johnson	83.54
	Kenton	155.80
	Knott	35.60
	Knox	66.64
	Larue	98.79
	Laurel	93.06

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Lawrence	44.51
	Lee	56.98
	Leslie	106.34
	Letcher	83.51
	Lewis	58.35
	Lincoln	90.36
	Livingston	78.28
	Logan	134.42
	Lyon	86.88
	Madison	96.54
	Magoffin	57.62
	Marion	96.93
	Marshall	105.67
	Martin	96.07
	Mason	82.31
	McCracken	124.04
	McCreary	68.34
	McLean	124.32
	Meade	120.48
	Menifee	53.81
	Mercer	109.26
	Metcalfe	74.52
	Monroe	79.25
	Montgomery	97.57
	Morgan	54.23
	Muhlenberg	83.40
	Nelson	113.05
	Nicholas	64.64
	Ohio	95.15
	Oldham	221.69
	Owen	78.81
	Owsley	37.36
	Pendleton	79.06
	Perry	31.90
	Pike	39.36
	Powell	64.97
	Pulaski	90.14
	Robertson	60.88
	Rockcastle	60.66
	Rowan	77.11
	Russell	86.10
	Scott	155.75
	Shelby	161.70
	Simpson	157.97
	Spencer	126.44
	Taylor	84.57
	Todd	144.33
	Trigg	114.41
	Trimble	90.33
	Union	140.27
	Warren	148.48
	Washington	89.41
	Wayne	74.21
	Webster	102.52
	Whitley	70.48
	Wolfe	56.12
	Woodford	225.78
Louisiana	Acadia	70.41
	Allen	65.42
	Ascension	92.44
	Assumption	75.05
	Avoyelles	64.86
	Beauregard	77.48
	Bienville	64.93
	Bossier	79.59
	Caddo	76.05
	Calcasieu	88.72
	Caldwell	63.91
	Cameron	63.17
	Catahoula	68.89
	Claiborne	60.91
	Concordia	71.43
	De Soto	75.62
	East Baton Rouge.	210.35
	East Carroll	94.66
	East Feliciana	71.36
	Evangeline	62.23
	Franklin	72.30
	Grant	69.80

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Iberia	73.12
	Iberville	45.79
	Jackson	102.05
	Jefferson	59.50
	Jefferson Davis	56.78
	La Salle	81.20
	Lafayette	142.28
	Lafourche	73.91
	Lincoln	81.84
	Livingston	136.42
	Madison	70.08
	Morehouse	81.07
	Natchitoches	59.53
	Orleans	263.99
	Ouachita	108.63
	Plaquemines	35.97
	Pointe Coupee	78.80
	Rapides	95.53
	Red River	57.06
	Richland	72.17
	Sabine	96.34
	St. Bernard	44.67
	St. Charles	89.00
	St. Helena	106.03
	St. James	78.06
	St. John the Baptist.	89.23
	St. Landry	74.42
	St. Martin	81.71
	St. Mary	84.08
	St. Tammany	273.58
	Tangipahoa	129.03
	Tensas	71.46
	Terrebonne	104.98
	Union	77.60
	Vermilion	73.35
	Vernon	94.40
	Washington	92.08
	Webster	74.93
	West Baton Rouge.	71.89
	West Carroll	84.03
	West Feliciana	74.83
	Winn	71.49
Maine	Androscoggin	92.11
	Aroostook	45.48
	Cumberland	178.42
	Franklin	64.89
	Hancock	72.99
	Kennebec	78.97
	Knox	123.43
	Lincoln	121.31
	Oxford	76.12
	Penobscot	64.42
	Piscataquis	36.78
	Sagadahoc	107.99
	Somerset	38.56
	Waldo	78.32
	Washington	40.07
	York	133.75
Maryland	Allegany	153.12
	Anne Arundel	282.37
	Baltimore	405.95
	Calvert	280.86
	Caroline	195.13
	Carroll	223.94
	Cecil	219.53
	Charles	258.99
	Dorchester	155.42
	Frederick	260.74
	Garrett	124.89
	Harford	298.64
	Howard	250.72
	Kent	180.97
	Montgomery	224.89
	Prince George's	222.68
	Queen Anne's	200.96
	Somerset	156.79
	St. Mary's	272.43
	Talbot	192.45

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023

State	County	Fee/acre/yr
	Washington	220.62
	Wicomico	192.61
	Worcester	145.13
Massachusetts	Barnstable	751.40
	Berkshire	187.98
	Bristol	447.23
	Dukes	281.06
	Essex	429.13
	Franklin	157.86
	Hampden	254.35
	Hampshire	188.42
	Middlesex	392.09
	Nantucket	962.13
	Norfolk	421.75
	Plymouth	235.47
	Suffolk	5,653.64
	Worcester	302.41
Michigan	Alcona	70.40
	Alger	55.45
	Allegan	162.57
	Alpena	69.18
	Antrim	114.24
	Arenac	91.19
	Baraga	59.50
	Barry	130.50
	Bay	137.32
	Benzie	107.66
	Berrien	175.18
	Branch	115.14
	Calhoun	144.31
	Cass	125.63
	Charlevoix	102.47
	Cheboygan	69.64
	Chippewa	58.82
	Clare	81.84
	Clinton	153.71
	Crawford	95.19
	Delta	48.52
	Dickinson	74.12
	Eaton	113.51
	Emmet	102.39
	Genesee	143.03
	Gladwin	106.25
	Gogebic	70.70
	Grand Traverse	172.93
	Gratiot	147.65
	Hillsdale	117.12
	Houghton	63.98
	Huron	164.39
	Ingham	144.74
	Ionia	134.68
	Iosco	85.70
	Iron	53.71
	Isabella	111.42
	Jackson	135.53
	Kalamazoo	191.76
	Kalkaska	72.14
	Kent	200.60
	Keweenaw	91.74
	Lake	66.92
	Lapeer	125.22
	Leelanau	198.99
	Lenawee	142.05
	Livingston	154.96
	Luce	68.52
	Mackinac	54.28
	Macomb	138.49
	Manistee	78.39
	Marquette	59.96
	Mason	84.56
	Mecosta	95.27
	Menominee	57.76
	Midland	150.64
	Missaukee	99.43
	Monroe	167.33
	Montcalm	108.48
	Montmorency	58.33
	Muskegon	174.64
	Newaygo	105.71
	Oakland	315.93

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Oceana	113.05
	Ogemaw	76.03
	Ontonagon	43.41
	Osceola	81.63
	Oscoda	74.50
	Otsego	75.56
	Ottawa	224.82
	Presque Isle	63.74
	Roscommon	66.62
	Saginaw	157.79
	Sanilac	134.00
	Schoolcraft	49.47
	Shiawassee	122.61
	St. Clair	142.81
	St. Joseph	155.40
	Tuscola	141.80
	Van Buren	157.35
	Washtenaw	212.64
	Wayne	314.24
	Wexford	91.55
Minnesota	Aitkin	58.70
	Anoka	211.26
	Becker	80.89
	Beltrami	54.72
	Benton	122.19
	Big Stone	121.02
	Blue Earth	200.46
	Brown	182.98
	Carlton	59.98
	Carver	187.66
	Cass	69.67
	Chippewa	164.05
	Chisago	127.34
	Clay	109.89
	Clearwater	56.39
	Cook	164.97
	Cottonwood	175.94
	Crow Wing	74.82
	Dakota	192.11
	Dodge	191.83
	Douglas	109.83
	Faribault	189.24
	Fillmore	154.59
	Freeborn	167.84
	Goodhue	172.68
	Grant	122.55
	Hennepin	374.76
	Houston	119.41
	Hubbard	73.65
	Isanti	108.19
	Itasca	79.10
	Jackson	179.19
	Kanabec	73.82
	Kandiyohi	145.24
	Kittson	62.60
	Koochiching	40.16
	Lac qui Parle	124.64
	Lake	101.01
	Lake of the Woods.	47.23
	Le Sueur	171.87
	Lincoln	134.60
	Lyon	162.88
	Mahnomen	82.25
	Marshall	68.86
	Martin	186.82
	McLeod	159.32
	Meeker	144.46
	Mille Lacs	86.34
	Morrison	92.13
	Mower	189.63
	Murray	171.62
	Nicollet	194.89
	Nobles	192.36
	Norman	91.88
	Olmsted	185.29
	Otter Tail	82.64
	Pennington	53.66
	Pine	65.80
	Pipestone	162.36

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Polk	91.30
	Pope	115.34
	Ramsey	741.66
	Red Lake	65.97
	Redwood	173.66
	Renville	182.59
	Rice	190.86
	Rock	212.40
	Roseau	48.51
	Scott	211.26
	Sherburne	143.48
	Sibley	187.77
	St. Louis	55.45
	Stearns	143.32
	Steele	172.60
	Stevens	141.31
	Swift	140.37
	Todd	76.40
	Traverse	138.58
	Wabasha	153.62
	Wadena	61.23
	Waseca	184.29
	Washington	242.02
	Watonwan	197.54
	Wilkin	107.77
	Winona	160.13
	Wright	179.28
	Yellow Medicine	150.53
Mississippi	Adams	76.97
	Alcorn	55.60
	Amite	83.29
	Attala	48.17
	Benton	50.25
	Bolivar	78.93
	Calhoun	46.34
	Carroll	55.79
	Chickasaw	52.26
	Choctaw	48.04
	Claiborne	70.66
	Clarke	58.37
	Clay	48.98
	Coahoma	86.29
	Copiah	66.88
	Covington	94.06
	DeSoto	78.51
	Forrest	110.74
	Franklin	82.82
	George	97.35
	Greene	65.96
	Grenada	57.40
	Hancock	100.74
	Harrison	218.50
	Hinds	85.90
	Holmes	63.27
	Humphreys	85.32
	Issaquena	71.42
	Itawamba	44.67
	Jackson	130.78
	Jasper	73.19
	Jefferson	65.75
	Jefferson Davis	67.06
	Jones	98.79
	Kemper	52.76
	Lafayette	71.49
	Lamar	92.58
	Lauderdale	53.62
	Lawrence	83.78
	Leake	78.98
	Lee	47.80
	Leflore	75.72
	Lincoln	80.13
	Lowndes	66.01
	Madison	68.57
	Marion	75.17
	Marshall	62.70
	Monroe	57.35
	Montgomery	52.16
	Neshoba	69.51
	Newton	61.87
	Noxubee	66.09

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Oktibbeha	72.95
	Panola	64.27
	Pearl River	92.50
	Perry	83.76
	Pike	97.22
	Pontotoc	51.35
	Prentiss	53.39
	Quitman	74.65
	Rankin	86.11
	Scott	66.43
	Sharkey	86.37
	Simpson	71.96
	Smith	74.96
	Stone	86.31
	Sunflower	83.08
	Tallahatchie	73.58
	Tate	73.71
	Tippah	54.06
	Tishomingo	49.31
	Tunica	77.10
	Union	52.16
	Walthall	80.99
	Warren	63.33
	Washington	96.75
	Wayne	80.78
	Webster	47.83
	Wilkinson	62.65
	Winston	59.41
	Yalobusha	48.64
	Yazoo	72.77
Missouri	Adair	76.30
	Andrew	105.02
	Atchison	133.99
	Audrain	116.31
	Barry	93.71
	Barton	75.24
	Bates	84.45
	Benton	74.80
	Bollinger	68.51
	Boone	154.52
	Buchanan	110.76
	Butler	128.31
	Caldwell	86.63
	Callaway	108.22
	Camden	60.34
	Cape Girardeau	118.69
	Carroll	97.84
	Carter	52.17
	Cass	102.73
	Cedar	68.02
	Chariton	93.98
	Christian	110.05
	Clark	97.70
	Clay	113.93
	Clinton	101.69
	Cole	99.64
	Cooper	89.31
	Crawford	70.59
	Dade	76.71
	Dallas	69.36
	Daviess	89.23
	DeKalb	89.45
	Dent	57.14
	Douglas	57.39
	Dunklin	139.10
	Franklin	105.60
	Gasconade	76.16
	Gentry	84.66
	Greene	129.67
	Grundy	80.02
	Harrison	75.65
	Henry	73.51
	Hickory	57.61
	Holt	133.72
	Howard	82.61
	Howell	58.59
	Iron	56.43
	Jackson	158.89
	Jasper	88.03
	Jefferson	114.78

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Johnson	91.39
	Knox	83.13
	Laclede	68.79
	Lafayette	123.94
	Lawrence	87.40
	Lewis	90.51
	Lincoln	119.18
	Linn	78.79
	Livingston	92.15
	Macon	87.29
	Madison	57.36
	Maries	53.86
	Marion	108.39
	McDonald	73.30
	Mercer	73.60
	Miller	68.24
	Mississippi	159.52
	Moniteau	97.56
	Monroe	97.26
	Montgomery	103.06
	Morgan	104.86
	New Madrid	152.79
	Newton	99.45
	Nodaway	109.64
	Oregon	48.67
	Osage	66.00
	Ozark	58.29
	Pemiscot	143.07
	Perry	89.45
	Pettis	95.65
	Phelps	72.04
	Pike	96.09
	Platte	121.04
	Polk	69.00
	Pulaski	61.13
	Putnam	68.87
	Ralls	105.22
	Randolph	94.58
	Ray	96.09
	Reynolds	43.70
	Ripley	66.85
	Saline	109.59
	Schuyler	70.54
	Scotland	92.10
	Scott	139.02
	Shannon	53.65
	Shelby	101.91
	St Louis	118.82
	St. Charles	133.50
	St. Clair	67.04
	St. Francois	80.15
	Ste. Genevieve	80.65
	Stoddard	146.29
	Stone	79.09
	Sullivan	63.89
	Taney	61.08
	Texas	56.46
	Vernon	77.64
	Warren	110.63
	Washington	64.82
	Wayne	64.22
	Webster	84.77
	Worth	77.72
	Wright	58.98
Montana	Beaverhead	27.74
	Big Horn	8.28
	Blaine	12.47
	Broadwater	24.64
	Carbon	31.25
	Carter	11.33
	Cascade	25.53
	Chouteau	19.65
	Custer	11.29
	Daniels	13.35
	Dawson	14.07
	Deer Lodge	40.92
	Fallon	12.72
	Fergus	23.04
	Flathead	134.56
	Gallatin	63.82

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Garfield	8.51
	Glacier	24.58
	Golden Valley	14.11
	Granite	34.08
	Hill	18.13
	Jefferson	35.85
	Judith Basin	19.57
	Lake	33.82
	Lewis and Clark	27.51
	Liberty	18.89
	Lincoln	110.57
	Madison	36.01
	McCone	11.12
	Meagher	19.12
	Mineral	105.35
	Missoula	58.89
	Musselshell	13.46
	Park	54.95
	Petroleum	14.28
	Phillips	11.16
	Pondera	25.42
	Powder River	11.60
	Powell	27.27
	Prairie	16.30
	Ravalli	120.76
	Richland	18.47
	Roosevelt	15.21
	Rosebud	9.06
	Sanders	20.81
	Sheridan	14.62
	Silver Bow	47.41
	Stillwater	28.31
	Sweet Grass	23.93
	Teton	24.98
	Toole	18.47
	Treasure	12.17
	Valley	13.56
	Wheatland	14.60
	Wibaux	12.99
	Yellowstone	21.12
Nebraska	Adams	134.74
	Antelope	116.14
	Arthur	20.28
	Banner	22.07
	Blaine	25.14
	Boone	112.62
	Box Butte	33.77
	Boyd	51.34
	Brown	29.67
	Buffalo	111.20
	Burt	155.93
	Butler	144.11
	Cass	141.93
	Cedar	131.18
	Chase	52.78
	Cherry	23.62
	Cheyenne	25.82
	Clay	122.77
	Colfax	156.79
	Cuming	154.08
	Custer	62.65
	Dakota	143.17
	Dawes	22.50
	Dawson	86.37
	Deuel	33.03
	Dixon	118.37
	Dodge	162.31
	Douglas	193.50
	Dundy	38.73
	Fillmore	137.91
	Franklin	87.64
	Frontier	47.56
	Furnas	62.45
	Gage	112.06
	Garden	21.92
	Garfield	37.54
	Gosper	71.18
	Grant	21.19
	Greeley	75.05
	Hall	128.67

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Hamilton	160.51
	Harlan	72.85
	Hayes	35.82
	Hitchcock	39.84
	Holt	60.25
	Hooker	18.61
	Howard	88.37
	Jefferson	105.08
	Johnson	91.91
	Kearney	132.44
	Keith	41.16
	Keya Paha	35.84
	Kimball	27.21
	Knox	84.67
	Lancaster	141.71
	Lincoln	42.38
	Logan	30.38
	Loup	29.44
	Madison	147.30
	McPherson	20.73
	Merrick	128.44
	Morrill	28.98
	Nance	107.00
	Nemaha	115.13
	Nuckolls	90.83
	Otoe	125.48
	Pawnee	82.12
	Perkins	54.17
	Phelps	129.45
	Pierce	123.33
	Platte	160.18
	Polk	149.63
	Red Willow	49.29
	Richardson	108.01
	Rock	28.81
	Saline	119.38
	Sarpy	188.31
	Saunders	142.79
	Scotts Bluff	51.59
	Seward	144.54
	Sheridan	24.55
	Sherman	67.74
	Sioux	22.81
	Stanton	126.34
	Thayer	99.23
	Thomas	19.74
	Thurston	122.19
	Valley	72.85
	Washington	165.02
	Wayne	139.53
	Webster	69.33
	Wheeler	38.68
	York	174.11
Nevada	Carson City	6.44
	Churchill	13.56
	Clark	22.02
	Douglas	14.55
	Elko	3.89
	Esmeralda	14.75
	Eureka	3.54
	Humboldt	6.28
	Lander	7.43
	Lincoln	18.24
	Lyon	16.19
	Mineral	2.08
	Nye	12.27
	Pershing	5.67
	Storey	6.44
	Washoe	7.27
	White Pine	9.39
New Hampshire	Belknap	130.52
	Carroll	104.36
	Cheshire	100.70
	Coos	68.10
	Grafton	103.78
	Hillsborough	206.52
	Merrimack	154.00
	Rockingham	299.64
	Strafford	172.47
	Sullivan	127.28

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
New Jersey	Atlantic	319.76
	Bergen	2,492.05
	Burlington	251.82
	Camden	411.33
	Cape May	364.78
	Cumberland	245.53
	Essex	2,115.16
	Gloucester	317.56
	Hudson	1,260.32
	Hunterdon	391.24
	Mercer	453.79
	Middlesex	545.46
	Monmouth	525.64
	Morris	536.76
	Ocean	476.76
	Passaic	800.49
	Salem	210.94
	Somerset	495.43
	Sussex	288.97
	Union	3,919.18
	Warren	305.23
New Mexico	Bernalillo	55.47
	Catron	8.44
	Chaves	9.51
	Cibola	6.37
	Colfax	10.15
	Curry	13.97
	De Baca	7.54
	Dona Ana	49.94
	Eddy	11.88
	Grant	9.79
	Guadalupe	6.25
	Harding	7.36
	Hidalgo	10.47
	Lea	8.28
	Lincoln	10.01
	Los Alamos	10.47
	Luna	10.35
	McKinley	8.60
	Mora	11.10
	Otero	8.83
	Quay	7.08
	Rio Arriba	17.25
	Roosevelt	9.19
	San Juan	10.74
	San Miguel	8.08
	Sandoval	9.03
	Santa Fe	17.71
	Sierra	7.26
	Socorro	12.63
	Taos	32.87
	Torrance	9.59
	Union	8.30
	Valencia	23.36
New York	Albany	120.70
	Allegany	54.65
	Bronx	87.66
	Broome	83.86
	Cattaraugus	62.20
	Cayuga	107.37
	Chautauqua	71.81
	Chemung	71.10
	Chenango	55.82
	Clinton	71.81
	Columbia	113.70
	Cortland	62.98
	Delaware	78.19
	Dutchess	245.42
	Erie	124.23
	Essex	64.67
	Franklin	67.52
	Fulton	75.77
	Genesee	90.81
	Greene	85.68
	Hamilton	90.70
	Herkimer	62.14
	Jefferson	72.68
	Kings	12,043.04
	Lewis	54.54
	Livingston	100.77

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Madison	71.16
	Monroe	116.90
	Montgomery	67.46
	Nassau	471.35
	New York	87.66
	Niagara	83.34
	Oneida	72.19
	Onondaga	111.90
	Ontario	109.33
	Orange	188.30
	Orleans	86.14
	Oswego	60.08
	Otsego	72.38
	Putnam	162.92
	Queens	1,317.15
	Rensselaer	95.37
	Richmond	87.66
	Rockland	781.11
	Saratoga	159.90
	Schenectady	116.41
	Schoharie	66.11
	Schuyler	88.77
	Seneca	101.97
	St. Lawrence	49.74
	Steuben	56.98
	Suffolk	331.72
	Sullivan	114.38
	Tioga	62.03
	Tompkins	102.86
	Ulster	187.30
	Warren	113.32
	Washington	75.85
	Wayne	93.31
	Westchester	289.02
	Wyoming	94.01
	Yates	141.90
North Carolina	Alamance	163.56
	Alexander	153.53
	Alleghany	134.58
	Anson	111.38
	Ashe	143.33
	Avery	177.02
	Beaufort	93.23
	Bertie	82.65
	Bladen	90.88
	Brunswick	106.86
	Buncombe	271.20
	Burke	155.41
	Cabarrus	237.40
	Caldwell	123.70
	Camden	86.74
	Carteret	123.65
	Caswell	88.35
	Catawba	178.36
	Chatham	150.06
	Cherokee	133.73
	Chowan	95.24
	Clay	171.11
	Cleveland	127.14
	Columbus	88.97
	Craven	107.32
	Cumberland	140.82
	Currituck	133.73
	Dare	114.68
	Davidson	158.02
	Davie	138.72
	Duplin	130.79
	Durham	290.48
	Edgecombe	83.11
	Forsyth	253.70
	Franklin	96.93
	Gaston	167.40
	Gates	98.82
	Graham	130.52
	Granville	94.97
	Greene	107.54
	Guilford	222.93
	Halifax	69.95
	Harnett	151.97
	Haywood	176.12

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Henderson	211.42
	Hertford	87.20
	Hoke	120.00
	Hyde	81.07
	Iredell	148.24
	Jackson	223.39
	Johnston	129.24
	Jones	110.51
	Lee	157.12
	Lenoir	108.49
	Lincoln	156.22
	Macon	217.15
	Madison	135.18
	Martin	73.00
	McDowell	143.33
	Mecklenburg	934.67
	Mitchell	158.51
	Montgomery	129.29
	Moore	139.05
	Nash	126.13
	New Hanover	927.88
	Northampton	76.24
	Onslow	171.30
	Orange	182.26
	Pamlico	99.55
	Pasquotank	108.60
	Pender	145.81
	Perquimans	97.04
	Person	102.99
	Pitt	104.81
	Polk	175.61
	Randolph	137.71
	Richmond	118.99
	Robeson	90.37
	Rockingham	105.58
	Rowan	159.47
	Rutherford	130.35
	Sampson	133.33
	Scotland	98.13
	Stanly	125.37
	Stokes	111.33
	Surry	121.88
	Swain	99.72
	Transylvania	210.85
	Tyrrell	113.07
	Union	145.46
	Vance	81.18
	Wake	317.79
	Warren	79.30
	Washington	99.99
	Watauga	175.52
	Wayne	136.02
	Wilkes	139.68
	Wilson	103.15
	Yadkin	149.14
	Yancey	148.46
North Dakota	Adams	29.75
	Barnes	64.43
	Benson	38.14
	Billings	25.62
	Bottineau	43.10
	Bowman	28.66
	Burke	29.38
	Burleigh	52.97
	Cass	103.65
	Cavalier	57.99
	Dickey	66.21
	Divide	29.80
	Dunn	31.98
	Eddy	40.56
	Emmons	44.19
	Foster	55.98
	Golden Valley	29.33
	Grand Forks	95.10
	Grant	29.86
	Griggs	49.54
	Hettinger	39.17
	Kidder	35.07
	LaMoure	70.78
	Logan	33.20

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	McHenry	30.36
	McIntosh	38.03
	McKenzie	28.60
	McLean	49.76
	Mercer	38.14
	Morton	39.14
	Mountrail	35.63
	Nelson	37.92
	Oliver	40.23
	Pembina	76.86
	Pierce	39.28
	Ramsey	50.43
	Ransom	56.09
	Renville	44.75
	Richland	88.91
	Rolette	35.69
	Sargent	77.70
	Sheridan	30.61
	Sioux	34.65
	Slope	29.47
	Stark	37.11
	Steele	61.25
	Stutsman	55.90
	Towner	38.61
	Traill	85.98
	Walsh	70.06
	Ward	45.53
	Wells	47.70
	Williams	30.56
Ohio	Adams	107.91
	Allen	201.70
	Ashland	168.87
	Ashtabula	121.56
	Athens	89.31
	Auglaize	226.30
	Belmont	106.44
	Brown	122.53
	Butler	229.47
	Carroll	130.93
	Champaign	199.31
	Clark	209.65
	Clermont	155.81
	Clinton	165.62
	Columbiana	160.37
	Coshocton	146.74
	Crawford	179.18
	Cuyahoga	453.49
	Darke	231.25
	Defiance	159.45
	Delaware	217.49
	Erie	181.91
	Fairfield	214.10
	Fayette	198.53
	Franklin	223.52
	Fulton	194.17
	Gallia	87.37
	Geauga	201.39
	Greene	198.48
	Guernsey	103.46
	Hamilton	369.52
	Hancock	167.95
	Hardin	163.67
	Harrison	92.01
	Henry	182.08
	Highland	139.57
	Hocking	125.84
	Holmes	215.18
	Huron	169.09
	Jackson	78.22
	Jefferson	151.89
	Knox	168.09
	Lake	226.89
	Lawrence	91.37
	Licking	183.91
	Logan	168.20
	Lorain	208.04
	Lucas	230.08
	Madison	192.75
	Mahoning	184.19
	Marion	162.28

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Medina	217.74
	Meigs	96.37
	Mercer	268.89
	Miami	206.29
	Monroe	90.84
	Montgomery	200.53
	Morgan	96.12
	Morrow	166.84
	Muskingum	114.00
	Noble	85.56
	Ottawa	150.36
	Paulding	174.01
	Perry	127.15
	Pickaway	167.70
	Pike	115.53
	Portage	180.99
	Preble	177.82
	Putnam	186.08
	Richland	208.62
	Ross	127.40
	Sandusky	164.73
	Scioto	87.23
	Seneca	163.70
	Shelby	213.71
	Stark	256.96
	Summit	371.52
	Trumbull	120.39
	Tuscarawas	154.42
	Union	176.52
	Van Wert	208.32
	Vinton	88.01
	Warren	217.49
	Washington	88.65
	Wayne	248.51
	Williams	143.46
	Wood	185.11
	Wyandot	158.61
Oklahoma	Adair	65.52
	Alfalfa	46.65
	Atoka	50.24
	Beaver	24.60
	Beckham	36.49
	Blaine	44.59
	Bryan	62.10
	Caddo	47.44
	Canadian	64.34
	Carter	55.61
	Cherokee	68.01
	Choctaw	48.59
	Cimarron	22.60
	Cleveland	132.88
	Coal	49.88
	Comanche	52.81
	Cotton	37.23
	Craig	57.66
	Creek	60.07
	Custer	39.77
	Delaware	74.75
	Dewey	37.55
	Ellis	27.23
	Garfield	47.55
	Garvin	52.51
	Grady	57.47
	Grant	43.96
	Greer	31.66
	Harmon	34.29
	Harper	30.16
	Haskell	52.10
	Hughes	43.69
	Jackson	38.29
	Jefferson	42.35
	Johnston	51.28
	Kay	45.06
	Kingfisher	52.67
	Kiowa	34.35
	Latimer	49.20
	Le Flore	59.22
	Lincoln	61.38
	Logan	61.36
	Love	67.25

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Major	40.65
	Marshall	66.34
	Mayes	76.15
	McClain	72.20
	McCurtain	58.65
	McIntosh	52.07
	Murray	58.56
	Muskogee	61.80
	Noble	48.73
	Nowata	56.51
	Okfuskee	46.92
	Oklahoma	177.50
	Okmulgee	60.59
	Osage	43.61
	Ottawa	76.04
	Pawnee	48.84
	Payne	66.32
	Pittsburg	47.99
	Pontotoc	59.39
	Pottawatomie	61.74
	Pushmataha	42.24
	Roger Mills	35.12
	Rogers	79.71
	Seminole	49.94
	Sequoyah	60.02
	Stephens	48.18
	Texas	27.75
	Tillman	36.35
	Tulsa	159.67
	Wagoner	77.60
	Washington	64.48
	Washita	40.70
	Woods	36.32
	Woodward	33.31
Oregon	Baker	24.24
	Benton	124.83
	Clackamas	417.13
	Clatsop	138.69
	Columbia	167.79
	Coos	59.10
	Crook	18.52
	Curry	68.66
	Deschutes	168.04
	Douglas	66.19
	Gilliam	13.96
	Grant	20.07
	Harney	13.22
	Hood River	270.01
	Jackson	164.69
	Jefferson	16.58
	Josephine	348.85
	Klamath	42.44
	Lake	20.96
	Lane	165.89
	Lincoln	106.60
	Linn	137.51
	Malheur	28.85
	Marion	239.78
	Morrow	21.85
	Multnomah	404.82
	Polk	137.97
	Sherman	16.48
	Tillamook	151.16
	Umatilla	35.37
	Union	35.13
	Wallowa	31.64
	Wasco	17.66
	Washington	331.53
	Wheeler	17.55
	Yamhill	197.34
Pennsylvania	Adams	189.72
	Allegheny	241.51
	Armstrong	100.40
	Beaver	166.68
	Bedford	112.30
	Berks	308.82

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Blair	185.89
	Bradford	99.82
	Bucks	259.20
	Butler	145.77
	Cambria	127.59
	Cameron	78.36
	Carbon	182.36
	Centre	184.59
	Chester	334.47
	Clarion	88.44
	Clearfield	99.40
	Clinton	180.13
	Columbia	166.11
	Crawford	92.05
	Cumberland	209.75
	Dauphin	242.20
	Delaware	396.60
	Elk	115.66
	Erie	124.28
	Fayette	114.09
	Forest	135.00
	Franklin	207.41
	Fulton	115.03
	Greene	100.40
	Huntingdon	132.63
	Indiana	99.18
	Jefferson	91.30
	Juniata	179.69
	Lackawanna	146.05
	Lancaster	503.77
	Lawrence	120.89
	Lebanon	396.74
	Lehigh	216.25
	Luzerne	167.04
	Lycoming	141.03
	McKean	78.47
	Mercer	110.12
	Mifflin	170.24
	Monroe	162.33
	Montgomery	533.39
	Montour	177.48
	Northampton	206.74
	Northumberland	161.78
	Perry	182.64
	Philadelphia	1,617.56
	Pike	61.33
	Potter	94.47
	Schuylkill	183.08
	Snyder	202.01
	Somerset	88.80
	Sullivan	112.71
	Susquehanna	130.59
	Tioga	104.61
	Union	264.46
	Venango	104.61
	Warren	95.35
	Washington	179.39
	Wayne	118.30
	Westmoreland	162.80
	Wyoming	114.17
	York	225.95
Puerto Rico	All Areas	149.23
Rhode Island	Bristol	1,050.42
	Kent	329.79
	Newport	568.65
	Providence	332.15
	Washington	317.05
South Carolina	Abbeville	83.76
	Aiken	101.92
	Allendale	59.68
	Anderson	153.54
	Bamberg	79.33
	Barnwell	75.35
	Beaufort	97.99
	Berkeley	72.32
	Calhoun	82.54

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Charleston	253.48
	Cherokee	91.01
	Chester	89.90
	Chesterfield	79.87
	Clarendon	61.52
	Colleton	81.98
	Darlington	70.23
	Dillon	61.98
	Dorchester	76.05
	Edgefield	95.42
	Fairfield	77.57
	Florence	85.66
	Georgetown	55.27
	Greenville	248.58
	Greenwood	92.42
	Hampton	65.99
	Horry	122.02
	Jasper	99.05
	Kershaw	83.57
	Lancaster	106.92
	Laurens	103.73
	Lee	65.36
	Lexington	149.70
	Marion	63.07
	Marlboro	52.13
	McCormick	54.22
	Newberry	89.66
	Oconee	172.75
	Orangeburg	81.65
	Pickens	190.74
	Richland	129.78
	Saluda	83.68
	Spartanburg	222.69
	Sumter	81.03
	Union	68.56
	Williamsburg	60.74
	York	188.82
South Dakota	Aurora	73.68
	Beadle	74.76
	Bennett	26.43
	Bon Homme	110.60
	Brookings	127.76
	Brown	93.33
	Brule	71.57
	Buffalo	42.89
	Butte	26.62
	Campbell	50.83
	Charles Mix	77.40
	Clark	87.45
	Clay	130.54
	Codington	96.25
	Corson	25.51
	Custer	44.31
	Davison	94.33
	Day	73.43
	Deuel	95.72
	Dewey	26.93
	Douglas	103.30
	Edmunds	68.29
	Fall River	19.88
	Faulk	70.71
	Grant	103.52
	Gregory	52.16
	Haakon	25.62
	Hamlin	108.99
	Hand	57.08
	Hanson	119.99
	Harding	18.46
	Hughes	52.50
	Hutchinson	124.79
	Hyde	42.39
	Jackson	24.29
	Jerauld	66.38
	Jones	31.73

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023

State	County	Fee/acre/yr
	Kingsbury	105.77
	Lake	142.17
	Lawrence	49.67
	Lincoln	191.72
	Lyman	45.83
	Marshall	78.12
	McCook	121.24
	McPherson	59.80
	Meade	26.40
	Mellette	26.79
	Miner	98.08
	Minnehaha	179.04
	Moody	161.57
	Pennington	18.70
	Perkins	29.37
	Potter	23.07
	Roberts	58.69
	Sanborn	83.48
	Shannon	79.32
	Spink	86.95
	Stanley	25.57
	Sully	59.80
	Todd	23.60
	Tripp	44.97
	Turner	139.34
	Union	163.10
	Walworth	54.97
	Yankton	122.76
	Ziebach	23.74
Tennessee	Anderson	151.90
	Bedford	115.82
	Benton	69.18
	Bledsoe	95.75
	Blount	178.89
	Bradley	168.58
	Campbell	115.01
	Cannon	99.70
	Carroll	76.02
	Carter	144.51
	Cheatham	126.66
	Chester	70.60
	Claiborne	86.94
	Clay	92.64
	Cocke	123.05
	Coffee	114.10
	Crockett	93.53
	Cumberland	112.37
	Davidson	249.54
	Decatur	61.40
	DeKalb	94.06
	Dickson	116.77
	Dyer	93.50
	Fayette	93.75
	Fentress	96.50
	Franklin	113.99
	Gibson	98.42
	Giles	91.03
	Grainger	105.56
	Greene	124.88
	Grundy	96.14
	Hamblen	153.07
	Hamilton	273.78
	Hancock	73.99
	Hardeman	63.62
	Hardin	62.04
	Hawkins	103.59
	Haywood	92.25
	Henderson	70.10
	Henry	92.39
	Hickman	87.66
	Houston	89.86
	Humphreys	77.35
	Jackson	86.30
	Jefferson	143.12
	Johnson	110.43
	Knox	273.64
	Lake	97.59
	Lauderdale	94.09
	Lawrence	91.61
	Lewis	79.47

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Lincoln	101.81
	Loudon	158.15
	Macon	104.59
	Madison	90.69
	Marion	90.44
	Marshall	97.23
	Maury	112.21
	McMinn	129.69
	McNairy	61.23
	Meigs	92.47
	Monroe	118.18
	Montgomery	136.67
	Moore	100.64
	Morgan	85.00
	Obion	100.03
	Overton	93.78
	Perry	61.59
	Pickett	97.31
	Polk	114.32
	Putnam	129.22
	Rhea	119.82
	Roane	146.37
	Robertson	146.90
	Rutherford	204.60
	Scott	74.24
	Sequatchie	107.40
	Sevier	169.94
	Shelby	145.56
	Smith	95.92
	Stewart	73.66
	Sullivan	196.37
	Sumner	147.65
	Tipton	91.44
	Trousdale	95.39
	Unicoi	198.59
	Union	113.74
	Van Buren	93.11
	Warren	96.06
	Washington	218.77
	Wayne	65.79
	Weakley	100.51
	White	106.06
	Williamson	168.46
	Wilson	136.50
Texas	Anderson	75.24
	Andrews	20.88
	Angelina	96.68
	Aransas	44.68
	Archer	39.43
	Armstrong	24.65
	Atascosa	60.57
	Austin	103.63
	Bailey	22.60
	Bandera	67.15
	Bastrop	109.15
	Baylor	27.38
	Bee	54.31
	Bell	87.08
	Bexar	157.57
	Blanco	79.12
	Borden	23.43
	Bosque	65.88
	Bowie	79.67
	Brazoria	124.19
	Brazos	150.94
	Brewster	18.07
	Briscoe	23.69
	Brooks	41.18
	Brown	63.97
	Burleson	90.92
	Burnet	78.64
	Caldwell	101.38
	Calhoun	56.88
	Callahan	45.95
	Cameron	94.45
	Camp	87.40
	Carson	36.06
	Cass	62.22
	Castro	36.61
	Chambers	62.80

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Cherokee	82.43
	Childress	24.54
	Clay	51.05
	Cochran	24.57
	Coke	25.52
	Coleman	43.59
	Collin	263.88
	Collingsworth	26.90
	Colorado	79.83
	Comal	90.61
	Comanche	70.02
	Concho	39.13
	Cooke	87.74
	Coryell	69.14
	Cottle	29.45
	Crane	22.50
	Crockett	21.54
	Crosby	25.74
	Culberson	19.53
	Dallam	30.09
	Dallas	214.83
	Dawson	27.59
	Deaf Smith	29.93
	Delta	52.21
	Denton	253.38
	DeWitt	81.51
	Dickens	28.26
	Dimmit	37.41
	Donley	22.95
	Duval	45.02
	Eastland	52.11
	Ector	30.72
	Edwards	31.04
	El Paso	106.52
	Ellis	85.19
	Erath	84.00
	Falls	66.67
	Fannin	76.23
	Fayette	106.98
	Fisher	30.01
	Floyd	26.69
	Foard	29.61
	Fort Bend	82.33
	Franklin	82.25
	Freestone	68.05
	Frio	49.03
	Gaines	30.64
	Galveston	140.59
	Garza	26.66
	Gillespie	80.63
	Glasscock	24.38
	Goliad	70.52
	Gonzales	84.37
	Gray	30.35
	Grayson	179.62
	Gregg	149.88
	Grimes	102.07
	Guadalupe	103.29
	Hale	34.52
	Hall	24.38
	Hamilton	66.59
	Hansford	35.61
	Hardeman	27.70
	Hardin	82.96
	Harris	229.10
	Harrison	69.73
	Hartley	32.93
	Haskell	27.91
	Hays	259.29
	Hemphill	29.56
	Henderson	84.58
	Hidalgo	114.59
	Hill	67.10
	Hockley	26.74
	Hood	90.95
	Hopkins	77.42
	Houston	74.05
	Howard	24.54
	Hudspeth	23.96
	Hunt	82.09

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Hutchinson	25.68
	Irion	26.40
	Jack	61.90
	Jackson	77.21
	Jasper	85.09
	Jeff Davis	18.23
	Jefferson	62.48
	Jim Hogg	46.09
	Jim Wells	54.89
	Johnson	104.83
	Jones	30.27
	Karnes	64.90
	Kaufman	79.86
	Kendall	82.14
	Kenedy	19.55
	Kent	22.74
	Kerr	66.25
	Kimble	52.85
	King	18.39
	Kinney	32.93
	Kleberg	35.02
	Knox	29.56
	La Salle	42.03
	Lamar	66.51
	Lamb	33.06
	Lampasas	75.03
	Lavaca	93.15
	Lee	97.53
	Leon	80.58
	Liberty	79.81
	Limestone	48.87
	Lipscomb	29.82
	Live Oak	57.28
	Llano	69.51
	Loving	5.07
	Lubbock	45.16
	Lynn	26.72
	Madison	79.49
	Marion	53.14
	Martin	23.61
	Mason	61.50
	Matagorda	63.60
	Maverick	37.28
	McCulloch	52.29
	McLennan	95.73
	McMullen	48.18
	Medina	70.95
	Menard	39.32
	Midland	42.69
	Milam	83.92
	Mills	66.57
	Mitchell	26.45
	Montague	72.48
	Montgomery	302.83
	Moore	30.09
	Morris	60.57
	Motley	22.47
	Nacogdoches	76.81
	Navarro	62.32
	Newton	58.93
	Nolan	29.24
	Nueces	80.97
	Ochiltree	32.69
	Oldham	21.62
	Orange	122.55
	Palo Pinto	64.74
	Panola	70.84
	Parker	113.98
	Parmer	29.85
	Pecos	18.36
	Polk	79.89
	Potter	26.96
	Presidio	20.77
	Rains	92.30
	Randall	41.97
	Reagan	22.23
	Real	50.97
	Red River	51.13
	Reeves	13.96
	Refugio	33.16

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Roberts	20.19
	Robertson	76.65
	Rockwall	146.88
	Runnels	36.69
	Rusk	67.95
	Sabine	59.86
	San Augustine	74.82
	San Jacinto	108.78
	San Patricio	70.31
	San Saba	64.98
	Schleicher	31.33
	Scurry	27.75
	Shackelford	34.23
	Shelby	93.05
	Sherman	37.97
	Smith	139.24
	Somervell	83.12
	Starr	48.66
	Stephens	46.40
	Sterling	17.99
	Stonewall	24.25
	Sutton	33.70
	Swisher	27.75
	Tarrant	161.95
	Taylor	54.47
	Terrell	19.93
	Terry	27.04
	Throckmorton	37.36
	Titus	66.86
	Tom Green	41.71
	Travis	165.98
	Trinity	70.15
	Tyler	90.53
	Upshur	91.35
	Upton	21.44
	Uvalde	34.46
	Val Verde	26.74
	Van Zandt	97.45
	Victoria	77.47
	Walker	97.61
	Waller	123.90
	Ward	28.23
	Washington	126.85
	Webb	45.45
	Wharton	76.99
	Wheeler	28.89
	Wichita	39.11
	Wilbarger	33.93
	Willacy	46.62
	Williamson	98.75
	Wilson	84.21
	Winkler	29.74
	Wise	103.37
	Wood	89.20
	Yoakum	24.91
	Young	44.87
	Zapata	37.46
	Zavala	46.19
Utah	Beaver	25.88
	Box Elder	17.82
	Cache	56.19
	Carbon	14.39
	Daggett	32.29
	Davis	108.42
	Duchesne	11.35
	Emery	24.43
	Garfield	36.36
	Grand	9.58
	Iron	22.73
	Juab	15.43
	Kane	21.09
	Millard	23.75
	Morgan	25.58
	Piute	24.20
	Rich	10.15
	Salt Lake	112.57
	San Juan	4.27
	Sanpete	32.79
	Sevier	49.79
	Summit	37.96

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Tooele	15.99
	Uintah	7.32
	Utah	101.55
	Wasatch	64.61
	Washington	43.45
	Wayne	52.77
	Weber	108.35
Vermont	Addison	91.48
	Bennington	130.74
	Caledonia	87.53
	Chittenden	175.20
	Essex	53.65
	Franklin	85.56
	Grand Isle	118.06
	Lamoille	95.62
	Orange	100.97
	Orleans	74.28
	Rutland	75.74
	Washington	117.49
	Windham	137.46
	Windsor	106.02
Virginia	Accomack	118.06
	Albemarle	273.64
	Alleghany	116.60
	Amelia	85.59
	Amherst	128.74
	Appomattox	85.59
	Arlington	8,243.41
	Augusta	193.61
	Bath	101.71
	Bedford	121.69
	Bland	95.32
	Botetourt	116.13
	Brunswick	69.54
	Buchanan	66.89
	Buckingham	103.21
	Campbell	85.37
	Caroline	102.24
	Carroll	89.05
	Charles City	93.31
	Charlotte	72.50
	Chesapeake City	161.77
	Chesterfield	254.94
	Clarke	194.91
	Craig	82.71
	Culpeper	158.98
	Cumberland	105.28
	Dickenson	78.01
	Dinwiddie	84.87
	Essex	88.35
	Fairfax	464.90
	Fauquier	203.57
	Floyd	105.17
	Fluvanna	119.36
	Franklin	99.64
	Frederick	199.81
	Giles	85.01
	Gloucester	130.48
	Goochland	150.21
	Grayson	114.94
	Greene	180.66
	Greensville	75.02
	Halifax	73.33
	Hanover	139.28
	Henrico	167.80
	Henry	81.91
	Highland	88.46
	Isle of Wight	102.74
	James City	279.75
	King and Queen	93.42
	King George	141.38
	King William	111.92
	Lancaster	117.21
	Lee	73.19
	Loudoun	271.53
	Louisa	137.01
	Lunenburg	73.69
	Madison	164.56
	Mathews	118.34
	Mecklenburg	76.46

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Middlesex	109.74
	Montgomery	133.94
	Nelson	140.33
	New Kent	148.08
	Northampton	126.83
	Northumberland	83.15
	Nottoway	87.80
	Orange	174.19
	Page	180.22
	Patrick	76.76
	Pittsylvania	78.42
	Powhatan	146.58
	Prince Edward	78.78
	Prince George	105.31
	Prince William	295.82
	Pulaski	97.32
	Rappahannock	190.62
	Richmond	109.41
	Roanoke	158.87
	Rockbridge	136.04
	Rockingham	244.65
	Russell	79.94
	Scott	72.95
	Shenandoah	162.77
	Smyth	81.05
	Southampton	85.39
	Spotsylvania	155.93
	Stafford	362.49
	Suffolk	114.16
	Surry	93.47
	Sussex	76.76
	Tazewell	75.68
	Virginia Beach City.	266.89
	Warren	208.80
	Washington	139.36
	Westmoreland	103.24
	Wise	85.67
	Wythe	108.46
	York	334.58
Washington	Adams	25.84
	Asotin	23.94
	Benton	70.53
	Chelan	278.63
	Clallam	231.03
	Clark	161.86
	Columbia	29.46
	Cowlitz	162.02
	Douglas	21.35
	Ferry	9.37
	Franklin	83.14
	Garfield	28.46
	Grant	61.90
	Grays Harbor	43.33
	Island	198.64
	Jefferson	137.70
	King	637.73
	Kitsap	636.21
	Kittitas	74.67
	Klickitat	32.17
	Lewis	108.57
	Lincoln	22.11
	Mason	154.91
	Okanogan	21.84
	Pacific	62.67
	Pend Oreille	48.22
	Pierce	388.81
	San Juan	171.10
	Skagit	183.28
	Skamania	218.60
	Snohomish	349.77
	Spokane	67.45
	Stevens	28.39
	Thurston	214.94
	Wahkiakum	86.94
	Walla Walla	45.79
	Whatcom	303.85
	Whitman	31.59

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Yakima	49.85
West Virginia	Barbour	64.86
	Berkeley	148.58
	Boone	64.97
	Braxton	57.05
	Brooke	78.47
	Cabell	99.00
	Calhoun	50.64
	Clay	47.83
	Doddridge	59.14
	Fayette	80.91
	Gilmer	36.58
	Grant	72.83
	Greenbrier	72.39
	Hampshire	83.44
	Hancock	127.05
	Hardy	89.25
	Harrison	69.55
	Jackson	61.41
	Jefferson	163.13
	Kanawha	107.80
	Lewis	60.00
	Lincoln	51.19
	Logan	68.72
	Marion	82.33
	Marshall	71.86
	Mason	67.50
	McDowell	172.10
	Mercer	69.86
	Mineral	77.44
	Mingo	31.00
	Monongalia	125.83
	Monroe	73.94
	Morgan	145.38
	Nicholas	72.64
	Ohio	100.66
	Pendleton	62.50
	Pleasants	64.11
	Pocahontas	52.08
	Preston	76.30
	Putnam	79.61
	Raleigh	103.02
	Randolph	67.36
	Ritchie	50.14
	Roane	53.61
	Summers	63.11
	Taylor	85.41
	Tucker	79.52
	Tyler	53.14
	Upshur	73.47
	Wayne	55.80
	Webster	63.86
	Wetzel	53.53
	Wirt	50.22
	Wood	92.58
	Wyoming	92.97
Wisconsin	Adams	123.08
	Ashland	61.25
	Barron	93.75
	Bayfield	60.07
	Brown	232.92
	Buffalo	108.03
	Burnett	74.66
	Calumet	215.90
	Chippewa	97.58
	Clark	111.27
	Columbia	159.80
	Crawford	87.19
	Dane	225.90
	Dodge	160.24
	Door	130.43
	Douglas	53.77
	Dunn	98.74
	Eau Claire	125.22
	Florence	69.29
	Fond du Lac	199.47
	Forest	66.52
	Grant	129.33

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2023—Continued

State	County	Fee/acre/yr
	Green	148.80
	Green Lake	156.84
	Iowa	133.37
	Iron	93.25
	Jackson	104.19
	Jefferson	168.74
	Juneau	101.56
	Kenosha	207.70
	Kewaunee	154.09
	La Crosse	136.74
	Lafayette	163.88
	Langlade	89.71
	Lincoln	88.86
	Manitowoc	187.11
	Marathon	130.27
	Marinette	106.30
	Marquette	114.50
	Menominee	47.60
	Milwaukee	244.80
	Monroe	108.77
	Oconto	114.23
	Oneida	111.46
	Outagamie	197.61
	Ozaukee	179.70
	Pepin	106.22
	Pierce	126.68
	Polk	96.98
	Portage	112.42
	Price	67.42
	Racine	210.63
	Richland	92.02
	Rock	180.66
	Rusk	68.14
	Sauk	115.35
	Sawyer	71.10
	Shawano	127.83
	Sheboygan	180.80
	St. Croix	128.54
	Taylor	80.47
	Trempealeau	108.52
	Vernon	106.49
	Vilas	162.13
	Walworth	190.09
	Washburn	85.77
	Washington	193.39
	Waukesha	151.00
	Waupaca	123.82
	Waushara	116.01
	Winnebago	191.14
	Wood	90.78
Wyoming	Albany	10.97
	Big Horn	23.84
	Campbell	8.49
	Carbon	8.25
	Converse	7.94
	Crook	14.69
	Fremont	19.11
	Goshen	12.93
	Hot Springs	9.32
	Johnson	8.82
	Laramie	12.72
	Lincoln	27.42
	Natrona	6.81
	Niobrara	9.41
	Park	22.41
	Platte	13.17
	Sheridan	18.36
	Sublette	24.77
	Sweetwater	4.44
	Teton	60.74
	Uinta	16.08
	Washakie	17.54
	Weston	10.04

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DELAWARE RIVER BASIN COMMISSION

18 CFR Parts 410 and 440

Importations of Water Into and Exportations of Water From the Delaware River Basin; Discharges of Wastewater From High Volume Hydraulic Fracturing and Related Activities

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its Comprehensive Plan and the Delaware River Basin Water Code concerning importations of water into and exportations of water from the Delaware River Basin; its Special Regulations—High Volume Hydraulic Fracturing, to prohibit discharges to waters or land within the basin of wastewater from high volume hydraulic fracturing (''HVHF'') and HVHF-related activities; and its Water Quality Regulations, to facilitate the implementation in state-issued permits of the prohibition on such discharges.

DATES: This final rule is effective March 6, 2023. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 6, 2023.

FOR FURTHER INFORMATION CONTACT: Pamela M. Bush, Esquire, Commission Secretary and Assistant General Counsel, at *pam.bush@drbc.gov* (preferred) or 609–477–7203.

SUPPLEMENTARY INFORMATION: The Delaware River Basin Commission (''DRBC'' or ''Commission'') is a Federal-interstate compact agency charged with managing the water resources of the Delaware River Basin on a regional basis without regard to political boundaries. Its members are the governors of the four basin states—Delaware, New Jersey, New York, and Pennsylvania—and the Division Engineer, North Atlantic Division, U.S. Army Corps of Engineers, representing the Federal Government.

Background

By a Resolution for the Minutes on February 25, 2021, the DRBC Commissioners directed the Executive Director to prepare and publish for public comment a set of amendments to the Comprehensive Plan and implementing regulations to update the Commission's policies and provisions concerning inter-basin transfers of water and wastewater from and into the basin and to ''include in the draft regulations such other proposed amendments . . . as [the Executive Director, in consultation with the Commissioners] deem necessary or appropriate.'' The directive followed the Commission's decision not to include in its final rule adopted in 2021, portions of a proposed rule published in the **Federal Register** in January 2018 that concerned the exportation of water to support high volume hydraulic fracturing (''HVHF'') and the importation, treatment, and discharge of ''produced water'' and ''CWT wastewater''(with accompanying definitions).[1] In accordance with the Commission's February 25, 2021 directive, the Commission published a new proposed rule on November 22, 2021 (86 FR 66250). The draft regulations appeared on the Commission's website on October 28, 2021,[2] and notice of the proposed amendments appeared in the Delaware Register of Regulations, 25 Del. Reg. 548, 559, on December 1, 2021, the New Jersey Register, 53 N.J.R. 1994, on December 6, 2021, the New York Register on November 17, 2021, p. 2, and the Pennsylvania Bulletin, 51 Pa. B. 7471, on December 4, 2021.

Opportunity for public input on the proposed rules was provided during a comment period that ran from October 28, 2021, through February 28, 2022. In addition to accepting written comments, the Commission accepted oral comment at five hearings conducted via Zoom and telephone. The fifth hearing included toll-free telephone access and real-time English-to-Spanish and Spanish-to-English professional translation, which allowed attendees to listen and participate in either English or Spanish. The Commission received a total of 2,461 public comment submissions, consisting of 2,388 in writing and 73 oral comments. Notably, in many cases, a single written submission consisted of comments with multiple signatories or parts, and many similar or identical comments were separately submitted by multiple commenters using form letters or template language provided by organizations.

The Commission reviewed the statements, consultant reports, scientific literature and other materials submitted by commenters. The staff, in consultation with the Commissioners, prepared a Comment and Response Document summarizing the comments on the proposed rule and setting forth the Commission's responses and revisions in detail. By Resolution No. 2022–04 on December 7, 2022, the Commission adopted the Comment and Response Document simultaneously with its adoption of the final rule.

Changes From the Proposed Rule

Incorporation by reference: The final rule incorporates by reference into the Code of Federal Regulations the Commission's Water Quality Regulations and the Delaware River Basin Water Code (the ''Water Code'') as amended by the Commission on December 7, 2022. For a discussion of the amendments, including changes from those proposed in October and November 2021, see ''Additional Materials'' below. The Water Code and Water Quality Regulations are reasonably available to regulated and other interested parties through the Commission's website, *www.drbc.gov.*

Special Regulations—High Volume Hydraulic Fracturing: The final rule includes the addition of two words to section (1) of the proposed definition of ''Wastewater from HVHF and HVHF-related activities'' in § 440.2 of the Special Regulations. The words ''or'' and ''containing'' are added to clarify that the definition refers to wastewater, brine, or sludge *containing* (as opposed to constituting) the various listed contaminants. The final rule also includes a new defined term—''Discharge of wastewater from HVHF and HVHF-related activities''—to make the meaning and intended effect of the rules more explicit. Additional non-substantive changes were made to conform proposed rule text in § 440.2 to Code of Federal Regulations standards.

Summary of Material Incorporated by Reference

The Delaware River Basin Water Code consists of four articles applicable to public and private water projects and programs within the Delaware River Basin. Article I sets forth general policies of the Commission with respect to the planning of Federal, state and local projects, the Commission's comprehensive plan, and projects subject to the Commission's review. Article II sets forth measures for the conservation, development and utilization of the water resources of the basin, including the management of shared water resources during drought, provisions relating to inter-basin transfers of water, metering and reporting of withdrawals, and water audit requirements. Article III establishes water quality standards, including uses and quality objectives for surface and ground waters. Article IV

[1] *See* 86 FR 20628 (April 21, 2021) and 83 FR 1586, pp. 1589, 1591 (January 12, 2018).

[2] By a Resolution for the Minutes dated September 9, 2021, the DRBC Commissioners extended from September 30, 2021 to November 30, 2021 the date by which draft regulations would be published.

contains rules relating to application of water quality standards within the basin.

The Water Quality Regulations apply to all public and private entities that discharge waste to waters of the Delaware River Basin and are comprised of four articles. Article I sets forth general purposes of the Water Quality Regulations, as well as definitions applicable to the Water Quality Regulations. Article II concerns interstate cooperation among the signatories to the Delaware River Basin Compact. Article III sets forth water quality standards and guidelines for the Delaware River Basin. Article IV contains rules relating to application of water quality standards within the basin.

Activities Prohibited and Activities Not Regulated by the Final Rule

Many commenters urged the Commission to prohibit activities that would be prohibited by the proposed (now final) prohibition at 18 CFR 440.4. The final rule at § 440.4(b) prohibits the discharge of wastewater ''from high volume hydraulic fracturing and HVHF-related activities to waters or land within the basin.'' The terms ''Discharge of wastewater from HVHF and HVHF-related activities,'' ''HVHF-related activities,'' and ''wastewater from HVHF and HVHF-related activities'' all are defined in detail in § 440.2. Activities about which multiple commenters expressed concern, which are *prohibited by the final rule* include (but are not necessarily limited to) the following:

- discharge of HVHF wastewater to waters or land within the basin;
- road spreading of HVHF wastewater;
- injection of HVHF wastewater into deep wells within the basin;
- disposal of HVHF wastewater in basin landfills;
- discharge of leachate from any landfill in the basin that accepts HVHF waste after the effective date of the final regulations, including after treatment at an onsite or off-site leachate or wastewater treatment plant; and
- spills and leaks during transport, transfer, or storage of HVHF wastewater within the basin if not fully captured by a containment system in place throughout the duration of the spill or leak and thereafter promptly removed or remediated.

Other commenters urged the Commission to prohibit activities that are beyond the scope of the proposed rule. As explained in detail in the Commission's Comment and Response document, *the final rule does not:*

- regulate air emissions from HVHF activities;
- regulate the transportation and storage of HVHF materials, which are regulated under detailed state and Federal programs focused on these activities;
- categorically prohibit the transfer of HVHF wastewater into the basin when no resulting discharge is proposed;
- categorically prohibit the transfer of water from the basin if it would be used to support HVHF (or any other specified activity). However, the rule does limit the circumstances under which transfers of water from the basin will be considered and provides for an evaluation of such proposals based on factors designed to ensure no harm to the basin's water resources or the health and safety of the basin community; or
- prohibit road spreading of wastewater from *conventional* drilling activities, an activity not within the scope of DRBC's proposed rulemaking. The Commission will continue to coordinate with the basin states to review the scientific evidence regarding harm to water resources caused by road spreading of conventional oil and gas production wastewater and may in the future consider whether additional regulation of the practice is needed in the basin.

Additional Materials

Additional materials can be found on the Commission's website, *www.drbc.gov,* at *https://www.nj.gov/drbc/about/regulations/final-rule_import-export-hvhf-discharge.html.* These include links to Resolution No. 2022–04 of December 7, 2022 adopting the final rule; the Commission's Comment and Response Document; mark-ups comparing the final to the proposed rule text for Section 2.30 of the Water Code and for the Commission's Special Regulations at 18 CFR part 440; mark-ups comparing the amended to the existing rule text for 18 CFR part 440 and the Commission's Water Quality Regulations; and clean drafts of the amended and existing Section 2.30 of the Water Code for comparison.

The Commission's notice of proposed rulemaking, proposed rule text, written comments received, and transcripts of public hearings can be found on the Commission's website at *https://www.state.nj.us/drbc/meetings/proposed/notice_import-export-rules.html.*

List of Subjects in 18 CFR Parts 410 and 440

Incorporation by reference, Natural gas, Wastewater discharge, Water pollution control, Water resources.

For the reasons set forth in the preamble, the Delaware River Basin Commission amends 18 CFR chapter III as follows:

PART 410—BASIN REGULATIONS; WATER CODE AND ADMINISTRATIVE MANUAL—PART III WATER QUALITY REGULATIONS

■ 1. The authority citation for part 410 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

■ 2. Amend § 410.1 by revising paragraph (c) to read as follows:

§ 410.1 Basin regulations—Water Code and Administrative Manual—Part III Water Quality Regulations.

* * * * *

(c) Work, services, activities and facilities affecting the conservation, utilization, control, development or management of water resources within the Delaware River Basin are subject to regulations contained within the Delaware River Basin Water Code with Amendments through December 7, 2022 and the Administrative Manual—Part III Water Quality Regulations with Amendments through December 7, 2022. Both the Delaware River Basin Water Code and the Administrative Manual—Part III Water Quality Regulations are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain or inspect this material at the Delaware River Basin Commission (DRBC), 25 Cosey Road, West Trenton, New Jersey 08628–0360, 609–883–9500, *www.drbc.gov.*

You may inspect this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.*

PART 440—HIGH VOLUME HYDRAULIC FRACTURING

■ 3. The authority citation for part 440 continues to read as follows:

Authority: Delaware River Basin Compact (75 Stat. 688).

■ 4. Amend § 440.1 by revising paragraph (d) to read as follows:

§ 440.1 Purpose, authority, and relationship to other requirements.

* * * * *

(d) *Relationship to other Commission requirements.* The provisions of this part are in addition to all applicable requirements in other Commission regulations, dockets, permits, and determinations.

* * * * *

■ 5. Amend § 440.2 by revising the introductory text, adding, in alphabetical order, the definitions for ''Discharge of wastewater from HVHF and HVHF-related activities,'' ''HVHF-related activities,'' and ''Wastewater from HVHF and HVHF-related activities,'' and revising the definition of ''Water resource(s)'' to read as follows:

§ 440.2 Definitions.

For purposes of this part, the following terms and phrases have the meanings provided. Some definitions differ from those provided in regulations of one or more agencies of the Commission's member states and the Federal Government. Other definitions are consistent with terms defined by the Delaware River Basin Compact.

* * * * *

Discharge of wastewater from HVHF and HVHF-related activities is an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, spreading, spraying, injecting, leaching, dumping, or disposing of such wastewater to waters or land within the Basin, and including the abandonment or discarding of barrels, containers, and other receptacles containing such wastewater.

* * * * *

HVHF-related activities are:

(1) Construction of an oil or natural gas production well that is to be stimulated using HVHF as defined in this section;

(2) Chemical mixing or storage of proppant, chemicals and other additives to make fracturing fluid; and

(3) Management of wastewater from hydraulic fracturing, including storage, disposal, treatment, or reuse in hydraulic fracturing operations or other uses.

* * * * *

Wastewater from HVHF and HVHF-related activities is:

(1) Any wastewater, brine, or sludge containing chemicals, naturally occurring radioactive materials, heavy metals or other contaminants that have been used for or generated by high volume hydraulic fracturing or HVHF-related activities;

(2) Leachate from solid wastes associated with HVHF-related activities, except if the solid wastes were lawfully disposed of in a landfill within the Basin prior to March 6, 2023; and

(3) Any products, co-products, byproducts, or waste products resulting from the treatment, processing, or modification of the wastewater described in paragraphs (1) and (2) of this definition.

Water resource(s) is, in accordance with section 1.2(i) of the *Delaware River Basin Compact,* water and related natural resources in, on, under, or above the ground, including related uses of land, which are subject to beneficial use, ownership or control within the Delaware River Basin.

■ 6. Add § 440.4 to read as follows:

§ 440.4 Wastewater from high volume hydraulic fracturing and related activities.

(a) *Determination.* The Commission has determined that the discharge of wastewater from high volume hydraulic fracturing and HVHF-related activities poses significant, immediate and long-term risks to the development, conservation, utilization, management, and preservation of the Basin's water resources. Controlling future pollution by prohibiting such discharge is required to effectuate the Comprehensive Plan, avoid injury to the waters of the Basin as contemplated by the Comprehensive Plan, and protect the public health and preserve the waters of the Basin for uses in accordance with the Comprehensive Plan.

(b) *Prohibition.* No person may discharge wastewater from high volume hydraulic fracturing or HVHF-related activities to waters or land within the Basin.

Dated: January 26, 2023.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 2023–02125 Filed 2–1–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. FDA–2023–N–0062]

Medical Devices; Hematology and Pathology Devices; Classification of the Software Algorithm Device To Assist Users in Digital Pathology

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the software algorithm device to assist users in digital pathology into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the software algorithm device to assist users in digital pathology's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective February 2, 2023. The classification was applicable on September 21, 2021.

FOR FURTHER INFORMATION CONTACT: Arpita Roy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3319, Silver Spring, MD 20993–0002, 240–402–4807, *Arpita.Roy@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the software algorithm device to assist users in digital pathology as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21

U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On December 31, 2020, FDA received Paige.AI, Inc.'s request for De Novo classification of the Paige Prostate. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on September 21, 2021, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 864.3750.[1] We have named the generic type of device software algorithm device to assist users in digital pathology, and it is identified as an in vitro diagnostic device intended to evaluate acquired scanned pathology whole slide images. The device uses software algorithms to provide information to the user about presence, location, and characteristics of areas of the image with clinical implications. Information from this device is intended to assist the user in determining a pathology diagnosis.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—SOFTWARE ALGORITHM DEVICE TO ASSIST USERS IN DIGITAL PATHOLOGY RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
False negative classification (loss of accuracy).	Certain design verification and validation, including certain device descriptions, certain analytical studies, and clinical studies; and Certain labeling information, including certain device descriptions, certain performance information, and certain limitations.
False positive classification (loss of accuracy).	Certain design verification and validation, including certain device descriptions, certain analytical studies, and clinical studies; and Certain labeling information, including certain device descriptions, certain performance information, and certain limitations.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of **Federal Register**'s (OFR) interpretations of the **Federal Register** Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801and 809, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 864

Blood, Medical devices, and Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 864 is amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

■ 1. The authority citation for part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 864.3750 to subpart D to read as follows:

§ 864.3750 Software algorithm device to assist users in digital pathology.

(a) *Identification.* A software algorithm device to assist users in digital pathology is an in vitro diagnostic device intended to evaluate acquired scanned pathology whole slide images. The device uses software algorithms to provide information to the user about presence, location, and characteristics of areas of the image with clinical implications. Information from this device is intended to assist the user in determining a pathology diagnosis.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The intended use on the device's label and labeling required under § 809.10 of this chapter must include:

(i) Specimen type;

(ii) Information on the device input(s) (*e.g.,* scanned whole slide images (WSI), etc.);

(iii) Information on the device output(s) (*e.g.,* format of the information provided by the device to the user that can be used to evaluate the WSI, etc.);

(iv) Intended users;

(v) Necessary input/output devices (*e.g.,* WSI scanners, viewing software, etc.);

(vi) A limiting statement that addresses use of the device as an adjunct; and

(vii) A limiting statement that users should use the device in conjunction with complete standard of care evaluation of the WSI.

(2) The labeling required under § 809.10(b) of this chapter must include:

(i) A detailed description of the device, including the following:

(A) Detailed descriptions of the software device, including the detection/analysis algorithm, software design architecture, interaction with input/output devices, and necessary third-party software;

(B) Detailed descriptions of the intended user(s) and recommended training for safe use of the device; and

(C) Clear instructions about how to resolve device-related issues (*e.g.,* cybersecurity or device malfunction issues).

(ii) A detailed summary of the performance testing, including test methods, dataset characteristics, results, and a summary of sub-analyses on case distributions stratified by relevant confounders, such as anatomical characteristics, patient demographics, medical history, user experience, and scanning equipment, as applicable.

(iii) Limiting statements that indicate:

(A) A description of situations in which the device may fail or may not operate at its expected performance level (*e.g.,* poor image quality or for certain subpopulations), including any limitations in the dataset used to train, test, and tune the algorithm during device development;

(B) The data acquired using the device should only be interpreted by the types of users indicated in the intended use statement; and

(C) Qualified users should employ appropriate procedures and safeguards (*e.g.,* quality control measures, etc.) to assure the validity of the interpretation of images obtained using this device.

(3) Design verification and validation must include:

(i) A detailed description of the device software, including its algorithm and its development, that includes a description of any datasets used to train, tune, or test the software algorithm. This detailed description of the device software must include:

(A) A detailed description of the technical performance assessment study protocols (*e.g.,* regions of interest (ROI) localization study) and results used to assess the device output(s) (*e.g.,* image overlays, image heatmaps, etc.);

(B) The training dataset must include cases representing different pre-analytical variables representative of the conditions likely to be encountered when used as intended (*e.g.,* fixation type and time, histology slide processing techniques, challenging diagnostic cases, multiple sites, patient demographics, etc.);

(C) The number of WSI in an independent validation dataset must be appropriate to demonstrate device accuracy in detecting and localizing ROIs on scanned WSI, and must include subsets clinically relevant to the intended use of the device;

(D) Emergency recovery/backup functions, which must be included in the device design;

(E) System level architecture diagram with a matrix to depict the communication endpoints, communication protocols, and security protections for the device and its supportive systems, including any products or services that are included in the communication pathway; and

(F) A risk management plan, including a justification of how the cybersecurity vulnerabilities of third-party software and services are reduced by the device's risk management mitigations in order to address cybersecurity risks associated with key device functionality (such as loss of image, altered metadata, corrupted image data, degraded image quality, etc.). The risk management plan must also include how the device will be maintained on its intended platform (*e.g.* a general purpose computing platform, virtual machine, middleware, cloud-based computing services, medical device hardware, etc.), which includes how the software integrity will be maintained, how the software will be authenticated on the platform, how any reliance on the platform will be managed in order to facilitate implementation of cybersecurity controls (such as user authentication, communication encryption and authentication, etc.), and how the device will be protected when the underlying platform is not updated, such that the specific risks of the device are addressed (such as loss of image, altered metadata, corrupted image data, degraded image quality, etc.).

(ii) Data demonstrating acceptable, as determined by FDA, analytical device

performance, by conducting analytical studies. For each analytical study, relevant details must be documented (*e.g.,* the origin of the study slides and images, reader/annotator qualifications, method of annotation, location of the study site(s), challenging diagnoses, etc.). The analytical studies must include:

(A) Bench testing or technical testing to assess device output, such as localization of ROIs within a pre-specified threshold. Samples must be representative of the entire spectrum of challenging cases likely to be encountered when the device is used as intended; and

(B) Data from a precision study that demonstrates device performance when used with multiple input devices (*e.g.,* WSI scanners) to assess total variability across operators, within-scanner, between-scanner and between-site, using clinical specimens with defined, clinically relevant, and challenging characteristics likely to be encountered when the device is used as intended. Samples must be representative of the entire spectrum of challenging cases likely to be encountered when the device is used as intended. Precision, including performance of the device and reproducibility, must be assessed by agreement between replicates.

(iii) Data demonstrating acceptable, as determined by FDA, clinical validation must be demonstrated by conducting studies with clinical specimens. For each clinical study, relevant details must be documented (*e.g.,* the origin of the study slides and images, reader/annotator qualifications, method of annotation, location of the study site(s) (on-site/remote), challenging diagnoses, etc.). The studies must include:

(A) A study demonstrating the performance by the intended users with and without the software device (*e.g.,* unassisted and device-assisted reading of scanned WSI of pathology slides). The study dataset must contain sufficient numbers of cases from relevant cohorts that are representative of the scope of patients likely to be encountered given the intended use of the device (*e.g.,* subsets defined by clinically relevant confounders, challenging diagnoses, subsets with potential biopsy appearance modifiers, concomitant diseases, and subsets defined by image scanning characteristics, etc.) such that the performance estimates and confidence intervals for these individual subsets can be characterized. The performance assessment must be based on appropriate diagnostic accuracy measures (*e.g.,* sensitivity, specificity, predictive value, diagnostic likelihood ratio, etc.).

(B) [Reserved]

Dated: January 26, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02141 Filed 2–1–23; 8:45 am]

BILLING CODE 4164–01–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation (LSC) is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines issued by the U.S. Department of Health and Human Services (HHS).

DATES: Effective February 2, 2023.

FOR FURTHER INFORMATION CONTACT: Karly Satkowiak, Staff Attorney, Legal Services Corporation, 3333 K St. NW, Washington, DC 20007; (202) 295–1633 *satkowiakk@lsc.gov.*

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act (Act), 42 U.S.C. 2996f(a)(2), requires LSC to establish maximum income levels for individuals eligible for legal assistance. Section 1611.3(c) of LSC's regulations establishes a maximum income level equivalent to 125% of the Federal Poverty Guidelines (Guidelines), which HHS is responsible for updating and issuing. 45 CFR 1611.3(c).

Each year, LSC updates appendix A to 45 CFR part 1611 to provide client income eligibility standards based on the most recent Guidelines. The figures for 2023, set out below, are equivalent to 125% of the Guidelines published by HHS on January 19, 2023.

In addition, LSC is publishing a chart listing income levels that are 200% of the Guidelines. This chart is for reference purposes only as an aid to recipients in assessing the financial eligibility of an applicant whose income is greater than 125% of the applicable Guidelines amount, but less than 200% of the applicable Guidelines amount (and who may be found to be financially eligible under duly adopted exceptions to the annual income ceiling in accordance with 45 CFR 1611.3, 1611.4, and 1611.5).

Except where there are minor variances due to rounding, the amount by which the guideline increases for each additional member of the household is a consistent amount.

List of Subjects in 45 CFR Part 1611

Grant programs—law, Legal services.

For reasons set forth in the preamble, the Legal Services Corporation amends 45 CFR part 1611 as follows:

PART 1611—FINANCIAL ELIGIBILITY

■ 1. The authority citation for part 1611 continues to read as follows:

Authority: 42 U.S.C. 2996g(e).

■ 2. Revise appendix A to part 1611 to read as follows:

Appendix A to Part 1611—Income Level for Individuals Eligible for Assistance

LEGAL SERVICES CORPORATION 2023 INCOME GUIDELINES *

Size of household	48 Contiguous states and the District of Columbia	Alaska	Hawaii
1	$18,225	$22,763	$20,963
2	24,650	30,800	28,350
3	31,075	38,838	35,738
4	37,500	46,875	43,125
5	43,925	54,913	50,513
6	50,350	62,950	57,900
7	56,775	70,988	65,288
8	63,200	79,025	72,675

LEGAL SERVICES CORPORATION 2023 INCOME GUIDELINES *—Continued

Size of household	48 Contiguous states and the District of Columbia	Alaska	Hawaii
For each additional member of the household in excess of 8, add:	6,425	8,038	7,388

* The figures in this table represent 125% of the Federal Poverty Guidelines by household size as determined by HHS.

REFERENCE CHART—200% OF FEDERAL POVERTY GUIDELINES *

Size of household	48 Contiguous states and the District of Columbia	Alaska	Hawaii
1	$29,160	$36,420	$33,540
2	39,440	49,280	45,360
3	49,720	62,140	57,180
4	60,000	75,000	69,000
5	70,280	87,860	80,820
6	80,560	100,720	92,640
7	90,840	113,580	104,460
8	101,120	126,440	116,280
For each additional member of the household in excess of 8, add:	10,280	12,860	11,820

* The figures in this table represent 200% of the Federal Poverty Guidelines by household size as determined by HHS.

Authority: 42 U.S.C. 2996g(e).

Dated: January 23, 2023.

Stefanie Davis,

Senior Associate General Counsel and Ethics Officer.

[FR Doc. 2023–02179 Filed 2–1–23; 8:45 am]

BILLING CODE 7050–01–P

Proposed Rules

Federal Register
Vol. 88, No. 22
Thursday, February 2, 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 Part 50

[Docket No. PRM–50–124; NRC–2022–0178]

Licensing Safety Analysis for Loss-of-Coolant Accidents

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; extension of comment period.

SUMMARY: On November 23, 2022, the U.S. Nuclear Regulatory Commission (NRC) published a notice requesting comments on a petition for rulemaking from Ralph O. Meyer dated August 1, 2022, docketed as PRM–50–124. The petition requests that the NRC revise its regulations regarding the licensing safety analysis for loss-of-coolant accidents. The public comment period was originally scheduled to close on February 6, 2023. The NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit their comments.

DATES: The comment period for the notice published on November 23, 2022 (87 FR 71531), is extended to March 8, 2023. Comments received after this date will be considered, if it is practical to do so, but the Commission 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–2022–0178. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov*. For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov*. If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

FOR FURTHER INFORMATION CONTACT: Blake Purnell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1380, email: *Blake.Purnell@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Documents

A. Obtaining Information

Please refer to Docket ID NRC–2022–0178 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–2022–0178.
- *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 at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0178 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. Discussion

The NRC requested public comments on PRM–50–124 on November 23, 2022 (87 FR 71531). The purpose of the request was to obtain public input and responses on the request to revise NRC regulations regarding the licensing safety analysis for loss-of-coolant accidents. The public comment period was originally scheduled to close on February 6, 2023. The NRC has decided to extend the public comment period on this document until March 8, 2023, to allow more time for members of the public to submit their comments.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2022–0178. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2022–0178); (2) click the ''Subscribe'' link; and (3) enter an email address and click on the ''Subscribe'' link.

Dated January 27, 2023.

For the Nuclear Regulatory Commission.

Brooke P. Clark,

Secretary of the Commission.

[FR Doc. 2023–02131 Filed 2–1–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0010; Project Identifier MCAI–2022–01090–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–2B16 (604 Variant) airplanes. This proposed AD was prompted by a determination that during certain modes, the flight guidance/autopilot does not account for engine failure while capturing an altitude. This proposed AD would require revising the existing airplane flight manual (AFM) to add new limitation and procedures. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 20, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0010; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Bombardier service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com*; website *bombardier.com.*
- 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.

FOR FURTHER INFORMATION CONTACT: Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0010; Project Identifier MCAI–2022–01090–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2022–45, dated August 11, 2022 (Transport Canada AD CF–2022–45) (also referred to after this as the MCAI), to correct an unsafe condition on certain Model CL–600–2B16 (604 Variant) airplanes. The MCAI states that during (V) ALTS CAP or (V) ALTV CAP modes, the flight guidance/autopilot does not account for engine failure while capturing an altitude. If an engine failure occurs during or before a climb while in one of these modes, the airspeed may decrease rapidly below the safe operating speed, and prompt crew intervention may be required to maintain a safe operating speed. Transport Canada AD CF–2022–45 requires updating the Limitation and Abnormal Procedures of the AFM for (V) ALTS CAP or (V) ALTV CAP modes to address the unsafe condition for the affected Model CL–600–2B16 (604 Variant) airplanes. These updates include:

- A warning regarding the potential airspeed decay in the case of an engine failure during a climb while in (V) ALTS CAP or (V) ALTV CAP modes.
- A new procedure to adjust the pitch attitude to maintain the required operating airspeed in the case of an engine failure during a climb while in (V) ALTS CAP or (V) ALTV CAP modes.

The unsafe condition, if not addressed, could result in the airplane failing to maintain a safe operating speed.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0010.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service information, which specifies revised Limitations and Abnormal Procedures of the AFM for (V) ALTS CAP or (V) ALTV CAP modes. These documents are distinct since they apply to different airplane models and configurations.

- Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems Limitations, of Chapter 2—

LIMITATIONS of Bombardier Challenger 604 Airplane Flight Manual—Publication No. PSP 604–1, Revision 120, dated December 8, 2020. (For obtaining this section of the Bombardier Challenger 604 Airplane Flight Manual—Publication No. PSP 604–1, use Document Identification No. CH 604 AFM.)

- Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES; of Bombardier Challenger 604 Airplane Flight Manual—Publication No. PSP 604–1, Revision 120, dated December 8, 2020. (For obtaining this section of the Bombardier Challenger 604 Airplane Flight Manual—Publication No. PSP 604–1, use Document Identification No. CH 604 AFM.)
- Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems Limitations, of Chapter 2—LIMITATIONS of Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, Revision 58, dated December 8, 2020. (For obtaining this section of the Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, use Document Identification No. CH 605 AFM.)
- Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES of Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, Revision 58, dated December 8, 2020. (For obtaining this section of the Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, use Document Identification No. CH 605 AFM.)
- Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems Limitations, of Chapter 2—LIMITATIONS of Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, Revision 23, dated December 8, 2020. (For obtaining this section of the Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, use Document Identification No. CH 650 AFM.)
- Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES; of Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, Revision 23, dated December 8, 2020. (For obtaining this section of the Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, use Document Identification No. CH 650 AFM.)

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 the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Transport Canada AD CF–2022–45 requires operators to ''advise all flight crews'' of revisions to the AFM, and thereafter to ''operate the affected aircraft accordingly.'' However, this proposed AD would not specifically require those actions as those actions are already required by FAA regulations. FAA regulations require operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Therefore, including a requirement in this proposed AD to operate the airplane according to the revised AFM would be redundant and unnecessary.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposal, would affect 409 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$34,765

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2023–0010; Project Identifier MCAI–2022–01090–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 20, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model CL–600–2B16 (604 Variant) airplanes, certificated in any category, serial numbers (S/N) 5301 through 5665 inclusive, 5701 through 5988 inclusive, and 6050 through 6160 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto flight.

(e) Unsafe Condition

This AD was prompted by a determination that during (V) ALTS CAP or (V) ALTV CAP modes, the flight guidance/autopilot does not account for engine failure while capturing an altitude. The FAA is issuing this AD to address the possible occurrence of an engine failure during or before a climb while in (V) ALTS CAP or (V) ALTV CAP modes, which could cause the airspeed to decrease rapidly. The unsafe condition, if not addressed, could result in the airplane failing to maintain a safe operating speed.

(f) Compliance

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

(g) Revision of Existing AFM

Within 30 days after the effective date of this AD: Do the applicable actions specified in paragraph (g)(1) through (3) of this AD.

(1) For Model CL–600–2B16 (604 variant), S/N 5301 through 5665 inclusive: Revise the existing AFM to incorporate the information specified in paragraphs (g)(1)(i) and (ii) of this AD of Bombardier Challenger 604 Airplane Flight Manual—Publication No. PSP 604–1, Revision 120, dated December 8, 2020.

(i) Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems Limitations, of Chapter 2—LIMITATIONS.

(ii) Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES.

Note 1 to paragraph (g)(1): For obtaining Bombardier Challenger 604 Airplane Flight Manual—Publication No. PSP 604–1, use Document Identification No. CH 604 AFM.

(2) For Model CL–600–2B16 (604 variant), S/N 5701 through 5988 inclusive: Revise the existing AFM to incorporate the information specified in paragraphs (g)(2)(i) and (ii) of this AD of Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, Revision 58, dated December 8, 2020.

(i) Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems Limitations, of Chapter 2—LIMITATIONS.

(ii) Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES.

Note 2 to paragraph (g)(2): For obtaining Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, use Document Identification No. CH 605 AFM.

(3) For Model CL–600–2B16 (604 variant), S/N 6050 through 6160 inclusive: Revise the existing AFM to incorporate the information specified in paragraphs (g)(3)(i) and (ii) of this AD of Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, Revision 23, dated December 8, 2020.

(i) Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems Limitations, of Chapter 2—LIMITATIONS.

(ii) Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES.

Note 3 to paragraph (g)(3): For obtaining Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, use Document Identification No. CH 650 AFM.

(h) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the New York ACO Branch, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (i)(2) of this AD or email to: *9-avs-nyaco-cos@faa.gov*. If mailing information, also submit information by email. 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, New York ACO Branch, FAA; or Transport Canada; or Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Additional Information

(1) Refer to Transport Canada AD CF–2022–45, dated August 11, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–0010.

(2) For more information about this AD, contact Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov*.

(j) Material Incorporated by Reference

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

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

(i) Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems Limitations, of Chapter 2—LIMITATIONS of Bombardier Challenger 604 Airplane Flight Manual—Publication No. PSP 604–1, Revision 120, dated December 8, 2020.

Note 4 to paragraph (j)(2)(i): This note applies to paragraphs (j)(2)(i) and (ii) of this AD. For obtaining Bombardier Challenger 604 Airplane Flight Manual—Publication No. PSP 604–1, use Document Identification No. CH 604 AFM.

(ii) Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES of Bombardier Challenger 604 Airplane Flight Manual—Publication No. PSP 604–1, Revision 120, dated December 8, 2020.

(iii) Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems

Limitations, of Chapter 2—LIMITATIONS of Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, Revision 58, dated December 8, 2020.

Note 5 to paragraph (j)(2)(iii): This note applies to paragraphs (j)(2)(iii) and (iv) of this AD. For obtaining Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, use Document Identification No. CH 605 AFM.

(iv) Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES of Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, Revision 58, dated December 8, 2020.

(v) Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems Limitations, of Chapter 2—LIMITATIONS of Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, Revision 23, dated December 8, 2020.

Note 6 to paragraph (j)(2)(v): This note applies to paragraphs (j)(2)(v) and (vi) of this AD. For obtaining this section of the Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, use Document Identification No. CH 650 AFM.

(vi) Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES of Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, Revision 23, dated December 8, 2020.

(3) For service information identified in this AD, contact Bombardier, Inc., Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com*; internet bombardier.com.

(4) 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.

(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. 2023–00261 Filed 2–1–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 122

[Docket No. USCBP–2023–0002]

RIN 1651–AB43

Advance Passenger Information System: Electronic Validation of Travel Documents

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: U.S. Customs and Border Protection (CBP) regulations require commercial air carriers to electronically transmit passenger information to CBP's Advance Passenger Information System (APIS) prior to an aircraft's departure to the United States from a foreign port or place or departure from the United States so that the Department of Homeland Security (DHS) can determine whether the carrier must conduct an additional security analysis or security screening of the passengers. CBP proposes to amend these regulations to incorporate additional commercial carrier requirements that would enable CBP to determine whether each passenger is traveling with valid, authentic travel documents prior to the passenger boarding the aircraft. The proposed regulations would also require commercial air carriers to transmit additional data elements through APIS for all commercial aircraft passengers arriving, or intending to arrive, in the United States in order to support border operations and national security and safety. Additionally, this proposal includes changes to conform existing regulations to current practice. Finally, the proposed regulations would allow commercial carriers to transmit an aircraft's registration number to CBP via APIS. This proposed rule is intended to increase the security and safety of the international traveling public, the international air carrier industry, and the United States.

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

ADDRESSES: Please submit comments, identified by docket number, by the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2023–0002.

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

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

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Due to relevant COVID–19-related restrictions, CBP has temporarily suspended its on-site public inspection of submitted comments.

FOR FURTHER INFORMATION CONTACT: Robert Neumann, Office of Field Operations, U.S. Customs and Border Protection, by phone at 202–412–2788.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the notice of proposed rulemaking. The Department of Homeland Security (DHS) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposal.

Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Statutory Authority

Multiple statutes require air carriers to electronically transmit passenger information to Customs and Border Protection (CBP) prior to arriving in or departing from the United States.[1] For instance, section 115 of the Aviation and Transportation Security Act (Pub. L. 107–71, 115 Stat. 623, Nov. 19, 2001) requires air carriers operating a passenger flight in foreign air transportation to the United States to electronically transmit a passenger manifest to CBP. *See* 49 U.S.C. 44909(c). Pursuant to this statute, the manifest must contain the following data for each passenger: full name; date of birth; citizenship; sex; passport number and

[1] Those statutes include, but are not limited to, section 115 of the Aviation and Transportation Security Act (Pub. L. 107–71, 115 Stat. 623, 49 U.S.C. 44909), section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173, 116 Stat. 557, 8 U.S.C. 1221), section 4012 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458; 49 U.S.C. 44909(c)), and certain authorities administered by the Transportation Security Administration (TSA) (49 U.S.C. 114, 49 CFR parts 1550, 1544, 1546).

country of issuance (if a passport is required for travel); U.S. visa number or resident alien card, as applicable; and such other information as the Administrator of the Transportation Security Administration (TSA), in consultation with the Commissioner of CBP, determines is reasonably necessary to ensure aviation safety. *See* 49 U.S.C. 44909(c)(2). The passenger manifest must be transmitted in advance of the aircraft landing in the United States in such manner, time, and form as CBP requires. *See* 49 U.S.C. 44909(c)(4).

Section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173, 116 Stat. 557) requires a master or commanding officer, or the authorized agent, owner, or consignee of a commercial aircraft that is either departing the United States or arriving in the United States to transmit to CBP manifest information about each passenger on board. *See* 8 U.S.C. 1221(a)–(b). The manifest information must contain the following information: complete name; date of birth; citizenship; sex;[2] passport number and country of issuance; country of residence; U.S. visa number, date and place of issuance, where applicable; alien registration number, where applicable; and U.S. address while in the United States. *Id.* The Secretary of Homeland Security (Secretary) may also require additional manifest information if the Secretary, in consultation with the Secretary of State and the Secretary of the Treasury, determines that the information is necessary for the identification of the persons transported, the enforcement of the immigration laws, or the protection of safety and national security. *See* 8 U.S.C. 1221(c); 8 U.S.C. 1103(a)(1). Together, these and other applicable broad statutes cited as authority for CBP's Advance Passenger Information System (APIS) regulations allow CBP to require that commercial air carriers transmit to CBP manifest information relating to each individual traveling onboard an aircraft arriving in or departing from the United States and specify the type of information that must be submitted.[3]

Additionally, section 4012 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (Pub. L. 108–458, 118 Stat. 3638) requires DHS to perform security vetting of passengers on board aircraft bound for or departing from the United States prior to the departure of the aircraft. Specifically, section 4012 requires DHS to compare passenger information for any international flight to or from the United States against the consolidated and integrated terrorist watch list maintained by the Federal Government before departure of the flight. *See* 49 U.S.C. 44909(c)(6). IRTPA authorizes the Secretary of Homeland Security to issue regulations to implement these requirements. Regulations implementing section 4012 of IRTPA were published on August 23, 2007 (72 FR 48320). Those regulations are described below.

III. Background and Current Requirements

Current CBP regulations require commercial air carriers to transmit information electronically to CBP for individuals traveling or intending to travel to or from the United States on board an aircraft. The focus of this proposed rulemaking is commercial aircraft arriving in or departing from the United States. Unless otherwise specified, use of the term ''carrier'' throughout this proposed rulemaking refers to ''commercial air carriers.''[4] Section 122.49a of title 19 of the Code of Federal Regulations (19 CFR 122.49a) specifies the information that commercial carriers must transmit for each passenger checked in for a flight arriving in the United States from a foreign place.[5] Title 19 CFR 122.75a specifies the information that commercial carriers must transmit for each passenger checked in for an aircraft departing the United States for a foreign place.[6] Under the current APIS regulations, carriers submit passenger data to CBP between 72 hours and 30 minutes before departure, and no later than securing the aircraft doors for individual submissions. The required information varies depending on whether the aircraft is departing or arriving, but it generally must include: the passenger's name; date of birth; sex; citizenship; status on board the aircraft (*i.e.,* passenger); travel document type; passport number, country of issuance, and expiration date (if a passport is required); location of boarding and departure; and the date of arrival or departure for each individual.

Carriers have two options for transmitting the required information to CBP. Under the first option, a carrier uses an interactive electronic transmission system that is capable of transmitting data to APIS and receiving electronic messages from CBP. *See* 19 CFR 122.49a(b)(1)(ii)(B), 122.49a(b)(1)(ii)(C), 122.75a(b)(1)(ii)(B), and 122.75a(b)(1)(ii)(C). Before using an interactive electronic transmission system, the carrier must subject its system to CBP testing, and CBP must certify that the carrier's system is capable of interactively communicating with the CBP system for effective transmission of manifest data and receipt of appropriate messages in accordance with the regulations. *See* 19 CFR 122.49a(b)(1)(ii)(E) and 122.75a(b)(1)(ii)(E). Once CBP certifies the interactive electronic transmission system, the carrier may use it to transmit the required electronic data. The vast majority of commercial carriers use an interactive CBP-certified transmission system.

Under the second option, the carrier may electronically transmit the required information through a non-interactive electronic transmission system approved by CBP. *See* 19 CFR 122.49a(b)(1)(ii)(A) and 122.75a(b)(1)(ii)(A). This includes the electronic Advance Passenger Information System (eAPIS), which is an online transmission system that meets all APIS data element requirements for all mandated APIS transmission types. eAPIS is a web-based transmission system that can be accessed through the internet.

Regardless of the transmission method, carriers must transmit the required information through APIS to CBP prior to the securing of the aircraft, with certain transmission methods requiring transmission no later than 30 minutes prior to securing of the

[2] APIS allows carriers to transmit male, female, or any gender code included on a Government-issued ID. *See* DHS Consolidated User Guide Part 4—UN/EDIFACT Implementation Guide, September 6, 2016, available at *https://www.cbp.gov/sites/default/files/assets/documents/2016-Sep/DHS_CUG_v4%202_09-06-2016_Pt%204_EDIFACT.pdf* (last accessed October 29, 2021).

[3] Additional document validation procedures and advance data submitted through APIS supports CBP's mission to identify and interdict nefarious actors before departing to and from the United States. *See* 6 U.S.C. 211. For more information regarding the purpose of the proposed regulations see section IV.

[4] Separate regulations that address electronic manifest requirements for crew and non-crew members arriving in or departing from the United States by commercial aircraft, *see* 19 CFR 122.49b, 122.75b, and individuals onboard private aircraft arriving in and departing from the United States, *see* 19 CFR 122.22, are not affected by this proposed rulemaking.

[5] CBP regulations do not require commercial air carriers to transmit this information to CBP for active-duty U.S. military personnel being transported as passengers on Department of Defense commercial chartered aircraft. 19 CFR 122.49a(c), 122.75a(c).

[6] A more detailed description of the history of electronic manifest information requirements, and the relevant authorities, is set forth in the APIS final rule published on April 7, 2005 (70 FR 17820) and the pre-departure final rule published on August 23, 2007 (72 FR 48320).

aircraft.[7] *See* 19 CFR 122.49a(b)(2) and 19 CFR 122.75a(b)(2). After receiving a transmission of APIS manifest information either through a CBP-certified transmission system or through eAPIS, CBP stores APIS information in a data system called TECS.[8] CBP simultaneously transfers this information to the Automated Targeting System (ATS)[9] to perform multiple enforcement and security queries against various databases, including multiagency law enforcement databases and the terrorist watch list.[10]

After performing the security vetting, the CBP system transmits to the carrier an electronic message. This message is generally referred to as CBP's response message. If the carrier is using an interactive transmission system, the response message provides certain instructions to the carrier. Specifically, it states whether each passenger is authorized to board, requires additional security screening, or is prohibited by TSA from boarding based on the security status of the passenger. Depending on the instructions received in the response message, the carrier may be required to take additional steps, including coordinating secondary security screening with TSA, before loading the baggage of or boarding the passenger at issue. If the carrier is using eAPIS, the CBP system will send a message to the carrier through a non-interactive method, such as email, that states whether the flight is cleared, meaning that no passengers were identified as not being cleared for boarding. If the flight is not cleared, the carrier is required to contact TSA in order to resolve the security status of one or more passengers.[11]

IV. Purpose of Rule and APIS Document Validation Program

Although CBP currently uses APIS to compare the passenger information submitted by the carriers to various law enforcement databases and the terrorist watch list, to enhance national security and safety, CBP and the air carrier industry, under the governing statutes and regulations, continue to take steps to further strengthen the quality of the results and protect vital industries and the public. To further improve CBP's vetting processes with respect to APIS data and enhance communication with air carriers, CBP proposes to amend its regulations to require carriers to ensure that their systems are capable of accepting document validation instructions from CBP's system and to contact CBP, if necessary, to take appropriate action to resolve the travel document status of each passenger intending to board an aircraft arriving in or departing from the United States.

To mitigate the risk regarding the potential use of fraudulent or invalid travel documents, in 2013 CBP implemented the voluntary Document Validation Program (DVP), which enables CBP to use APIS to vet the validity of each travel document and provide an electronic response message, either via response message or email, to the carriers as a result of that vetting. Under the DVP, APIS vets the information transmitted by carriers by comparing the information to CBP's databases, which include access to information regarding valid Department of State-issued U.S. passports and U.S. visas, DHS-issued Permanent Resident Cards, Electronic System for Travel Authorization (ESTA) approvals, and Electronic Visa Update System (EVUS) enrollments.[12] APIS then transmits a response message to the carriers participating in the voluntary program. Unlike the original (non-DVP) response message, which contains one element, the DVP response message contains two elements. The first element indicates the security status of each passenger, as required by current regulations. *See* 19 CFR 122.49a(b) and 122.75a(b). The second element states whether each passenger's travel documents have been validated, meaning that the travel document was matched to a valid, existing travel document in CBP's databases. Multiple carriers participate in the voluntary program and have updated their transmission systems in order to receive the document validation message.

The voluntary DVP has enabled CBP to more efficiently identify passengers attempting to use fraudulent travel documents and electronically communicate that information to air carriers. As a result, carriers have prevented those passengers from boarding aircraft destined for or departing from the United States. For example, in 2016, a participating carrier received a response message from CBP stating that seven passengers on one flight had travel documents that could not be validated. The carrier therefore refused to board the passengers. Later investigations revealed that all seven passengers were attempting to travel with visa numbers that had been reported as lost or stolen. In 2017, a participating carrier refused to board a passenger whose visa could not be validated by CBP. Although the visa appeared authentic and showed the passenger's name, the passenger's date of birth did not match the date of birth listed for the visa in CBP's databases. As a result, the visa was not validated, and the carrier refused to board the individual. An investigation indicated that the passenger likely shared a name with his father and was attempting to travel using a visa issued to his father.

These examples demonstrate that document validation instructions have the potential to increase security and safety for the commercial air industry and the United States and significantly improve rapid communication between CBP and air carriers. Without mandatory requirements, however, not all carriers will take the steps necessary to electronically receive CBP's document validation instructions and contact CBP prior to issuing boarding passes to passengers whose travel documents are not validated.

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ry personnel being transported as passengers on Department of Defense commercial chartered aircraft. 19 CFR 122.49a(c), 122.75a(c).

[8] CBP retains APIS information in TECS for 13 months. TECS is the name of a computerized information system designed to identify individuals and businesses suspected of violations of federal law. TECS also serves as a communications system permitting the transmittal of messages between CBP and other national, state, and local law enforcement agencies. While the term ''TECS'' previously was an acronym for the Treasury Enforcement Communications System, it is no longer an abbreviation and is now simply the name of the system. For more information, see DHS's Privacy Impact Assessments on TECS at *https://www.dhs.gov/publication/tecs-system-cbp-primary-and-secondary-processing-tecs-national-sar-initiative.*

[9] ATS is a decision support tool that compares traveler, cargo, and conveyance information against law enforcement, intelligence, and other enforcement data.

[10] CBP retains APIS information in TECS for 13 months and ATS for 15 years. CBP uses such data for all routine purposes permitted by the ATS System of Records Notice (SORN) and the APIS SORN. CBP shares passenger data automatically with other law enforcement and national security partners pursuant to agreements with those partners for use throughout a period of time specified by the relevant agreement. CBP's current APIS regulations contemplate such sharing. *See* 19 CFR 122.49a(e), 122.75a(e). For further details, please see the APIS SORN, ATS SORN, privacy impact assessments regarding APIS and ATS, and section VI.F. CBP's privacy impact assessments are available at *https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.*

[11] CBP regulations, procedures, and actions may be subject to oversight by the DHS Office for Civil Rights and Civil Liberties, the Privacy Office, the Office of General Counsel, and the Office of Inspector General. *See* 6 U.S.C. 345; 6 U.S.C. 113; 6 U.S.C. 142; 42 U.S.C. 2000ee–1.

[12] Nonimmigrants intending to travel under the Visa Waiver Program (VWP) must have a valid ESTA approval prior to travel. *See* 8 CFR part 217. Nonimmigrants who hold a passport issued by a country identified for inclusion in EVUS containing a U.S. nonimmigrant visa of a designated category are required to enroll in EVUS. *See* 8 CFR part 215. EVUS enrollment is currently limited to nonimmigrants who hold unrestricted, maximum validity B–1 (visitor for business), B–2 (visitor for pleasure), or combination B–1/B–2 visas, contained in a passport issued by the People's Republic of China.

In addition to enhancing document validation procedures, CBP proposes to require carriers to transmit additional contact data for all passengers on commercial flights arriving in the United States to support CBP border and national security missions and safety. The proposed additional requirements assist CBP in identifying and locating individuals suspected of posing a risk to national security and safety and aviation security before departing to and from the United States. For instance, in December 2009 an individual suspected of receiving explosives training arrived in the United States from Pakistan. That individual was later linked to the failed detonation of a vehicle-borne improvised explosive device at Times Square in New York City using data related to the individual's flight to the United States. DHS was ultimately able to interdict the individual just as he was about to board an international flight. Although DHS was able to prevent this individual from boarding an international flight at the last minute, additional contact information including a primary and alternative phone number and email address will better assist CBP in identifying and locating potential nefarious actors in the future. Additionally, prior to September 11, 2001, CBP refused entry to the so-called ''20th hijacker.'' CBP concluded, after its review of this incident, that the inclusion of a phone number, alternate phone number, and email address would have provided CBP with an opportunity to identify other individuals associated with the traveler.

In addition to terrorism-related concerns, the inclusion of these additional data elements would also increase CBP's ability to investigate or respond to suspected crimes occurring on international flights. For example, in 2013, a passenger was suspected of kidnapping his daughter and taking her on a flight to Jamaica to avoid U.S. authorities. CBP was ultimately able to help locate the missing child. Had the passenger been required to provide a phone number, email information and U.S. address, CBP could have located the child more quickly.

As a result of these and other incidents, CBP has concluded that the inclusion of a primary and alternative phone number, email address, and address while in the United States for all passengers (other than those in transit to a location outside the United States) will enable CBP to further mitigate risks to border, national and aviation security.

V. Proposed Requirements

CBP is proposing four main changes to CBP's regulations in this Notice of Proposed Rulemaking. First, CBP proposes to require carriers to participate in the DVP program in order to receive the document validation message from CBP and to contact CBP regarding any passengers whose travel documents cannot be validated. Second, CBP proposes to require carriers to transmit additional data elements for all passengers on commercial flights arriving in the United States. Third, CBP proposes to enable carriers to include an aircraft's registration number as an optional data element in the APIS transmission. Fourth, CBP proposes several changes to conform the regulations to current practice. Each proposal is discussed in detail below.

A. Document Validation Message, Requirement To Contact CBP, and Recommendation Not To Board

Title 19 CFR 122.49a describes the electronic manifest requirement for passengers onboard commercial aircraft arriving in the United States. Title 19 CFR 122.75a describes the electronic manifest requirement for passengers onboard commercial aircraft departing from the United States. Both sections require the appropriate official of a commercial aircraft arriving in or departing from the United States to transmit through APIS to CBP an electronic passenger arrival or departure manifest. The arrival and departure manifest requirements are nearly the same and specify the transmission methods, the information that must be included in the manifest, and the applicable exceptions.

CBP proposes to add a new paragraph (c) to both 19 CFR 122.49a and 122.75a. The new paragraphs would be identical for both sections. The new paragraphs would be divided into two sub-paragraphs and would describe the document validation message and the recommendation not to board passengers whose travel documents cannot be validated. This proposed rule differs from current practice in three respects. First, this proposed rule would enable CBP to more efficiently validate the travel documents of each passenger. Second, this proposed rule would require the carrier to receive a second message from CBP stating whether the passenger's travel documents are validated. Third, the proposed rule would require the carrier to take appropriate action if CBP is unable to validate the travel documents of a passenger.

1. Document Validation Message

Proposed paragraphs (c)(1) to 122.49a and 122.75a describe the required process for the document validation message. The general process is as follows. After a carrier transmits passenger manifest information to CBP through APIS, CBP responds to the carrier with a document validation message.

The carrier would be required to ensure its transmission system is capable of receiving the document validation message. For carriers using an interactive transmission method, APIS would transmit the document validation message through the interactive system. The document validation message from CBP would state whether CBP's system matched each passenger's travel documents to a valid, existing travel document in CBP's databases.

This proposal would add two new definitions in 19 CFR 122.49a(a) to define terms used in 122.49a and 122.75a. A ''travel document'' would be defined as any document or electronic record presented for travel to or from the United States, including DHS-approved travel documents, U.S.-issued visas, Electronic System for Travel Authorization (ESTA) approvals, and Electronic Visa Update System (EVUS) enrollments. ''DHS-approved travel document'' would be defined as a document approved by DHS for travel in or out of the United States, such as a passport or other Western Hemisphere Travel Initiative (WHTI) approved document.

2. Requirement To Contact CBP

If the document validation message states that the CBP system could not validate a passenger's travel documents and the carrier is unable to resolve the issue on its own, the carrier would be required to contact CBP prior to issuing a boarding pass to that passenger or allowing the passenger to board the aircraft. However, the carrier would not be required to contact CBP for individuals who are ineligible to travel or will not travel on the flight.

To facilitate the document validation process, and prior to contacting CBP, a carrier using an interactive transmission method may transmit additional biographical information as listed in paragraph (b)(3) of 19 CFR 122.49a and 122.75a.[13] For example, for a passenger

[13] Biographical information refers to the information set forth in the proposed 19 CFR 122.49a(b)(3)(i) through (v), (vii) through (xi), and (xiii) for arriving aircraft and 19 CFR 122.75a(b)(3)(i) through (iv), and (vi) through (xi)

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with more than one travel document whose name appears differently on the travel documents, the carrier may transmit the names as they appear on each travel document. If, after submitting the additional biographical information, the CBP document validation message states that the passenger's travel documents were validated, the carrier is not required to contact CBP to resolve that passenger's travel document status prior to issuing a boarding pass to that passenger.

For carriers using a non-interactive transmission method, the CBP system would respond to the carrier with a document validation message indicating whether the flight was cleared. The carrier must ensure that it is capable of receiving the document validation message through a non-interactive method, such as email. A cleared flight for document validation purposes means that the CBP system matched each passenger's travel documents to a valid, existing travel document in CBP's databases. If the document validation message states that the CBP system was unable to clear the flight, the carrier must contact CBP prior to issuing any boarding passes for that flight or boarding any passengers. Upon the carrier contacting CBP, CBP would provide the carrier additional details as to which passenger's travel documents could not be validated.

3. Recommendation Not To Board

Proposed paragraph (c)(2) of 19 CFR 122.49a and 122.75a states that if CBP is unable to validate a passenger's travel documents even after the carrier has contacted CBP, CBP would issue a recommendation to the carrier not to board the passenger. However, it is within the discretion of the carrier whether to board the passenger upon receiving CBP's recommendation.[14]

B. Additional APIS Data Elements

The required data elements in the electronic passenger arrival manifest are specified in 19 CFR 122.49a(b)(3). CBP proposes to amend this provision to require the carrier to transmit four additional data elements for each passenger in the arrival manifest: phone number with country code, alternative phone number with country code, email address, and address while in the United States. The carrier would be required to transmit an address in the United States for all passengers, except for passengers who are in transit to a location outside the United States.

Under current regulations, carriers are not required to transmit a U.S. address for U.S. citizens, lawful permanent residents (LPRs), and those in transit to locations outside the United States. *See* 19 CFR 122.49a(b)(3)(xii). When promulgating the current regulations, CBP explained that a U.S. address for U.S. citizens and LPRs could be obtained through other means. *See* 70 FR 17829–17830. The primary method for obtaining these addresses in 2005 was the Customs Declaration Form 6059B, which is a paper form filled out by the traveler upon arrival in the United States. Since 2005, CBP has automated much of the processing of arriving passengers. As a result, the collection of an address from U.S. citizens and LPRs through the Customs Declaration is no longer effective for use with all of CBP's electronic systems. Accordingly, CBP has determined that the collection of a U.S. address from U.S. citizens and LPRs prior to arrival and through the electronic APIS process is necessary to ensure that CBP has the information in a timely manner and in a format that can be easily accessed. Once the proposed APIS regulatory changes are implemented, other regulatory changes may be proposed to reduce redundancies in the collection of personal information. However, the proposed APIS changes are foundational before other changes to information collection can be made.

Under current regulations, carriers are not required to transmit through APIS a phone number with country code, alternative phone number with country code, or email address for any passenger. Requiring this additional contact information through APIS for all passengers arriving in the United States, including U.S. Citizens, LPRs, and visitors provides CBP with additional avenues to identify and locate individuals suspected of posing a risk to national security and safety and aviation security.

In addition to promoting national security and safety, the collection of these additional data elements would also enable CBP to further support the efforts of the Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), to monitor and conduct contact tracing related to public health incidents. In 2017, the CDC promulgated regulations requiring any airline arriving in the United States to make certain data available to the CDC Director for passengers or crew who may be at risk of exposure to a communicable disease, to the extent that such data is already available and maintained by the airline. *See* 82 FR 6890 (Jan. 19, 2017) and 42 CFR 71.4. CBP also provides support to the CDC pursuant to 42 U.S.C. 268, which states that it ''shall be the duty of the customs officers . . . to aid in the enforcement of quarantine rules and regulations.'' Pursuant to these authorities, DHS and HHS have developed procedures and technical infrastructure that facilitate DHS sharing traveler information with HHS upon request, including safeguards for data privacy and security.

In response to the COVID–19 pandemic, the CDC issued an interim final rule (IFR) on February 12, 2020 (85 FR 7874), requiring that ''any airline with a flight arriving into the United States, including any intermediate stops between the flight's original and final destination, shall collect and, within 24 hours of an order by the Director [of the CDC], transmit to the Director'' certain data regarding passengers and crew arriving from foreign countries ''for the purposes of public health follow-up, such as health education, treatment, prophylaxis, or other appropriate public health interventions, including travel restrictions.'' Pursuant to the IFR, airlines must submit the following five data elements to CDC with respect to each passenger and crew member, to the extent that such information exists for the individual, and in a format acceptable to the Director when ordered by CDC to do so: full name, address while in the United States, email address, primary phone number, and secondary phone number. According to the CDC, these data elements are the most useful for responding to a critical health crisis. In light of COVID–19, CBP issued a Privacy Impact Assessment (PIA) documenting CBP efforts to support the CDC public health response.[15]

If this proposed rule is implemented and the carrier submits the required information through APIS, CBP would also have the ability to share these data elements with the CDC upon its request, using existing communication channels between DHS and HHS, which would mitigate the need for airlines to separately transmit the same information to the CDC if the airline has

for departing aircraft. That is: full name; date of birth; gender; citizenship; country of residence (for arriving passengers); DHS-approved travel document type, number, country of issuance, and expiration date (if a DHS-approved travel document is required); alien registration number (where applicable), and passenger name record locator (if available).

[14] CBP cannot require that a passenger be denied boarding. However, if an air carrier boards a passenger who is then denied entry to the United States, the air carrier may have to pay a penalty and bear the costs of transporting that passenger out of the United States.

[15] For more information, please access *https://www.dhs.gov/publication/dhscbppia-066-cbp-support-cdc-public-health-contact-tracing.*

already transmitted the necessary information to CBP.

Lastly, the proposed regulations were developed to comply with the United States' international obligations.[16] The International Civil Aviation Organization (ICAO), of which the United States is a contracting state, directs contracting states to use a single window to collect advance passenger information from air carriers and then provide necessary data to agencies that require the information, rather than require individual transmissions from carriers to each relevant agency within one contracting state. Convention on International Civil Aviation, 61 Stat. 1180, 15 U.N.T.S. 295, Annex 9, SARP 9.1 (Chicago, 1944) (Chicago Convention). The Chicago Convention is the international agreement which established the ICAO and ICAO standards and recommended practices (SARPs). In accordance with the ICAO SARPs covering advance passenger information (API), CBP is using APIS to collect data from carriers that can be provided to other agencies that require the information. This ensures that carriers are required to provide only one electronic API message to the U.S. government, which can be used to satisfy the needs of multiple government agencies.

ICAO permits contracting states to establish rules that deviate from the SARPs, so long as the contracting state notifies ICAO of the deviation by filing a difference. Chicago Convention, art. 38. The United States currently files a difference with ICAO concerning Annex 9, SARP 9.10, which requires contracting states to require as advanced passenger information only data elements that are available in machine readable form on accepted travel documents. The United States already files a difference under SARP 9.10 because CBP requires carriers to collect street address and country of residence, which are not available in machine readable form on accepted travel documents. *See* 19 CFR 122.49a(b)(3). The additional data elements that DHS is now proposing (primary phone number with country code, alternative phone number with country code, and email address) similarly are not available in machine readable form on accepted travel documents. Therefore, the United States would need to amend the difference that is already on file with ICAO to include the additional data requirements under the proposed regulations.

[16] Nothing in the proposed rule is intended to change existing bilateral agreements between the United States and other entities.

C. Changes Conforming Regulations With Current Practices

1. Close-Out Message

Carriers must submit passenger manifest information to CBP upon the aircraft's departure or arrival. Pursuant to existing regulatory requirements, carriers may use an interactive transmission option to transmit a ''close-out message'' not later than 30 minutes after securing the aircraft. *See* 19 CFR 122.49a(b)(1)(ii)(B) and (C) and 19 CFR 122.75a(b)(1)(ii)(B) and (C). The close-out message includes a header (information about the carrier sending a secure link to CBP), flight information (flight number, departure time, estimated arrival time), and passenger manifest information. This option is described in 19 CFR 122.49a(b)(1)(ii)(B) and (C) for arriving aircraft and section 19 CFR 122.75a(b)(1)(ii)(B) and (C) for departing aircraft. The current regulations permit the carrier to select one of two ways to format the close-out messages. Under the first option, the carrier can transmit a message for any passengers who checked in but who were not onboard the flight. Under the second option, the carrier can transmit a message for all passengers who boarded the flight.

CBP proposes to amend 19 CFR 122.49a(b)(1)(ii)(B) and (C) and 19 CFR 122.75a(b)(1)(ii)(B) and (C) to eliminate the option to transmit messages for any passengers who checked in but who were not onboard the flight. Carriers subject to these provisions would be required to transmit a close-out message that identifies all passengers onboard the flight.

Allowing carriers to transmit a message identifying passengers who checked in but were not onboard the flight has impeded CBP's efforts to document who was actually on board a flight. Under the current regulations, a carrier could submit a close-out message that only identifies individuals who checked in but did not board the flight. This allows for instances where an individual reserves a flight, the carrier transmits APIS data that includes this individual to CBP, then the individual cancels before checking in. A carrier that transmits a close-out message identifying only individuals that checked in but did not board would not indicate that this passenger also did not board because the passenger never checked in. CBP would then consider that the individual described above was onboard the flight. Because of this discrepancy, carriers have ceased transmitting close-out messages that transmit a message only identifying those individuals who checked in but who were not onboard the flight. Instead, it is common practice for carriers to transmit a message identifying only those individuals who boarded the flight. CBP proposes to amend the regulations to reflect the current practice.

2. U.S. Electronic Data Interchange for Administration, Commerce and Transport (U.S. EDIFACT) Format

19 CFR 122.49a(b)(1)(i) and 19 CFR 122.75a(b)(1)(i) state that a passenger manifest must be transmitted separately from a crew member manifest if the transmission is in U.S. EDIFACT format. CBP proposes to eliminate the references to U.S. EDIFACT.

In March 2003, the World Customs Organization adopted the U.N. EDIFACT format as the global standard for advance passenger information messaging. As a result, when CBP published the final rule requiring the transmission of passenger manifest information through APIS, CBP announced that U.N. EDIFACT would be the mandatory format 180 days after the publication of the final rule. *See* 70 FR 17831 (Apr. 7, 2005). Because U.N. EDIFACT is now the mandatory format for APIS transmissions, the references to U.S. EDIFACT in 19 CFR 122.49a and 122.75a are no longer necessary and would be removed.

3. 2005 Exception

19 CFR 122.49a(b)(3) lists the data elements that must be transmitted in the arrival manifest. 19 CFR 122.75a(b)(3) lists the data elements that must be transmitted in the departure manifest. Both sections state that certain information is not required until after October 4, 2005. As this exception no longer applies, the language is no longer necessary and would be removed.

4. DHS-Approved Travel Document

In accordance with section 7209 of the IRTPA, the Secretary of Homeland Security is authorized to require passengers entering the United States from the Western Hemisphere to present a passport or other documents that the Secretary of Homeland Security has determined to be sufficient to denote identity and citizenship. *See* Public Law 108–458, 118 Stat. 3638 (Dec. 17, 2004). In order to reflect the inclusion of travel documents, in addition to passports, which are approved for travel to or from the United States in certain situations, CBP proposes to amend 19 CFR 122.49a(b)(3) and 122.75a(b)(3) to replace the references to ''passport'' with ''DHS-approved travel document.'' As stated above, ''DHS-approved travel document'' would be defined as a travel

document approved by the U.S. Department of Homeland Security for travel in or out of the United States, such as a passport, or other Western Hemisphere Travel Initiative (WHTI) approved document.[17]

Further, 19 CFR 122.49a(b)(3) and 122.75a(b)(3) list the data elements that must be included in the passenger manifest and require a carrier to submit each passenger's travel document type (*e.g.,* passport), passport number, passport country of issuance, and passport expiration date (if a passport is required). Under the proposed amendments, carriers would instead be required to transmit the DHS-approved travel document type, DHS-approved travel document number, DHS-approved travel document country of issuance, and DHS-approved travel document expiration date.

D. Optional Additional Data Element: Aircraft Registration Number

As discussed above, carriers that use an interactive transmission option must transmit the close-out message not later than 30 minutes after securing the aircraft. *See* 19 CFR 122.49a(b)(1)(ii)(B) and (C) and 19 CFR 122.75a(b)(1)(ii)(B) and (C). CBP proposes to permit carriers that use an interactive electronic transmission system to include the aircraft's registration number in the close-out message.

The change is proposed as part of CBP's efforts to automate the General Declaration (CBP Form 7507). The General Declaration is a paper form submitted by owners or operators of commercial aircraft to CBP at the time of an aircraft's departure from or arrival to the United States. The General Declaration includes information on the arrival and departure of aircraft entering or departing the United States, the flight itinerary, and passenger and crew information. One of the required data elements of the CBP Form 7507 is the aircraft's registration number. This data element is not collected through any other means and is critical to CBP operations. If CBP automates CBP Form 7507 through a subsequent rulemaking, it is likely that transmission through APIS would be one option for a carrier to continue transmitting the aircraft registration number to CBP. Unless and until the existing regulatory requirements change regarding submission of Form 7507, carriers that transmit the aircraft's registration number in APIS will still need to submit the General Declaration.

[17] For more information on WHTI, see 73 FR 18383 (Apr. 3, 2008).

VI. Statutory and Regulatory Reviews

A. Executive Order 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated as a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation.

Purpose of Rule

Entry into the United States by U.S. citizens and foreign travelers via air travel requires certain travel documents containing biographical information, such as a passenger's name and date of birth. As a security measure, CBP compares the information on passengers' documents to various databases and the terrorist watch list and recommends that air carriers deny boarding to those who are likely to be deemed inadmissible upon arrival in the United States. However, current processes for advising carriers regarding passengers who may be presenting fraudulent travel documents would be improved through CBP providing electronic messages to carriers indicating if the false information on their documents does not match the information in CBP databases. This proposed rule would allow CBP to add a document validation message to the electronic messages currently exchanged between air carriers and CBP prior to departure to the United States from a foreign port or place or departure from the United States. The addition of the proposed electronic validation of travel documents and response messaging to carriers to the pre-boarding vetting process would allow CBP and carriers to more efficiently identify and prevent those passengers with fraudulent or improper documents from traveling to the United States. The proposed rule would also reduce the number of errors in CBP records that must be corrected by CBP officers during inspections.

The proposed rule also would require carriers to transmit additional passenger information to CBP, including phone number with country code, alternative phone number with country code, email address, and address while in the United States. The carrier would be required to transmit an address in the United States for all passengers, except for passengers who are in transit to a location outside of the United States. Submission of such information would enable CBP to identify and interdict more quickly individuals posing a risk to border, national, and aviation safety and security. Collecting these additional data elements would also enable CBP to further assist CDC to monitor and trace the contacts of those involved in serious public health incidents, when CDC requests such assistance from CBP.

Finally, the proposed rule would give carriers the option to include the aircraft registration number in their electronic messages to CBP and would make technical changes to conform with current practice.

Background

United States citizens traveling outside the United States require a passport or other WHTI-approved travel document to re-enter the United States. Foreign travelers coming to the United States by air must possess either a visa or approval under the Electronic System for Travel Authorization (ESTA), in addition to other appropriate travel documentation, such as a foreign passport, to be presented to CBP for inspection when required.[18] Though a visa or ESTA approval is not required to purchase a ticket, it is required to check in for a flight. When a traveler arrives at an airport for a flight, the carrier is required to check the ticket and travel documents to confirm the document appears to be valid for travel to the United States, and the passenger is the person to whom the travel document was issued. Current regulations also require air carriers to submit information electronically for each individual traveling or intending to travel to or from the United States, including passengers, crew, and non-crew. The required information is different for flights departing from and arriving in the United States, but generally includes biographical information, such as a passenger's name, date of birth, sex, status on the

[18] Approved ESTA applications (ESTAs) are required of travelers who are traveling by air or sea to the U.S. under the Visa Waiver Program. Most citizens and nationals from visa waiver countries do not require a visa to travel to the United States for a period not exceeding 90 days; instead, they may apply for an ESTA approval, which is valid for two years or until their passport expires. ESTA holders are not required to provide a physical copy of a document. Rather, DHS can communicate their status to air carriers. *See https://esta.cbp.dhs.gov/* for more information on the ESTA program.

aircraft, passport type and number, country of issuance, expiration date, and departure or arrival details. CBP checks these details against various databases and the terrorist watch list and sends a response in the form of numbers and letters to the carrier, indicating whether the passengers are cleared to board or if CBP recommends they not be boarded.[19] Under this proposed regulation, as part of the Document Validation Program (DVP) and in addition to current checks, CBP would also include in the response message to carriers a character that indicates whether a passenger's travel documents are validated.

Carriers submit required electronic manifest information to CBP through APIS. Most large, commercial operators use a CBP-certified interactive system capable of transmitting and receiving messages to or from APIS electronically. Beginning 72 hours before the departure time, carriers may submit individual records or batches of passenger information through APIS acquired during ticket reservation for validation. Carriers must submit all non-interactive and interactive batch transmission information at least 30 minutes prior to securing the aircraft doors, and all interactive individual passenger information transmission messages up to the time of securing the aircraft doors. Passenger information is automatically vetted against CBP databases and the terrorist watch list. CBP transmits vetting results back to the carrier in batches or through individual interactive messages, with one vetting response for each name uniquely identified in the transmission. During check-in, carriers may submit passenger information through APIS Quick Query in up to 10-person batches, with responses coming within 4 seconds. The Quick Query mode is often used to send updates for passengers whose information has already been submitted or for last minute ticket reservations. APIS Quick Query allows passengers to print their boarding passes at home or at an airport kiosk without consulting a gate agent.

Smaller carriers and charter carriers usually use a non-interactive, web-based portal called eAPIS to send uploaded manifest information through APIS for validation. Smaller carriers usually use eAPIS to avoid the costs of setting up and maintaining an interactive system. Many of these carriers fly infrequently and with small passenger counts. Those using eAPIS must submit information to CBP via the internet at least 30 minutes prior to securing the aircraft doors and will receive messages back electronically, usually through email. The response message contains vetting results and states whether the carrier should continue with printing boarding passes or boarding passengers. Because charters and small carriers generally have smaller passenger lists and fly less frequently, they do not require the same processing speeds enabled by an interactive system.

With APIS, carriers receive a response message from CBP noting whether individuals are cleared to board, require additional security screening, or are recommended to be denied boarding based on checks against law enforcement databases. With eAPIS, carriers receive a single response message for the entire manifest, in the form of an email, stating whether the entire flight is cleared or not. In the event a flight is not cleared, additional processes will be developed such as the carrier logging back in to their eAPIS account for greater details on which passengers are not cleared and how they may resolve the issue.[20] The proposed rule requires carriers to receive additional data in the response message(s) they receive from CBP indicating whether each passenger's travel documents have been validated. Travel documents would be defined as any document or electronic record presented for travel to the United States, including DHS-approved travel documents, U.S.-issued visas, Electronic System for Travel Authorization (ESTA) approvals, and Electronic Visa Update System (EVUS) enrollments.[21] Passengers cleared by CBP whose documents are validated may be issued a boarding pass automatically, online or at an airport kiosk.

With the addition of document validation to pre-flight APIS transmissions via the voluntary DVP, discussed in more detail below, carriers follow the same information collection and submission procedures as established in existing regulations and discussed above. When the travel document information gets to CBP, it undergoes an additional database check to validate the travel documents. The results of that additional check are returned to the carriers in the form of a character in the APIS response message they already receive. Carriers participating in DVP receive the same message as those not yet participating, but with the addition of the DVP-specific character indicating whether documents were validated against the CBP database. Any carrier not enrolled in the DVP would, under existing regulation, not receive the document validation part of the response message through APIS. In that case, the validity of documents is not confirmed via a CBP database check and would not affect whether the passenger or flight is cleared. Under the terms of the proposed rule, all commercial carriers transporting passengers must participate in document validation program, and CBP will work with carriers to implement changes to receive DVP response messages from CBP.

The response message from CBP includes characters indicating a passenger's status. Passenger information sent by commercial carriers is checked against various databases and the terrorist watch list, and the results are submitted to the carrier in the form of alphanumeric codes. For TSA information, numerical characters indicate statuses like cleared or selectee for further review, among others. Under current regulations, CBP includes a letter indicating the passenger's travel status. With the DVP, CBP can indicate particular document validation errors, such as valid ESTA on file, ESTA denial, no U.S. travel documents on file, or that CBP recommends the carrier not board the passenger. Some of these codes have been in use since interactive APIS was deployed, though CBP introduced new letters to accommodate the DVP.

Under current regulations and practices, errors can occur when a passenger submits their information to the carrier. This often happens when documents are damaged, smudged, or scanned incorrectly. Minor errors like a misspelled name or incorrectly recorded passport number may be fixed by the passenger. More egregious errors or errors a passenger cannot correct themselves would require the assistance of a carrier employee to complete the check-in process, or the need to contact CBP for assistance if unable to resolve the issue. In some instances, though, errors like a misspelled name remain in the APIS record during travel and would be corrected upon arrival. Under the DVP and the proposed rule, these simple errors may cause legitimate travel documents to not be validated.

[19] As discussed in footnote 14 above, CBP cannot require that a passenger be denied boarding. However, if an air carrier boards a passenger who is then denied entry to the United States, the air carrier may have to pay a penalty and bear the costs of transporting that passenger out of the United States.

[20] No smaller carriers using the eAPIS system are currently enrolled in the voluntary DVP. This system and protocols will be developed as those carriers implement the program.

[21] Chinese nationals holding a 10-year B1, B2, or B1/B2 visa must enroll in EVUS. *See https://www.cbp.gov/travel/international-visitors/electronic-visa-update-system-evus/frequently-asked-questions.*

Such errors would, without DVP, either require intervention by a carrier employee or be missed and only noted and corrected upon arrival. In some instances, failure to validate indicates intentional deception or fraud.

Often, a passenger traveling with a carrier participating in DVP whose documents are not validated when initially submitted as part of the check-in process can quickly identify an error like an incorrect birthdate while they are still online or at an airport kiosk attempting to check-in for a flight. They are then able to correct that information manually, by re-scanning the document or manually entering the data, and resubmitting. The documents will then be validated and the passenger may print their boarding pass without assistance from a carrier employee. However, if, after the information is submitted and the passenger has attempted any necessary corrections, a passenger's documents are still not validated, they may seek assistance from carrier staff to complete check-in. In the event the carrier employee is unable to validate the document by re-submitting the information or performing a manual check, they would need to work with CBP and the passenger to resolve the issue.[22]

Before calling CBP, an agent for a DVP-enrolled carrier may re-submit the information in order to correct any entry errors or account for changes that have occurred since the document was issued. Passengers with multiple travel documents may be more likely to require assistance. This can occur, for example, if a dual citizen uses one passport to reserve his or her ticket and the other to check-in to the flight. Some passengers from Visa Waiver Program (VWP) countries who under other circumstances would not require a visa, must travel with a visa if, for instance, they are staying in the United States for longer than 90 days or attending an American university and may require additional help resubmitting information to validate those documents. Though document validation automatically checks for a visa for a VWP passenger without an ESTA approval, carrier agents may need to check for a visa manually. Additionally, those passengers with multiple travel documents may re-submit their information, adding their second document, for validation. If a passenger's documents are still not validated, the carrier must contact CBP for resolution.

Carriers both enrolled and not enrolled in DVP and using the interactive system receive validation messages almost in real time or in batches of multiple passengers, which indicate whether CBP cleared each passenger. DVP-enrolled carriers also receive a message indicating whether CBP has validated their travel documents. All carriers using the non-interactive system receive a single response message for the entire manifest, in the form of an email, indicating whether the entire flight is cleared or not. If the flight is not cleared, the carrier may log in to their eAPIS account for greater detail to determine which passenger or passengers are at issue. Those enrolled in DVP will also receive validation information in their response messages. To resolve any issues they cannot resolve themselves, carriers must contact CBP regardless of DVP enrollment status.

Error in the APIS record regarding traveler documentation not identified and resolved by carriers before departure are generally identified and corrected by CBP Officers (CBPOs) during inspection once the passenger has arrived at a United States port of entry. CBPOs compare document information against APIS data and modify the APIS record to reflect the correct information when errors are identified. Adding document validation to the pre-departure APIS system checks would reduce the number of errors CBPOs would encounter and need to correct during inspections as passengers have a better opportunity to identify and resolve these errors themselves.

CBP began the voluntary DVP to test document validation in 2013. Because carriers were already required to submit information to APIS beginning in 2005,[23] the infrastructure to send and receive messages was already in place. Most large, commercial carriers have already incurred the cost of setting up an interactive system for communicating with APIS to comply with other regulations. Smaller carriers and charter carriers submit their information to CBP through eAPIS. This web portal allows information to be transmitted over the internet once the user has established an account. CBP does not believe that any carriers would choose to switch from eAPIS to APIS as a result of this proposed rule.

In the following sections, CBP provides a full accounting of the costs and benefits of the proposed rule, including during the regulatory period from 2022–2026, and the voluntary DVP period from 2013–2021.

Costs of the Rule

Technology Costs

To comply with this proposed rule, carriers would be required to ensure their systems can both transmit and receive messages. Because carriers already must use a CBP-certified system to connect to APIS, and any system already certified by CBP is able to receive messages, they face minimal or no costs to be able to receive the document validation message required by the proposed rule or to submit additional passenger information.[24] Because carriers participating in the voluntary DVP already have the systems in place to send passenger information and receive CBP response codes, they require no new technology. Carriers would not face additional technology maintenance costs to comply with this proposed rule. CBP does not anticipate that this proposed rule would cause any more carriers to switch to and bear the costs of adopting an interactive system.

CBP has already configured its system to check travel document information automatically against CBP databases, as well as to send and receive the appropriate messages. Development of the document validation system occurred in 2012 and 2013 and is discussed in detail in the *Voluntary Period* section below. The database of travel documents used in document validation was already built for use in other CBP programs. In the years since 2013, the DVP has cost CBP approximately $500,000 per year for ongoing technological maintenance.[25] CBP has already established a channel of communication with other agencies, including the CDC, and would not need to make any updates in order to collect and share, when appropriate, additional passenger biographical information. Therefore, technology costs for the proposed rule would include $500,000 per year in maintenance costs.

[22] If a gate agent is unable to resolve a passenger issue, for example by manually checking for a visa, the gate agent may call CBP for assistance. CBP provides support to carriers via the Immigration Advisory Program and the Regional Carrier Liaison Group. *See https://www.cbp.gov/document/fact-sheets/immigration-advisory-program-iap* and *https://www.cbp.gov/travel/travel-industry-personnel/carrier-liaison-prog* for more information.

[23] Source: U.S. Department of Homeland Security, ''Advance Passenger Information System Fact Sheet,'' November 12, 2013, *https://www.cbp.gov/document/fact-sheets/advance-passenger-information-system-fact-sheet.* Accessed August 26, 2020.

[24] CBP bases this assumption on discussions between Office of Field Operations personnel and participating carriers.

[25] Source: CBP's Office of Field Operations on Jan. 6, 2022.

Time Costs To Resolve Errors

Under the current regulations, air carriers submit passenger data to CBP between 72 hours and 30 minutes before departure, and no later than securing the aircraft doors for interactive individual submissions. CBP systems automatically perform checks between the data and information stored in CBP databases. CBP sends response messages to the carriers indicating whether CBP has cleared each passenger for boarding or requires additional screening, or recommends the air carrier deny boarding, although under existing regulations there is no document validation message included. Once the flight arrives, passengers must go through CBP inspection where a CBPO checks their travel documents against APIS manifest information. Errors in the manifest data, such as misspellings or incorrect date information, are corrected at this time.

By adding document validation to the checks CBP already runs on passenger information, many of the errors corrected by a CBPO during inspection upon arrival could be corrected by the passenger during the check-in process. For example, should the date of birth read incorrectly when a passenger scans their document pre-flight with their phone or at an airport kiosk, the document may not be validated and the passenger will receive an error message.[26] The passenger may review their data, correct the mistake, and resubmit their information. The document would then be validated and the passenger could automatically print the boarding pass. Without the DVP, the error might require the passenger to seek assistance from carrier employees or may not be caught before the boarding pass is printed, but would then be noticed by the CBPO, who would correct the APIS record during inspection after the flight arrives in the United States.

Some errors require the passenger to seek assistance and the carrier agent to call CBP to resolve an issue, though such calls are rare. Under DVP, passengers would correct the majority of errors either online or at an airport kiosk during check-in. These corrections would lead to an increase in the time spent by these passengers during check-in. CBP estimates that passengers needing to correct personal information average about 10 seconds in making the correction. Because they no longer spend about 20 seconds waiting for a CBPO to make the correction (discussed further in the *Benefits of the Rule* section below), this represents a partial burden transfer. Although passengers would spend an additional 10 seconds pre-flight to correct the error, they then save 20 seconds during processing. By allowing passengers to make their own corrections online or at a kiosk, the overall check-in process would be more efficient. Enabling passengers to correct errors themselves, whether it be a spelling mistake or the submission of the wrong document, allows them to continue using an automated check-in process rather than seeking assistance with manual validation. This would reduce time spent waiting in line for help, as well as the number of instances where carrier employees must manually validate documents or seek CBP assistance if they cannot resolve the error in some way. For example, a passenger traveling from a VWP country who does not have an ESTA but does have a valid visa would, without DVP, require assistance from carrier personnel because the system would not find an ESTA upon initial submission of passenger information. With DVP, the system automatically checks for a visa if an ESTA is not found, so the passenger could continue using the automated check-in process and would not require assistance. Air carriers participating in the DVP voluntarily have reported increased efficiency pre-flight.[27]

For smaller carriers using the non-interactive, eAPIS system, the travel document error resolution process is similar to the interactive version. Carriers send in passenger data and receive a response message. Generally, the entire manifest is cleared, but should there be an issue, the carrier is notified via an email. The carrier may review the data to determine which passenger is at issue, then log back into their eAPIS account to re-submit corrected data. Should the problem not be resolvable by re-submitting corrected data, the carrier may call CBP for assistance in the same way as users of the interactive system. The vast majority of flights and passengers are processed through the interactive APIS system. Approximately 0.4 percent of passenger data is submitted via the non-interactive, eAPIS system.

Some errors and corrections would require carriers to call into a CBP support center for assistance. For example, if a passenger has a visa that appears valid, but the CBP response indicated it was not, the carrier agent may call to verify if the visa has been revoked. In another scenario, if a passenger's visa has been washed to remove the ink and the data altered, the DVP system would fail to validate the document and the carrier might call CBP to manually verify the information they see on the document.[28] These calls generally take no more than five minutes. CBP does not anticipate the number of calls for assistance to increase from pre-DVP levels, nor does CBP believe that either carriers or the support centers would need to increase staffing to accommodate additional calls.

Carriers not participating in DVP currently sometimes call CBP to verfiy travel documents. Using the automated process can confirm that a document is valid, which can prevent additional calls. CBP does not collect information on the frequency of these calls or what issues each call addresses and so cannot estimate how many calls would be prevented if passengers or carrier agents catch and correct a greater number of data errors as a result of mandating the DVP.

In total, CBP has already incurred technology costs described above in preparation for the proposed rule. Some passengers would experience an increased time burden during check-in in order to identify and correct errors in information submitted through APIS. CBP does not anticipate increased costs for air carriers as a result of the proposed rule.

Changes Conforming Regulations With Current Practices

CBP is making several changes to conform the regulations to current practice in this proposed rule, as described in the **SUMMARY** section above. These changes are unlikely to result in increased costs to carriers, passengers or CBP. The changes, including updates to the requirements for close-out messages, removal of superfluous language from the regulations, and the replacement of ''passport'' with ''DHS-approved travel document'' would simplify the regulations without imposing an additional burden on carriers, passengers, or CBP. Because carriers already send close-out messages, the change to the requirements would not result in additional programming costs,

[26] The passenger does not see the response message from CBP. Instead, the passenger sees whatever error message the individual carrier uses in its system. That message is based upon the response from CBP. Such an error might direct the passenger to review the passenger's data and try submitting again or, in the case of a more egregious issue such as a recommendation not to board the passenger, might direct the passenger to seek assistance from a carrier employee.

[27] Source: discussion with the Office of Field Operations on July 28, 2020.

[28] In this instance, if the document had been improperly altered, the document would not be validated and the passenger would not receive a boarding pass.

technology investments, or an increased time burden for carrier personnel. It is common practice for carriers to transmit a message identifying only those individuals who boarded the flight. The other revisions reflect current practice or minor, clarifying changes.

Benefits of the Rule

To Passengers, Carriers, and CBP

As error correction is moved from CBP inspection to the pre-departure period, passengers and CBPOs would experience greater efficiency after flights have arrived in the United States. Because CBPOs would not need to re-run as much information or modify as many records, they would complete inspection of passengers more quickly, leading to shortened wait times for everyone. Because CBP has instituted a number of programs to reduce inspection wait times throughout the time that the voluntary DVP has been in place, it is impossible to estimate precisely the degree to which the DVP may have impacted overall wait times in the voluntary phase of the program. However, CBP believes it has contributed to faster overall processing.

Approximately 135,747,880 commercial passengers arrived in the United States by air in Fiscal Year (FY) 2019.[29] Over the 5-year period from FY 2015 to FY 2019, arrivals in the United States grew at a compound annual growth rate of 3.8 percent.[30] Over the 5-year period of analysis from FY 2022 to FY 2026, CBP projects that 820,115,824 commercial air passengers will arrive in the United States, assuming a continued growth rate of 3.84 percent per year. Under the terms of proposed rule, all arriving commercial air passengers would be subject to the DVP, rather than the 67 percent of commercial air passengers covered as of 2021 in the voluntary program. See Table 1 for historical passenger arrival data and Table 2 future projections.

TABLE 1—HISTORIC COMMERCIAL AIR PASSENGER ARRIVALS FROM FY 2015–FY 2019

Fiscal year	Arriving passengers
2015	112,505,410
2016	119,253,895
2017	124,262,060
2018	130,833,520
2019	135,747,880
Total	622,602,765

Note: Estimates may not sum to total due to rounding.

TABLE 2—PROJECTED COMMERCIAL AIR PASSENGER ARRIVALS FROM FY 2022–FY 2026

Fiscal year	Arriving passengers
2022	151,938,854
2023	157,754,144
2024	163,792,007
2025	170,060,963
2026	176,569,857
Total	820,115,824

Note: Estimates may not sum to total due to rounding.

Common errors corrected by CBPOs during inspections that would be corrected pre-flight with the DVP in place include a passenger's misspelled last name, incorrect date of birth, and incorrect document number. Based on a sampling of more than three million commercial passengers arriving in FY 2019, CBP estimates that 7.5 percent of passengers require a simple correction to their APIS record upon arrival at CBP inspection.[31] Of those 7.5 percent of passengers that require a simple correction, CBP estimates based on its experience with the voluntary program that initially 50 percent would be corrected pre-flight under the proposed rule, meaning that neither the passenger nor the CBPO would need to expend time in making corrections during CBP inspection. This would save each party about 20 seconds (0.0056 hours) per inspection. Note that the passenger would have spent about 10 seconds making the correction before the flight during the check-in process and, on average, would see a net time savings of about 10 seconds. The remaining 50 percent would continue to be resolved upon arrival when the CBPO processes the traveler.

Over the 5-year period of analysis, approximately 820,115,824 commercial passengers are projected to arrive in the United States by air. Under the baseline, approximately 67 percent of those passengers would arrive via carriers participating in the voluntary DVP as of 2021. Under the terms of the proposed rule, the remaining 33 percent of passengers would arrive on carriers newly required to join the DVP. We estimate that those passengers would experience 20,269,456 errors over 5 years. Under the proposed rule, about 50 percent, or 10,134,728 of those errors would be corrected pre-flight, saving CBPOs and air passengers $6,181,058. This benefit estimate is based on a wage rate of $86.23 for CBPOs and $47.10 for air passengers, resulting in a combined wage rate of $133.33.[32] See Table 3 for a summary.

Individual time savings may also accumulate to create greater overall time savings for entire groups of arriving air passengers. If half of all passengers with a data error save 20 seconds each during CBP inspection, the passengers waiting behind them for inspection would also benefit from the effects of that 20 seconds saved per passenger. CBP cannot reliably estimate the net impact of this time savings, because those passengers with errors to be corrected would be, in any given group, randomly dispersed among all the passengers. However, CBP does believe the proposed rule would result in additional time savings to passengers overall as individual time savings allow groups to move more quickly through CBP inspection.[33]

[29] The COVID–19 pandemic led to a significant decrease in passenger arrivals in both 2020 and 2021, so those years are excluded from calculations as highly anomalous. CBP also cannot predict when or if passenger arrivals might return to pre-2020 trends, so we have used data from 2015–2019 as a basis for passenger number projections.

[30] CBP is aware that the COVID–19 pandemic will likely reduce the volume of arriving travelers in the short run. Consequently, using historical growth rates and figures from FY 2015 to FY 2019 to estimate arriving passenger volumes for FY 2021 through FY 2025 will not reflect any impacts from the COVID–19 pandemic. It is not clear what level of reductions the pandemic will have on arriving passenger volumes or how CBP would estimate such an impact with any precision given available data. Therefore, the arriving passenger projections that CBP uses in this analysis may be overestimations for the period of analysis, resulting in potential overestimations of this proposed rule's costs and benefits.

[31] Source: email correspondence with the Office of Field Operations on August 11, 2020.

[32] Because both passengers and CBPOs would save time under the proposed rule, this wage rate encompasses both the wage rate of a CBPO ($86.23) and the wage rate for an all-purpose air traveler ($47.10). CBP bases this wage on the FY 2021 salary and benefits of the national average of CBP Officer Positions, which is equal to a GS–11, Step 9. Source: Email correspondence with CBP's Office of Finance on September 7, 2021. Source for the passenger wage rate: U.S. Department of Transportation, Office of Transportation Policy. The Value of Travel Time Savings: Departmental Guidance for Conducting Economic Evaluations Revision 2 (2016 Update), ''Table 4 (Revision 2—2016 Update): Recommended Hourly Values of Travel Time Savings for Intercity, All-Purpose Travel by Air and High-Speed Rail.'' September 27, 2016. Available at *https://www.transportation.gov/sites/dot.gov/files/docs/2016%20Revised%20Value%20of%20Travel%20Time%20Guidance.pdf.* Accessed June 12, 2021.

[33] This analysis is performed from a global perspective and includes individuals who travel to the United States. Not all individuals benefiting from the proposed rule are U.S. citizens or permanent residents.

TABLE 3—SUMMARY OF BENEFITS FOR COMMERCIAL AIR PASSENGERS AND CBPOS

[Undiscounted 2021 U.S. dollars]

Fiscal year	Arriving passengers newly affected	Errors avoided	Time per error (hrs, CBP)	Time per error (hrs, Passenger)	Benefits
2022	50,139,822	1,877,612	0.0056	0.0028	$1,145,134
2023	52,058,867	1,949,475	0.0056	0.0028	1,188,963
2024	54,051,362	2,024,089	0.0056	0.0028	1,234,469
2025	56,120,118	2,101,559	0.0056	0.0028	1,281,717
2026	58,268,053	2,181,994	0.0056	0.0028	1,330,774
Total	270,638,222	10,134,728			6,181,058

Note: Estimates may not sum to total due to rounding.

In addition to time savings from correcting errors earlier in the process, as a result of the proposed rule, fewer passengers would ultimately be denied entry upon arrival in the United States because their fraudulent or expired documents are discovered in CBP inspection, instead of before boarding. In FY 2022, carriers will incur penalties of $6,215.00 [34] for each boarded passenger who was subsequently denied entry, though penalties are modified or reduced for those carriers who have signed a Memorandum of Understanding with CBP regarding their penalty mitigation practices. Carriers are eligible for mitigation based on their violation records and status with CBP. Mitigated amounts are generally 25 percent or 50 percent of the base penalty. In addition to the penalty, carriers are responsible for the costs of returning the passenger to their home country.[35] With the DVP, some passengers with fraudulent or improper documents may be identified before boarding, in which case the carrier may deny boarding, saving the air carrier both the cost of the penalty and the cost of securing and transporting the passenger out of the United States, which amounts to about $10,000 for a single passenger.[36]

The number of penalties that would be issued to air carriers for improperly transporting some passengers is difficult or close to impossible to predict. The average number of penalties issued annually between 2015 and 2019 was 415.[37] CBP cannot project the number of penalties that might be incurred over the coming years, but CBP's subject matter experts estimate that roughly 20 percent of penalties could be avoided due to the DVP.[38] Based on this rough estimate, carriers would avoid $515,845 in penalty costs (2022 U.S. Dollars) per year as well as the costs to transport those individuals back to their home countries.

Benefits and Costs Not Estimated in This Analysis

CBP is unable to estimate some costs and benefits to carriers. For example, while air carriers already have a CBP-certified system to send and receive pre-flight messages, some air carriers may need to make programming improvements to handle the messages required by the proposed rule, though no participating carriers report burdensome programming costs. Therefore, these programming costs are expected to be minor and are generally built into overall technology maintenance budgets, making them impossible to separate. The potential benefits are equally difficult to estimate given variations in travel patterns, the impossibility of predicting when and how passengers may attempt to use fraudulent documents, and the fact that CBP has instituted several time-saving programs (such as Global Entry), which make separating out the time-savings from the DVP impossible.

Mandating the DVP would promote greater efficiency during the CBP inspection process at ports of entry as fewer passengers would require corrections to their information, which would lead to fewer missed flight connections and a better experience for all parties. Carriers enrolled in the voluntary DVP have also reported greater efficiency pre-flight. Additionally, by further enabling carriers to prevent individuals with fraudulent documents from boarding planes to the United States, the proposed rule would increase U.S. national security and safety, in addition to saving the carriers the cost of returning passengers.

The Voluntary Period

CBP began the voluntary DVP in 2013. Initially, a single carrier joined the program, representing about 1 percent of flights arriving in the U.S. that year. Over the next 8 years, 39 carriers joined the voluntary DVP.[39] The 40 total carriers participating in 2021 include the largest U.S. and foreign carriers and cover approximately 67 percent of flights. See Table 4 for more detail.

TABLE 4—HISTORY OF THE VOLUNTARY DVP

Year	Carriers added	Cumulative proportion of flights (%)
2013	1	1
2014	3	12
2015	2	24
2016 [40]	13	47
2017	6	59
2018	9	63
2019	3	65
2020	2	66
2021	1	67
Total	40	67

Carriers participating in the voluntary DVP, the passengers on the flights offered by participants, and CBP all experienced costs and benefits during the voluntary period from 2013 to 2021. Though there are no fees to enroll in the voluntary DVP and no carrier was required to do so during the voluntary period, carriers may have experienced minor programming costs to ensure they

[34] Penalties are indexed to inflation. *See* Department of Homeland Security, Final Rule, ''Civil and Monetary Adjustments for Inflation,'' 87 FR 1317 (January 11, 2022).

[35] *See* 8 U.S.C. 1231(c)–(e).

[36] Source: discussions with the Office of Field Operations on July 28, 2020.

[37] As with passenger arrivals, the number of penalties per year was significantly affected by the flight cancellations and travel restrictions associated with the COVID–19 pandemic. Therefore, CBP has used penalty counts from 2015–2019. Data provided by CBP's Office of Regulations and Rulings.

[38] Source: discussions with the Office of Field Operations on July 28, 2020.

[39] Source: Office of Field Operations records, received on December 15, 2021.

[40] In 2016 and 2018, participating carriers merged, such that the number of participants was reduced by one, although passengers of those carriers were still covered by DVP.

were able to receive the additional codes included in CBP response messages.

Passengers faced no additional net costs as a result of the voluntary DVP. Some passengers would likely have faced additional time costs to resolve errors in the pre-flight check-in process, but those costs would have been outweighed by faster processing after the flight. See *Time Costs to Resolve Errors,* above, for more detail.

CBP incurred programing and IT development costs in 2012 and 2013, and maintenance costs throughout the voluntary period. The DVP's main IT development took place from 2012 to 2013 in preparation for the voluntary DVP. However, the development of the technical infrastructure for the program was a part of a larger series of IT improvements and integration during those years which connected CBP systems with TSA Secure Flight systems, upgraded existing database technology, and improved data integration, response time, and coordination between the systems. The entire program cost $12,893,000 over the two-year period, including initial development costs of $7,493,000 and maintenance costs of $2,700,000 per year for the two years.[41] However, CBP works to efficiently add technological changes that can support multiple efforts, saving costs for both government and industry, so it is challenging to appropriately allocate these costs among programs. Many of the IT upgrades would have been undertaken without the inclusion of the DVP and the current technological backbone behind the DVP also serves other programs, specifically, TSA's Secure Flight, as well as the CBP ESTA and EVUS programs. Additionally, because these IT costs cannot be recovered by not pursuing the proposed rule, CBP considers them a sunk cost. See Table 5 for a summary of IT development costs.

TABLE 5—IT DEVELOPMENT COSTS FOR THE DVP AND OTHER IT IMPROVEMENTS

[2021 U.S. dollars]

Year	Development cost	Maintenance cost	Total cost
2012	$5,887,000	$2,700,000	$8,587,000
2013	1,606,000	2,700,000	4,306,000
Total	7,493,000	5,400,000	12,893,000

All three parties did benefit from participation in the DVP as well, saving time during pre-flight check-in and post-flight processing. These costs and benefits all accrued during the voluntary period and cannot be recovered should the proposed rule not move forward. Therefore, these costs and benefits are excluded from the overall costs of the proposed rule during the regulatory period. See Table 6 for a quantification of the benefits during the voluntary period. Costs and benefits are based on a time savings of 20 seconds and a wage rate of $86.23 for CBPOs and a time savings of 10 seconds (net) and a wage rate of $47.10 for commercial air passengers, as well as an error correction rate of 50 percent for 7.5 percent of passengers requiring them, all discussed in more detail above.[42]

TABLE 6—BENEFITS DURING THE VOLUNTARY PERIOD

[2021 U.S. dollars]

Fiscal year	Arriving commercial air passengers	Passengers in the DVP	Errors (7.5% × DVP passengers)	Avoided (50% of errors)	Benefit (CBP + passengers)
2013	102,221,415	1,022,214	76,559	38,279	$23,346
2014	107,048,937	12,845,872	962,092	481,046	293,385
2015	112,505,410	27,001,298	2,022,263	1,011,131	616,678
2016	119,253,895	56,049,331	4,197,816	2,098,908	1,280,101
2017	124,262,060	73,314,615	5,490,900	2,745,450	1,674,419
2018	130,833,520	82,425,118	6,173,231	3,086,616	1,882,493
2019	135,747,880	88,236,122	6,608,447	3,304,223	2,015,209
2020	140,943,478	93,022,696	6,966,937	3,483,469	2,124,529
2021	146,337,933	98,046,415	7,343,189	3,671,594	2,239,265
Total	972,816,595	433,917,266	32,498,244	16,249,122	12,149,424

Over the years of the voluntary period following IT development in 2012, CBP estimates that the DVP cost approximately $500,000 per year in ongoing technical operation and maintenance costs.[43] See Table 7 for a summary of the net benefits of the voluntary period.[44]

[41] Source of IT cost information and timing: CBP's Office of Information and Technology on December 16, 2021.

[42] CBP bases this wage on the FY 2021 salary and benefits of the national average of CBP Officer Positions, which is equal to a GS–11, Step 9. Source: Email correspondence with CBP's Office of Finance on September 7, 2021. Source for the passenger wage rate: U.S. Department of Transportation, Office of Transportation Policy. The Value of Travel Time Savings: Departmental Guidance for Conducting Economic Evaluations Revision 2 (2016 Update), ''Table 4 (Revision 2—2016 Update): Recommended Hourly Values of Travel Time Savings for Intercity, All-Purpose Travel by Air and High-Speed Rail.'' September 27, 2016. Available at *https://www.transportation.gov/sites/dot.gov./files/docs/2016%20Revised%20Value%20of%20Travel%20Time%20Guidance.pdf.* Accessed June 12, 2020.

[43] Source: CBP's Office of Field Operations on January 6, 2022.

[44] CBP does not include the development costs identified in Table 5, above, because CBP is unable to isolate the costs CBP incurred solely for DVP from all of the IT upgrades made at the same time.

TABLE 7—NET BENEFITS DURING THE VOLUNTARY PERIOD

Year	Benefit	Cost	Net benefit
2013	$23,346	$500,000	−$476,654
2014	293,385	500,000	−206,615
2015	616,678	500,000	116,678
2016	1,280,101	500,000	780,101
2017	1,674,419	500,000	1,174,419
2018	1,882,493	500,000	1,382,493
2019	2,015,209	500,000	1,515,209
2020	2,124,529	500,000	1,624,529
2021	2,239,265	500,000	1,739,265
Total	12,149,424	4,500,000	7,649,424

Net Impact of the Rule

The proposed rule would result in $6,181,058 in undiscounted gross benefits (*i.e.,* cost savings) to air carriers, CBP, and passengers from FY 2022–2026. See Table 8 for a summary of these benefits. CBP estimates the undiscounted net benefits of the proposed rule to total $3,681,058 over a 5-year period, as CBPOs and air passengers save time and air carriers face fewer penalties and associated costs. The proposed rule therefore results in a net benefit ranging from $2,992,942 to $3,359,080 discounted at either seven or three percent. The annualized net benefit comes to approximately $730,000 using either rate.

TABLE 8—NET BENEFITS SUMMARY

[Undiscounted 2021 U.S. dollars]

Fiscal year	Total benefit of rule	Total costs of rule	Net benefits
2022	$1,145,134	$500,000	$645,134
2023	1,188,963	500,000	688,963
2024	1,234,469	500,000	734,469
2025	1,281,717	500,000	781,717
2026	1,330,774	500,000	830,774
Total	6,181,058	2,500,000	3,681,058

Note: Estimates may not sum to total due to rounding.

TABLE 9—NET PRESENT VALUE AND ANNUALIZED BENEFITS

[2021 U.S. dollars]

3% Discount rate		7% Discount rate	
Present value benefit	Annualized benefit	Present value benefit	Annualized benefit
$3,359,080	$733,470	$2,992,941	$729,950

TABLE 10—OMB CIRCULAR A–4 ACCOUNTING STATEMENT: CLASSIFICATION OF RULE'S IMPACTS, FY 2022–FY 2026

[2021 U.S. dollars]

	3% Discount rate		7% Discount rate	
	Present value	Annualized	Present value	Annualized
Total Cost:				
Monetized	$2,289,854	$500,000	$2,050,099	$500,000
Non-Monetized, but Quantified				
Non-Monetized and Non-Quantified				
Total Benefit:				
Monetized	5,648,934	1,233,470	5,043,040	1,229,950
Non-Monetized, but Quantified				
Non-Monetized and Non-Quantified	Greater efficiency and passenger satisfaction in pre-boarding; improved national security; participant enthusiasm; fewer penalties for carriers following entry denial of a passenger; faster post-flight processing.			
Total Net Benefit:				
Monetized	3,359,080	733,470	2,992,941	729,950
Non-Monetized, but Quantified				

TABLE 10—OMB CIRCULAR A–4 ACCOUNTING STATEMENT: CLASSIFICATION OF RULE'S IMPACTS, FY 2022–FY 2026—Continued

[2021 U.S. dollars]

	3% Discount rate		7% Discount rate	
	Present value	Annualized	Present value	Annualized
Non-Monetized and Non-Quantified	Benefits: Greater efficiency and passenger satisfaction in pre-boarding; improved national security; participant enthusiasm; fewer penalties for carriers following entry denial of a passenger; faster post-flight processing.			

Note: Estimates may not sum to total due to rounding.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule.

This proposed rule would not have a significant economic impact on small businesses or entities. All of the estimated costs are to the federal government instead of carriers. Although some small businesses, particularly smaller charter carriers, would be required to comply with the requirements of the proposed rule, the necessary systems are already in place because of other programs. CBP does not anticipate that these entities would need to upgrade their technology to comply with the proposed rule. Smaller carriers that currently transmit data through non-interactive submissions are currently also required to compare the travel document presented by the passenger with the information it is transmitting to CBP, in order to ensure that the information is correct, the document appears to be valid for travel to the United States, and the passenger is the person to whom the travel document was issued. The DVP will support small entities in meeting this requirement by providing a response message on whether the data submitted matches to a valid document or not. Charter carriers would also likely benefit from increased efficiency for their customers moving through CBP inspection. CBP thus certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The collections of information in this document will be submitted for OMB review in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0088. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collections of information for this rulemaking are included in an existing collection for the automated information collection system, APIS, under the OMB control number 1651–0088.

This proposed rule would, among other things, require commercial air carriers to transmit additional data elements to CBP before departure of flights bound for the United States. These elements include a passenger's phone number with country code, alternative phone number with country code, email address, and address while in the United States. Because the passenger generally provides most of these data elements when booking a ticket for air travel and the carrier then forwards this information to CBP, the estimated time burden for this information collection has not increased. While private aircraft pilots, bus, and rail carriers are covered by this information collection, they are unaffected by the proposed rule.

Comments should be submitted to CBP per the instructions outlined in the introductory text of this proposed rulemaking, as CBP is not currently accepting comments via mail due to COVID–19. The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers form the collection of information (total capital/startup costs and operations and maintenance costs).

Passenger and Crew Manifest

Commercial Air Carriers:
Estimated Number of Respondents: 1,130.
Estimated Number of Total Annual Responses: 1,850,878.
Estimated Time per Response: 10 minutes.
Estimated Total Annual Burden Hours: 307,246.
Commercial Air Carrier Passengers (3rd party):
Estimated Number of Respondents: 184,050,663.
Estimated Number of Total Annual Responses: 184,050,663.
Estimated Time per Response: 10 seconds.
Estimated Total Annual Burden Hours: 496,937.
Private Aircraft Pilots:
Estimated Number of Respondents: 460,000.
Estimated Number of Total Annual Responses: 460,000.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 115,000.
Commercial Passenger Rail Carrier:
Estimated Number of Respondents: 2.
Estimated Number of Total Annual Responses: 9,540.
Estimated Time per Response: 10 minutes.
Estimated Total Annual Burden Hours: 1,590.
Bus Passenger Carrier:
Estimated Number of Respondents: 9.
Estimated Number of Total Annual Responses: 309,294.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 77,324.

D. Privacy

CBP seeks input from the public regarding whether the data should be retained, used, and shared under the terms of the current APIS data, and if not, what use, retention, and sharing

limitations are appropriate. CBP will also consult with the DHS Privacy Office, Office for Civil Rights and Civil Liberties, and Office of General Counsel regarding these questions. CBP will ensure that all Privacy Act requirements and DHS Privacy policies and guidance are adhered to in the implementation of this proposed rule.[45] CBP will issue or update any necessary Privacy Impact Assessment and/or Privacy Act System of Records notice to outline processes fully and ensure compliance with Privacy Act protections.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 requires agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule will not 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, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

VII. Signing Authority

The signing authority for these amendments falls under 19 CFR 0.2(a). Accordingly, this document is signed by the Secretary of Homeland Security (or his delegate).

List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Reporting and recordkeeping requirements, Security measures.

Proposed Regulatory Amendments

For the reasons stated in the preamble, U.S. Customs and Border Protection proposes to amend 19 CFR part 122 as follows:

19 CFR PART 122—AIR COMMERCE REGULATIONS

■ 1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1415, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

Section 122.22 is also issued under 46 U.S.C. 60105.

Section 122.49a also issued under 8 U.S.C. 1101, 1221, 19 U.S.C. 1431, 49 U.S.C. 44909.

Section 122.49b also issued under 8 U.S.C. 1221, 19 U.S.C. 1431, 49 U.S.C. 114, 44909.

Section 122.49c also issued under 8 U.S.C. 1221, 19 U.S.C. 1431, 49 U.S.C. 114, 44909.

Section 122.49d also issued under 49 U.S.C. 44909(c)(3).

Section 122.75a also issued under 8 U.S.C. 1221, 19 U.S.C. 1431.

Section 122.75b also issued under 8 U.S.C. 1221, 19 U.S.C. 1431, 49 U.S.C. 114.

■ 2. Amend § 122.49a by:

■ a. In paragraph (a), adding in alphabetical order the definitions for ''DHS-approved travel document'' and ''Travel document'';

■ b. Revising paragraph (b)(1)(i);

■ c. Revising the last two sentences in paragraph (b)(1)(ii)(B);

■ d. Revising the last two sentences in paragraph (b)(1)(ii)(C);

■ e. Revising paragraph (b)(3) introductory text, and paragraphs (b)(3)(vii) through (x), (xii), and (xviii) through (xxii);

■ f. Adding paragraphs (b)(3)(xx) through (xxii);

■ g. Redesignating paragraphs (c) through (e), as paragraphs (d) through (f); respectively; and

■ h. Adding a new paragraph (c).

The revisions and additions read as follows:

§ 122.49a Electronic manifest requirement for passengers onboard commercial aircraft arriving in the United States.

(a) * * *

DHS-approved travel document. ''DHS-approved travel document'' means a document approved by the U.S. Department of Homeland Security for travel in or out of the United States, such as a passport, or other Western Hemisphere Travel Initiative (WHTI) approved document.

* * * * *

Travel document. ''Travel document'' means any document or electronic record presented for travel to or from the United States, including DHS-approved travel documents, U.S.-issued visas, Electronic System for Travel Authorization (ESTA) approvals, and Electronic Visa Update System (EVUS) enrollments.

* * * * *

(b) * * *

(1) * * *

(i) *Basic requirement.* Except as provided in paragraph (d) of this section, an appropriate official of each commercial aircraft (carrier) arriving in the United States from any place outside the United States must transmit to the Advance Passenger Information System (APIS) (referred to in this section as the U.S. Customs and Border Protection (CBP) system), the electronic data interchange system approved by CBP for such transmissions, an electronic passenger arrival manifest covering all passengers checked in for the flight. A passenger manifest must be transmitted separately from a crew member manifest required under § 122.49b. The passenger manifest must be transmitted to the CBP system at the place and time specified in paragraph (b)(2) of this section, in the manner set forth under paragraph (b)(1)(ii) of this section.

(ii) * * *

(B) * * * No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting all passengers onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (*e.g.,* name) and may include the aircraft's registration number.

(C) * * * No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting all passengers onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (*e.g.,* name) and may include the aircraft's registration number.

* * * * *

(3) *Information required.* Except as provided in paragraph (d) of this section, the electronic passenger arrival manifest required under paragraph (b)(1) of this section must contain the following information for all passengers:

* * * * *

(vii) DHS-approved travel document type (*e.g.,* P = passport; A = alien registration card), if a DHS-approved travel document is required;

(viii) DHS-approved travel document number, if a DHS-approved travel document is required;

(ix) DHS-approved travel document country of issuance, if a DHS-approved travel document is required;

(x) DHS-approved travel document expiration date, if a DHS- approved travel document is required;

* * * * *

(xii) Address while in the United States (number and street, city, state, and zip code), except that this information is not required for persons who are in transit to a location outside the United States;

* * * * *

(xviii) Flight number;

(xix) Date of aircraft arrival;

(xx) Phone number with country code;

(xxi) Alternative phone number with country code; and

(xxii) Email address.

[45] Comments regarding minimization of impacts on privacy, civil rights, and civil liberties should be submitted per the instructions outlined in the introductory text of this proposed rulemaking. Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

(c) *Document Validation Message and Requirements*—(1) *Document Validation Message.* After the submission of the required information in paragraph (b)(3) of this section, the carrier will receive a document validation message from CBP. The message and carrier requirements vary depending on whether the carrier is using an interactive transmission method or a non-interactive transmission method.

(i) *Carriers using an interactive transmission method.* (A) For carriers using an interactive transmission method, the CBP system will respond to the carrier with a document validation message stating whether the CBP system validated each passenger's travel documents.

(B) The carrier must ensure its interactive transmission system is capable of receiving the document validation message.

(C) Except as provided in paragraph (c)(1)(i)(D) of this section, if the document validation message states that the CBP system was unable to validate a passenger's travel documents, the carrier must contact CBP to resolve that passenger's travel document status prior to issuing a boarding pass to or boarding that passenger.

(D) To facilitate the document validation process, prior to contacting CBP as required by paragraph (c)(1)(i)(C), the carrier may transmit additional biographical information as listed in paragraph (b)(3) of this section.

(ii) *Carriers using a non-interactive transmission method.* (A) For carriers using a non-interactive transmission method, the CBP system will respond to the carrier with a document validation message stating whether the CBP system cleared the flight.

(B) The carrier must ensure it is capable of receiving the document validation message through a non-interactive method, such as email.

(C) If the document validation message states that the CBP system was unable to clear the flight, the carrier must contact CBP prior to issuing any boarding passes or boarding any passengers for that flight.

(2) *Recommendation Not to Board.* If CBP is unable to validate a passenger's travel documents, CBP will recommend that the carrier not board the passenger.

* * * * *

■ 3. Amend § 122.75a by:

■ a. Revising paragraph (b)(1)(i);

■ b. Revising the last two sentences in paragraph (b)(1)(ii)(B);

■ c. Revising the last two sentences in paragraph (b)(1)(ii)(C);

■ d. Revising paragraph (b)(3) introductory text, and paragraphs (b)(3)(vi) through (ix);

■ e. Redesignating paragraphs (c) through (e), as paragraphs (d) through (f) respectively; and

■ f. Adding a new paragraph (c).

The revisions and additions read as follows:

§ 122.75a Electronic manifest requirement for passengers onboard commercial aircraft departing from the United States.

* * * * *

(b) * * *

(1) * * *

(i) *Basic requirement.* Except as provided in paragraph (d) of this section, an appropriate official of each commercial aircraft (carrier) departing from the United States en route to any port or place outside the United States must transmit to the Advance Passenger Information System (APIS) (referred to in this section as the U.S. Customs and Border Protection (CBP) system), the electronic data interchange system approved by CBP for such transmissions, an electronic passenger departure manifest covering all passengers checked in for the flight. A passenger manifest must be transmitted separately from a crew member manifest required under § 122.75b. The passenger manifest must be transmitted to the CBP system at the place and time specified in paragraph (b)(2) of this section, in the manner set forth under paragraph (b)(1)(ii) of this section.

(ii) * * *

(B) * * * No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting all passengers onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (*e.g.,* name) and may include the aircraft's registration number.

(C) * * * No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting all passengers onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (*e.g.,* name). The message may include the aircraft's registration number.

* * * * *

(3) *Information required.* The electronic passenger departure manifest required under paragraph (b)(1) of this section must contain the following information for all passengers:

* * * * *

(vi) DHS-approved travel document type (*e.g.,* P = passport; A = alien registration card), if a DHS-approved travel document is required;

(vii) DHS-approved travel document number, if a DHS-approved travel document is required;

(viii) DHS-approved travel document country of issuance, if a DHS-approved travel document is required;

(ix) DHS-approved travel document expiration date, if a DHS-approved travel document is required;

* * * * *

(c) *Document Validation Message and Requirements*—(1) *Document Validation Message.* After the submission of the required information in paragraph (b)(3) of this section, the carrier will receive a document validation message from CBP. The message and carrier requirements vary depending on whether the carrier is using an interactive transmission method or a non-interactive transmission method.

(i) *Carriers using an interactive transmission method.* (A) For carriers using an interactive transmission method, the CBP system will respond to the carrier with a document validation message stating whether the CBP system validated each passenger's travel documents.

(B) The carrier must ensure its interactive transmission system is capable of receiving the document validation message.

(C) Except as provided in paragraph (c)(1)(i)(D) of this section, if the document validation message states that the CBP system was unable to validate a passenger's travel documents, the carrier must contact CBP to resolve that passenger's travel document status prior to issuing a boarding pass to or boarding that passenger.

(D) To facilitate the document validation process, prior to contacting CBP as required by paragraph (c)(1)(i)(C), the carrier may transmit additional biographical information as listed in paragraph (b)(3) of this section.

(ii) *Carriers using a non-interactive transmission method.* (A) For carriers using a non-interactive transmission method, the CBP system will respond to the carrier with a document validation message stating whether the CBP system cleared the flight.

(B) The carrier must ensure it is capable of receiving the document validation message through a non-interactive method, such as email.

(C) If the document validation message states that the CBP system was unable to clear the flight, the carrier must contact CBP prior to issuing any boarding passes or boarding any passengers for that flight.

(2) *Recommendation Not to Board.* If CBP is unable to validate a passenger's travel documents, CBP will recommend that the carrier not board the passenger.

* * * * *

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2023–02139 Filed 2–1–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1311

[Docket No. DEA–732]

RIN 1117–AB79

Controlled Substances Ordering System (CSOS) Modernization

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend the Drug Enforcement Administration's (DEA) regulations to conform to the Controlled Substances Ordering System (CSOS) modernization effort by requiring all CSOS enrollment applications and supporting materials to be submitted through the Diversion Control Division secure online portal. These amendments would improve the enrollment process by aligning it with DEA's current requirements for other online form submissions. The online submission of enrollment applications and supporting material through the secure network application portal would increase the efficiency of the enrollment, modification, and revocation processes, and ensure DEA's receipt of accurate documentation in a more timely and organized manner.

DATES: Electronic comments must be submitted, and written comments must be postmarked, on or before April 3, 2023. Commenters should be aware that the electronic Federal Docket Management System will not accept any comments after 11:59 p.m. Eastern Time on the last day of the comment period.

All comments concerning collections of information under the Paperwork Reduction Act must be submitted to the Office of Management and Budget on or before April 3, 2023.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–732'' on all correspondence, including any attachments.

• *Electronic comments:* The Drug Enforcement Administration (DEA) encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov and follow the online instructions at that site for submitting comments.* Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

• *Paper comments:* Paper comments that duplicate electronic submissions are not necessary. Should you wish to mail a paper comment, *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 776–2265.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified as directed above will be made publicly available in redacted form. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as confidential as directed above.

An electronic copy of this proposed rule is available at *http://www.regulations.gov* for easy reference.

Legal Authority

The Controlled Substances Act (CSA) grants the Attorney General authority to promulgate rules and regulations relating to: the registration and control of the manufacture, distribution, and dispensing of controlled substances and listed chemicals; reporting changes to professional or business addresses; and the efficient execution of his statutory functions. 21 U.S.C. 821, 822(a), 827(h), 871(b), 957(a). The Attorney General is further authorized by the CSA to promulgate rules and regulations relating to the registration and control of importers and exporters of controlled substances and listed chemicals.[1] The Attorney General has delegated this authority to the Administrator of DEA.[2]

The CSA defines ''distribute'' as ''to deliver (other than by administering or dispensing) a controlled substance or a listed chemical'' and ''distributor'' as ''a person who so delivers a controlled substance or a listed chemical.''[3] The CSA further provides that it ''shall be unlawful for any person to distribute a controlled substance in schedule I or II to another except in pursuance of a written order of the person to whom such substance is distributed, made on a form to be issued by the Attorney General in blank in accordance with subsection (d) of this section and regulations prescribed by him pursuant

[1] 21 U.S.C. 958(f).

[2] 28 CFR 0.100(b).

[3] 21 U.S.C. 802(11).

to this section.'' [4] ''Every person who gives an order required under subsection (a) of this section shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued by the Attorney General in blank in accordance with subsection (d) of this section and regulations prescribed by him pursuant to this section, and shall, if such order is accepted, preserve such duplicate for a period of two years and make it available for inspection and copying . . . . '' [5] ''The Attorney General shall issue forms . . . only to persons validly registered under section 823 of this title (or exempted from registration under section 822(d) of this title). Whenever any such form is issued to a person, the Attorney General shall, before delivery thereof, insert therein the name of such person, and it shall be unlawful for any other person (A) to use such form for the purpose of obtaining controlled substances or (B) to furnish such form to any person with intent thereby to procure the distribution of such substances.'' [6]

Implementation of the CSA Written Order Form Requirement

Paper DEA Form 222

In 1971 DEA implemented the CSA's written order form requirement by publishing a final rule requiring triplicate paper DEA Form 222s.[7] In 2019, DEA amended its regulations to create a new single-sheet format for the paper DEA Form 222s.[8] The rule contained transition provisions allowing registrants to continue to use their existing stocks of the triplicate paper DEA Form 222s until their supply was exhausted, or until October 30, 2021, whichever came sooner.[9]

Electronic DEA Form 222

In 2005, DEA published a final rule amending its regulations to provide an electronic equivalent to the DEA Form 222 (also known as CSOS).[10] The amendments allowed registrants to order schedule I and II controlled substances electronically and maintain records of these orders electronically. The intent of these amendments was to reduce paperwork and transaction times for DEA registrants who sell or buy controlled substances.

Summary of Current CSOS Regulations

The current CSOS regulations are found in 21 CFR parts 1305 and 1311. DEA Registrants use CSOS as a secure system to track schedule I and II controlled substance orders. The system allows for secure electronic controlled substances orders without the need for a paper order form (DEA Form 222). Using Public Key Infrastructure (PKI), CSOS requires that each individual supplier and purchaser enroll with DEA to acquire a CSOS digital certificate. System enhancements will allow electronic documentation submission, self-service support options, and electronic processing of single and bulk applications, renewals, and revocations. Users will be able to electronically search for, revoke, report, retrieve, and renew secure digital certificates.

Purpose of Rule

Current regulations require registrants who wish to participate in the CSOS system to enroll using a labor intensive manual process which relies on paper applications. The paper application must be notarized and the package mailed to DEA, creating delays in the enrollment process and putting applications at risk of being lost.[11] The purpose of this rule is to simplify the application process by requiring all CSOS enrollment applications to be submitted online. All applicants for enrollment will follow the CSOS link on the *deadiversion.gov* website to the CSOS log-in page. From the CSOS log-in page the applicant will be redirected to *Login.gov* for Identification Verification. Upon arrival at the site, the applicant will be asked to create a *Login.gov* account by entering a valid email address, selecting a default language, and agreeing to *Login.gov's* Rules of Behavior. A confirmation email will then be sent to the applicant's selected email. Once the email has been confirmed, the applicant must create a *Login.gov* password by providing a telephone number to which a verification code can be sent. Once the code is sent and the applicant enters the given code on the *Login.gov* website, the applicant must agree to the site's security statement. *Login.gov* next requires applicants to upload photographs of one or more forms of identification as specified by *Login.gov* and to enter a Social Security Number, after which the applicant is asked to verify the given information. The applicant is next asked to re-enter their *Login.gov* password to receive a Personal Key by separate message. The applicant is then asked to enter that Personal Key and review their information. Upon review of the information, the applicant is then directed back to the CSOS website for further processing. Upon return to the CSOS website, the applicant is asked to agree to the CSOS User Agreement and can apply for one of three system user roles (Registrant, Coordinator, or Power of Attorney in order of superiority) with enrollment requests approved or rejected by the superior role. After the Registrant role is established, all subordinate applications for enrollment for the Coordinator role must be approved by the Registrant. Upon establishment of a Coordinator, all subordinate applications for enrollment for the Power of Attorney role must be approved in the system by the responsible Coordinator. This proposed rule would amend DEA regulations to require electronic enrollment through a secure web-based system. Submission through the secure online system will be a streamlined process which will benefit both DEA and CSOS participants.

Discussion of Regulatory Changes

Need for Regulatory Changes

Regulatory changes are needed to conform existing DEA regulations regarding the submission of the paper CSOS system enrollment forms to DEA's current requirements that other DEA forms be submitted online.[12] The paper enrollment process is prone to errors, creates wasteful and unnecessary paper records, requires manual processing,

[4] 21 U.S.C. 828(a).

[5] 21 U.S.C. 828(c)(2).

[6] 21 U.S.C. 828(d)(1).

[7] 36 FR 7776, April 24, 1971.

[8] DEA Notice of Proposed Rulemaking titled ''New Single-Sheet Format for U.S. Official Order form for Schedule I and II Controlled Substances (DEA Form 222),'' published in the **Federal Register** on February 21, 2019, *and* DEA Final Rule titled ''New Single-Sheet Format for U.S. Official Order Form for schedule I and II Controlled Substances (DEA Form 222),'' published in the **Federal Register** on September 30, 2019, at 84 FR 51368.

[9] 21 CFR 1305.20.

[10] DEA Notice of Proposed Rulemaking titled ''Electronic Orders for Controlled Substances,'' published in the **Federal Register** on June 27, 2003, at 68 FR 38557 *and* DEA Final Rule titled ''Electronic Orders for Controlled Substances,'' published in the **Federal Register** on April 1, 2005, at 70 FR 16901.

[11] 21 CFR part 1311 *et seq.*

[12] See Reporting of Theft or Significant Loss of Controlled Substances, 85 FR 146 (July 29, 2020) (published NPRM proposing to require all DEA Form 106's to be submitted electronically); Suspicious Orders of Controlled Substances, 85 FR 212 (Nov. 02, 2020) (published NPRM proposing centralized electronic reporting for SORS based on Congressional mandate); Agency Rule List—Spring 2021 (2021), *https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=1100&csrf_token=F19C7C599C70B80C228EC16B60AEB150F6339AF3C80E56FE003EEB7D3A758895BC8E16A215E8A0466326EBFBA8639F799E09* (Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions, Active Regulatory Actions Listed By Agency, Agency Rule list noting proposed rule stage for Electronic Submission of DEA Form 41 (Registrant Record of Controlled Substances Destroyed) –1117–AB59).

and is expensive to process and store. This rule proposes to amend existing DEA regulations in one part—Title 21 Chapter II Part 1311. DEA is proposing to amend 21 CFR 1311 to require all CSOS enrollment applications and supporting materials to be submitted to DEA through the CSOS secure network portal. This amendment would improve the submission process by aligning it with DEA's current policy of reducing and/or eliminating the reliance on wasteful paper applications and expediting enrollment by utilizing modern technology. The online submission of applications and supporting materials through the secure database will ensure DEA's receipt of documentation in a more timely and organized manner.

Section by Section Analysis

DEA is proposing to amend 21 CFR 1311.20, 1311.25, 1311.40, and 1311.60 by eliminating the ability of registrants to submit paper CSOS enrollment application forms. Registrants would thus be required to submit all their application materials through the secure online portal. Moreover, DEA is proposing to amend these regulations by eliminating certain recordkeeping requirements, as those records would now be accessible as a digital version in the system. DEA believes these amendments would expedite the enrollment process for registrants and facilitate the Agency-wide goal of reducing DEA's reliance on paper forms.

DEA is proposing to amend § 1311.20, which describes the role and responsibilities of the CSOS Coordinator. Current regulations require the CSOS Coordinator to complete the paper application process by submitting the notarized enrollment package to DEA Certification Authority for processing. This proposed amendment would streamline the process by eliminating the paper process and requiring Coordinator applicants to enroll using the secure online portal.

Additionally, DEA is proposing to amend § 1311.25, which establishes the requirements for a registrant, or authorized representative with a Power of Attorney, to complete the manual application process by submitting the notarized enrollment package to the DEA Certification Authority for processing. This proposed amendment would streamline the process by eliminating the manual paper process and require all Registrants, or authorized representative with a Power of Attorney to enroll using the secure online portal.

DEA is also proposing to amend § 1311.40, which establishes the criteria for renewal of a CSOS digital certificate by the manual paper process. This proposed amendment would streamline the renewal process by eliminating the manual paper process and require that all renewal applications be submitted using the secure online portal.

Last, DEA is proposing to amend § 1311.60, which establishes recordkeeping requirements on the part of the CSOS Certificate holder by requiring that a copy of the subscriber agreement be maintained for the life of the certificate. This proposed amendment would remove the requirement of the CSOS Certificate holder to maintain a copy of the subscriber agreement by enabling registrants to sign and access a digital version of the agreement in the online portal.

Regulatory Analyses

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

This proposed rule was developed in accordance with the principles of Executive Orders (E.O.) 12866 and 13563. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review established in E.O. 12866.

E.O. 12866 classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. OMB has determined that this proposed rule is not a ''significant regulatory action'' under E.O. 12866, section 3(f).

Analysis of Benefits and Costs

Current regulations require registrants who wish to participate in the CSOS system to enroll using a labor-intensive manual process which relies on paper applications. This proposed rule would amend DEA regulations to require electronic enrollment through a secure web-based system.

The current regulations related to CSOS enrollment are summarized below.

(1) 21 CFR 1311.20(b)–(c) requires coordinators to enroll in writing.

(2) 21 CFR 1311.25(a)–(b) requires a registrant, or authorized representative with a Power of Attorney, to enroll in writing.

(3) 21 CFR 1311.40(c)–(d) requires submitting a new application in writing for every third renewal and for expired certificates.

(4) 21 CFR 1311.60(c) requires maintaining a copy of the subscription agreement for the life of the certificate.

The proposed rule would change this to:

(1) 21 CFR 1311.20(b)–(c) would require coordinators to enroll online.

(2) 21 CFR 1311.25(a) (with (b) removed) would require all registrants, or authorized representative with a Power of Attorney, to enroll online.

(3) 21 CFR 1311.40(c)–(d) would require, for every third renewal and expiration, a new application online.

(4) 21 CFR 1311.60(c) would be removed, allowing electronic subscription agreements to be held online and no longer requiring a paper copy be maintained.

Table 1 summarizes the changes from current regulations to the proposed rule.

TABLE 1—SUMMARY OF CURRENT REGULATIONS AND THE PROPOSED RULE

21 CFR Location	Current	Proposed
1311.20(b)–(c)	requires coordinators to enroll in writing	would require coordinators to enroll online.
1311.25(a)–(b)	requires a registrant, or authorized representative with a Power of Attorney, to enroll in writing.	would require all registrants, or authorized representative with a Power of Attorney, to enroll online.

TABLE 1—SUMMARY OF CURRENT REGULATIONS AND THE PROPOSED RULE—Continued

21 CFR Location	Current	Proposed
1311.40(c)–(d)	requires submitting a new application in writing, for every third renewal and for expired certificates.	would require, for every third renewal and expiration, a new application online.
1311.60(c)	requires maintaining a copy of the subscription agreement.	(removal) would allow subscription agreements to be held online and no longer require a copy be maintained.

DEA has examined the benefits and costs of this proposed rule and believes it is of net economic benefit. DEA believes the cost savings to registrants, as well as the DEA, heavily outweigh any cost to the DEA associated with implementing and maintaining the necessary computer systems to allow for online enrollment and renewal to CSOS.

Affected Parties and Number of CSOS Applications

This proposed rule would affect registrants who wish to participate in the CSOS system and DEA. A registrant, designated person, or an authorized representative, who wishes to enroll in the CSOS system can apply for one of three system user roles: Registrant, Coordinator, or Power of Attorney. New and renewal enrollment applications are submitted online. DEA processes the applications in addition to operating and maintaining the systems used in the enrollment and certificate management process. The economic impact of this proposed rule is a function of changes in requirement for each CSOS enrollment application and the estimated number of applications.

Each year DEA receives a mix of new and renewal applications for enrollment. In 2021, DEA received 31,172 new applications. These applications include 11,411; 6,974; and 12,787 new applications for Registrant, Coordinator, and Power of Attorney roles, respectively. For every third renewal, the CSOS certificate holder must submit a new application.[13] Therefore, for the purposes of this analysis, a third renewal is considered as a new application. Based on this renewal requirement, DEA estimates that new applications are approximately one-third of total applications and the number of renewals is approximately twice the number of new applications. Therefore, DEA estimates there were 62,344 renewal applications for a total of 93,516 (31,172 + 62,344) total applications in 2021.

As pharmacies are the largest registration business activity that participate in CSOS, representing approximately 73% of CSOS registered locations,[14] DEA believes the growth in the number of pharmacies registered with the DEA represents a good proxy for the growth of CSOS-participating registrants, and the number of CSOS applications for enrollment.

The number of DEA registered pharmacies has declined from 72,353 in 2015 to 70,628 in 2019 and has roughly stayed constant, with no growth, from 2019 to 2021, with 70,789 and 70,670 pharmacy registration if 2020 and 2021, respectively. So, DEA believes that zero net growth in CSOS applications is a reasonable estimate. Therefore, DEA estimates the numbers of applications stay constant at 31,172 new and 62,344 renewal, for a total of 93,516 applications over the 10-year analysis period.

Registrant Impact

New Applications

Below is a description of the estimated impact of the proposed rule on new enrollment applications for Registrant, Coordinator, and Power of Attorney roles.

1. *Time To Complete New Application:* DEA estimates there will be labor cost savings from reduced time to complete a new application. DEA estimates that the current time to complete a new application is three hours, which includes an estimated 1.5 hours to prepare and provided the necessary information and 1.5 hours calling the DEA for assistance or status of application. Under the proposed rule, while an applicant is expected to require the same 1.5 hours to prepare and provide the necessary information, the online system will allow self-viewing of status, reducing the need or duration of calls to DEA. DEA estimates the required time to complete a new application would be 1.75 hours, including an estimated 0.25 hours for logging to CSOS system or calls to DEA for assistance. Using a loaded hourly rate of $87.65 for Pharmacists,[15 16 17] the labor cost would decrease from $262.95 ($87.65 × 3) to $153.39 ($87.65 × 1.75), resulting in an estimated cost savings of $109.56 ($262.95 − $153.39) per application.

2. *Postage Cost:* Under current regulations paper application forms and supporting information need to be shipped to DEA. The proposed rule would eliminate the need to ship paper applications. Not having to ship the enrollment package is estimated to reduce postage costs by $11.13 per application.[18]

3. *Notary Cost:* Under current regulations, a new application for a Registrant or a Coordinator role requires a notary. The proposed rule would eliminate the notary requirement. Not having to get a notary (due to online verification methods that are free) is expected to eliminate an estimated notary cost of $5.00 per enrollment package.[19 20] The notary requirement only applies to Registrant and Coordinator roles, and as discussed earlier, of the estimated 31,172 total new applications, 11,411 and 6,974 are for Registrant and Coordinator, respectively, making up 59 percent ((11,411 + 6,974)/31,174) of total registrations. Therefore, 59 percent of $5.00, $2.95 is the average notary cost savings for all new applications.

4. *Agreement Storage Costs:* Under current regulations, a CSOS certificate holder is required to maintain a copy of

[13] 21 CFR 1311.40(c).

[14] Source: DEA.

[15] U.S. Bureau of Labor Statistics (BLS), Occupational Employment and Wages, May 2021, 29–1051 Pharmacists. *https://www.bls.gov/oes/current/oes291051.htm.* (Accessed 4/25/2022.)

[16] BLS, ''Employer Costs for Employee Compensation—December 2021'' (ECEC).

[17] As pharmacies represent a large majority of CSOS participants and pharmacists are expected to be the most prevalent CSOS users, DEA believes pharmacists wages therefore represent a good estimate of the wage for all applicants. BLS reports that the median wage of pharmacists is $61.81. BLS also reports that average benefits for private industry is 29.5 percent of total compensation. The 29.5 percent of total compensation equates to 41.8 percent (29.5 percent/70.5 percent) load on wages and salaries. The load of 41.8 percent is added to each of the hourly rates to estimate the loaded hourly rates. $61.81 × 1.418 = $87.65.

[18] FedEx Ground rates for a one-pound package using zone five, effective January 4, 2021 and downloaded on 4/6/2022.

[19] National Notary Association, ''2022 Notary Fees by State''. *https://www.nationalnotary.org/knowledge-center/about-notaries/notary-fees-by-state* (accessed 4/6/2022).

[20] Notary fees can range from $1 to $25. DEA has decided to use $5 as its estimate of notary fees. DEA believes many applicants can get documents notarized at low costs, *i.e.,* at banks, employees with public notary, etc.

the subscriber agreement. The proposed rule would eliminate this requirement. DEA does not believe there is a material impact from not having to store written subscription agreements and having them be stored online in CSOS.

Table 2 summarizes the impact of the proposed rule for new applications.

TABLE 2—REGISTRANT IMPACT: NEW APPLICATION

	Current ($)	New ($)	Cost savings ($)
Labor cost per New app	262.95	153.39	109.56
Postage cost per New app	11.13		11.13
Cost of notary per New app	2.95		2.95
Total new application			123.64

Renewal Applications

Below is a description of the estimated impact of the proposed rule on renewal enrollment applications for Registrant, Coordinator, and Power of Attorney roles.

1. *Time Spent Requested Renewal:* DEA estimates there will be labor cost savings from reduced time to complete a renewal application. DEA estimates that the time spent requesting a renewal will fall from 1.5 hours using the phone method to 0.25 hours using the online method. Using a loaded hourly rate of $87.65 for Pharmacists,[21] the labor cost would decrease from $131.48 ($87.65 × 1.5) to $21.91 ($87.65 × 0.25), resulting in an estimated cost savings of $109.56 ($131.48 − $21.91) per application.

Table 3 summarizes the impact of the proposed rule for renewal applications.

TABLE 3—REGISTRANTS IMPACT—RENEWAL APPLICATIONS

	Current ($)	New ($)	Cost savings ($)
Labor cost per Renewal app	131.48	21.91	109.56

Total Registrant Impact

The total registrant cost savings is $10,684,716 per year, calculated by multiplying the cost of a new and renewal application by the number of new and renewal applications. Table 4 details the calculation.

TABLE 4—TOTAL REGISTRANT IMPACT

Number of new applications	31,172
Number of renewal applications	62,344
Number of total applications	93,516
Cost savings per new application ($)	123.64
Subtotal, all new applications ($)	3,854,152
Cost savings per renewal application ($)	109.56
Subtotal, all renewal applications ($)	6,830,565
Total cost savings to registrants ($)	10,684,716

Additional Benefits

There are additional benefits of the proposed rule. These include:

(1) *Shorter end-to-end process time (submission to certificate):* Allowing earlier use of CSOS for ordering Schedule II controlled substances and realizing the benefits of electronic ordering rather than using paper order forms.

(2) *Insight into status and workflows to track the progress of the submission:* Allowing Coordinators to get status updates online, see how the application progresses, and plan for additional CSOS users.

(3) *No longer needing to wait for the call center to request Certificate management action revocations:* Allowing Coordinators to self-manage and remove user certificates.

(4) *Safer submission process:* Allowing secure delivery of potentially sensitive information.

(5) *Error checking:* Allowing programmatic review for erroneous or incomplete information, reducing delays in application processing.

DEA Impact

DEA's costs are driven by the personnel and technology resources required to process the applications. Below is a list of the cost activities and anticipated impact.

1. *Certification Authority (CA) Cost:* The CA serves as the central element responsible for establishing a trust relationship between controlled substance manufacturers, distributors, pharmacies, and other DEA authorized ordering entities. CA issues user digital certificates used to digitally sign electronic transactions. DEA believes that the personnel resources and costs to certify enrollment and issue digital certificates will not change as a result of this proposed rule. Based on current CA resources, DEA estimates the annual CA cost will remain at $732,922.[22]

[21] Note 17.

[22] Source: DEA.

2. *Registration Authority (RA) Cost:* The RA is the entity that collects and verifies each applicant's identity and information that are to be entered into his or her public key certificates. Receiving electronic applications would eliminate the need to scan paper applications. DEA estimates that the personnel resources and costs to process enrollment applications will fall by 30 percent starting with the second year of implementation of the rule. However, in the first year of implementation, DEA anticipates the decrease in resource requirements from elimination of scanning requirement will be offset by increase in applicant questions referred to RA. DEA estimates the total annual RA cost of $597,688 [23] will remain the same in year 1 and will be $418,382 ($597,688 × 0.7) in year 2 and thereafter.

3. *Mail Reception Cost:* Currently, DEA requires personnel to receive, sort, and deliver paper applications to the RA at an estimated annual cost of $34,562.[24] Under the proposed rule, applications would be received online, eliminating this cost.

4. *Data Entry Cost:* Currently, personnel resources are needed to verify the accuracy of the scanned paper applications and make any needed corrections. Under the proposed rule, online applications would eliminate the need for this task. The estimated total current annual cost of $109,138 [25] would be eliminated if this proposed rule were implemented.

5. *Call Center Support Cost:* DEA operates a CSOS call center to service questions, or provide assistance, regarding CSOS enrollment and certificate management. The estimated total current annual cost as $1,749,946.[26] While DEA anticipates a reduction in the number of calls and duration of each call, DEA anticipates this reduction will result in lower wait-times for callers rather than reduced call center resources. Therefore, DEA estimates this cost will remain the same at $1,749,946.

6. *Information Technology (IT) Cost:* DEA currently spends approximately $255,000 per year on its IT enrollment-related systems and software. DEA anticipates IT costs will increase to $2,935,200 per year.[27] IT cost includes, but are not limited to, cloud services, workflow management, identity verification, identity management functionality, professional services for continuous development, integration and deployment, and maintenance and troubleshooting.

All costs are expected to scale with the volume of new applications, except IT cost, which does not vary with the volume of applications. Table 5 summarizes the DEA's impact.

TABLE 5—TOTAL DEA IMPACT

[Initial and remaining years]

	Current ($)	Year 1 ($)	Year 1, change from current ($)	Year 2 * ($)	Year 2, change from current ($)
Number of applications	31,172	31,172		31,172	
Certificate Authority	732,992	732,992		418,382	−314,610
Registration Authority **	597,688	418,382	−179,306	418,382	−179,306
Mail preparation (received mail)	34,562		−34,562		−34,562
Data Entry	109,138		−109,138		−109,138
Call Center Support	1,749,946	1,749,946		1,749,946	
Information Technology	255,000	2,935,200	2,680,200	2,935,200	2,680,200
Total cost	3,479,325	5,836,519	2,357,194	5,521,909	2,042,584

* Years 2 through 10 are all assumed to be the same.
** New cost starts on second year.

Additional Benefits

There are additional benefits to the DEA from the proposed rule. These include:

(1) That the CSOS System will be supported, secure, reliable, and scalable: Reducing the risk of lost or stolen data and long-term reduction in costs associated with to maintenance, operations, and growth.

(2) The Certificate management process no longer involves a help desk call: Call center resources will be freed up to reduce hold-times for registrants allowing meeting call management service level agreements and improving user satisfaction.

(3) Possible increase in CSOS adoption due to ease of enrollment process: Reducing DEA costs associated with printing and mailing paper order forms.

(4) The ease at which enhancements can be made as needed, for example Enterprise Certificates with multiple DEA numbers: Allowing efficient future improvements to CSOS.

Registrant and DEA Total Impact

Using the registrant and DEA impacts from table 5 the estimated net cost savings of this proposed rule for the 10-year analysis period is listed in Table 8.

TABLE 6—DEA AND REGISTRANT TOTAL IMPACT

Year	Total cost savings to registrants ($)	Net cost savings to DEA (net cost) ($)	Total net cost savings, registrant + DEA ($)
1	10,684,716	(2,536,501)	8,148,216
2	10,684,716	(2,357,194)	8,327,522

[23] Source: DEA.
[24] Source: DEA.
[25] Source: DEA.
[26] Source: DEA.
[27] Source: DEA.

TABLE 6—DEA AND REGISTRANT TOTAL IMPACT—Continued

Year	Total cost savings to registrants ($)	Net cost savings to DEA (net cost) ($)	Total net cost savings, registrant + DEA ($)
3	10,684,716	(2,357,194)	8,327,522
4	10,684,716	(2,357,194)	8,327,522
5	10,684,716	(2,357,194)	8,327,522
6	10,684,716	(2,357,194)	8,327,522
7	10,684,716	(2,357,194)	8,327,522
8	10,684,716	(2,357,194)	8,327,522
9	10,684,716	(2,357,194)	8,327,522
10	10,684,716	(2,357,194)	8,327,522

The present value of the net cost savings over the 10-year analysis period is $70,861,367 and $58,321,453 at three and seven percent discount rates, respectively. The annualized net benefit is $8,307,114 and $8,303,663 at three and seven percent, respectively.

Executive Order 12988, Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burdens. DEA expects the instant validation of online registration applications to reduce ambiguity and reduce the number of errors in submissions and reduce burdens on both DEA and registrants.

Executive Order 13132, Federalism

This proposed rule does not have federalism implications warranting the application of E.O. 13132. The proposed rule does 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.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The proposed rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA), the DEA has reviewed the economic impact of this proposed rule on small entities. DEA's economic impact evaluation indicates that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

The RFA requires an agency to analyze options for regulatory relief of small entities unless it can certify that the rule will not have a significant impact on substantial number of small entities. DEA has analyzed the economic impact of each provision of this proposed rule and estimates that it will have minimal economic impact on affected entities, including small businesses, nonprofit organizations, and small governmental jurisdictions.

This proposed rule will simplify the enrollment process by requiring all initial registration and renewal applications be submitted online. The rule would affect all enrollment and renewals for CSOS, whose users currently use paper applications. However, once a registrant is enrolled the DEA already requires them to order using CSOS. So, there is no additional cost to obtaining access to CSOS, since registrants will already be required to use it eventually.

There is a total of 94,011 CSOS participating entities, as can be seen in Table 7, with approximately 325,000 active certificates. Certificates have to be renewed every one or three years, based on the registrants' DEA registration renewal cycle. In 2021, the number of new applications were 31,172. For every third renewal, the CSOS certificate holder must submit a new application.[28] Therefore, for the purposes of this analysis, a third renewal is considered as a new application. DEA estimate that the total applications, including renewals, is 93,516.

TABLE 7—PERCENTAGE AND NUMBER OF REGISTERED LOCATIONS BY BUSINESS ACTIVITY

Business activity	Number of entities	Percent	Renewal cycle (years)
Pharmacy	62,291	66.26	3
Hospital/Clinic	11,898	12.66	3
Practitioner/Mid-Level Practitioner (MLP)	18,095	19.25	3
Teaching Institution	14	0.01	3
Manufacturer	103	0.11	1
Distributor/Importer/Exporter	444	0.47	1
Researcher	247	0.26	1
Analytical Lab	26	0.03	1
Reverse Distributor	5	0.01	1
Narcotic Treatment Program (NTP)	888	0.94	1
Total	94,011	100.00	*2.97

*Weighted average.
(Source: DEA).

[28] 21 CFR 1311.40(c).

This proposed rule affects all new and renewal enrollment applications for CSOS, as applications will have to take place online, and all entities who would submit new and renewal applications. This proposed rule would affect small entities in industries associated with the above business activities, primarily industries associated with pharmacy, hospital/clinic, and practitioner/MLP registrations, as these business activities make up 98.17% of the CSOS-participating registrations. Table 8 indicates the sectors, as defined by the North American Industry Classification System (NAICS), that best correlate with business activities affected by the proposed rule.

TABLE 8—INDUSTRIAL SECTORS AFFECTED BY THE PROPOSED RULE

Business activity	NAICS code	NAICS code description
Pharmacy	445110	Supermarkets and Other Grocery (except Convenience) Stores.
	446110	Pharmacies and Drug Stores.
	452210	Department Stores.
	452311	Warehouse Clubs and Supercenters.
NTP, Hospital/Clinic, Practitioner, MLP*	621111	Offices of Physicians (except Mental Health Specialists).
	621112	Offices of Physicians, Mental Health Specialists.
	621330	Offices of Mental Health Practitioners (except Physicians).
	621420	Outpatient Mental Health and Substance Abuse Centers.
	621491	HMO Medical Centers.
	621493	Freestanding Ambulatory Surgical and Emergency Centers.
	622110	General Medical and Surgical Hospitals.
	622210	Psychiatric and Substance Abuse Hospitals.
	622310	Specialty (except Psychiatric and Substance Abuse) Hospitals.
Teaching Institute	611310	Colleges, Universities and Professional Schools.
Manufacturer	325411	Medicinal and Botanical Manufacturing.
	325412	Pharmaceutical Preparation Manufacturing.
Distributor, Importer, Exporter	424210	Drugs and Druggists' Sundries Merchant Wholesalers.
Researcher	541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology).
Analytical Labs	541380	Testing Laboratories.
Reverse Distributor	562213	Solid Waste Combustors and Incinerators.
	562219	Other Nonhazardous Waste Treatment and Disposal.

* Practitioners and mid-level practitioners are generally employed in one of these industries.

As shown in Table 8, the proposed rule would affect a wide variety of entities across many industry sectors. Some industry sectors are expected to consist primarily of DEA CSOS registrants (*i.e.,* 446110—Pharmacies and Drug Stores, 622110—General Medical and Surgical Hospitals, etc.). Therefore, this proposed rule is expected to affect a substantial number of small entities in some industries.

There are no new costs associated with this proposed rule. The labor burden to submit an application is estimated to be the same for electronic and paper submissions. All CSOS registered location will already need to have access to the internet in order to use CSOS. DEA acknowledges some applicants prefer paper forms. DEA does not have a basis to quantify this preference; however, DEA believes any costs associated with eliminating this preference is offset by the cost savings discussion below.

DEA anticipates there will be cost savings associated with electronic submissions. Some cost savings are described qualitatively and some are quantified. Many paper applications submitted contain illegible or erroneous information or omit required information. Many such errors or omissions, such as not including a signature or paying the wrong amount, require DEA to contact applicants to correct or clarify the information in the paper form, consuming DEA's and the applicant's time and resources. Electronic submissions are expected to virtually eliminate the requirement for DEA to contact applicants for clarifications of form data or correction of submission errors, as validation features in the system will flag common errors prior to transmission. As DEA has not tracked the number of delays or the duration of such delays, DEA does not have a basis to quantify the cost savings.

Furthermore, this proposed rule would eliminate the need to print paper forms and transmit by mail or courier service, generating an estimated cost savings of $11.13 per each paper application not submitted.[29] DEA assumes the cost savings associated with eliminating printing costs and envelopes is negligible. This proposed rule would also eliminate the need to get a notary for new applications, which will save $5.00 each for applications for registrant and coordinator roles.[30] An application for POA role does not require a notary; and while there would be no notary cost savings for these applications, $5 cost savings is included in the analysis to be conservative and because applications for registrant and coordinator roles are slightly more than half of all applications.

As discussed in the E.O. 12866 section above, DEA estimates that the time savings from this proposed rule will save $109.56 per new and renewal application.

Total cost savings for a new application is $125.69 (109.56 + 11.13 + 5.00 = 125.69), as can be seen in Table 9.

[29] Note 18.

[30] Note 20.

TABLE 9—COST SAVINGS PER NEW APPLICATION

	Current ($)	New ($)	Cost savings ($)
Labor cost per New app	262.95	153.39	109.56
Postage cost per app	11.13		11.13
Cost of notary	5.00		5.00
Total			125.69

As also calculated in the E.O. 12866 section above, total cost savings for renewals is $109.56, as can be seen in Table 10.

TABLE 10—COST SAVINGS PER RENEWAL APPLICATION

	Current ($)	New ($)	Cost savings ($)
Labor cost per Renewal app	131.48	21.91	109.56
Total			109.56

There were 31,172 new applications in 2021. DEA estimates there were also 62,344 renewal applications for a total of 93,516 applications. Given there are 94,011 CSOS participating entities, there is less than one application per year per entity on average (93,516/94,011 = 0.99). Given that there are at approximately 325,000 active digital certificates, the vast majority of which are on three-year renewal cycles, DEA expects approximately 108,333 certificates to be renewed annually (325,000/3 = 108,333). There are then approximately 1.15 certificates per entity (108,333/94,011 = 1.15). Given that smaller firms should have less certificates than larger firms, DEA believes using one certificate or one application per entity per year is a reasonable assumption for the smallest of small entities.

To determine whether the proposed rule would have a significant economic impact on small entities, DEA conducted a revenue test by comparing the estimated annual cost savings to the average annual revenue for the smallest of small entities in industries affected by the proposed rule. Based on the Statistics of U.S. Businesses data from the Census Bureau, table 11 lists the enterprise size, number of establishments, and the average annual revenue for the smallest of small businesses in each industry sector.[31] [32]

TABLE 11—AVERAGE ANNUAL REVENUE OF SMALLEST OF SMALL ENTITIES

NAICS	NAICS description	Enterprise size (number of employees)	Number of establish-ments	Average revenue per establishment ($ thousands)
325411	Medicinal and Botanical Manufacturing	0–4	239	690
325412	Pharmaceutical Preparation Manufacturing	0–4	390	1,173
424210	Drugs and Druggists' Sundries Merchant Wholesalers	0–4	4,076	1,512
445110	Supermarkets and Other Grocery (except Convenience) Stores	0–4	20,741	519
446110	Pharmacies and Drug Stores	0–4	7,052	1,328
452210	Department Stores	0–4	3	467
452311	Warehouse Clubs and Supercenters	0–4	20	475
541380	Testing Laboratories	0–4	2,427	316
541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology).	0–4	4,895	449
562213	Solid Waste Combustors and Incinerators	0–4	15	949
562219	Other Nonhazardous Waste Treatment and Disposal	0–4	183	580
611310	Colleges, Universities, and Professional Schools	0–4	458	802
621111	Offices of Physicians (except Mental Health Specialists)	0–4	91,892	465
621112	Offices of Physicians, Mental Health Specialists	0–4	9,031	291
621330	Offices of Mental Health Practitioners (except Physicians)	0–4	22,653	165
621420	Outpatient Mental Health and Substance Abuse Centers	0–4	3,019	248
621491	HMO Medical Centers	0–4	27	98
621493	Freestanding Ambulatory Surgical and Emergency Centers	0–4	1,188	666
622110	General Medical and Surgical Hospitals	0–4	79	15,559
622210	Psychiatric and Substance Abuse Hospitals	0–4	10	1,024
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	0–4	8	1,965

[31] Census Bureau, Statistics of U.S. Businesses Revenue Data by Size, 2017. *https://www.census.gov/programs-surveys/susb.html.* (Released 5/28/2021).

[32] Census Bureau, Statistics of U.S. Businesses Number of Establishment Data by Size, 2019. *https://www.census.gov/programs-surveys/susb.html.* (Released 2/11/2022).

The estimated cost savings of $125.69 for new applications and $109.56 for renewal applications were compared to the average annual revenue for each of the NAICS codes in Table 11. For example, taking the smallest possible entities, HMO Medical Centers with 0–4 people, with an average revenue of $98,000, the benefit, in the form of cost savings, from new applications is $125.69 (109.56 + 11.13 + 5 = 125.69), or 0.13 percent of revenues (125.69/98,000 = 0.0013). The benefit from renewals is 0.11 percent of revenues (109.56/98,000 = 0.0011). Table 12 details the revenue test results for all affected NAICS codes.

TABLE 12—REVENUE TEST OF SMALLEST OF SMALL ENTITIES

NAICS	NAICS description	Average revenue per establishment ($ thousands)	Benefit from new applications ($)	Percent of revenue (%)	Benefit from renewal applications ($)	Percent of revenue (%)
325411 ..	Medicinal and Botanical Manufacturing	690	125.69	0.02	109.56	0.02
325412 ..	Pharmaceutical Preparation Manufacturing	1,173	125.69	0.01	109.56	0.01
424210 ..	Drugs and Druggists' Sundries Merchant Wholesalers.	1,512	125.69	0.01	109.56	0.01
445110 ..	Supermarkets and Other Grocery (except Convenience) Stores.	519	125.69	0.02	109.56	0.02
446110 ..	Pharmacies and Drug Stores	1,328	125.69	0.01	109.56	0.01
452210 ..	Department Stores	467	125.69	0.03	109.56	0.02
452311 ..	Warehouse Clubs and Supercenters	475	125.69	0.03	109.56	0.02
541380 ..	Testing Laboratories	316	125.69	0.04	109.56	0.03
541715 ..	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology).	449	125.69	0.03	109.56	0.02
562213 ..	Solid Waste Combustors and Incinerators	949	125.69	0.01	109.56	0.01
562219 ..	Other Nonhazardous Waste Treatment and Disposal.	580	125.69	0.02	109.56	0.02
611310 ..	Colleges, Universities, and Professional Schools.	802	125.69	0.02	109.56	0.01
621111 ..	Offices of Physicians (except Mental Health Specialists).	465	125.69	0.03	109.56	0.02
621112 ..	Offices of Physicians, Mental Health Specialists.	291	125.69	0.04	109.56	0.04
621330 ..	Offices of Mental Health Practitioners (except Physicians).	165	125.69	0.08	109.56	0.07
621420 ..	Outpatient Mental Health and Substance Abuse Centers.	248	125.69	0.05	109.56	0.04
621491 ..	HMO Medical Centers	98	125.69	0.13	109.56	0.11
621493 ..	Freestanding Ambulatory Surgical and Emergency Centers.	666	125.69	0.02	109.56	0.02
622110 ..	General Medical and Surgical Hospitals	15,559	125.69	0.00	109.56	0.00
622210 ..	Psychiatric and Substance Abuse Hospitals.	1,024	125.69	0.01	109.56	0.01
622310 ..	Specialty (except Psychiatric and Substance Abuse) Hospitals.	1,965	125.69	0.01	109.56	0.01

As shown in Table 12, the revenue test for the smallest of small entities (0–4 employees) ranges from 0.00 percent with rounding for NAICS code 622110 to 0.13 percent for NAICS code 621491. Therefore, the economic impact of this proposed rule is not significant for the smallest of small entities, and the economic impact is estimated to be not significant on any small entity.

In conclusion, while the proposed rule will impact a substantial number of small entities in at least some industries, the economic impact will not be significant. Therefore, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act of 1995 (UMRA),[33] DEA has determined that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' Therefore, neither a Small Government Agency Plan nor any other action is required under the UMRA.

Paperwork Reduction Act

This proposed rule would modify existing collection(s) of information requirement under the Paperwork Reduction Act (PRA).[34] The proposed rule will combine all information collection into one on-line enrollment process eliminating the need for individual forms. Pursuant to the PRA,[35] DEA has identified the collections of information below related to this proposed rule. A person is not required to respond to a collection of information unless it displays a valid OMB control number.[36]

A. Collections of Information Associated With the Proposed Rule

1. Title: CSOS Certificate Application. *OMB Control Number:* 1117–0038.

[33] 2 U.S.C. 1501 *et seq.*

[34] 44 U.S.C. 3501–3521.

[35] 44 U.S.C. 3507(d).

[36] Copies of existing information collections approved by OMB may be obtained at *http://www.reginfo.gov/public/do/PRAMain.*

Form Number: DEA–251.

DEA is proposing to amend its regulations to require that all CSOS applications and supporting materials must be submitted to DEA through the DEA Diversion Control Division secure network application. This amendment would improve the submission process by aligning it with DEA's current requirements for other online form submissions. The online submission of applications and supporting material through the secure database will ensure DEA's receipt of documentation in a more timely and organized manner. This combined online form will be used for all CSOS user roles: DEA Registrant, Principal Coordinator/Alternate Coordinator, and Power of Attorney.

DEA estimates the following number of respondents and burden associated with this collection of information:

- *Number of respondents:* 94,011.
- *Frequency of response:* 0.994735 (as needed, calculated).[37]
- *Number of responses:* 93,516.
- *Burden per response:* 0.75.[38]
- *Total annual hour burden:* 70,137.

Written comments and suggestions from the public and affected entities concerning the proposed collections of information are encouraged. Under the PRA, DEA is required to provide a notice regarding the proposed collections of information in the FR with the notice of proposed rulemaking and solicit public comment. Pursuant to the PRA,[39] DEA solicits comments on the following issues:

- Whether the proposed collection of information is necessary for the proper performance of the functions of DEA, including whether the information will have practical utility.
- The accuracy of DEA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Recommendations to enhance the quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

All comments concerning collections of information under the PRA must be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of Justice, Washington, DC 20503. Please state that your comments refer to RIN 1117–AB79/Docket No. DEA–732. All comments must be submitted to OMB on or before April 3, 2023. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposed rule.

If you need a copy of the proposed information collection instrument(s) with instructions or additional information, please contact the Regulatory Drafting and Policy Support Section (DPW), Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261.

List of Subjects in 21 CFR Part 1311

Administrative practice and procedure, Control substances, Drug traffic control, Prescription drugs, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, DEA proposes to amend 21 CFR part 1311 as follows:

PART 1311—REQUIREMENTS FOR ELECTRONIC ORDERS AND PRESCRIPTIONS

■ 1 The authority citation for part 1311 continues to read as follows:

Authority: 21 U.S.C. 821, 828, 829, 871(b), 958(e), 965, unless otherwise noted.

■ 2. Amend § 1311.20 by revising paragraphs (b) and (c) to read as follows:

§ 1311.20 Coordinators for CSOS digital certificate holders.

* * * * *

(b) If the designated coordinator changes at any time, the Certification Authority must immediately be notified of the change and the new responsibilities assumed by each of the registrant's coordinators, if applicable. New Coordinators must complete the online application as provided in § 1311.25.

(c) The registrant's coordinator must inform the Certification Authority of all digital certificate applications, renewals and revocations for the registrant's users and approve applicants applying for a power of attorney digital certificate for a DEA registrant by means instructed by the Certification Authority within the system.

■ 3. Revise § 1311.25 to read as follows:

§ 1311.25 Requirements for obtaining a CSOS digital certificate.

(a) To obtain a certificate to use for signing electronic orders for controlled substances, a registrant, coordinator, or person with power of attorney authorized to obtain a certificate for signing electronic orders for controlled substances for a registrant must complete the online enrollment process at *www.deaecom.gov* by:

(1) Completing the online identification proofing process;

(2) Providing a current listing of DEA registrations for which the individual has authority to sign controlled substances orders.

(3) Uploading all copies of the power of attorney forms authorized by the registrant, when applicable.

(4) Acknowledging that the applicant has read and understands the Subscriber Agreement and agrees to all terms contained in the Statement of Subscriber Obligations contained online.

(b) When the Certification Authority verifies the applicant's identity and employment and approves the application, it will send the applicant a one-time use reference number and access code, via separate channels, and information on how to use them. Using this information, the applicant must then electronically submit a request for certification of the public digital signature key. After the request is approved, the Certification Authority will provide the applicant with the signed public key certificate.

(c) Once the applicant has generated the key pair, the Certification Authority must prove that the user has possession of the key. For public keys, the corresponding private key must be used to sign the certificate request. Verification of the signature using the public key in the request will serve as proof of possession of the private key.

■ 4. Amend § 1311.40 by revising paragraphs (c) and (d) to read as follows:

§ 1311.40 Renewal of CSOS digital certificates.

* * * * *

(c) If a CSOS certificate holder applies for a renewal before the certificate expires, the certificate holder may renew online at *www.deaecom.gov* twice. For every third renewal, the CSOS certificate holder must submit a new application and documentation, as provided in § 1311.25.

(d) If a CSOS certificate expires before the holder applies for a renewal, the certificate holder must submit a new application and all required documentation, as provided in § 1311.25.

[37] Calculated by dividing the number of responses (93,516) by the number of respondents (94,011).

[38] Weighted average of new and renewal applications. There are 31,172 new applications and they take 1.75 hours. There are 62,344 renewals and they take 0.25 hours. New applications represent 33 percent of applications (31,172/93,516 = 0.33) and renewals represent 67 percent of applications (62,344/93,516 = 0.67). The weighted average is then 0.75 ([0.33 × 1.75] + [0.67 * 0.25] = 0.75).

[39] 44 U.S.C. 3506(c)(2).

§ 1311.60 [Amended]

■ 5. Amend § 1311.60 by removing paragraph (c).

Signing Authority

This document of the Drug Enforcement Administration was signed on January 24, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–01804 Filed 2–1–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 402, 880, 881, 883, 884, 886, 891

[Docket No. FR–6320–A–01]

RIN 2502–AJ62

Federal Housing Administration (FHA): Section 8 Project-Based Rental Assistance: Standard Program Regulation and Renewal Contract; Advance Notice of Proposed Rulemaking and Request for Public Comment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Office of Multifamily Housing Programs, HUD.

ACTION: Advance notice of proposed rulemaking and request for public comment.

SUMMARY: The Office of Multifamily Housing Programs (MFH) seeks comments from the public regarding an initiative under which MFH, in partnership with owners, tenants, and other program stakeholders, would move toward a single Section 8 program regulation and single contract form pursuant to which the Secretary would renew project-based Section 8 Housing Assistance Payments (HAP) contracts under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). Section 524 authorizes the Secretary to establish the terms and conditions under which expiring contracts are renewed, subject to the requirements of section 524. Currently, the Secretary issues one of several section 524 renewal contracts, which is subject to one of seven Section 8 regulatory parts under which the original contract was issued, as well as other HUD regulations implementing section 524. To reduce regulatory complexities, MFH envisions promulgating a single Section 8 project-based rental assistance program regulation consisting of a standardized set of Section 8 program requirements and a single form of section 524 renewal contract.

DATES: *Comment Due Date:* Written comments must be received on or before April 3, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this advance notice of proposed rulemaking. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Members of the public may submit comments by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all federal agencies, however, submission of comments by standard mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by standard mail be submitted at least two weeks in advance of the deadline. HUD will make all comments received by mail available to the public at *https://www.regulations.gov.*

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. All submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

3. *Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD are available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via teletypewriter (TTY) by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Lavorel, Director, Program Administration Division, Office of Asset Management Portfolio Oversight, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone number 202–402–2515 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Housing and Community Development Act of 1974, Public Law 93–383 (Aug. 22, 1974) amended the United States Housing Act of 1937 to add Section 8. Congress established a new project-based rental assistance (PBRA) program under which public housing agencies under contract with HUD were authorized to enter into Housing Assistance Payments (HAP) contracts on behalf of eligible low-income families occupying new, substantially rehabilitated, or existing rental units. In 1983, Congress repealed PBRA authority for new construction and substantial rehabilitation HAP contracts. As original HAP contracts began to expire, Congress enacted the Multifamily Assisted Housing Reform and Affordability Act of 1997, Public Law 105–65 (Oct. 27, 1997), which authorized the renewal of expiring HAP contracts. Section 524 of MAHRA authorizes the renewal of HAP contracts at market rents (524(a)(4)(c)) and above-market rents (524(a)(4)(B)), for contracts

that are not subject to Mark-to-Market debt-restructuring.

Historically, MFH has issued HAP contracts under the seven regulatory parts listed below. Today, MFH issues renewal HAP contracts under MAHRA and continues to issue new contracts under 24 CFR part 886 subpart C (Disposition of HUD-owned Projects) and under the Rental Assistance Demonstration (RAD) Project-Based Rental Assistance (PBRA) program.

The Section 8 statute requires that the HAP contract contain certain provisions, which means that the contracts MFH has issued over the years contain many similar provisions. Many contracts, however, contain other provisions that mirror the administrative requirements unique to each program's regulatory structure. Some programs (*flagged below*) have both old and new regulation contracts depending on when the notice of selection or initial application for the project was issued (for projects subject to Part 880, for example, ''old regulation'' contracts are those that received a notice of selection for their proposal between 1975 and November 5, 1979 and ''new regulation'' contracts received the notice of selection after November 5, 1979) as follows:

1. New Construction (24 CFR part 880) (*old and new*);
2. Substantial Rehabilitation (24 CFR part 881) (*old and new*);
3. State Housing Agencies (24 CFR part 883) (*old and new*);
4. New Construction financed under section 515 of the Housing Act of 1949 (24 CFR part 884);
5. Loan Management Set Aside Program (24 CFR part 886, subpart A);
6. Section 202/8 Program (24 CFR part 891, subpart E) (formerly part 885);
7. Disposition of HUD-Owned Projects (24 CFR part 886, subpart C);
8. RAD PBRA Program (RAD Notice, Appendix I).

The fundamental difference between old regulation and new regulation HAP contracts is that new regulation contracts impose a limitation on distributions for profit-motivated owners, as well as a requirement for residual receipts and a reserve for replacement account, whereas old regulation contracts generally do not. As another example, only new regulation HAP contracts typically require the owner to submit audited financial statements. These types of differences are carried forward when contracts are renewed, because the renewal contracts that HUD has used since the enactment of MAHRA state that they renew all the provisions of the expiring contract (except for those pertaining to the identification of contract units by size and applicable contract rents, the amount of the monthly contract rents, contract rent adjustments, and any project account). The differing contract terms that result from this environment contribute to program complexities that could be reduced by instead having a standard renewal contract for all projects renewing under section 524. Adoption of a standard program regulation and contract would reduce the complexity faced by owners and tenants, in addition to HUD staff and contractors who are responsible for the administration and oversight of assisted projects.

HUD sees a clear benefit to moving toward a single program regulatory structure and a single program contract that sets forth all contract terms. HUD also recognizes that such contract terms may affect an owner's decision-making process in considering whether to request renewal. As a result, MFH is soliciting public comment on this initiative.

II. Request for Public Comment

This notice offers an opportunity for the public to provide input on the policies to be incorporated in a standard program regulation. MFH will consider all public comments received and subsequently issue a proposed rule. At that time, MFH will accept further public comments on the proposed standard program regulation. MFH is particularly interested in public comments addressing the following issues:

A. Reserve for Replacement

(1) To ensure project capital needs are met, HUD intends to require an owner to establish a HUD-controlled reserve for replacement account, with initial and annual deposits determined by means of a periodic capital needs assessment (CNA). Are there circumstances under which HUD should consider waiving the need for a CNA and, if so, what circumstances and why?

(2) Should HUD provide an incentive to owners to use their own capital to establish and/or make continued deposits to a reserve for replacement account? If yes, how might the incentive be structured? Should access to the incentive be tied to particular outcomes? If so, what outcomes?

B. Rehabilitation

(3) Should the standard program regulation address requirements when a project assisted under section 524 is undergoing rehabilitation? If not, why not?

(4) If the standard regulation should address rehabilitation, what elements of rehabilitation should it cover (*i.e.,* rehabilitation planning, tenant relocation, use of the pass-through)? Are there items that should be excluded from the regulation?

C. Project Finances

(5) To ensure compliance with the reserve for replacement requirement, HUD intends to require all owners to submit annual financial reports. Please comment.

(6) Should the standard program regulation contain any limits on distributions? If not, how should HUD ensure that owners dedicate appropriate funds to operating and maintenance costs, and that taxpayer funds are not providing excessive compensation to owners?

D. HUD Enforcement

(7) In the interest of providing clarity and transparency, HUD believes it would be beneficial to include in the regulation a subpart on enforcement, where the tools available to HUD and the circumstances under which such tools could be employed would be addressed. Please comment.

E. Vacancy Payments

(8) What incentives could HUD use to encourage owners to re-lease vacant units quickly? Are there programmatic changes HUD might consider to encourage this result?

F. Scope

(9) What topics should be addressed in a standard program regulation? For example, should the regulation be comprehensive, addressing all aspects of the program, ranging from renewal, management, occupancy, enforcement, and nondiscrimination, accessibility for persons with disabilities and equal opportunity requirements? If not, how should the scope of the regulation be limited?

(10) HUD expects to incorporate into the regulation tenant rights equivalent to those that apply currently to tenants residing in projects assisted under RAD PBRA HAP contracts (as currently described in Notice H 2019–09/PIH 2019–23). Should the regulation contain a subpart addressing tenant rights and responsibilities? If so, what specific topics should the subpart cover?

G. Renewal Options

(11) Upon expiration, most contracts in MFH's portfolio are eligible for renewal under section 524 of MAHRA. HUD intends to require renewal of such contracts by means of the standard program contract, so that as owners renew, they will be subject to the requirements laid out in the standard program regulation. Please comment.

H. Other Comments

(12) In addition to the subject areas described above, MFH welcomes any other input that interested parties believe would contribute to the successful design and implementation of a standard program regulation and contract, including input on education and outreach efforts that would assist owners in understanding and complying with requirements in the standard program regulation and contract.

Julia R. Gordon,

Assistant Secretary for Housing—FHA Commissioner.

[FR Doc. 2023–02181 Filed 2–1–23; 8:45 am]

BILLING CODE 4210–67–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2020–0239; FRL–10597–01–R9]

Air Plan Actions; Nevada; Clark County—Department of Environment and Sustainability; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing an approval, a partial approval and partial disapproval, and a limited approval and limited disapproval of certain revisions to the Clark County portion of the Nevada State Implementation Plan (SIP). These revisions primarily concern the Clark County Department of Environment and Sustainability's (''DES'' or ''Department'') general definitions rule and New Source Review (NSR) permitting program for new and modified sources of air pollution under the Clean Air Act (CAA or ''Act''). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received by March 6, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2020–0239 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, Air–3–1, 75 Hawthorne St., San Francisco, CA 94105, (415) 972–3534, *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules [1] addressed by this proposal, including the dates they were adopted by the Clark County Board of County Commissioners, and the dates they were submitted by the Nevada Division of Environmental Protection (NDEP) to the EPA.

TABLE 1—SUBMITTED RULES

Section	Section title	Adopted	Cover letter date	Submittal date
0	Definitions	7/20/21	1/31/22	1/31/22
10	Compliance Schedules (Request to rescind)	12/18/18	6/6/19	6/10/19
12.0	Applicability and General Requirements	1/21/20	3/13/20	3/16/20
12.1	Permit Requirements For Minor Sources	12/18/18	4/12/19	4/12/19
12.11	General Permits for Minor Stationary Sources	12/18/18	4/12/19	4/12/19

[1] These rules are referred to by the Clark County DES as ''Sections.''

Six months after the submittal of each rule, the EPA determined that the SIP submittals were deemed complete by the operation of law to meet the completeness criteria, in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There are previous versions of some of these rules approved in the SIP. The current SIP-approved rules are listed in Table 2.

TABLE 2—SIP-APPROVED RULES

Rule	Rule title	SIP approval date	**Federal Register** citation
0	Definitions	10/17/14	79 FR 62350.
1	Definition: Subsection 1.1, Affected Facility	4/14/81	46 FR 21758.
1	Definition: Subsection 1.26, Dust	4/14/81	46 FR 21758.
1	Definition: Subsection 1.29, Existing Gasoline Station	4/14/81	46 FR 21758.
1	Definition: Subsection 1.36, Fumes	4/14/81	46 FR 21758.
1	Definition: Subsection 1.51, Mist	4/14/81	46 FR 21758.
1	Definition: Subsection 1.57, New Gasoline Station	6/21/82	47 FR 26620.
1	Definition: Subsection 1.95, Uncombined Water	4/14/81	46 FR 21758.
10	Compliance Schedules	8/27/81	46 FR 43141.
12.0	Applicability and General Requirements	10/17/14	79 FR 62350.
12.1	Permit Requirements For Minor Sources	10/17/14	79 FR 62350.

C. What is the purpose of the submitted rules?

The submitted rules are intended to update the Nevada SIP with recent revisions to the Department's Air Quality Regulations.[2] The revisions to Section 0, ''Definitions,'' would add, revise or remove certain definitions, and move six definitions currently found in SIP-approved Section 1, ''Definition,'' into Section 0. Section 10, ''Compliance Schedules,'' was repealed locally because it had become obsolete. The SIP submittal requests that the EPA remove Section 10 from the SIP.

The revisions to Section 12.0, ''Applicability and General Requirements,'' remove a portion of the rule entitled ''Transition Procedures,'' that had been included for the sole purpose of aiding in the transition from the 2004 version of Section 12 to the new Sections 12.1, 12.2, 12.3 and 12.4 that replaced it in 2011. This transition was completed in 2015. Other minor editorial changes were also made, such as capitalizing defined terms and replacing the term ''Department of Air Quality'' with the term ''Department''.

The revisions to Section 12.1, ''Permit Requirements for Minor Sources,'' include numerous updates and minor revisions including edits to provide clarity to rule provisions, as well as the addition of several new or clarified permit exemptions for insignificant activities.

Section 12.11 is a new SIP submittal of a rule to regulate the issuance of General Permits for minor stationary sources.

Additional information concerning these submittals can be found in our Technical Support Document (TSD) for this action, which can be found in the docket for this rulemaking.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

The EPA reviewed Clark County's revisions for compliance with the applicable requirements of section 110(a)(2) and associated regulations at 40 CFR 51.160 through 51.164. We also reviewed the rules for consistency with other CAA general requirements for SIP submittals, including requirements at section 110(a)(2)(A) regarding rule enforceability, and requirements at sections 110(l) and 193 for SIP revisions.

Section 110(a)(2)(C) of the CAA requires each SIP to include a program to regulate the modification and construction of any stationary source within the areas covered by the SIP as necessary to assure attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The EPA's regulations at 40 CFR 51.160 through 51.164 provide specific programmatic requirements to implement this statutory mandate. These requirements, commonly referred to as the ''minor NSR'' or ''general NSR'' program, apply generally to both major and non-major stationary sources and modifications and in both attainment and nonattainment areas, in contrast to the specific statutory and regulatory requirements for permitting programs under parts C and D of title I of the CAA that apply to major sources in attainment and nonattainment areas, respectively.

Section 110(a)(2)(A) of the CAA requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable. Section 110(l) of the CAA prohibits the EPA from approving any SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA. Section 193 of the CAA prohibits the modification of a SIP-approved control requirement in effect before November 15, 1990, in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutant(s). With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing.

B. Do the rules meet the evaluation criteria?

Based on our review of the public process documentation included in Clark County's submittals, which include Affidavits of Publications and Records of Publications, we find that

[2] We are not taking action on earlier revised versions of Section 0 that were adopted on December 18, 2018, December 17, 2019, and January 21, 2020, which have been superseded by the more recent version of Section 0 that was adopted on July 20, 2021, and submitted to the EPA on January 31, 2022. However, we have considered relevant information relating to the revisions made in those older versions of Section 0 in evaluating the July 20, 2021, version of Section 0. Similarly, we are not taking action on an earlier revised version of Section 12.0 that was adopted on December 18, 2018, which has been superseded by the more recent version of Section 12.0 that was adopted on January 21, 2020, and submitted to the EPA on March 16, 2020. However, we have considered relevant information relating to the revisions made in that older version of the rule in evaluating the January 21, 2020, version of Section 12.0.

Clark County has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of these rules to the EPA, consistent with CAA sections 110(a)(2) and 110(l). With respect to the substantive requirements found in CAA sections 110(a)(2)(A) and (C), and 40 CFR 51.160 through 51.164, we evaluated Clark County's submittal in accordance with the applicable CAA and regulatory requirements, primarily focusing on those that apply to new source review permit programs, and find that the revisions to the SIP as reflected in our action on the revised rules, as well as new Section 12.11, and the removal of Section 10 from the SIP, satisfy these requirements, except for a few relatively minor deficiencies, discussed in Section II.C. of this proposal.

With respect to the substantive requirements found in CAA sections 110(l) and 193, we find that our approval of this SIP submittal would not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the CAA. In addition, we find that the revisions to the SIP as reflected in our action on the submitted rules listed in Table 1 of this proposal will not relax any pre-November 15, 1990 control requirement in the SIP. Accordingly, we have concluded that our action is consistent with the requirements of CAA sections 110(l) and 193.

Our TSD contains a more detailed discussion of our analysis.

C. What are the rule deficiencies?

For Section 0, we find that the removal of the definition of ''Clearing and Grubbing'' is not approvable as the term is still used in the Section 94 Handbook that is part of the SIP.

For Section 12.1, we identified the following four deficiencies. First and second, the provisions in Sections 12.1.2(c)(7) and (8), which exempt ancillary parts washers and degreasers that use only certified clean air solvents from permitting requirements, are deficient because the term ''certified clean air solvents'' is not defined in any Section 12 series rule, which makes the provision unenforceable. Third, the provision in Section 12.1.2(c)(10) allowing the Control Officer to deem any other emission unit or activity to be insignificant on a case-by-case basis with no specific criteria for making this determination is deficient because it contains impermissible Director's discretion. Fourth, the provision in Section 12.1.4.1(z) contains impermissible Control Officer discretion to decide whether certain conditions should be added to portable minor source permits.

For Section 12.11, the rule contains an unenforceable cross-reference relating to certain emissions inventory report requirements, and does not satisfy the requirement in 40 CFR 51.160(f) that the screening model used pursuant to Section 12.11.1(f) be based on the applicable models, databases, and other requirements specified in 40 CFR part 51, appendix W.

Our TSD contains a more detailed discussion of these deficiencies.

D. EPA Recommendations To Further Improve the Rule

The TSD also includes recommendations for additional clarifying revisions to consider for the rules evaluated in this SIP submittal.

E. Proposed Action and Public Comment

Pursuant to section 110(k)(3) of the Act, for Section 0, we are proposing a partial approval and partial disapproval. We are proposing approval of the rule with the exception of its removal of the definition of ''Clearing and Grubbing.'' This definition is separable from the other definitions and revisions in Section 0 and therefore the disapproval issue related to this definition is suitable for a partial disapproval.

If this action is finalized as proposed, the July 20, 2021, version of Section 0 would be approved into the SIP, and a separate entry for the definition of ''Clearing and Grubbing'' from the current SIP-approved version of Section 0, approved into the SIP on October 17, 2014, and referenced in Table 2 of this proposal, would be retained in the SIP. Therefore, this partial disapproval action would require no further action from the Department to remedy the identified deficiency. More generally, the incorporation of the submitted version of Section 0 into the SIP would replace the older version of Section 0 that is currently in the SIP, as referenced in Table 2, except for the definition of ''Clearing and Grubbing''; that older version of Section 0 would be removed from the SIP (except for the specified definition). In addition, our approval of certain definitions in the submitted version of Section 0 would replace in the SIP the older versions of those same definitions that are currently included in SIP-approved Section 1, as referenced in Table 2 of this proposal; these older versions of the definitions would be removed from the SIP.

Pursuant to CAA section 110(k)(3), we are proposing to approve the request to rescind Section 10 from the SIP, as we have determined that its removal is consistent with the relevant CAA requirements. We are also proposing to fully approve Section 12.0, adopted on January 21, 2020, based on our determination that the rule revisions satisfy the applicable statutory and regulatory provisions governing regulation of stationary sources under CAA section 110(a)(2)(C), including the permitting requirements in 40 CFR 51.160 through 51.164. If our action is finalized as proposed, the submitted version of Section 12.0 would replace the older version of Section 12.0 that is currently in the SIP, as referenced in Table 2 of this proposal, which would be removed from the SIP.

Pursuant to CAA sections 110(k)(3) and 301(a) of the Act, we are proposing limited approval and limited disapproval of Sections 12.1 and 12.11, both adopted on December 18, 2018. We are proposing to approve these rules based on our determination that the rules mostly satisfy the applicable statutory and regulatory provisions governing regulation of stationary sources under CAA section 110(a)(2)(A) and (C), including the permitting requirements for stationary sources in 40 CFR 51.160 through 51.164. If our action is finalized as proposed, our limited approval of Section 12.1 would replace the older version of Section 12.1 that is currently in the SIP, as referenced in Table 2, which would be removed from the SIP. Our limited approval of Section 12.11 would approve it into the SIP in its entirety. We are also proposing a limited disapproval of these same rules because they contain certain deficiencies as discussed above and in Sections 5.5, 5.6, and 6 of the TSD. The intended effect of this proposed limited approval and limited disapproval action is to update the applicable SIP with current and clarified, and, in some regards, strengthened, Department permitting rules, while triggering the obligation to remedy the identified deficiencies.

In support of our proposed action, we have also concluded that our approval and limited approval of the submitted rules would comply with sections 110(l) and 193 of the Act, as explained above. If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.1470 (Identification of plan).

If we finalize the limited disapproval of Sections 12.1 and 12.11 as proposed, CAA section 110(c) would require the EPA to promulgate a Federal Implementation Plan (FIP) within 24 months unless we approve a subsequent SIP revision that corrects the deficiencies identified in the final limited disapproval. A final limited

disapproval of Sections 12.1 and 12.11 will not start any CAA section 179 sanctions clocks as both rules address only minor source program requirements.[3]

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the following Clark County DES rules: Sections 0, 12.0, 12.1 and 12.11, as described in Table 1 of this proposal concerning definitions and New Source Review permit program requirements. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this proposal for more information).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

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 beyond those imposed by state law.

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. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

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)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The state did not evaluate environmental justice considerations as part of its SIP. There is no information in the record inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

List of Subjects in 40 CFR Part 52

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

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

Dated: January 26, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2023–02134 Filed 2–1–23; 8:45 am]

BILLING CODE 6560–50–P

[3] Our partial disapproval of Section 0 does not trigger any FIP obligation, as the identified deficiency is remedied by the fact that the provision necessary to address the deficiency is already included in the SIP and will not be removed as part of this action. For the same reason, this partial disapproval also would not potentially trigger any offset or highway sanctions pursuant to CAA section 179.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 03–123, 13–24, 22–408; FCC 22–97; FR ID 123862]

Proposal for New TRS Fund Support for Internet Protocol Captioned Telephone Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (FCC or Commission) proposes to adopt a new three-year plan for Telecommunications Relay Services (TRS) Fund support of internet Protocol Captioned Telephone Service (IP CTS). Based on recent data that allows more reliable assessment of the costs of fully automatic IP CTS, the Commission proposes to apply different formulas for compensating TRS providers for the provision of Communications Assistant (CA)-assisted and automatic speech recognition (ASR)-only IP CTS. The Commission proposes to continue using an average-cost methodology, subject to

revised criteria for determining reasonable costs and to annual adjustments based on relevant cost factors.

DATES: Comments are due March 6, 2023. Reply comments are due April 3, 2023.

ADDRESSES: You may submit comments, identified by CG Docket Nos. 03–123, 13–24, and 22–408, by either of the following methods:

• *Federal Communications Commission's Website: https://www.fcc.gov/ecfs/filings.* Follow the instructions for submitting comments.

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, 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.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* document FCC 22–97 at *https://docs.fcc.gov/public/attachments/FCC-22-97A1.pdf.*

FOR FURTHER INFORMATION CONTACT: Michael Scott, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418–1264, or *Michael.Scott@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, document FCC 22–97, adopted on December 21, 2022, released on December 22, 2022, in CG Docket Nos. 03–123, 13–24, and 22–408. The full text of document FCC 22–97 is available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

Ex Parte Rules. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* 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 § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Synopsis

Background

1. Section 225 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 225, requires the Commission to ensure that TRS are available to persons who are deaf, hard of hearing, or deafblind or have speech disabilities, ''to the extent possible and in the most efficient manner.'' TRS are defined as ''telephone transmission services'' enabling such persons to communicate by wire or radio ''in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services.''

2. IP CTS, a form of TRS, permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an [IP]-enabled device via the internet to simultaneously listen to the other party and read captions of what the other party is saying. IP CTS is supported entirely by the TRS Fund, which is composed of mandatory contributions collected from telecommunications carriers and voice over internet Protocol (VoIP) service providers based on a percentage of each company's annual revenue. IP CTS providers receive monthly payments from the TRS Fund to compensate them for the reasonable cost of providing the service, in accordance with a per-minute compensation formula approved by the Commission.

3. Before 2018, compensation for IP CTS providers was determined by proxy, by averaging the payments made by state TRS programs to providers of an analogous service, Captioned Telephone Service (CTS). In 2018, the Commission determined that this approach had resulted in providers receiving compensation greatly in excess of the average cost actually incurred to provide IP CTS. Instead, the Commission proposed that compensation be determined as a weighted average of the actual allowable costs reported by the providers. In 2020, the Commission adopted this average-cost methodology. From 2018 to 2021, the Commission progressively reduced the level of TRS Fund compensation to close the gap between compensation and average provider cost. As a result of these decisions, the compensation formula for IP CTS was reduced from $1.9467 per minute in Fund Year 2017–18 to $1.30 per minute in Fund Year 2021–22.

4. In 2018, the Commission authorized, for the first time, the provision of IP CTS on a fully automatic basis, using *only* automatic speech recognition (ASR) technology to generate captions, without the participation of a communications assistant. The Commission also sought comment on whether and how to establish a separate compensation formula for the provision of fully automatic IP CTS. In 2020, while noting that the ASR-only mode allowed substantial reductions in the cost of providing IP CTS, the Commission deferred the issue of establishing a specific compensation formula for ASR-only captioning. With only two companies (both new entrants) then authorized to provide fully automatic IP CTS, the Commission reasoned that sufficient information was not yet available on the specific cost of that service mode. The Commission also suggested that, even after sufficient cost data became available, application of a single compensation formula might still be warranted. Noting that the two service modes are essentially different technological means for delivering a

single service, the Commission pointed out that a single compensation formula may be warranted to encourage IP CTS providers to use the most cost-effective technology for providing this service.

Proposed Rules

5. *Compensation for ASR-only IP CTS.* The Commission revisits the question of whether to establish different formulas for CA-assisted and ASR-only IP CTS, along with other related issues. Since 2020, the availability of cost data has improved. All currently certified IP CTS providers have been authorized to provide captioning in the ASR-only mode, either as an alternative to CA-assisted captioning or as the provider's sole captioning method, and additional applicants are currently seeking authorization to provide TRS Fund-supported IP CTS exclusively in the ASR-only mode. Total minutes of ASR-only IP CTS has substantially increased in the past two years. Historical cost and demand data for calendar year 2021, in which ASR-only usage increased to some 23% of monthly IP CTS minutes that year, was reported by providers in March 2022, along with projected cost and demand for 2022 and 2023. These reports appear to confirm that there are significant differences in the costs attributable to each service mode. The TRS Fund administrator reports that the weighted average of provider costs attributed to ASR-only IP CTS (expenses plus 10% operating margin) in 2021 was $0.6977, $0.30 less per minute than the average for CA-assisted IP CTS ($0.9979). The Commission seeks comment on the extent to which these estimates, based on provider-reported data, accurately reflect cost differences between ASR-only and CA-assisted IP CTS.

6. Further, notwithstanding the Commission's prior reservations, we believe there are special considerations warranting the application of different compensation formulas to the two service modes, at least as a temporary measure. On the one hand, there is evidence, including tests conducted by a federally funded research and development center, that ASR-only captioning offers better speed of answer (*i.e.,* it takes less time for captioning to commence after a call has begun), lower caption delay (the time lag between words being spoken on a phone call and the appearance of captions on the user's screen), and a level of accuracy that is generally comparable to (and in many instances, greater than) that of CA-assisted captioning. On the other hand, the record also indicates that for some portion of IP CTS calls, CA-assisted captioning can result in better service or is preferred by consumers. Further, some research indicates that ASR technology may show algorithmic bias in the accuracy with which it transcribes voices; a 2020 study of speech recognition systems from five major tech companies found that the systems misidentified words spoken by black individuals at a substantially higher rate than words spoken by white people. Given the apparently substantial cost differences, the continued application of a single compensation formula to both service modes could encourage IP CTS providers to use the lower-cost, more profitable ASR-only mode even for those calls where a user could benefit from having a CA involved. The Commission seeks comment on the foregoing analysis. Is it consistent with recent test results of the speed and accuracy of ASR-only and CA-assisted IP CTS?

7. In noting that the availability of CA assistance may improve the quality of service on some calls, the Commission does not mean to suggest that, if a provider chooses to provide IP CTS exclusively in one mode or the other, that provider would necessarily fail to provide functionally equivalent service. The Commission has granted certification to a number of applicants proposing to offer only fully automatic IP CTS, based in part on a showing that their average performance on testing of both caption delay and accuracy exceeded that of an average CA-assisted IP CTS provider.

8. In addition, the Commission notes that it has proposed to adopt measures and metrics that would allow more precise assessment of IP CTS service quality, including compliance with minimum TRS standards. The Commission recognizes the importance of this question, and work continues on development of more precise measures and metrics for assessing how well each provider and captioning approach performs in meeting the objectives of section 225 of the Act. Among the potential benefits of such metrics is the ability to make more fine-grained policy determinations regarding TRS Fund compensation. Pending the development of such metrics, the Commission seeks to apply cost-based compensation formulas for CA-assisted and ASR-only IP CTS that allow providers (or consumers, when able to choose) to select an appropriate captioning method for each call based primarily on considerations of quality, not cost. The Commission seeks comment on this analysis.

9. As a further consideration, if the cost differences between ASR-only and CA-assisted IP CTS are as substantial as they appear, then—as long as a substantial portion of IP CTS minutes are provided with CA assistance—continued application of a single, average-cost-based compensation formula to both modes of service could confer above-average profits on those IP CTS providers that produce captions predominantly or exclusively in the ASR-only mode. While such above-average profits earned during a limited period of time may serve to incentivize and reward innovation, prolonged payment of excessive compensation may result in waste of TRS Fund resources—and could significantly increase the risk of fraud in the IP CTS program, if the availability of unusually high profits increases the attractiveness of the IP CTS program to unscrupulous actors. The Commission seeks comment on this analysis.

10. To address the concerns discussed above, the Commission proposes that during the next compensation period, different levels of per-minute compensation should be applicable to each service mode, with the compensation formula for each mode aligned with the reasonable cost attributable to that mode. By setting a level of per-minute compensation for the ASR-only service mode that tracks its actual cost, the Commission believes it can maintain an appropriate incentive for providers to use the ASR-only mode where warranted, while also continuing to support CA-assisted IP CTS where appropriate, *e.g.,* where CA-assisted IP CTS may be needed to achieve functional equivalence. Given its lower reported cost, the fact that all IP CTS providers have now begun using ASR-only IP CTS, and the likelihood of continuing improvements in ASR technology, the Commission believes IP CTS providers will continue to be motivated to offer this service mode when preferred by users or otherwise warranted.

11. The Commission seeks comment on this proposal and the above assumptions. If the Commission applies different compensation formulas to the ASR-only and CA-assisted service modes, should the Commission also, within the CA-assisted category, establish a separate formula for CA-assisted IP CTS using the Communications Access Realtime Translation (CART) method to account for cost differences? Alternatively, should the Commission continue to determine a single level of compensation for IP CTS, based on the weighted average of providers' reasonable costs for the service as a whole? What are the costs and benefits of establishing separate compensation

levels for IP CTS calls, compared to maintaining the current approach? Are there other factors the Commission should consider in setting compensation formulas for ASR-only and CA-assisted service?

12. If the Commission establishes separate formulas for CA-assisted and ASR-only service, then it must be clear—to both providers and the TRS Fund administrator—which formula applies to any particular call or portion of a call. The Commission therefore proposes to codify in its rules the requirement, currently imposed as a condition of granting certification for the provision of ASR-only in addition to CA-assisted captioning, that IP CTS providers identify in their monthly call detail reports those calls and minutes that are captioned as ASR-only and those captioned as CA-assisted. If the service mode changes in the middle of a call, the Commission proposes that portions of the call (*i.e.,* number of minutes, specified to one decimal place) that are ASR-only and CA-assisted, respectively, shall be correctly identified as such.

13. The Commission also proposes to amend its rules to make clear which compensation formula is applicable to calls for which a CA or other provider personnel is not involved in the initial generation of the captions, but is monitoring caption quality while a call is in progress and may also be correcting captions during a call. The Commission seeks comment on the extent to which such monitoring is currently practiced and how it is handled operationally. For example, where CAs are engaged in monitoring ASR-generated captions, do they also undertake to correct any mistakes themselves, or do they simply assess the caption quality to determine whether the call needs to be transferred to the CA-assisted service mode? Are there circumstances in which one CA may simultaneously monitor more than one ASR-captioned call? Are there other relevant scenarios the Commission should consider, involving both a CA and the use of ASR on a single call?

14. The Commission proposes that, if a CA is only assigned to monitor or correct one call at a time, the CA-assisted compensation formula shall apply to any call (or any call minutes, if a CA is not present for the entire call) to which that CA is assigned. On the other hand, if a CA (or other employee) is monitoring more than one call, or is splitting time between monitoring a call and attending to other tasks, then—because the employee's involvement appears to be more in the nature of general supervision of ASR-only operations—the Commission proposes that the ASR-only formula shall apply to each call being monitored. The Commission seeks comment on these proposals. Are there any other kinds of situations in which the proper classification of calls and minutes as ASR-only or CA-assisted needs clarification?

15. The Commission also seeks comment on how to determine with greater precision the reasonable cost of providing IP CTS on a fully automatic or CA-assisted basis. Are any additional categories or subcategories needed in the administrator's cost reporting template to appropriately capture the costs of each service mode? Are any such changes necessary to capture costs that may be incurred in providing users the ability to choose a preferred service mode, or to switch between ASR-only and CA-assisted services during a call? Are there other steps the Commission could take, consistent with cost-causation principles, to ensure that the compensation formulas provide appropriate incentives for providers to offer such choices to consumers or otherwise to advance the statutory goal of functional equivalence?

16. Although the Commission required IP CTS providers offering both modes of service to specify the costs attributable to each mode, there is a lack of consistency in how various providers have responded to this directive. For certain cost categories, such as facilities, indirect costs, and marketing, some providers directly assigned the costs attributed to each service mode, while other providers allocated the same costs based on the share of minutes provided. In accordance with well-established principles of regulatory accounting, the Commission tentatively concludes that when it is possible to directly assign costs to either ASR-only or CA-assisted IP CTS, providers must do so, and when that is not possible, they must reasonably allocate such costs based on direct analysis of the origin of the costs themselves. The Commission has applied this principle in a variety of contexts where costs of regulated companies must be apportioned among multiple services. When direct analysis is not possible, common cost categories should be allocated based upon an indirect, cost-causative linkage to another cost category (or group of cost categories) for which a direct assignment or allocation is available. The Commission seeks comment on this tentative conclusion.

17. *Allowable Costs.* In the *2020 IP CTS Compensation Order,* the Commission decided that IP CTS costs could be reasonably determined using, for the most part, the same allowable-cost criteria applicable to other forms of internet-based TRS. As the only exception, the Commission determined that the TRS Fund should support reasonable outreach costs of IP CTS providers. Except as specifically identified in this document, the Commission does not seek to revisit these determinations. Nonetheless, in order to ensure that the Commission sets rates for the foregoing periods at levels that promote the statutory goal of functional equivalence at a time when both technology and consumer use of communications services are rapidly evolving, the Commission seeks comment on whether adjustments to certain cost criteria are warranted for IP CTS.

18. *Research and development to enhance functional equivalency.* The Commission proposes to revise its allowable cost criteria to allow TRS Fund support for the reasonable cost of research and development to enhance the functional equivalency of IP CTS, including improvements in service quality that may exceed the Commission's TRS mandatory minimum standards. Currently, the TRS Fund supports research and development conducted by an IP CTS provider to ensure that its service meets the applicable TRS mandatory minimum standards, but does not compensate providers for developing IP CTS enhancements that exceed this criterion. In establishing this limitation, the Commission reasoned that the functionality that TRS providers must provide is defined by the applicable mandatory minimum standards, and that the TRS Fund was not intended to be a source of funding for the development of TRS services, features, and enhancements that, although perhaps desirable, are not necessary for the provision of functionally equivalent TRS service.

19. The Commission now proposes to revisit this criterion with respect to IP CTS costs. In this document, the Commission seeks comment on the allowability of research and development costs specifically with respect to IP CTS. In the pending VRS compensation proceeding, commenters have raised an analogous concern with respect to VRS. The Commission deferred consideration of the analogous issue with respect to IP Relay, pending its resolution for other forms of TRS.

20. While it is true that, to be eligible for TRS Fund support, a TRS provider is only required to meet the minimum standards, the rules do not *prohibit* providers from exceeding those standards. Further, section 225 of the Act states that the Commission's TRS

regulations must not ''discourage or impair the development of improved technology.'' In addition, the Commission's policy is to encourage IP CTS providers to compete for subscribers on the basis of service quality, including by introducing innovative captioning processes and features.

21. Adjusting the Commission's criteria to allow TRS Fund support for research and development into IP CTS improvements that meet *or* exceed the Commission's minimum standards will increase the likelihood that, in fact, the service actually provided does meet or exceed those standards and harmonize the Commission's IP CTS cost criteria with the Congressional intent to encourage the development of improved technology for TRS. The Commission seeks comment on this proposal and the cost and benefits of allowing providers to recover the reasonable cost of such research and development.

22. The Commission also invites comment on how it should ensure that the benefit of the conducted research and development actually enhances functional equivalency. The Commission believes that, by using an average cost methodology and setting compensation formulas for multi-year periods, the Commission provides substantial incentives for providers to use research and development funds wisely and avoid incurring unnecessary costs. However, the Commission seeks comment on whether additional safeguards are needed. Should providers be required to report on conducted research and development? If so, how often? What information should be included in such reports to allow the Commission or TRS Fund administrator to audit research and development costs? Further, in determining the reasonable costs for research and development, should the Commission account for the benefits that may inure to providers, for example, licensing or earning profits from research and development outside the TRS program?

23. *Numbering.* Pursuant to a prior Commission ruling, the costs associated with acquiring a telephone number and assigning it to a customer are not currently supported by the TRS Fund. The Commission reasoned that such costs are not attributable to the use of a relay service to facilitate a call, noting that analogous costs incurred by voice service providers are typically passed through to their customers. In the *2022 IP Relay Compensation Order,* however, the Commission revisited this issue with respect to IP Relay, concluding that, because the Commission's rules require the assignment of North American Numbering Plan (NANP) numbers to IP Relay users, it seems illogical to treat such costs as if they are not attributable to the use of relay to facilitate a call. The Commission also reasoned that the circumstances relevant to recovery of number acquisition costs by voice service providers and IP CTS providers are not equivalent. While voice service providers have a billing relationship with their consumers, IP CTS providers typically do not, and there seems to be little point in creating such a relationship for the sole purpose of passing through what likely would be a *de minimis* monthly charge for any particular IP CTS user.

24. To harmonize IP CTS compensation methodology with the IP Relay ruling, the Commission proposes to also treat as allowable the reasonable costs of acquiring NANP telephone numbers for IP CTS users, in those circumstances where such acquisition is necessary to provide the service. To date, such number acquisition has *not* been routinely required. IP CTS is most commonly provided as an adjunct to the consumer's existing telephone service. In such cases, the consumer already has a telephone number, and it is not necessary for the IP CTS provider to assign one. However, for some types of IP CTS, the user initiates an IP CTS call by connecting to the IP CTS provider via the internet, such as web-based or wireless-based IP CTS, and the provider assigns a new NANP telephone number to the IP CTS user, which is different from the user's existing telephone number and is used only for processing and transmitting IP CTS calls. The Commission seeks comment on this proposal and the costs and benefits of allowing recovery of number acquisition costs.

25. *User access software.* Pursuant to longstanding Commission rulings, twice upheld by the D.C. Circuit, the TRS Fund does not support the provision of the equipment used by a consumer to access TRS. The Commission has previously interpreted this restriction to extend to the ''installation of the equipment or any necessary software.'' However, the Commission has not specifically addressed whether the TRS Fund should support the expenses of providing software that is *not* designed for installation on provider-distributed equipment, but rather is usable on off-the-shelf user devices supplied by third parties. At the time the prohibition on equipment cost recovery was adopted, TRS user software was typically proprietary software run on provider-distributed equipment.

26. Historically, IP CTS has been most commonly accessed via provider-distributed devices. However, a number of providers offer IP CTS via software applications that consumers may access via any web browser or may download to off-the-shelf devices owned by the consumer, such as a computer, tablet, or mobile device.

27. The Commission proposes to allow TRS Fund support for the reasonable cost of developing, maintaining, and providing software and web-based applications that enable users to access IP CTS from off-the-shelf user devices. Where a type of software can be used with a variety of devices purchased from other sources and is necessary for a customer to access and use the service, the Commission believes that such access software, even though it may be installed on or downloaded to a user device, is appropriately classified as associated with the relay *service,* rather than with *equipment.* Further, the Commission believes that its statutory directive to make TRS widely available in the most efficient manner will be advanced if the TRS Fund supports the provision of software that enables access to IP CTS from a wide range of devices. Today, a wide variety of devices are capable of receiving and displaying captions of telephone conversations.

28. In addition, compatibility with off-the-shelf equipment facilitates consumers' ability to choose from a range of service providers based on the quality of their captioning service. The Commission does not propose to include the costs of providing any devices to users, just the costs of developing and providing software that is necessary to provide IP CTS on off-the-shelf devices. The Commission seeks comment on this proposal, its costs and benefits, and the above assumptions. Are there more specific characteristics or limitations that should be identified for determining whether access software costs should be allowable? Commenters are encouraged to provide specific examples of the types of software that might be allowed and the amount of such costs that would be covered under this proposal.

29. As one party has suggested, should the Commission also allow TRS Fund support for the cost of IP CTS access software that is developed and provided for proprietary devices that are designed to be used with a particular provider's service (or with a service that has been licensed to use a particular IP CTS technology)? What would be the costs and benefits of such a change? How would allowing such cost recovery promote the objectives of section 225 of

the Act? Would such a change require the Commission to revisit its past determination that its rules should promote the ability of users to access TRS from a variety of commercially available devices? Would allowing such recovery tend to ''lock in'' consumers, increasing their dependence on a single supplier of IP CTS technology? If the Commission were to allow such cost recovery, how should it distinguish between costs of the software needed to access IP CTS from proprietary devices, which would be supported by the TRS Fund, and software that is integral to operation of the device, which would continue to be unsupported?

30. The Commission seeks comment on how to ensure the appropriate allocation of software costs between software that a consumer can download to the consumer's off-the-shelf equipment or that is used in association with web-based IP CTS as opposed to software that is used with a provider's or contractor's proprietary equipment. To the extent that such software costs are not directly attributable to one category or the other, the Commission seeks comment on how to allocate such costs between these categories.

31. *Operating Margin.* The Commission proposes that IP CTS compensation for the next cycle should aim to ensure that the total compensation paid to all providers allows an average recovery of an operating margin above allowable expenses that is within the zone of reasonableness (7.75%–12.35%) established in the Commission's *2017 VRS Compensation Order,* published at 82 FR 39973, August 22, 2017, and applied to IP CTS in the *2020 IP CTS Compensation Order,* published at 85 FR 64971, October 14, 2020. The Commission seeks comment on this proposal. Have there been changes in relevant factors that support adjusting the range? Is the current allowable operating margin sufficient to attract capital, new entry, and promote functionally equivalent IP CTS? The Commission notes that a new investor recently purchased a controlling interest in a certified IP CTS provider, CaptionCall. What has been providers' experience since 2020?

32. If the Commission continues to use a cost-based methodology for IP CTS, should it also continue to set the operating margin at 10%, the approximate midpoint of the zone of reasonableness? If the Commission sets different compensation formulas for CA-assisted and ASR-only IP CTS, is there any reason to apply a different operating margin for the ASR-only formula?

33. *Calculation of Cost-Based Compensation Formulas.* The Commission seeks comment on the appropriate levels of per-minute compensation for CA-assisted and ASR-only IP CTS, respectively. Based on the cost and demand data reported by providers in March 2022, the TRS Fund administrator, Rolka Loube, has determined that the average cost (including a 10% operating margin) of CA-assisted IP CTS was $0.9979 per minute in 2021, and is projected to be $1.1818 per minute in 2022. The estimated average cost of ASR-only IP CTS was $0.6977 per minute in 2021 and is projected to be $0.7286 for 2022. Updated cost data, which will include historical cost and demand for 2021 and 2022 and projected cost and demand for 2023 and 2024, is due to be filed by providers in February 2023. In setting compensation, the Commission intends to take account of such updated cost and demand data, which may result in modification of the above estimates. For example, a recent report by Rolka Loube indicates that demand for IP CTS, which increased significantly in 2020 and 2021, appears to be returning to a level closer to that of 2019. This may reflect a declining impact of the COVID–19 pandemic. The record will remain open for interested parties to comment on such additional data.

34. The Commission recognizes that the use of ASR-only IP CTS has grown while the use of CA-assisted IP CTS has declined. As noted above, by the end of 2021, the ASR-only mode accounted for approximately 23% of monthly IP CTS minutes, and current projections are that the percentage will rise to 40% by late 2023. Given the absence of CAs, it appears that ASR-only service involves a much smaller proportion of variable costs. If ASR-only minutes continue to increase as a share of total IP CTS usage, it appears likely that the per-minute costs of ASR-only will decline, as ASR-only IP CTS seems to involve few costs that grow in direct proportion to usage. The Commission seeks comment on these assumptions. Is the projected growth of ASR-only IP CTS a reasonable expectation, given the efficiency advantages and other benefits of this technology? Is the trend of growth likely to change substantially, and if so, how should that affect the Commission's compensation determinations?

35. *Compensation Period.* The Commission proposes a three-year compensation period. Thus, if the revised compensation formula is effective July 1, 2023, the compensation period will end June 30, 2026. The Commission believes this period is long enough to give providers certainty regarding the applicable compensation levels, provide incentives for providers to become more efficient, and mitigate any risk of creating the ''rolling average'' problem previously identified by the Commission regarding TRS. On the other hand, the period is short enough to allow timely reassessment of the compensation formulas in response to substantial cost changes and other significant developments.

36. The Commission seeks comment on this proposal. What are the costs and benefits of adopting a compensation period of a longer or shorter duration? In light of the high growth rate of ASR-only usage and the apparently high volume sensitivity of ASR-only per-minute costs, as well as the ongoing changes in ASR technology, should the Commission set a different compensation period for an ASR-only compensation formula (or for a single IP CTS compensation formula, if the Commission continues using one)?

37. *Inflation and Productivity Adjustments.* The Commission seeks comment to refresh the record on whether a price indexing formula, analogous to price-cap factors, should be applied during a multi-year compensation period, and on the appropriate indices to use to reflect inflation and productivity. If inflation and productivity trends for IP CTS can be predicted with reasonable accuracy, then it appears that the adoption of such factors would give providers greater assurance of cost recovery during a multi-year compensation period, and allow the benefits of any productivity-related cost declines to be shared with TRS Fund contributors.

38. In the *2020 IP CTS Compensation Order,* the Commission deferred consideration of such factors ''until we are better able to assess the impact of ASR technology on IP CTS costs.'' Have providers adjusted their projected costs to account for anticipated inflation? If the Commission continues to use a weighted average of historical and projected costs in setting a compensation formula, are such adjustments accounted for in the compensation formula? If adopted, how should a price-indexing approach be structured if the Commission were to adopt compensation levels for CA-assisted and ASR-only IP CTS, *e.g.,* to account for any disparities in expected productivity gains between the services?

39. As a reference point for determining an annual inflation adjustment, the Commission proposes to use the Bureau of Labor Statistics' Employment Cost Index for ''professional, scientific, and technical services.'' The Commission believes

that, because CA-assisted IP CTS is a labor-intensive service, this seasonally adjusted index, which includes translation and interpreting services, will more accurately reflect changes in relevant costs than will a more general index of price changes. The Commission seeks comment on this proposal. Is the use of the index appropriate for ASR-only IP CTS, given that ASR-only IP CTS is not primarily labor based? Would another index be more appropriate for ASR-only IP CTS?

40. How should the Commission ensure productivity is properly accounted for in the adjustment? Does the proposed price index appropriately account for inflation and productivity relevant to IP CTS or would a different price index be more reasonable? Should the Commission adopt a separate X-factor to account for productivity or other factors that may reduce costs relative to inflation? If so, how should the Commission set such an X-factor? For example, could total factor productivity for the professional and technical services industry as measured by the Bureau of Labor Statistics be used to set the X-factor for CA-assisted IP CTS? Given that ASR-only IP CTS is not primarily labor based, would another index be more appropriate for ASR-only IP CTS?

41. *Alternative Approaches.* The Commission also seeks comment on whether there are other approaches to IP CTS compensation that can successfully align the compensation formula for this service with actual provider costs and enable the Commission to provide IP CTS in the most efficient manner. To the extent that commenters wish to suggest alternative approaches that could simplify or otherwise improve the IP CTS compensation process, the Commission invites the submission of specific proposals, along with an explanation of how each proposal would better align IP CTS compensation with actual provider costs and otherwise advance the objectives of section 225 of the Act.

42. *Technical Amendment Clarifying IP Relay Compensation Rate.* The Commission proposes a technical amendment to § 64.640(d) of the Commission's rules to clarify the inflation adjustment factor for IP Relay compensation. In the *2022 IP Relay Compensation Order,* published at 87 FR 42656, July 18, 2022, the Commission adopted an annual inflation adjustment factor based on the Employment Cost Index compiled by the Bureau of Labor Statistics, U.S. Department of Labor, for total compensation for private industry workers in professional, scientific, and technical services. The Commission directed the TRS Fund administrator to specify in its annual TRS Fund report ''the index values for each quarter of the previous calendar year and the last quarter of the year before that.'' The Commission also directed the TRS Fund administrator to propose the IP Relay compensation level for the next TRS Fund year by adjusting the compensation level from the previous year by a percentage equal to the percentage change in the index between the fourth quarter of the calendar year ending before the filing of its annual report and the fourth quarter of the preceding calendar year.

43. In short, § 64.640(d) of the Commission's rules codifies the index and time periods to be used to calculate the percentage change in the index to determine the rate of inflation. The Commission proposes to revise the text of the rule to clarify the inflation adjustment factor to eliminate any ambiguity as to how the inflation adjustment factor is calculated. The relevant provision of the rules currently reads:

> (d) The inflation adjustment factor for a Fund Year (IF_{FY}), to be determined annually on or before June 30, is 1/100 times the difference between the values of the Employment Cost Index compiled by the Bureau of Labor Statistics, U.S. Department of Labor, for total compensation for private industry workers in professional, scientific, and technical services, for the following periods:
>
> (1) The fourth quarter of the Calendar Year ending 6 months before the beginning of the Fund Year; and
>
> (2) The fourth quarter of the preceding Calendar Year.

As amended, this provision would read:

> (d) The inflation adjustment factor for a Fund Year (IF_{FY}), to be determined annually on or before June 30, is equal to the difference between the Initial Value and the Final Value, as defined herein, divided by the Initial Value. The Initial Value and Final Value, respectively, are the values of the Employment Cost Index compiled by the Bureau of Labor Statistics, U.S. Department of Labor, for total compensation for private industry workers in professional, scientific, and technical services, for the following periods:
>
> (1) Final Value. The fourth quarter of the Calendar Year ending 6 months before the beginning of the Fund Year; and
>
> (2) Initial Value. The fourth quarter of the preceding Calendar Year.

44. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed in this Notice. The term ''equity'' is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. Specifically, the Commission seeks comment on how the Commission's proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

Initial Regulatory Flexibility Analysis

45. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared the Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the NPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments provided in this document.

Need for, and Objectives of, the Proposed Rules

46. The Commission seeks comment on the adoption of a compensation methodology and compensation levels for TRS Fund support of providers of IP CTS. With the introduction and growing demand of ASR-only IP CTS, the Commission seeks to build a record on the cost and service quality differences between ASR-only IP CTS and CA-assisted IP CTS. In doing so, the Commission proposes to move away from its current practice of determining a compensation level for both ASR-only IP CTS and CA-assisted IP CTS on the average weighted cost of providing CA-assisted IP CTS. To develop an alternative, the Commission seeks comment on the allocation of costs between ASR-only and CA-assisted IP CTS, allowable costs, operating margins,

cost reporting, available demand data, and the service quality of ASR-only and CA-assisted IP CTS.

47. The Commission seeks comment on the appropriate duration of the compensation period and the use of a price indexing formula to adjust compensation for inflation and productivity. The Commission also seeks comment on alternatives to using a cost-based compensation methodology and alternatives to averaging costs to determine whether such alternatives could better achieve the Commission's objectives.

48. The Commission also seeks comment on a technical amendment to the Commission's rules on IP Relay compensation to clarify the inflation adjustment factor that is applied annually during the compensation period.

49. The Commission takes these steps to ensure the provision of IP CTS in a functionally equivalent manner to persons who are deaf, hard of hearing, deafblind or have speech disabilities. In doing so, the Commission balances several different factors including regulating the recovery of costs caused by the service, encouraging the use of existing technology and not discouraging or impairing the development of improved technology, and ensuring IP CTS is ''available, to the extent possible and in the most efficient manner.''

Legal Basis

50. The authority for this proposed rulemaking is contained in sections 1, 2, and 225 of the Act, as amended, 47 U.S.C. 151, 152, 225.

Small Entities Impacted

51. The proposals in this document will affect the obligations of IP CTS providers. These services can be included within the broad economic category of All Other Telecommunications.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

52. The proposed compensation methodology will not create new reporting, recordkeeping, or other compliance requirements.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

53. Throughout this document, the Commission is taking steps to minimize the impact on small entities by seeking comment on reforms to the IP CTS compensation methodology that would ensure that providers of IP CTS are fairly compensated for the provision of IP CTS (both ASR-only IP CTS and CA-assisted IP CTS) including considering significant alternatives by identifying and seeking comment on multiple methodologies for compensation; and considering various options to determine the best compensation methodology for ensuring functionally equivalent service and balance several different factors in carrying out the objective of section 225 of the Act over the long term in accordance with the Commission's statutory obligations. The Commission seeks comment on the effect these proposals will have on all entities that have the potential to provide IP CTS, including small entities.

54. The Commission seeks comment from all interested parties. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in this document. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to this document, in reaching its final conclusions and acting in this proceeding.

Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals

55. None.

Initial Paperwork Reduction Act of 1995 Analysis

The Commission seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act, Public Law 104–13; 44 U.S.C. 3501–3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107–198, 44 U.S.C. 3506(c)(4).

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications, Telecommunications relay services.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Proposed Regulations

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend Title 47 of the Code of Federal Regulations as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 617, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 2. The authority citation for subpart F continues to read as follows:

Authority: 47 U.S.C. 151–154; 225, 255, 303(r), 616, and 620.

■ 3. Amend § 64.640 by revising paragraph (d) to read as follows:

§ 64.640 Compensation for IP Relay.

* * * * *

(d) The inflation adjustment factor for a Fund Year (IF_{FY}), to be determined annually on or before June 30, is equal to the difference between the Initial Value and the Final Value, as defined herein, divided by the Initial Value. The Initial Value and Final Value, respectively, are the values of the Employment Cost Index compiled by the Bureau of Labor Statistics, U.S. Department of Labor, for total compensation for private industry workers in professional, scientific, and technical services, for the following periods:

(1) Final Value. The fourth quarter of the Calendar Year ending 6 months before the beginning of the Fund Year; and

(2) Initial Value. The fourth quarter of the preceding Calendar Year.

* * * * *

■ 4. Add § 64.641 to subpart F to read as follows:

§ 64.641 Compensation for Internet Protocol Captioned Telephone Service using only automatic speech recognition technology (ASR-Only IP CTS).

(a) For the period from _____, through _____, TRS Fund compensation for the provision of ASR-Only internet Protocol Captioned Telephone Service shall be as described in this section.

(b) For Fund Year _____, comprising the period from _____, _____, the

Compensation Level for ASR-Only internet Protocol Captioned Telephone Service shall be $X.XXXX per minute.

(c) For each succeeding Fund Year through _____, the per-minute Compensation Level (L_{FY}) shall be determined in accordance with the following equation:

$$L_{FY} = L_{FY-1} * (1+IF_{FY} - PF_{FY})$$

where IF_{FY} is the Inflation Adjustment Factor for that Fund Year, determined in accordance with paragraph (d) of this section and PF_{FY} is the Productivity Adjustment Factor for that Fund Year, determined in accordance with paragraph (e).

(d) The inflation adjustment factor for a Fund Year (IF_{FY}), to be determined annually on or before June 30, is equal to the difference between the Initial Value and the Final Value, as defined herein, divided by the Initial Value. The Initial Value and Final Value, respectively, are the values of the Employment Cost Index compiled by the Bureau of Labor Statistics, U.S. Department of Labor, for total compensation for private industry workers in professional, scientific, and technical services, for the following periods:

(1) Final Value. The fourth quarter of the Calendar Year ending 6 months before the beginning of the Fund Year; and

(2) Initial Value. The fourth quarter of the preceding Calendar Year.

(e) The productivity adjustment factor for a Fund Year (PF_{FY}), to be determined annually on or before June 30, is [to be added].

(f) In addition to L_{FY}, an ASR-only internet Protocol Captioned Telephone Service provider shall be paid a per-minute exogenous cost adjustment if claims for exogenous cost recovery are submitted by the provider and approved by the Commission on or before June 30. Such exogenous cost adjustment shall equal the amount of such approved claims divided by the provider's projected minutes for the Fund Year.

(g) An exogenous cost adjustment shall be paid if an internet Protocol Captioned Telephone Service provider incurs well-documented costs that:

(1) belong to a category of costs that the Commission has deemed allowable;

(2) result from new TRS requirements or other causes beyond the provider's control;

(3) are new costs that were not factored into the applicable compensation formula; and

(4) if unrecovered, would cause a provider's current allowable-expenses-plus-operating margin to exceed its revenues.

■ 5. Add § 64.642 to subpart F to read as follows:

§ 64.642 Compensation for Internet Protocol Captioned Telephone Service provided with communications assistants (CA-Assisted IP CTS).

(a) For the period from _____, through _____, TRS Fund compensation for the provision of CA-Assisted internet Protocol Captioned Telephone Service shall be as described in this section.

(b) For Fund Year _____, comprising the period from _____, through _____, the Compensation Level for CA-Assisted internet Protocol Captioned Telephone Service shall be $X.XXXX per minute.

(c) For each succeeding Fund Year through _____, the per-minute Compensation Level (L_{FY}) shall be determined in accordance with the following equation:

$$L_{FY} = L_{FY-1} * (1+IF_{FY} - PF_{FY})$$

where IF_{FY} is the Inflation Adjustment Factor for that Fund Year, determined in accordance with paragraph (d) of this section and PF_{FY} is the Productivity Adjustment Factor for that Fund Year, determined in accordance with paragraph (e).

(d) The inflation adjustment factor for a Fund Year (IF_{FY}), to be determined annually on or before June 30, is equal to the difference between the Initial Value and the Final Value, as defined herein, divided by the Initial Value. The Initial Value and Final Value, respectively, are the values of the Employment Cost Index compiled by the Bureau of Labor Statistics, U.S. Department of Labor, for total compensation for private industry workers in professional, scientific, and technical services, for the following periods:

(1) Final Value. The fourth quarter of the Calendar Year ending 6 months before the beginning of the Fund Year; and

(2) Initial Value. The fourth quarter of the preceding Calendar Year.

(e) The productivity adjustment factor for a Fund Year (PF_{FY}), to be determined annually on or before June 30, is [to be added].

(f) In addition to L_{FY}, a CA-assisted internet Protocol Captioned Telephone Service provider shall be paid a per-minute exogenous cost adjustment if claims for exogenous cost recovery are submitted by the provider and approved by the Commission on or before June 30. Such exogenous cost adjustment shall equal the amount of such approved claims divided by the provider's projected minutes for the Fund Year.

(g) An exogenous cost adjustment shall be paid if a CA-assisted internet Protocol Captioned Telephone Service provider incurs well-documented costs that:

(1) belong to a category of costs that the Commission has deemed allowable;

(2) result from new TRS requirements or other causes beyond the provider's control;

(3) are new costs that were not factored into the applicable compensation formula; and

(4) if unrecovered, would cause a provider's current allowable-expenses-plus-operating margin to exceed its revenues.

[FR Doc. 2023–01679 Filed 2–1–23; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 88, No. 22

Thursday, February 2, 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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Texas Advisory Committee (Committee) will hold a series of meetings via *ZoomGov* on the following dates and times listed below. These virtual business meetings are for the purpose of discussing their project on mental health care in the Texas Juvenile Justice System.

DATES: These meetings will take place on:

- Tuesday, April 11, 2023, from 12:00 p.m.–2:00 p.m. CT
- Wednesday, May 3, 2023, from 12:00 p.m.–1:00 p.m. CT

ADDRESSES: Zoom Link to Join:

- Tuesday, April 11th: *https://www.zoomgov.com/meeting/register/vJItfuCtpz8oGT6lLccG8kGyA1O1F9Wmg-Q*
- Wednesday, May 3rd: *https://www.zoomgov.com/meeting/register/vJItcumsrz4uG-ISd0LP33-B8d1jrG-HUFE*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or by phone at (202) 701–1376. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery (DFO) at *bpeery@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkoAAA.*

Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: January 30, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–02207 Filed 2–1–23; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Hawai'i Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of a virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Hawai'i Advisory Committee to the Commission will convene by *ZoomGov* on Thursday, March 2, 2023, from 2:00 p.m. to 3:30 p.m. HST, to discuss the draft Project Proposal on the Committee's chosen topic ''Overrepresentation of Native Hawaiian Families in the Child Welfare System in the State of Hawaii.''

DATES: Thursday, March 2, 2023, from 2:00 p.m.–3:30 p.m. HST.

Zoom Link: https://tinyurl.com/trvrcdd9.

Audio: (833) 568–8864; Meeting ID: 161 196 1451.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, Designated Federal Officer (DFO) at *kfajota@usccr.gov* or by phone at (434) 515–2395.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the Zoom link above. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided for this meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Kayla Fajota at *kfajota@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl0AAA.*

Please click on ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above phone number or email address.

Agenda

I. Welcome and Roll Call
II. Approval of November 7, 2022, Meeting Minutes
III. Discussion: Draft Project Proposal
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: January 30, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–02206 Filed 2–1–23; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Minnesota Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Minnesota Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 1:00 p.m. CT on Thursday, February 23, 2023, to discuss the Committee's next topic of study.

DATES: The meeting will take place on Thursday, February 23, 2023, from 1:00 p.m.–2:00 p.m. CT.

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1612943387

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 161 294 3387

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, members of the public who wish to speak during public comment must provide their name to the Commission; however, if a member of the public wishes to join anonymously, we ask that you please join by phone. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided for individuals who are deaf, deafblind, or hard of hearing. To request additional accommodations, please email *dbarreras@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Minnesota Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Discussion: Civil Rights Concerns in Minnesota
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: January 30, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–02186 Filed 2–1–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

First Responder Network Authority

National Telecommunications and Information Administration

Public Combined Board and Board Committees Meeting

AGENCY: First Responder Network Authority (FirstNet Authority), National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce.

ACTION: Announcement of meeting.

SUMMARY: The FirstNet Authority Board will convene an open public meeting of the Board and Board Committees.

DATES: February 15, 2023; 8:30 a.m. to 10:30 a.m. Central Standard Time (CST); Austin, Texas.

ADDRESSES: The meeting will be held at the University of Texas at Austin, AT&T Hotel and Conference Center, 1900 University Avenue, Austin, Texas 78705. All expected attendees are asked to provide notice of intent to attend by sending an email to *BoardRSVP@Firstnet.gov.* Members of the public may listen to the meeting and view the presentation by visiting the URL: *https://stream2.sparkstreetdigital.com/20230215-firstnet.html* If you experience technical difficulty, contact *support@sparkstreetdigital.com.* WebEx information can also be found on the FirstNet Authority website (*FirstNet.gov*).

FOR FURTHER INFORMATION CONTACT: *General information:* Janell Smith, (202) 257–5929, *Janell.Smith@FirstNet.gov.*

Media inquiries: Ryan Oremland, (571) 665–6186, *Ryan.Oremland@FirstNet.gov.*

SUPPLEMENTARY INFORMATION: *Background:* The Middle-Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. 1401 *et seq.*) (Act) established the FirstNet Authority as an independent authority within NTIA. The Act directs the FirstNet Authority to ensure the building, deployment, and operation of a nationwide interoperable public safety broadband network. The FirstNet Authority Board is responsible for making strategic decisions regarding the operations of the FirstNet Authority.

Matters to be Considered: The FirstNet Authority will post a detailed agenda for the Combined Board and Board Committees Meeting on *FirstNet.gov* prior to the meeting. The agenda topics are subject to change. Please note that the subjects discussed by the Board and Board Committees may involve commercial or financial information that is privileged or confidential, or other legal matters affecting the FirstNet Authority. As such, the Board may, by majority vote, close the meeting only for the time necessary to preserve the confidentiality of such information, pursuant to 47 U.S.C. 1424(e)(2).

Other Information: The public Combined Board and Board Committees Meeting is accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Janell Smith at (202) 257–5929 or email: *Janell.Smith@FirstNet.gov* at least five (5) business days (February 8) before the meeting.

Records: The FirstNet Authority maintains records of all Board proceedings. Minutes of the Combined Board and Board Committees Meeting will be available on *FirstNet.gov.*

Dated: January 30, 2023.

Janell Smith,

Board Secretary, First Responder Network Authority.

[FR Doc. 2023–02180 Filed 2–1–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–844]

Certain Carbon and Alloy Steel Cut-to-Length Plate From the Federal Republic of Germany: Rescission of Antidumping Administrative Review; 2021–2022; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published a notice in the **Federal Register** of January 24, 2023, in which Commerce rescinded the 2021–2022 administrative review of the antidumping order on certain carbon and alloy steel cut-to-length plate from Germany. In the title of this notice, Commerce incorrectly listed the years for the period of review (POR) for the administrative review and misspelled a word.

DATES: Applicable February 2, 2023.

FOR FURTHER INFORMATION CONTACT: Paul Gill, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5673.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of January 24, 2023, in FR Doc 2023–01331, on page 4154, correct the title of the rescission notice to *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Rescission of Antidumping Administrative Review; 2021–2022.*

Background

On January 24, 2023, Commerce published in the **Federal Register** the *Rescission Notice.*[1] The title of this notice is incorrectly written as *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Recission of Antidumping Administrative Review; 2020–2021.* In this title, we incorrectly listed the years for the POR of the administrative review and misspelled the word ''rescission'' as ''recission.''

[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Recission {sic} of Antidumping Administrative Review; 2020–2021 {sic}*, 88 FR 4154 (January 24, 2023) (*Rescission Notice*).

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 27, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–02170 Filed 2–1–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders with December anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable February 2, 2023.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders with December anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

With respect to antidumping administrative reviews, if a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *https://access.trade.gov,* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection.

Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a Separate Rate Application or Certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Exporters and producers must file a timely Separate Rate Application or Certification if they want to be considered for individual examination. Furthermore, exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents will

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than December 30, 2023.

	Period to be reviewed
AD Proceedings	
India: Carbazole Violet Pigment 23, A–533–838	12/1/21–11/30/22
Meghmani LLP	
Navpad Pigments Pvt. Ltd.	
India: Stainless Steel Flanges,[5] A–533–877	10/1/21–9/30/22
Hilton Metal Forging Limited	
India: Utility Scale Wind Towers, A–533–897	5/24/21–11/30/22
Anand Engineering Products Private Limited	
Cubuilt Engineers Private Limited	
GE Renewable Energy	
GRI Towers India Private Limited	
Metalfab Hightech Private Limited	
Nordex SE	
Siemens Gamesa Renewable Energy Limited	
Suzlon Energy Limited	
Vestas Wind Technology India Private Limited	
VMV Engineering Private Limited	
Windar Renewable Energy Private Limited	
Malaysia: Utility Scale Wind Towers, A–557–821	10/13/21–11/30/22
CS Wind Corporation/CS Wind Malaysia Sdn. Bhd.[6]	
Republic of Korea: Forged Steel Fittings, A–580–904	12/1/21–11/30/22
Samyoung Fitting Co., Ltd.	
Republic of Korea: Welded Line Pipe, A–580–876	12/1/21–11/30/22
Husteel Co., Ltd.	
Hyundai Steel Company/Hyundai HYSCO	
NEXTEEL Co., Ltd.	
SeAH Steel Corporation	
Thailand: Passenger Vehicle and Light Truck Tires,[7] A–549–842	1/6/21–6/30/22
Deestone Corporation Public Company Limited	
The People's Republic of China: Cased Pencils, A–570–827	12/1/21–11/30/22
Ningbo Homey Union Co., Ltd.	
Shandong Wah Yuen Stationery Co. Ltd./Wah Yuen Stationery Co. Ltd.	
Tianjin Tonghe Stationery Co. Ltd.	
The People's Republic of China: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, A–570–979	12/1/21–11/30/22
Anji DaSol Solar Energy Science & Technology Co., Ltd.	
Boviet Solar Technology Co., Ltd.	
BYD (Shangluo) Industrial Co., Ltd.	
BYD H.K. Co., Ltd.	
Canadian Solar International Limited; Canadian Solar Manufacturing (Changshu), Inc.; Canadian Solar Manufacturing (Luoyang), Inc.; CSI Cells Co., Ltd.; CSI Solar Power (China) Inc.; CSI–GCL Solar Manufacturing (Yancheng) Co., Ltd.	
Canadian Solar Manufacturing, Inc.	
Changzhou Trina Hezhong Photoelectric Co., Ltd.	
Changzhou Trina Solar Yabang Energy Co., Ltd.	
Chint Solar (Hong Kong) Company Limited; Chint Solar (Jiuquan) Co., Ltd.	
Chint Solar (Zhejiang) Co., Ltd.; Chint New Energy Technology (Haining) Co. Ltd.	
CSI Modules (DaFeng) Co., Ltd.	
CSI Solar Co., Ltd. (f.k.a. CSI Solar Power (China) Inc.)	
CSI Solar Manufacturing (Fu Ning) Co., Ltd. (f.k.a. CSI–GCL Solar Manufacturing (YanCheng) Co., Ltd.)	
CSI Solar Power Group Co., Ltd. (f.k.a. CSI Solar Power (China) Inc.)	
De-Tech Trading Limited HK	
Hengdian Group DMEGC Magnetics Co. Ltd.	
Hongkong Hello Tech Energy Co., Ltd.	
Hubei Trina Solar Energy Co., Ltd.	
JA Solar Co., Ltd.	
JA Solar Technology Yangzhou Co., Ltd.	
Jiawei Solarchina Co., Ltd.	
Jiawei Solarchina (Shenzhen) Co., Ltd.	
JingAo Solar Co., Ltd.	
Jinko Solar (Malaysia) Sdn. Bhd.	
Jinko Solar Import and Export Co., Ltd.; Jinko Solar Co., Ltd.; Jinko Solar Technology (Haining) Co., Ltd.; Yuhuan Jinko Solar Co., Ltd.; Zhejiang Jinko Solar Co., Ltd.; Jiangsu Jinko Tiansheng Solar Co., Ltd.; JinkoSolar (Chuzhou) Co., Ltd.; JinkoSolar (Yiwu) Co., Ltd.; JinkoSolar (Shangrao) Co., Ltd.	
Jinko Solar International Limited	
Jinko Solar Technology Sdn. Bhd.	
Jinkosolar Middle East DMCC	
Lightway Green New Energy Co., Ltd.	
Longi (HK) Trading Ltd.	
Longi Solar Technology Co. Ltd.	
Luoyang Suntech Power Co., Ltd.	
Maodi Solar Technology (Dongguan) Co., Ltd.	
New East Solar Energy Cambodia Co., Ltd.	
Ningbo ETDZ Holdings, Ltd.	
Ningbo Qixin Solar Electrical Appliance Co., Ltd.	
Red Sun Energy Long An Company Limited	
Renesola Jiangsu Ltd.	
ReneSola Zhejiang Ltd.	

	Period to be reviewed
Risen Energy Co. Ltd.; Risen Energy (Changzhou) Co., Ltd.; Risen (Wuhai) New Energy Co., Ltd.; Zhejiang Twinsel Electronic Technology Co., Ltd.; Risen (Luoyang) New Energy Co., Ltd.; Jiujiang Shengchao Xinye Technology Co., Ltd.; Jiujiang Shengzhao Xinye Trade Co., Ltd.; Ruichang Branch, Risen Energy (HongKong) Co., Ltd.; Risen Energy (YIWU) Co., Ltd.	
Shanghai BYD Co., Ltd.	
Shanghai JA Solar Technology Co., Ltd.	
Shanghai Nimble Co., Ltd.	
Shenzhen Glory Industries Co., Ltd.	
Shenzhen Sungold Solar Co., Ltd.	
Shenzhen Topray Solar Co., Ltd.	
Shenzhen Yingli New Energy Resources Co., Ltd.; Baoding Jiasheng Photovoltaic Technology Co. Ltd.; Baoding Tianwei Yingli New Energy Resources Co., Ltd.; Beijing Tianneng Yingli New Energy Resources Co., Ltd.; Hainan Yingli New Energy Resources Co., Ltd.; Hengshui Yingli New Energy Resources Co., Ltd.; Lixian Yingli New Energy Resources Co., Ltd.; Tianjin Yingli New Energy Resources Co., Ltd.; Yingli Energy (China) Company Limited	
Sumec Hardware & Tools Co., Ltd.	
Suntech Power Co., Ltd.	
Taizhou BD Trade Co., Ltd.	
tenKsolar (Shanghai) Co., Ltd.	
Trina Solar Co., Ltd.; Trina Solar (Changzhou) Science and Technology Co., Ltd.; Changzhou Trina Solar Yabang Energy Co., Ltd.; Hubei Trina Solar Energy Co., Ltd..; Turpan Trina Solar Energy Co., Ltd.; Yancheng Trina Solar Energy Technology Co., Ltd.; Changzhou Trina Solar Energy Co., Ltd.; Changzhou Trina PV Ribbon Materials Co., Ltd.	
Trina Solar (Hefei) Science and Technology Co., Ltd.	
Trina Solar (Singapore) Science and Technology Pte. Ltd.	
Trina Solar Energy Development Company Limited	
Trina Solar Energy Development PTE Ltd.	
Trina Solar Science & Technology (Thailand) Ltd.	
Turpan Trina Solar Energy Co., Ltd.	
Vina Cell Technology Company Limited	
Vina Solar Technology Company Limited	
Wuxi Suntech Power Co., Ltd.	
Wuxi Tianran Photovoltaic Co., Ltd.	
Xiamen Yiyusheng Solar Co., Ltd.	
Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd.	
Yingli Green Energy International Trading Company Limited	
Zhejiang Aiko Solar Energy Technology Co., Ltd.	
The People's Republic of China: Melamine, A–570–020	12/1/21–11/30/22
Sichuan Aolaite Chemical Co., Ltd.	
Xinji Jiuyuan	
The People's Republic of China: Multilayered Wood Flooring, A–570–970	12/1/21–11/30/22
Anhui Longhua Bamboo Product Co., Ltd.	
Benxi Flooring Factory (General Partnership)	
Benxi Wood Company	
Dalian Deerfu Wooden Product Co., Ltd.	
Dalian Jaenmaken Wood Industry Co., Ltd.	
Dalian Jiahong Wood Industry Co., Ltd.	
Dalian Penghong Floor Products Co., Ltd./Dalian Shumaike Floor Manufacturing.	
Co., Ltd.	
Dalian Qianqiu Wooden Product Co., Ltd., Fusong Jinlong Wooden Group Co., Ltd., Fusong Jinqiu Wooden Product Co., Ltd., and Fusong Qianqiu Wooden Product Co., Ltd. (collectively, Fusong Jinlong Group)	
Dalian Shengyu Science And Technology Development Co., Ltd.	
Dongtai Fuan Universal Dynamics, LLC	
Dun Hua Sen Tai Wood Co., Ltd.	
Dunhua City Dexin Wood Industry Co., Ltd.	
Dunhua City Hongyuan Wood Industry Co., Ltd.	
Dunhua Shengda Wood Industry Co., Ltd.	
HaiLin LinJing Wooden Products, Ltd.	
Hunchun Xingjia Wooden Flooring Inc.	
Huzhou Chenghang Wood Co., Ltd.	
Huzhou Fulinmen Imp. & Exp. Co., Ltd.	
Huzhou Sunergy World Trade Co., Ltd.	
Jiangsu Guyu International Trading Co., Ltd.	
Jiangsu Keri Wood Co., Ltd.	
Jiangsu Mingle Flooring Co., Ltd.	
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.	
Jiangsu Simba Flooring Co., Ltd.	
Jiangsu Yuhui International Trade Co., Ltd.	
Jiashan HuiJiaLe Decoration Material Co., Ltd.	
Jiashan On-Line Lumber Co., Ltd.	
Jiaxing Hengtong Wood Co., Ltd.	
Kingman Wood Industry Co., Ltd	
Lauzon Distinctive Hardwood Flooring, Inc.	
Linyi Anying Wood Co., Ltd.	
Linyi Youyou Wood Co., Ltd.	
Metropolitan Hardwood Floors, Inc.	
Muchsee Wood (Chuzhou) Co., Ltd.	
Pinge Timber Manufacturing (Zhejiang) Co., Ltd.	
Power Dekor Group Co. Ltd.	
Sino-Maple (Jiangsu) Co., Ltd.	
Suzhou Dongda Wood Co., Ltd.	
Tongxiang Jisheng Import and Export Co., Ltd.	
Yekalon Industry, Inc.	
Yihua Lifestyle Technology Co., Ltd. (successor-in-interest to Guangdong	
Yihua Timber Industry Co., Ltd.)	
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd.	

	Period to be reviewed
Zhejiang Dadongwu Greenhome Wood Co., Ltd.	
Zhejiang Fuerjia Wooden Co., Ltd.	
Zhejiang Longsen Lumbering Co., Ltd.	
Zhejiang Shiyou Timber Co., Ltd.	
Zhejiang Shuimojiangnan New Material Technology Co., Ltd.	
Zhejiang Simite Wooden Co., Ltd.	
The People's Republic of China: Refillable Stainless Steel Kegs, A–570–093	12/1/21–11/30/22
Dalian Yonghseng Metal Structure Co., Ltd. d/b/a DYM Brewing Solutions	
Equipmentimes (Dalian) E-Commerce Co., Ltd.	
Guangzhou Jingye Machinery Co., Ltd.	
Guangzhou Ulix Industrial & Trading Co., Ltd.	
Jinan Chenji International Trade Co., Ltd.	
Jinan Chenji Machinery Equipment Co., Ltd.	
Jinan HaoLu Machinery Equipment Co., Ltd.	
Jinjiang Jiaxing Import and Export Co., Ltd.	
NDL Keg Qingdao Inc.	
Ningbo All In Brew Technology Co.	
Ningbo BestFriends Beverage Containers Industry Co., Ltd.	
Ningbo Chance International Trade Co., Ltd.	
Ningbo Direct Import & Export Co., Ltd.	
Ningbo Haishu Direct Import and Export Trade Co., Ltd.	
Ningbo Haishu Xiangsheng Metal Factory	
Ningbo Hefeng Container Manufacturer Co., Ltd.	
Ningbo Hefeng Kitchen Utensils Manufacture Co., Ltd.	
Ningbo HGM Food Machinery Co., Ltd.	
Ningbo Jiangbei Bei Fu Industry and Trade Co., Ltd.	
Ningbo Kegco International Trade Co., Ltd.	
Ningbo Kegstorm Stainless Steel Co., Ltd.	
Ningbo Minke Import & Export Co., Ltd.	
Ningbo Sanfino Import & Export Co., Ltd.	
Ningbo Shimaotong International Co., Ltd.	
Ningbo Sunburst International Trading Co., Ltd.	
Orient Equipment (Taizhou) Co., Ltd.	
Penglai Jinfu Stainless Steel Products.	
Pera Industry Shanghai Co., Ltd.	
Qingdao Henka Precision Technology Co., Ltd.	
Qingdao Xinhe Precision Manufacturing Co., Ltd.	
Rain Star International Trading Dalian Co., Ltd.	
Shandong Meto Beer Equipment Co., Ltd.	
Shandong Tiantai Beer Equipment Co., Ltd.	
Shandong Tonsen Equipment Co., Ltd.	
Shandong Yuesheng Beer Equipment Co., Ltd.	
Shenzhen Wellbom Technology Co., Ltd.	
Sino Dragon Group, Ltd.	
Wenzhou Deli Machinery Equipment Co.	
Wuxi Taihu Lamps and Lanterns Co., Ltd.	
Yantai Toptech Ltd.	
Yantai Trano New Material Co., Ltd., d/b/a Trano Keg, d/b/a SS Keg.	
United Arab Emirates: Circular Welded Carbon-Quality Steel Pipe, A–520–807	12/1/21–11/30/22
Ajmal Steel Tubes & Pipes Ind., L.L.C.	
Conares Metal Supply Limited	
K.D. Industries Inc.	
KHK Scaffolding and Formwork LLC	
THL Pipe and Tube Industries LLC	
TSI Metal Industries L.L.C (formerly known as Tiger Steel Industries LLC) [8]	
Universal Tube and Plastic Industries, Ltd.	
CVD Proceedings	
India: Utility Scale Wind Towers, C–533–898	3/25/21–12/31/21
Anand Engineering Products Private Limited	
Cubuilt Engineers Private Limited	
GE Renewable Energy	
GRI Towers India Private Limited	
Metalfab Hightech Private Limited	
Nordex SE	
Siemens Gamesa Renewable Energy Limited	
Suzlon Energy Limited	
Vestas Wind Technology India Private Limited	
VMV Engineering Private Limited	
Windar Renewable Energy Private Limited	
India: Stainless Steel Flanges, C–533–878 [9]	1/1/21–12/31/21
Hilton Metal Forging Limited	
Pradeep Metals Limited	
The People's Republic of China: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, C–570–980	1/1/21–12/31/21
Anji DaSol Solar Energy Science & Technology Co., Ltd.	
Astronergy Co., Ltd.	
Astronergy Solar	
Baoding Jiasheng Photovoltaic Technology Co., Ltd.	
Baoding Tianwei Yingli New Energy Resources Co., Ltd.	
Beijing Tianneng Yingli New Energy Resources Co., Ltd.	
Boviet Solar Technology Co., Ltd.	
BYD (Shangluo) Industrial Co., Ltd.; BYD H.K. Co., Ltd.; Shanghai BYD Co., Ltd.	
Canadian Solar International Limited	

	Period to be reviewed
Canadian Solar Manufacturing, Inc.	
Canadian Solar Inc.; Canadian Solar Manufacturing (Changshu) Inc.; Canadian Solar Manufacturing (Luoyang) Inc.; Changshu Tegu New Materials Technology Co., Ltd.; Changshu Tlian Co., Ltd.; CSI Cells Co., Ltd.; CSI New Energy Holding Co., Ltd.; CSI Solar Manufacture Inc. (a.k.a. CSI New Energy Holding Co., Ltd.); CSI Solar Power (China) Inc.; CSI Solar Power Group Co., Ltd. (f.k.a. CSI Solar Power (China) Inc.); CSI Solar Technologies Inc.; CSI Solartronics (Changshu) Co., Ltd. CSI–GCL Solar Manufacturing (Yancheng) Co., Ltd.; CSI Manufacturing (FuNing) Co., Ltd. (f.k.a. CSI–GCL Solar Manufacturing (YanCheng) Co., Ltd.); Suzhou Sanysolar Materials Technology Co., Ltd.; CSI Modules (Dafeng) Co., Ltd.	
Changzhou Trina Hezhong Photoelectric Co., Ltd.	
Chint New Energy Technology (Haining) Co., Ltd.	
Chint New Energy Technology (Yancheng) Co., Ltd.; Chint New Energy Technology Co., Ltd. (f/k/a Chint New Energy Technology (Haining) Co., Ltd.)	
Chint Solar (Hong Kong) Company Limited	
Chint Solar (Jiuquan) Co., Ltd.	
Chint Solar (Yancheng) Co., Ltd.	
Chint Solar (Zhejiang) Co., Ltd.	
CSI Modules (Dafeng) Co., Ltd.	
CSI Solar Power (China) Inc.	
DelSolar (Wujiang) Ltd.	
DelSolar Co., Ltd.	
De-Tech Trading Limited HK	
Dongguan Sunworth Solar Energy Co., Ltd.	
Eoplly New Energy Technology Co., Ltd.	
ERA Solar Co., Ltd.	
ET Solar Energy Limited	
Fuzhou Sunmodo New Energy Equipment Co., Ltd.	
GCL System Integration Technology Co. Ltd.	
Hainan Yingli New Energy Resources Co., Ltd.	
Haining Chint Solar Energy Technology Co., Ltd.	
Hangzhou Sunny Energy Science and Technology Co., Ltd.	
Hengdian Group DMEGC Magnetics Co. Ltd.	
Hengshui Yingli New Energy Resources Co., Ltd.	
Hongkong Hello Tech Energy Co., Ltd.	
JA Technology Yangzhou Co., Ltd.	
JA Solar, Co., Ltd.	
Baotou JA Solar Technology Co., Ltd.; Beijing JA Solar PV Technology Co., Ltd.; Beijing Jinfeng Investment Co., Ltd.; Donghai JA Solar Technology Co., Ltd.; Donghai JingAo Solar Energy Science and Technology Co., Ltd.; Hebei Jingle Optoelectronic Technology Co., Ltd.; Hebei Jinglong New Materials Technology Group Co., Ltd.; Hebei Jinglong Sun Equipment Co. Ltd.; Hebei Ningjin Songgong Semiconductor Co., Ltd.; Hebei Ningtong Electronic Materials Co., Ltd.; Hebei Ningtong Electronic Materials Co., Ltd.; Hebei Yujing Electronic Science and Technology Co., Ltd.; Hefei JA Solar Technology Co., Ltd.; JA (Hefei) Renewable Energy Co., Ltd; JA PV Technology Co., Ltd.; JA Solar (Xingtai) Co., Ltd.; JA Solar Investment China Co., Ltd; JA Solar Technology Co., Ltd.; JA Solar Technology Yangzhou Co., Ltd.; Jing Hai Yang Semiconductor Material (Donghai) Co., Ltd.; JingAo Solar Co., Ltd.; Jinglong Industry and Commerce Group Co., Ltd.; Jinglong Technology Holdings Co., Ltd.; Jingwei Electronic Materials Co., Ltd.; Ningjin County Jing Tai Fu Technology Co., Ltd.; Ningjin County Jingyuan New Energy Investment Co., Ltd.; Ningjin Guiguang Electronics Investment Co., Ltd.; Ningjin Jinglong PV Industry Investment Co., Ltd.; Ningjin Jingxing Electronic Material Co., Ltd.; Ningjin Longxin Investment Co., Ltd.; Ningjin Saimei Ganglong Electronic Materials Co., Ltd.; Ningjin Songgong Electronic Materials Co., Ltd.; Shanghai JA Solar Technology Co., Ltd.; Solar Silicon Peak Electronic Science and Technology Co., Ltd.; Solar Silicon Valley Electronic Science and Technology Co., Ltd.; Taicang Juren PV Material Co., Ltd.; Xingtai Jinglong Electronic Material Co., Ltd.; Xingtai Jinglong New Energy Co., Ltd.; Xingtai Jinglong PV Materials Co., Ltd.	
Jiangsu High Hope Int'l Group.	
Jiangsu Jinko Tiansheng Solar Co., Ltd.	
Jinko Solar International Limited	
Jinko Solar Co., Ltd.; Jinko Solar Import and Export Co., Ltd.; Jiangxi Jinko Photovoltaic Materials Co., Ltd.; Jinko Solar Technology (Haining) Co., Ltd.; JinkoSolar (Chuzhou) Co., Ltd.; JinkoSolar (Shangrao) Co., Ltd.; JinkoSolar (Sichuan) Co., Ltd.; JinkoSolar (Yiwu) Co., Ltd.; Ruixu Industrial Co., Ltd.; Xinjiang Jinko Solar Co., Ltd.; Yuhuan Jinko Solar Co., Ltd.; Zhejiang Jinko Solar Co., Ltd.; Jinko Solar (Shanghai) Management Co., Ltd.	
Light Way Green New Energy Co., Ltd.	
Lixian Yingli New Energy Resources Co., Ltd.	
Longi (HK) Trading Ltd.	
Longi Solar Technology Co, Ltd.	
Luoyang Suntech Power Co., Ltd.	
New East Solar Energy Cambodia Co., Ltd.	
Nice Sun PV Co., Ltd.	
Ningbo ETDZ Holdings, Ltd.	
ReneSola Jiangsu Ltd.	
Renesola Zhejiang Ltd.	
Changzhou Jintan Ningsheng Electricity Power Co., Ltd.; Changzhou Sveck New Material Technology Co., Ltd.; Changzhou Sveck Photovoltaic New Material Co., Ltd. (including Changzhou Sveck Photovoltaic New Material Co., Ltd. Jintan Danfeng Road Branch); Jiangsu Sveck New Material Co., Ltd.; JiuJiang Shengchao Xinye Technology Co., Ltd. (including JiuJang Shengshao Xinye Technology Co., Ltd. Ruichang Branch); Jiujiang Shengchao Xinye Trade Co., Ltd.; Ninghai Risen Energy Power Development Co., Ltd.; Risen (Changzhou) Import and Export Co., Ltd.; Risen (Luoyang) New Energy Co., Ltd.; Risen (Ningbo) Electric Power Development Co., Ltd.; Risen (Wuhai) New Energy Co., Ltd.; Risen Energy (Changzhou) Co., Ltd.; Risen Energy (HongKong) Co., Ltd.; Risen Energy (Ningbo) Co., Ltd.; Risen Energy (Yiwu) Co., Ltd.; Risen Energy Co., Ltd.; Zhejiang Boxin Investment Co., Ltd.; Zhejiang Twinsel Electronic Technology Co., Ltd.	
Shanghai Nimble Co., Ltd.	
Shenzhen Glory Industries Co., Ltd.	
Shenzhen Sungold Solar Co., Ltd.	
Shenzhen Topray Solar Co., Ltd.	
Shenzhen Yingli New Energy Resources Co., Ltd.	
Sumec Hardware & Tools Co., Ltd.	
Sunpreme Solar Technology (Jiaxing) Co., Ltd.	
Suntech Power Co., Ltd.	
Suntimes Technology Co., Limited	
Systemes Versilis, Inc.	
Taimax Technologies Inc.	
Taizhou BD Trade Co., Ltd.	

	Period to be reviewed
Talesun Energy	
Talesun Solar	
tenKsolar (Shanghai) Co., Ltd.	
Tianjin Yingli New Energy Resources Co., Ltd.	
Toenergy Technology Hangzhou Co., Ltd.	
Trina (Hefei) Science and Technology Co., Ltd.	
Trina Solar (Hefei) Science and Technology Co., Ltd.	
Trina Solar (Singapore) Science and Technology Pte. Ltd.	
Trina Solar Energy Development Company Limited	
Trina Solar Science & Technology (Thailand) Ltd.; Changzhou Trina PV Ribbon Materials Co., Ltd.; Changzhou Trina Solar Energy Co., Ltd. (a.k.a. Trina Solar Co., Ltd.); Changzhou Trina Solar Yabang Energy Co., Ltd.; Hubei Trina Solar Energy Co., Ltd.; Trina Solar (Changzhou) Science and Technology Co., Ltd.; Trina Solar Co., Ltd.; Turpan Trina Solar Energy Co., Ltd.; Yancheng Trina Solar Energy Technology Co., Ltd.	
Vina Cell Technology Company Limited	
Vina Solar Technology Company Limited	
Wuxi Suntech Power Co., Ltd.	
Wuxi Tianran Photovoltaic Co., Ltd.	
Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd.	
Yingli Energy (China) Co., Ltd.	
Yingli Green Energy International Trading Company Limited	
Yuhuan Jinko Solar Co., Ltd.	
Zhejiang ERA Solar Technology Co., Ltd.	
Zhejiang Jinko Solar Co., Ltd.	
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company	
The People's Republic of China: Melamine, C–570–021	1/1/21–12/31/21
Sichuan Aolaite Chemical Co., Ltd.	
Xinji Jiuyuan	
The People's Republic of China: Mobile Access Equipment and Subassemblies Thereof,[10] C–570–140	12/9/21–12/31/21
Anhui Heli Industrial Vehicle Imp. & Exp. Co., Ltd.	
Changzhou Hengxuan Logistics Co., Ltd.	
Crown Equipment (Suzhou) Co., Ltd.	
Deqing Liguan Machinery Trading Co. Ltd.	
Dongguan Tinbo Packing Industrial Co., Ltd.	
Everocean International Forwarding Co., Ltd.	
Guangxi LiuGong Machinery Co., Ltd.	
Guangzhou Eounice Machinery Co., Ltd.	
Hangzhou Hengli Metal Processing Co., Ltd.	
Hunan Sinoboom Intelligent Equipment Co., Ltd.	
Jiaxing Xinfeng Zhong Wang Hydraulic Pressure Accessory Factory.	
Leader Technology Co., Ltd.	
Lingong Group Jinan Heavy Machinery Co., Ltd.	
Mantall Heavy Industry Co., Ltd.	
Noblelift Intelligent Equipment Co., Ltd.	
Oshkosh JLG (Tianjin) Equipment Technology Co., Ltd.	
Sany Marine Heavy Industry Co., Ltd.	
Shandong Tavol Machinery Co., Ltd.	
Shanghai Full Trans Global Forwarding Co., Ltd.	
Shanghai Inter Cooperation Co., Ltd.	
Shanghai Xiangcheng Trading Co., Ltd.	
Shenzhen Shining Ocean International Logistics Co., Ltd.	
Skyjack Inc.	
Terex (Changzhou) Machinery Co., Ltd.	
Wuhai Huadong Heavy Industry Foundry Co., Ltd.	
Xuzhou Construction Machinery Group Fire Fighting Safety Equipment Co., Ltd.	
Xuzhou Construction Machinery Group Imp. & Exp. Co., Ltd.	
Yantai Carhart Manufacturing Co., Ltd.	
Zhejiang Dingli Machinery Co., Ltd.	
Zhejiang Smile Tools Co., Ltd.	
Zoomlion Heavy Industry Science & Technology Co., Ltd.	
The People's Republic of China: Multilayered Wood Flooring,[11] C–570–971	1/1/21–12/31/21
Anhui Boya Bamboo & Wood Products Co., Ltd.	
Anhui Yaolong Bamboo & Wood Products Co. Ltd.	
Anhui Longhua Bamboo Product Co., Ltd.	
Armstrong Wood Products (Kunshan) Co., Ltd.	
Baroque Timber Industries (Zhongshan) Co., Ltd.	
Benxi Flooring Factory (General Partnership)	
Benxi Wood Company	
Changzhou Hawd Flooring Co., Ltd.	
Dalian Guhua Wooden Product Co., Ltd.	
Dalian Huilong Wooden Products Co., Ltd.	
Dalian Jaenmaken Wood Industry Co., Ltd.	
Dalian Jiahong Wood Industry Co., Ltd.	
Dalian Kemian Wood Industry Co., Ltd.	
Dalian Penghong Floor Products Co., Ltd.	
Dalian Qianqiu Wooden Product Co., Ltd.	
Dalian Shengyu Science and Technology Development Co., Ltd.	
Dalian Shumaike Floor Manufacturing Co., Ltd.	
Dalian T-Boom Wood Products Co., Ltd.	
Dongtai Fuan Universal Dynamics, LLC	
Dun Hua SenTai Wood Co., Ltd.	
Dunhua City Dexin Wood Industry Co., Ltd.	
Dunhua City Hongyuan Wood Industry Co., Ltd.	
Dunhua City Jisen Wood Industry Co., Ltd.	

	Period to be reviewed
Dunhua Shengda Wood Industry Co., Ltd.	
Fine Furniture (Shanghai) Limited [12]	
Fusong Jinlong Wooden Group Co., Ltd.	
Fusong Jinqiu Wooden Product Co., Ltd.	
Fusong Qianqiu Wooden Product Co., Ltd.	
Guangzhou Homebon Timber Manufacturing Co., Ltd.	
HaiLin LinJing Wooden Products, Ltd.	
Hangzhou Hanje Tec Company Limited	
Hangzhou Zhengtian Industrial Co., Ltd.	
Hong Kong Chuanshi International	
Hunchun Forest Wolf Wooden Industry Co., Ltd.	
Hunchun Xingjia Wooden Flooring Inc.	
Huzhou Chenghang Wood Co., Ltd.	
Huzhou Fulinmen Imp. & Exp. Co., Ltd.	
Huzhou Jesonwood Co., Ltd.	
Huzhou Sunergy World Trade Co., Ltd.	
Jiangsu Guyu International Trading Co., Ltd.	
Jiangsu Keri Wood Co., Ltd.	
Jiangsu Mingle Flooring Co., Ltd.	
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.	
Jiangsu Simba Flooring Co., Ltd.	
Jiangsu Yuhui International Trade Co., Ltd.	
Jiashan HuiJiaLe Decoration Material Co., Ltd.	
Jiashan On-Line Lumber Co., Ltd.	
Jiaxing Hengtong Wood Co., Ltd.	
Jilin Xinyuan Wooden Industry Co., Ltd.	
Karly Wood Product Limited	
Kemian Wood Industry (Kunshan) Co., Ltd.	
Kember Flooring, Inc. (also known as Kember Hardwood Flooring, Inc.)	
Kingman Wood Industry Co., Ltd.	
Kornbest Enterprises Limited	
Les Planchers Mercier, Inc.	
Linyi Anying Wood Co., Ltd.	
Linyi Youyou Wood Co., Ltd (successor-in-interest to Shanghai Lizhong Wood Products Co., Ltd.) (a/k/a The Lizhong Wood Industry Limited Company of Shanghai)	
Logwin Air and Ocean Hong Kong	
Metropolitan Hardwood Floors, Inc.	
Muchsee Wood (Chuzhou) Co., Ltd.	
Pinge Timber Manufacturing (Zhejiang) Co., Ltd.	
Power Dekor Group Co. Ltd.	
Power Dekor North America Inc.	
Riverside Plywood Corporation	
Samling Elegant Living Trading (Labuan) Ltd.	
Samling Global USA, Inc.	
Scholar Home (Shanghai) New Material Co. Ltd.	
Shanghai Lairunde Wood	
Shanghaifloor Timber (Shanghai) Co., Ltd.	
Sino-Maple (Jiangsu) Co., Ltd.	
Suzhou Dongda Wood Co., Ltd.	
Suzhou Times Flooring Co., Ltd.	
Tech Wood International Ltd.	
Tongxiang Jisheng Import and Export Co., Ltd.	
Xiamen Yung De Ornament Co., Ltd.	
Xuzhou Shenghe Wood Co., Ltd.	
Yekalon Industry, Inc.	
Yihua Lifestyle Technology Co., Ltd. (successor-in-interest to Guangdong Yihua Timber Industry Co., Ltd.)	
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd.	
Zhejiang Dadongwu Greenhome Wood Co., Ltd.	
Zhejiang Fuerjia Wooden Co., Ltd.	
Zhejiang Jiechen Wood Industry Co., Ltd.	
Zhejiang Longsen Lumbering Co., Ltd.	
Zhejiang Shiyou Timber Co., Ltd.	
Zhejiang Shuimojiangnan New Material Technology Co., Ltd.	
Zhejiang Simite Wooden Co., Ltd.	
The People's Republic of China: Refillable Stainless Steel Kegs, C–570–094	1/1/21–12/31/21
Dalian Yonghseng Metal Structure Co., Ltd. d/b/a DYM Brewing Solutions	
Equipmentimes (Dalian) E-Commerce Co., Ltd.	
Guangzhou Jingye Machinery Co., Ltd.	
Guangzhou Ulix Industrial & Trading Co., Ltd.	
Jinan Chenji International Trade Co., Ltd.	
Jinan Chenji Machinery Equipment Co., Ltd.	
Jinan HaoLu Machinery Equipment Co., Ltd.	
Jinjiang Jiaxing Import and Export Co., Ltd.	
NDL Keg Qingdao Inc.	
Ningbo All In Brew Technology Co.	
Ningbo Bestfriends Beverage Containers Industry Co., Ltd.	
Ningbo Chance International Trade Co., Ltd	
Ningbo Direct Import & Export Co., Ltd.	
Ningbo Haishu Direct Import and Export Trade Co., Ltd.	
Ningbo Haishu Xiangsheng Metal Factory	
Ningbo Hefeng Container Manufacturer Co., Ltd.	
Ningbo Hefeng Kitchen Utensils Manufacture Co., Ltd.	
Ningbo HGM Food Machinery Co., Ltd.	

	Period to be reviewed
Ningbo Jiangbei Bei Fu Industry and Trade Co., Ltd.	
Ningbo Kegco International Trade Co., Ltd.	
Ningbo Kegstorm Stainless Steel Co., Ltd.	
Ningbo Minke Import & Export Co., Ltd.	
Ningbo Sanfino Import & Export Co., Ltd.	
Ningbo Shimaotong International Co., Ltd.	
Ningbo Sunburst International Trading Co., Ltd.	
Orient Equipment (Taizhou) Co., Ltd.	
Penglai Jinfu Stainless Steel Products	
Pera Industry Shanghai Co., Ltd.	
Qingdao Henka Precision Technology Co., Ltd.	
Qingdao Xinhe Precision Manufacturing Co., Ltd.	
Rain Star International Trading Dalian Co., Ltd.	
Shandong Meto Beer Equipment Co., Ltd.	
Shandong Tiantai Beer Equipment Co., Ltd.	
Shandong Tonsen Equipment Co., Ltd.	
Shandong Yuesheng Beer Equipment Co., Ltd.	
Shenzhen Wellbom Technology Co., Ltd.	
Sino Dragon Group, Ltd.	
Wenzhou Deli Machinery Equipment Co.	
Wuxi Taihu Lamps and Lanterns Co., Ltd.	
Yantai Toptech Ltd.	
Yantai Trano New Material Co., Ltd., d/b/a Trano Keg, d/b/a SS Keg	
Suspension Agreements	
Mexico: Sugar, A–201–845	12/1/21–11/30/22
Mexico: Sugar, C–201–846	1/1/22–12/31/22
Deferral of Initiation of Administrative Review	
Oman: Circular Welded Carbon-Quality Steel Pipe,[13] A–523–812	12/1/21–11/30/22
Al Jazeera Steel Products Co. SAOG.	

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether AD duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the

[5] In the notice of initiation for October anniversary orders, published in the **Federal Register** on December 5, 2022 (87 FR 74404), an interested party inadvertently misspelled the name of one company for which a review was requested. Commerce hereby corrects that error.

[6] Commerce determined that that CS Wind Corporation and CS Wind Malaysia Sdn. Bhd. are a single entity. *See Utility Scale Wind Towers from Malaysia: Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination,* 86 FR 27828 (May 24, 2021); unchanged in *Utility Scale Wind Towers from Malaysia: Final Affirmative Determination of Sales at Less Than Fair Value,* 86 FR 56894 (October 13, 2021).

[7] The company listed below (*i.e.,* Deestone Corporation Public Company Limited) was inadvertently omitted in the notice of initiation that published in the **Federal Register** on September 6, 2022 (87 FR 54463).

[8] Commerce determined that TSI Metal Industries L.L.C is the successor-in-interest to Tiger Steel Industries LLC. *See Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2019–2020,* 87 FR 41112 at n.3 (July 11, 2022).

[9] In the notice of initiation for October anniversary orders, published in the **Federal Register** on December 5, 2022 (87 FR 74404), interested parties inadvertently misspelled the names of two companies for which a review was requested. Commerce hereby corrects that error.

[10] In the opportunity notice that published on December 1, 2022 (87 FR 73752), Commerce listed with wrong period of review for the case above. The correct period of review is listed in this notice.

[11] Commerce received a timely request to review Jiaxing Brilliant Import & Export Co., Ltd., but omitted it from this list because Jiaxing Brilliant Import & Export Co., Ltd. is excluded from the CVD order. *See Multilayered Wood Flooring From the People's Republic of China: Countervailing Duty Order,* 76 FR 76693 (December 8, 2011).

[12] Commerce previously found Great Wood (Tonghua) Ltd. and Fine Furniture Plantation (Shishou) Ltd. to be cross-owned affiliates of Fine Furniture (Shanghai) Limited. *See Multilayered Wood Flooring From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 64313 (October 18, 2011).

[13] Pursuant to 19 CFR 351.213(c), Commerce received a request from Al Jazeera Steel Products Co. SAOG to defer the administrative review with respect to itself for one year. Commerce did not receive any objections to the deferral within 15 days after the end of the anniversary month. As such, we will initiate the administrative review with respect to Al Jazeera Steel Products Co. SAOG in the month immediately following the next anniversary month of the AD order on Circular Welded Carbon-Quality Steel Pipe from Oman.

adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule,*[14] available at *www.govinfo.gov/content/pkg/FR-2013-07-17/pdf/2013-17045.pdf,* prior to submitting factual information in this segment. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[15]

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule.*[16] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.[17] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: January 27, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–02162 Filed 2–1–23; 8:45 am]

BILLING CODE 3510–DS–P

[14] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[15] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[16] *See* section 782(b) of the Act; *see also Final Rule;* and the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[17] *See* 19 CFR 351.302.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 5, 2022, the U.S. Department of Commerce (Commerce) published the preliminary results of the 2020–2021 administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from India. The period of review (POR) is July 1, 2020, through June 30, 2021. This review covers two producers and exporters of PET Film from India: Jindal Poly Films Ltd. (Jindal) and SRF Limited (SRF). We continue to find that mandatory respondent SRF did not make sales of subject merchandise to the United States at less than normal value during the POR.

DATES: Applicable February 2, 2023.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Jacob Saude, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5255 or (202) 482–0981, respectively.

Background

On August 5, 2022, Commerce published the *Preliminary Results* for this administrative review.[1] On September 6, 2022, we issued a supplemental questionnaire to SRF related to its response to sections A through C of Commerce's initial questionnaire.[2] SRF timely submitted its response to this supplemental questionnaire on September 29, 2022.[3] We made no changes to the *Preliminary Results* except for the use of an updated dataset provided by SRF which did not change the calculated margin as explained further below.

On October 25, 2022, Commerce revised the deadlines for the briefing schedule.[4] We invited interested parties to comment on the *Preliminary Results;* however, no interested party submitted comments. On November 14, 2022, we extended the final results of the review until February 1, 2023.[5] Commerce conducted this administrative review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order[6]

The products covered by the *Order* are all gauges of raw, pretreated, or

[1] *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Duty Review; 2020–2021,* 87 FR 47968 (August 5, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Commerce's Letter, ''Supplemental Questionnaire,'' dated September 6, 2022.

[3] *See* SRF's Letter, ''Submission of 2nd Supplemental Response,'' dated September 29, 2022.

[4] *See* Memorandum, ''Briefing Schedule,'' dated October 25, 2022.

[5] *See* Memorandum, ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated November 14, 2022.

[6] *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene*

Continued

primed PET film, whether extruded or coextruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of *Order* is dispositive.

Changes Since the Preliminary Results

As noted above, Commerce received no comments concerning the *Preliminary Results.* On September 29, 2022, SRF submitted new home market sales data with updated quantity discount information (REBATE1H). We used the new sales information with the updated data but made no other changes or updates to the calculations for the final results, and the margin calculated in the *Preliminary Results* did not change as a result of the updated data.[7] Accordingly, no decision memorandum accompanies this **Federal Register** notice.

Company Not Selected for Individual Review

The Act and Commerce's regulations do not address the establishment of a weighted-average dumping margin to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value (LTFV) investigation, for guidance when calculating the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually examined, excluding any margins that are zero, *de minimis* (*i.e.,* less than 0.5 percent), or determined entirely on the basis of facts available. However, where the dumping margins for individually examined respondents are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.'' In this review, we have calculated a weighted-average dumping margin for SRF, the sole mandatory respondent, that is zero. Thus, consistent with section 735(c)(5)(B) of the Act, we are assigning to the one company not selected for individual examination, Jindal, the zero percent rate calculated for the mandatory respondent, SRF.

Final Results of Review

As noted above, Commerce received no comments concerning the *Preliminary Results.* We continue to find that sales of subject merchandise by SRF were not made at less than normal value during the POR. The final weighted-average dumping margins for the period July 1, 2020, through June 30, 2021, for both Jindal and SRF are as follows:

Producer/exporter	Weighted-average dumping margin (percent)
Jindal Poly Films Ltd	0.00
SRF Limited	0.00

Assessment Rates

Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries in this review, in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1). Because we calculated a zero percent margin in the final results of this review for Jindal and SRF, in accordance with 19 CFR 351.212 we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce intends to issue appropriate assessment instructions directly to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Jindal and SRF will be zero, the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous review or in the original LTFV investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation, the cash deposit rate will continue to be the all-others rate of 5.71 percent, which is the all-others rate established by Commerce in the LTFV investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or

Terephthalate Film, Sheet, and Strip (PET Film) from India, 67 FR 44175 (July 1, 2002) (*Order*).

[7] For further details, *see* Memorandum, ''Analysis Memorandum for the Final Results of the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: SRF Ltd.,'' dated concurrently with this notice.

[8] *See Order,* 67 FR at 44176 (showing the dumping margin computed for all other producers/exporters as 24.14 percent); and *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from India,* 67 FR 34899, 34901 (showing an adjustment of 18.43 percent for export subsidies found in the companion countervailing duty investigation). The cash deposit rate for all other exporters is the net of these figures (*i.e.,* 5.71 percent).

destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

Notification to Interested Parties

These results are being issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: January 27, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–02189 Filed 2–1–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity to Request a Review: Not later than the last day of February 2023,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

	Period
Antidumping Duty Proceedings	
Argentina: Prestressed Concrete Steel Wire Strand, A–357–822	2/1/22–1/31/23
Brazil: Certain Carbon and Alloy Steel Cut-to-Length Plate, A–351–847	2/1/22–1/31/23
Colombia: Prestressed Concrete Steel Wire Strand, A–301–804	2/1/22–1/31/23
Egypt: Prestressed Concrete Steel Wire Strand, A–729–804	2/1/22–1/31/23
India:	
Certain Cut-To-Length Carbon-Quality Steel Plate, A–533–817	2/1/22–1/31/23
Certain Preserved Mushrooms, A–533–813	2/1/22–1/31/23
Certain Frozen Warmwater Shrimp, A–533–840	2/1/22–1/31/23
Stainless Steel Bar, A–533–810	2/1/22–1/31/23
Indonesia:	
Certain Cut-To-Length Carbon-Quality Steel Plate, A–560–805	2/1/22–1/31/23
Certain Preserved Mushrooms, A–560–802	2/1/22–1/31/23
Italy: Stainless Steel Butt-Weld Pipe Fittings, A–475–828	2/1/22–1/31/23
Japan: Carbon Steel Butt-Weld Pipe Fittings, A–588–602	2/1/22–1/31/23
Malaysia: Stainless Steel Butt-Weld Pipe Fittings, A–557–809	2/1/22–1/31/23
Mexico: Large Residential Washers, A–201–842	2/1/22–1/31/23
Philippines: Stainless Steel Butt-Weld Pipe Fittings, A–565–801	2/1/22–1/31/23
Republic of Korea: Certain Cut-To-Length Carbon-Quality Steel Plate Products, A–580–836	2/1/22–1/31/23
Saudi Arabia: Prestressed Concrete Steel Wire Strand, A–517–806	2/1/22–1/31/23
Socialist Republic of Vietnam:	
Certain Frozen Warmwater Shrimp, A–552–802	2/1/22–1/31/23
Steel Wire Garment Hangers, A–552–812	2/1/22–1/31/23
Utility Scale Wind Towers, A–552–814	2/1/22–1/31/23
South Africa: Carbon and Alloy Steel Cut-To-Length Plate, A–791–822	2/1/22–1/31/23
Taiwan:	
Carbon and Alloy Steel Threaded Rod, A–583–865	2/1/22–1/31/23
Crystalline Silicon Photovoltaic Products, A–583–853	2/1/22–1/31/23
Prestressed Concrete Steel Wire Strand, A–583–868	2/1/22–1/31/23
Thailand: Certain Frozen Warmwater Shrimp, A–549–822	2/1/22–1/31/23
The Netherlands: Prestressed Concrete Steel Wire Strand, A–421–814	2/1/22–1/31/23
The People's Republic of China:	
Certain Preserved Mushrooms, A–570–851	2/1/22–1/31/23
Common Alloy Aluminum Sheet, A–570–073	2/1/22–1/31/23
Crystalline Silicon Photovoltaic Products, A–570–010	2/1/22–1/31/23
Certain Frozen Warmwater Shrimp, A–570–893	2/1/22–1/31/23
Heavy Forged Hand Tools, With or Without Handles, A–570–803	2/1/22–1/31/23
Large Residential Washers, A–570–033	2/1/22–1/31/23
Rubber Bands, A–570–069	2/1/22–1/31/23
Small Diameter Graphite Electrodes, A–570–929	2/1/22–1/31/23
Truck and Bus Tires, A–570–040	2/1/22–1/31/23
Uncovered Innerspring Units, A–570–928	2/1/22–1/31/23
Utility Scale Wind Towers, A–570–981	2/1/22–1/31/23
Wood Mouldings and Millwork Products, A–570–117	2/1/22–1/31/23
Turkey:	
Certain Carbon and Alloy Steel Cut-To-Length Plate, A–489–828	2/1/22–1/31/23
Prestressed Concrete Steel Wire Strand, A–489–842	2/1/22–1/31/23
United Arab Emirates: Prestressed Concrete Steel Wire Strand, A–520–809	2/1/22–1/31/23
Countervailing Duty Proceedings	
India:	
Certain Cut-To-Length Carbon-Quality Steel Plate, C–533–818	1/1/22–12/31/22
Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, C–533–874	1/1/22–12/31/22
Prestressed Concrete Steel Wire Strand, C–533–829	1/1/22–12/31/22
Indonesia: Certain Cut-To-Length Carbon-Quality Steel Plate, C–560–806	1/1/22–12/31/22
Republic of Korea: Certain Cut-To-Length Carbon-Quality Steel Plate, C–580–837	1/1/22–12/31/22
Socialist Republic of Vietnam: Steel Wire Garment Hangers, C–552–813	1/1/22–12/31/22
The People's Republic of China:	
Cold-Drawn Mechanical Tubing, C–570–059	1/1/22–12/31/22
Common Alloy Aluminum Sheet, C–570–074	1/1/22–12/31/22
Crystalline Silicon Photovoltaic Products, C–570–011	1/1/22–12/31/22
Rubber Bands, C–570–070	1/1/22–12/31/22
Truck and Bus Tires, C–570–041	1/1/22–12/31/22
Utility Scale Wind Towers, C–570–982	1/1/22–12/31/22
Wood Mouldings and Millwork Products, C–570–118	1/1/22–12/31/22

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

	Period
Turkey: Prestressed Concrete Steel Wire Strand, C–489–843	1/1/22–12/31/22
Suspension Agreements	
None.	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov*.[6] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[7]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of February 2023. If Commerce does not receive, by the last day of February 2023, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[8] On September 27, 2021, Commerce also published the notice entitled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the

[3] *See* the Enforcement and Compliance website at *https://www.trade.gov/us-antidumping-and-countervailing-duties.*

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

[8] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

Federal Register.[9] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[10]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS, and on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [11]

As mentioned in the *Procedural Guidance,* beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.[12] Accordingly, Commerce will update the annual inquiry service lists for the above-listed antidumping and countervailing duty proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) new interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year's annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from ''Active'' to ''Needs Amendment'' for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule,*[13] once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [14] Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

This notice is not required by statute but is published as a service to the international trading community.

Dated: Janaury 20, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–02163 Filed 2–1–23; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[10] *Id.*

[11] This segment has been combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[12] *See Procedural Guidance,* 86 FR at 53206.

[13] *See Final Rule,* 86 FR at 52335.

[14] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Approved International Trade Administration Trade Mission

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing an upcoming trade mission that will be recruited, organized, and implemented by ITA. This mission is: Global Diversity Export Initiative (GDEI) Education Trade Mission to Brazil, Discover the Hidden Values in U.S. Higher Education, Sao Paolo, Salvador and Fortaleza Brazil, April 11–15, 2023. A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: *https://www.trade.gov/trade-missions.* For each mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*https://www.trade.gov/trade-missions-schedule*) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT: Jeffrey Odum, Events Management Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6397 or email *Jeffrey.Odum@trade.gov.*

SUPPLEMENTARY INFORMATION:

The Following Conditions for Participation Will Be Used for the Mission

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation that is adequate to allow the Department of Commerce to evaluate their application. If the Department of Commerce receives an incomplete application, the Department may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be cancelled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content by value. In the case of a Study State Consortia or other government education stakeholders (*e.g.,* Governor's offices, state trade offices, economic development organizations, etc.), the applicant must certify that, for each firm or service provider to be represented, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content.

A Study State Consortia or other government education stakeholder applicant must certify to the above for every company it seeks to represent on the mission. In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a Study State Consortia or other government education stakeholder, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for the Mission

Targeted mission participants are U.S. institutions, service providers, Study State Consortia, and other government education stakeholders providing or promoting U.S. programs and services that have an interest in entering or expanding their business in the mission's destination country. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of a Study State Consortia or other government education stakeholder, represented institution's or service provider's) programs or services to this market.
- The applicant's (or in the case of a Study State Consortia or other government education stakeholder, represented institution's or service provider's) potential for business in the markets, including likelihood of exports resulting from the mission; and
- Consistency of the applicant's (or in the case of a Study State Consortia or other government education stakeholder, represented institution's or service provider's) goals and objectives with the stated scope of the mission.

Balance of institution size and location may also be considered during the review process.

Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process.

The sender will be notified of these exclusions.

Trade Mission Participation Fees

If and when an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/.* Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Important Note About the COVID–19 Pandemic

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees, accordingly, prepare an agenda for virtual activities, and notify the previously selected applicants with the option to opt-in to the new virtual program.

Mission List: (additional information about trade missions can be found at *https://www.trade.gov/trade-missions*).

GDEI Education Trade Mission to Brazil, Discover the Hidden Values in U.S. Higher Education, Sao Paolo, Salvador, and Fortaleza Brazil, April 11–15, 2023

Summary

The United States Department of Commerce, International Trade Administration (ITA)'s Global Education Team, is organizing an Education Trade Mission to Brazil, April 11–15, 2023. This Education Trade Mission will target U.S. Higher Educational Institutions (HEIs) which are New-to-Export (NTE), such as Historically Black Colleges and Universities (HBCUs) and Minority Serving Institutions (MSIs), and Study State Consortia (composed of colleges and universities, community programs, and similar entities representing education within U.S. states) and other government education stakeholders (*e.g.,* Governor's offices, state trade offices, economic development organizations, etc.) that are interested in recruiting students from student communities in Brazil's Northeast region. It will include an anchor stop in São Paulo, a large metropolitan area that serves as the gateway to the Northeast and represents significant student recruitment and partnership opportunities. This trade mission is designed to provide a manageable (in terms of time and budgetary commitment) opportunity for HEIs that are new to exporting to experience the wide variety of opportunities U.S. Government-led trade missions offer for internationalization. The geographic proximity of the market lessens the travel, logistics and time zone burden for participants allowing them to focus on the core activities of the trade mission. Brazilian students seeking international education opportunities have an affinity for U.S. HEIs also due to this geographic proximity and cultural familiarity. The Brazilian market is therefore a good first market for NTE HEIs to explore.

Recruitment and consideration will be extended to all export-ready institutions, Study State Consortia, and other government educational stakeholders that meet the established criteria for participation in the mission. ITA is seeking to improve outreach and representation of HEIs that enroll students from underserved communities, such as U.S. HBCUs and MSIs. This mission is in alignment with Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 25, 2021) (E.O. 13985), the U.S. Department of Commerce Equity Action Plan, and the Global Diversity Export Initiative of the U.S. Commercial Service. For the purposes of the trade mission, ITA adopts the definition of ''underserved communities'' in E.O. 13985: ''populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of 'equity.' '' ''Equity'' is defined by E.O. 13985 as ''the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.'' This trade mission is also designed to be responsive to the priorities stated by Secretary of Commerce Gina Raimondo and outlined in the Equity Action Plan released in April 2022 which includes ''[s]trengthen[ing] small businesses in underserved communities by helping them be successful exporters''.

In addition to publishing notice of the trade mission in the **Federal Register**, ITA is committed to outreach and recruitment through collaboration with organizations with ties to underserved communities. Federal agencies that will help to support recruitment for this mission include the U.S. Export-Import Bank and the Minority Business Development Agency.

The mission will begin in Sao Paolo, Brazil where delegates will participate in pre-arranged Business-to-Business (B2B) meetings with potential partners and customers, a market briefing with speakers from U.S. Mission to Brazil and Education sector stakeholders, as well as a welcome reception. The market briefings will be an opportunity for mission participants to network and to gain a deeper understanding of the opportunities in the region. The market briefings will include Officers and Locally Employed Specialists. The GDEI Education Trade Mission to Brazil will take place in coordination with the EducationUSA Roadshow, and as such the stops for both events will mirror each other through the end of the GDEI Education Trade Mission. Timelines for activities for each event have been coordinated to allow those institutions that wish to do so to participate in both. The separate events require their own registration with the U.S. Department of Commerce and Education USA respectively. The Education Mission will stay one day in Sao Paolo before a travel day to Fortaleza, the second Mission Stop.

In Fortaleza, mission participants will once again have the opportunity to participate in pre-arranged B2B meetings with potential partners and customers, and optional cultural activities to better understand the Northeastern Brazil region. For Mission participants who have chosen to register for the optional/add-on Education USA Roadshow, they will have the opportunity to join these activities and events as well.

After Fortaleza, mission participants will travel to Salvador for the final Mission stop. This is also the third stop for the and optional EducationUSA Roadshow. In Salvador, participants will have B2B meetings with potential partners and customers. The GDEI Education Trade Mission to Brazil will conclude in Salvador.

Proposed Timetable

* *Note:* The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

Tuesday, April 11	• Trade Mission Participants Arrive in São Paulo, Brazil. • Welcome reception and networking.
Wednesday April 12	• Sao Paolo programming. • Breakfast briefing. • Business-to-Business Meetings. • Optional: Student Fair (EducationUSA).
Thursday, April 13	• Optional: School Visits (EducationUSA). • Business-to-Business Meetings continued.

Friday, April 14	• Travel to next stop, Fortaleza, Brazil. • Optional: Evening Cultural Event (No Host). • Programming in Fortaleza. • Breakfast briefing. • Optional: School Visits (EducationUSA). • Business-to-Business Meetings. • Optional: Student Fair (EducationUSA).
Saturday, April 15	• Travel to next stop, Salvador. • Programming in Salvador. • Luncheon and networking. • Optional: Student Fair (EducationUSA). • Trade Mission Concludes.
Sunday, April 16	• Optional: Cultural Event (No Host). • Participants depart Salvador for the United States at their leisure or continue with EducationUSA to Belo Horizonte.

Participation Requirements

All parties interested in participating in the trade mission must submit an application package for consideration by the U.S. Department of Commerce (DOC). All applicants will be evaluated on their ability to meet the criteria as outlined below. A minimum and maximum of fifteen institutions, Study State Consortia, and/or government education stakeholders will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After an institution, study state trade association has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the GDEI Education Trade Mission to Brazil will be $2,450 for public/private, non-profit institution, Study State Consortia, or other government education stakeholders; and $3,550 for private for-profit institution. The fee for each additional institution representative (private for-profit institution, private/public non-profit institution, Study State Consortia, or other government education stakeholder) is $350. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

If and when an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade Mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/passports/en/alertswarnings.html.* Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations/organizations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than February 28, 2023. The U.S. Department of Commerce will review applications and inform applicants of selection decisions on a rolling basis. Applications received after February 28, 2023, will be considered only if space and scheduling constraints permit.

Contacts

Jennifer Woods, Project lead/Director, U.S. Commercial Service Knoxville, (865) 338–3783, *Jennifer.Woods@trade.gov*

Rachel Alarid, Education International Trade Specialist, Industry and Analysis, *Rachjel.Alarid@trade.gov*

Michael Marangell, Commercial Officer, U.S. Commercial Service Sao Paolo, *Michael.Marangell@trade.gov*

Laura Reffatti, Commercial Specialist, U.S. Commercial Service Brasilia, *Laura.Reffatti@trade.gov*

Gemal Brangman,

Director, ITA Events Management Task Force.

[FR Doc. 2023–02150 Filed 2–1–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC700]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 77 HMS Hammerhead Sharks Assessment Webinar VIII.

SUMMARY: The SEDAR 77 assessment of the Atlantic stock of hammerhead sharks will consist of a stock identification (ID) process, data webinars/workshop, a series of assessment webinars, and a review workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 77 HMS Hammerhead Sharks Assessment Webinar VIII has been scheduled for Tuesday, February 21, 2023, from 11 a.m. until 3 p.m., Eastern Time. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Registration for the webinar is available by contacting the SEDAR coordinator via email at *Kathleen.Howington@safmc.net.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4371; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 77 HMS Hammerhead Shark Assessment Webinar VIII are as follows: Discuss any leftover data issues that were not cleared up during the data process, answer any questions that the analysts have, and discuss model development and model setup.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 30, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–02164 Filed 2–1–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC735]

Marine Mammals; File No. 27038

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Center for Whale Research (Responsible Party: Michael Weiss, Ph.D.), 355 Smuggler's Cove Road, Friday Harbor, WA 98250, has applied in due form for a permit to conduct research on marine mammals.

DATES: Written, telefaxed, or email comments must be received on or before March 6, 2023.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 27038 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 27038 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D., or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant requests a 5-year permit to monitor the demography, structure, and health of endangered Southern

Resident killer whales (*Orcinus orca*) and opportunistically study other cetaceans in the inland and coastal waters of Washington. Up to 17 additional species of cetaceans may be targeted for research including the following ESA-listed species: blue (*Balaenoptera musculus*), fin (*B. physalus*), gray (Western North Pacific distinct population segment [DPS]; *Eschrichtius robustus*), humpback (Mexico and Central America DPS; *Megaptera novaeangliae*), North Pacific right (*Eubalaena japonica*), sei (*B. borealis*), and sperm (*Physeter macrocephalus*) whales. Researchers would conduct vessel surveys, including unmanned aircraft systems, for counts, photography, photo-identification, photogrammetry, video recording, observations, passive acoustic recording, collection of samples (sloughed skin, feces, and predation remains), and underwater photo/videography. Five species of pinnipeds, including endangered Steller sea lions (Western DPS; *Eumetopias jubatus*), may be harassed during research. See the application for numbers of animals requested by species and procedure.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 30, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–02157 Filed 2–1–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC732]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration. The EFP would allow federally permitted fishing vessels to fish outside fishery regulations in support of exempted fishing activities proposed by the applicant. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before February 17, 2023.

ADDRESSES: You may submit written comments by the following method:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''6-Inch Gillnet Mesh Exploratory Fishing.''

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Policy Analyst, *Spencer.Talmage@noaa.gov,* (978) 281–9232.

SUPPLEMENTARY INFORMATION: The applicant submitted a complete application for an EFP to conduct commercial fishing activities that the regulations would otherwise restrict. This EFP would exempt the participating vessels from the following Federal regulations:

TABLE 1—REQUESTED EXEMPTIONS

Citation	Regulation	Need for exemption
50 CFR 648.80(a)(3)(iv)(B)(*1*)	Minimum mesh size for Trip Gillnet Vessels in the Gulf of Maine.	Needed to deploy 6-inch gillnet gear in Gulf of Maine.

TABLE 2—PROJECT SUMMARY

Project title	6-Inch Gillnet Mesh Exploratory Fishing.
Applicant	Northeast Sector Services Network.
Project objectives	Evaluate the efficacy of smaller mesh gillnet for haddock, without increasing catch of cod.
Application date	November 22, 2022.
Project period	January 2023—May 31, 2023.
Project location	Gulf of Maine.
Number of vessels	1.
Number of trips	20–30.
Trip duration (days)	2–3.
Total number of days	40–90 days.
Gear type(s)	Gillnet, 6 inch (15.24-cm) mesh.
Number of tows or sets	20–30.
Duration of tows or sets	24 hours.

Project Narrative

The proposed EFP is a continuation of a project conducting exploratory fishing in the Gulf of Maine (GOM) that mimics the structure of the GOM Sink Gillnet Mesh Exemption originally approved for sectors from fishing years 2010 through 2012. In fishing year 2013, NMFS disapproved the exemption due to concerns regarding the status of the GOM haddock stock, which at the time was subject to overfishing and approaching an overfished condition. The proposed EFP would provide preliminary catch data to inform future studies to test the feasibility of using the 6-inch (15.24-cm) gillnet gear to target haddock while minimizing catch of GOM cod.

From issuance to May 31, 2023, the participating vessel would conduct between 20 and 30 trips under the EFP in the GOM Regulated Mesh Area

during which it would make 20–30 hauls with 6-inch (15.24-cm) mesh gillnet gear. The maximum number of individual nets that could be deployed is 75. Gillnets would be set for a soak of up to 24 hours, and would be actively tended by the vessel (*i.e.,* the vessel would not leave the fishing grounds while nets are deployed).

A Northeast Fisheries at-sea monitor or observer would be deployed on all groundfish trips taken under the EFP. The participating vessel would use the Pre-Trip Notification System to identify groundfish trip taken under the EFP. Trips would be eligible for natural selection for observer coverage for either the Northeast Fisheries Observer Program or the At-Sea Monitoring program. Trips not naturally selected for observer coverage would not be reimbursable from Federal appropriations.

Allowable discards would be discarded at-sea, while all other species would be retained, landed, and processed per normal commercial fishing procedures. Monitors would document all discards of allocated sub-legal catch.

While on EFP trips, the vessel may also occasionally deploy a small amount of longline and 6.5-inch (16.51-cm) mesh gillnet gear, in order to generate catch composition data that could be used to compare the catchability of the 6-inch (15.24-cm) mesh gear with other gears used on a normal fishing trip. The gillnet gear would consist of 12 to 24 nets in a single string, while the longline gear would have between 1,000 and 2,400 hooks. All groundfish catch, including both discards and landings, would be deducted from the appropriate sector allocation.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: January 30, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–02167 Filed 2–1–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC724]

Marine Mammals; File No. 26919

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Georgia Department of Natural Resources, 2070 U.S. Highway 278 Southeast, Social Circle, GA 30025 (Responsible Party: Jonathan Ambrose) has applied in due form for a permit to conduct research on cetaceans.

DATES: Written, telefaxed, or email comments must be received on or before March 6, 2023.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 26919 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 26919 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D., or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant requests a 5-year permit to study endangered North Atlantic right whales (*Eubalaena glacialis*) to monitor the population and its habitat, identify and reduce human causes of mortality and serious injury, and implement the recovery plan. Three species of non-listed cetaceans may be unintentionally harassed and opportunistically studied during research. Researchers would conduct surveys from vessels or aircraft (manned or unmanned) for counts, photography, photo-identification, photogrammetry, thermal imaging, video recording, observations, passive acoustic recording, tracking, underwater photo/videography, and biological sampling (exhaled air, feces, and skin and blubber biopsy). Marine mammal parts may be exported and imported for analysis. See the application for numbers of animals requested by species and procedure.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 30, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–02159 Filed 2–1–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC592]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter

of Authorization (LOA) has been issued to Chevron U.S.A. Inc. (Chevron) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from April 20, 2023, through November 30, 2023.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Chevron plans to conduct a 3D borehole seismic survey using an airgun array as the sound source, covering portions of approximately 30 lease blocks centered around Lease Block G16942 (Big Foot). The survey is a type of vertical seismic profile (VSP) survey. The array consists of 32 elements, with a total volume of 5,040 cubic inches (in^3). Please see Chevron's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Chevron in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398, January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No VSP surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for use in evaluation of these survey types. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, 29220, June 22, 2018). Coil was selected as the best available proxy survey type because the spatial coverage of the planned survey is most similar to that associated with the coil survey pattern.

The planned 3D VSP survey will involve one source vessel sailing a racetrack pattern along survey lines approximately 100 m apart and 23 km in length. The coil survey pattern in the model was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Although Chevron is not proposing to perform a survey using the coil geometry, its planned VSP survey is expected to cover approximately 19.2 km^2 per day, meaning that the coil proxy is most representative of the effort planned by Chevron in terms of predicted Level B harassment exposures.

In addition, all available acoustic exposure modeling results assume use of a 72 element, 8,000 in^3 array. Thus, take numbers authorized through the LOA are considered conservative due to differences in both the airgun array (32 elements, 5,040 in^3) and the daily survey area planned by Chevron (19.2 km^2), as compared to those modeled for the rule.

The survey is planned to occur for 23 days, with 11 days occurring in Zone 5 and 12 days in Zone 7. The season is defined as summer.

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

Additionally, for some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. This can result in unrealistic projections regarding the likelihood of encountering particularly rare species and/or species not expected to occur outside particular habitats. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5322, 5442 (January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for certain marine mammal species produces results that are inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for those species as described below.

NMFS' final rule described a ''core habitat area'' for Rice's whales (formerly known as GOM Bryde's whales) [3] located in the northeastern GOM in waters between 100–400 m depth along the continental shelf break (Rosel *et al.,* 2016). However, whaling records suggest that Rice's whales historically had a broader distribution within similar habitat parameters throughout the GOM (Reeves *et al.,* 2011; Rosel and Wilcox, 2014). In addition, habitat-based density modeling identified similar habitat (*i.e.,* approximately 100–400 m water depths along the continental shelf break) as being potential Rice's whale habitat (Roberts *et al.,* 2016), although the core habitat area contained approximately 92 percent of the predicted abundance of Rice's whales. See discussion provided at, *e.g.,* 83 FR 29228, 83 FR 29280 (June 22, 2018); 86 FR 5418 (January 19, 2021).

Although Rice's whales may occur outside of the core habitat area, we expect that any such occurrence would be limited to the narrow band of suitable habitat described above (*i.e.,* 100–400 m) and that, based on the few available records, these occurrences would be rare. Chevron's planned activities will occur in water depths of approximately 1,000–3,000 m in the central GOM. Thus, NMFS does not expect there to be the reasonable potential for take of Rice's whale in association with this survey and, accordingly, does not authorize take of Rice's whale through the LOA.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015, Maze-Foley and Mullin, 2006). As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992–2009 reported only 16 sightings of killer whales, with an additional three encounters during more recent survey effort from 2017–18 (Waring *et al.,* 2013, *www.boem.gov/gommapps*). Two other species were also observed on less than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale [4]). However, observational data collected by protected species observers (PSOs) on industry geophysical survey vessels from 2002–2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322, 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of four killer whales, noting that the whales performed 20 times as many dives to 1–30 m depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. This survey would take place in deep waters that would overlap with the depths that the GOM killer whales typically occur. However, due to the short duration of the survey (23 days) and the relatively small geographic area it will cover in relation to suitable deep water habitat for killer whales, it is unlikely that killer whales would be encountered. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. In addition, as noted above in relation to the general take estimation methodology, the assumed proxy source (72-element, 8,000-in^3 array) results in a significant overestimate of the actual

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

potential for take to occur. NMFS' determination in reflection of the information discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales for this survey would result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, 5403, January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species such as killer whales in the GOM through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018. See also 86 FR 29090, May 28, 2021; 85 FR 55645, September 9, 2020. For Chevron's survey, use of the exposure modeling produces an estimate of 12 killer whale exposures. Given the foregoing discussion, it is unlikely that even one killer whale would be encountered during this 23 day survey, and accordingly, no take of killer whales is authorized through the LOA.

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations for the affected species or stocks of marine mammals. See Table 1 in this notice and Table 9 of the rule (86 FR 5322, January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438, January 19, 2021).

The take numbers for authorization are determined as described above in the Summary of Request and Analysis section. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than one day (see 86 FR 5322, 5404; January 19, 2021). The output of this scaling, where appropriate, is incorporated into adjusted total take estimates that are the basis for NMFS' small numbers determinations, as depicted in Table 1.

This product is used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take	Scaled take [1]	Abundance [2]	Percent abundance
Rice's whale	0	n/a	51	n/a
Sperm whale	347	146.6	2,207	6.6
Kogia spp	[3] 136	40.8	4,373	1.1
Beaked whales	1,761	177.9	3,768	4.7
Rough-toothed dolphin	302	86.8	4,853	1.8
Bottlenose dolphin	980	281.4	176,108	0.2
Clymene dolphin	817	234.4	11,895	2.0
Atlantic spotted dolphin	403	115.5	74,785	0.2
Pantropical spotted dolphin	4,948	1,419.9	102,361	1.4
Spinner dolphin	767	220.1	25,114	0.9
Striped dolphin	349	100.1	5,229	1.9
Fraser's dolphin	108	30.9	1,665	1.9
Risso's dolphin	210	62.1	3,764	1.6
Melon-headed whale	555	163.7	7,003	2.3
Pygmy killer whale	167	49.2	2,126	2.3
False killer whale	231	68.2	3,204	2.1
Killer whale	0	n/a	267	n/a
Short-finned pilot whale	128	37.8	1,981	1.9

[1] Scalar ratios were applied to ''Authorized Take'' values as described at 86 FR 5322, 5404 (January 19, 2021) to derive scaled take numbers shown here.

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the Rice's whale and killer whale, the larger estimated SAR abundance estimate is used.

[3] Includes 9 takes by Level A harassment and 127 takes by Level B harassment. Scalar ratio is applied to takes by Level B harassment only; small numbers determination made on basis of scaled Level B harassment take plus authorized Level A harassment take.

Based on the analysis contained herein of Chevron's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will

be taken relative to the affected species or stock sizes and therefore is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Chevron authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: January 27, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–02123 Filed 2–1–23; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, February 1, 2023; 10:00 a.m.

PLACE: The meeting will be held remotely.

STATUS: Commission meeting—closed to the public.

MATTERS TO BE CONSIDERED: Briefing Matter.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, 301–504–7479 (Office) or 240–863–8938 (Cell).

Dated: January 31, 2023.

Alberta E. Mills,

Commission Secretary.

[FR Doc. 2023–02360 Filed 1–31–23; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2023–IES–0011]

Request for Information on Topics To Address via the National Center for Education Research's R&D Centers

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Request for information.

SUMMARY: The National Center for Education Research (NCER), a center within the Institute of Education Sciences (IES), is charged with sponsoring sustained research that will lead to the accumulation of knowledge and understanding of the key issues facing education in the 21st century. In carrying out these activities, NCER is required to support not less than 8 Research and Development Centers (R&D Centers) focused on one or more of 11 specified topics (see the list of topics included below in the Background section or see the Education Sciences Reform Act of 2002 (ESRA)). The R&D Centers produce and disseminate rigorous evidence and products that provide practical solutions to important educational problems in the United States. They also provide national leadership in defining research and development directions within their topics. Through this request for information (RFI), NCER is soliciting public input as we seek to identify pressing questions within each of these broad topic areas that an R&D Center would be well-suited to address.

DATES: We must receive your comments by March 6, 2023.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov*, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments by email or by fax. To ensure that the Department does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''FAQ'' tab.

Privacy Note: The Department's policy for comments received from members of the public is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available. We encourage, but do not require, that each respondent include their name, title, institution or affiliation, and the name, title, mailing and email addresses, and telephone number of a contact person for the institution or affiliation, if any.

FOR FURTHER INFORMATION CONTACT: Elizabeth Albro, Commissioner, National Center for Education Research, Institute of Education Sciences, U.S Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–7240. Telephone: (202) 245–8495. You may also email your questions to *Elizabeth.Albro@ed.gov,* but as described above, comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Background

Section 131(b)(1) of ESRA (20 U.S.C. 9531(b)(1)) describes the mission of NCER, a center within the U.S. Department of Education's Institute of Education Sciences. NCER is directed to sponsor sustained research that will lead to the accumulation of knowledge and understanding of education to—

(A) Ensure that all children have access to a high-quality education;

(B) Improve student academic achievement, including through the use of educational technology;

(C) Close the achievement gap between high-performing and low-performing students through the improvement of teaching and learning of reading, writing, mathematics, science, and other academic subjects; and

(D) Improve access to, and opportunity for, postsecondary education.

As part of our mission to support sustained research, ESRA, sec. 133(c)(1) (20 U.S.C. 9533(c)(1)), directs NCER to support not less than 8 R&D Centers and to assign each center to at least 1 of the 11 topics described in ESRA sec. 133(c)(2). The 11 topics are:

(A) Adult literacy.

(B) Assessment, standards, and accountability research.

(C) Early childhood development and education.

(D) English language learners research.

(E) Improving low achieving schools.

(F) Innovation in education reform.

(G) State and local policy.

(H) Postsecondary education and training.

(I) Rural education.

(J) Teacher quality.

(K) Reading and literacy.

The duties of R&D Centers are to address areas of national need, and to incorporate the potential or existing role of educational technology, where appropriate, in achieving the goals of each center (ESRA, Sec. 133(c)(3)). In addition, ESRA Sec. 133(3)(7) specifies that research conducted by the R&D

Centers is to be disaggregated by age, race, gender, and socioeconomic background to the extent feasible. ESRA Sec. 133(c)(4) specifies that support for a national research and development center shall be for a period of not more than 5 years.

Currently, NCER is supporting R&D Centers and Research Networks that focus on the topics of adult literacy, English language learners research, innovation in education reform, State and local policy, postsecondary education and training, rural education, teacher quality, and reading and literacy. NCER can support additional R&D Centers addressing different research questions within these same topics as well as R&D Centers addressing other topics from the list of 11, above. Information about NCER's active and completed R&D Centers is available here: *https://ies.ed.gov/ncer/research/randdCenters.asp*.

Through this RFI, we seek public comment and input on the highest priority research questions within each of the 11 topics that could be addressed by new R&D Centers, as outlined in the Solicitation of Comments section.

This is a request for information only. This RFI is not a request for proposals (RFP) or a promise to issue an RFP or a notice inviting applications (NIA). This RFI does not commit the Department to contract for any supply or service whatsoever. Further, we are not seeking proposals and will not accept unsolicited proposals for R&D Centers. The Department will not pay for any information or administrative costs that you may incur in responding to this RFI. The documents and information submitted in response to this RFI will not be returned.

We will review every comment, and the comments in response to this RFI will be publicly available on the Federal eRulemaking Portal at *www.regulations.gov.* Please note that IES will not directly respond to comments.

Solicitation of Comments

We encourage the public, particularly those who are aware of key research questions in any of the 11 topic areas, to address the following questions in their comments:

(1) Of the 11 topics, which three are the most pressing to invest in now, and why?

(2) Within the three topics identified in response to item (1), on what priority research questions could a new R&D Center focus over a 5-year project period?

(3) How would your proposed research questions advance the core mission of NCER's program of research, described in the background section of this document?

(4) Are the identified priority research questions likely to yield any products or insights that could be readily shared and taken up by practitioners and policymakers?

Accessible Format: By request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schneider,

Director, Institute of Education Sciences.

[FR Doc. 2023–02182 Filed 2–1–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity

AGENCY: U.S. Department of Education, National Advisory Committee on Institutional Quality and Integrity (NACIQI).

ACTION: Notice of membership.

SUMMARY: This notice lists the members of the National Advisory Committee on Institutional Quality and Integrity (NACIQI). This notice is required under Section 114(e)(1) of the Higher Education Act of 1965, as amended (HEA).

ADDRESSES: U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Ave. SW, Room 2C–159, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George Alan Smith, Executive Director/Designated Federal Official, NACIQI, U.S. Department of Education, 400 Maryland Ave. SW, Room 2C–159, Washington, DC 20202, telephone: (202) 453–7757, or email *george.alan.smith@ed.gov.*

SUPPLEMENTARY INFORMATION:

NACIQI's Statutory Authority and Functions

The NACIQI is established under Section 114 of the HEA, and is composed of 18 members appointed—

(A) On the basis of the individuals' experience, integrity, impartiality, and good judgment;

(B) From among individuals who are representatives of, or knowledgeable concerning, education and training beyond secondary education, representing all sectors and types of institutions of higher education; and,

(C) On the basis of the individuals' technical qualifications, professional standing, and demonstrated knowledge in the fields of accreditation and administration of higher education.

The NACIQI meets at least twice a year and advises the Secretary of Education with respect to:

- The establishment and enforcement of the standards of accrediting agencies or associations under subpart 2, part H, Title IV of the HEA, as amended;
- The recognition of specific accrediting agencies or associations;
- The preparation and publication of the list of nationally recognized accrediting agencies and associations;
- The eligibility and certification process for institutions of higher education under Title IV of the HEA and part C, subchapter I, chapter 34, Title 42, together with recommendations for improvements in such process;
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions; and
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary of Education may prescribe by regulation.

What are the terms of office for the committee members?

The term of office of each member is six years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term.

Who are the current members of the committee?

The current members of the NACIQI are:

Members Appointed by the Secretary of Education With Terms Expiring September 30, 2025

- Wallace E. Boston, Ph.D., President Emeritus, American Public University System, Inc. Charles Town, West Virginia. Appointed by Secretary Betsy DeVos.
- Keith Curry, Ed.D., President/CEO, Compton College, Compton, California. Appointed by Secretary Miguel Cardona.
- David A. Eubanks, Ph.D., Assistant Vice President for Assessment and Institutional Effectiveness, Furman University, Greenville, South Carolina. Appointed by Secretary Betsy DeVos.
- Molly E. Hall-Martin, Ph.D., Director, W–SARA, Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado. Appointed by Secretary Miguel Cardona.
- D. Michael Lindsay, Ph.D., President, Taylor University, Upland, Indiana. Appointed by Secretary Betsy DeVos.
- Mary Ellen Petrisko, Ph.D., Former President, WASC Senior College and University Commission, Pittsburgh, Pennsylvania. Appointed by Secretary Betsy DeVos.

Members Appointed by the House of Representatives With Terms Expiring September 30, 2026

- Kathleen Sullivan Alioto, Ed.D., Strategic Advisor, Fundraiser, and Consultant, New York, New York, San Francisco, California, and Boston, Massachusetts. Appointed by Congresswoman Nancy Pelosi.
- Roslyn Clark Artis, Ed.D., President, Benedict College, Columbia, South Carolina. Appointed by Congresswoman Nancy Pelosi.
- Jennifer Blum, J.D., Principal, Blum Higher Education Advising, PLLC, Washington, DC. Appointed by Congressman Kevin McCarthy.
- Arthur E. Keiser, Ph.D., Chancellor, Keiser University, Fort Lauderdale, Florida. Appointed by Congressman Kevin McCarthy.
- Robert Mayes, Jr., CEO, Columbia Southern Education Group, Elberta, Alabama. Appointed by Congressman Kevin McCarthy.
- Robert Shireman, Director of Higher Education Excellence and Senior Fellow, The Century Foundation, Berkeley, California. Appointed by Congresswoman Nancy Pelosi.

Members Appointed by the Senate With Terms Expiring September 30, 2028

- Debbie Cochrane, Bureau Chief, California Bureau of Private Postsecondary Education, Alameda, California. Appointed by Senator Chuck Schumer.
- Zakiya Smith Ellis, Ed.D., Principal, Education Counsel, Atlanta, Georgia. Appointed by Senator Chuck Schumer.
- Michael Poliakoff, Ph.D., President, American Council of Trustees and Alumni, Washington, DC. Appointed by Senator Mitch McConnell.
- Claude O. Pressnell Jr., Ed.D., President, Tennessee Independent Colleges and Universities Association, Nashville, Tennessee. Appointed by Senator Mitch McConnell.
- José Luis Cruz Rivera, Ph.D., President, Northern Arizona University, Flagstaff, Arizona. Appointed by Senator Chuck Schumer.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 1011c.

Miguel A. Cardona,

Secretary of Education.

[FR Doc. 2023–02173 Filed 2–1–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0136]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluating the Impact of the Professional Learning Community: Emergent Literacy (PLC–EL)

AGENCY: Institute of Education Sciences (IES), 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 6, 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 Janelle Sands, 202–245–6786.

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: Evaluating the Impact of the Professional Learning Community: Emergent Literacy (PLC–EL).

OMB Control Number: 1850–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: Individuals and households.

Total Estimated Number of Annual Responses: 1,726.

Total Estimated Number of Annual Burden Hours: 3,156.

Abstract: The purpose of this study is to understand the impact of the PLC–EL program on preschool teachers'

knowledge, practice, and student achievement in print knowledge, phonological awareness, oral language, and vocabulary. In addition, this study will identify factors that influence program effectiveness and the facilitators and barriers of effective implementation that inform scale-up initiatives across the state. This study will using a randomized controlled trial design to help ensure that—all else equal—this study will yield the strongest, most reliable evidence possible on which to base policy and practice. The study sample will include approximately 100 preschool centers across SC, 2,940 students, 226 preschool teachers, 25 PLC–EL Facilitators, center leaders, and a subset of district and state education leaders.

The study findings will help the Office of Early Learning & Literacy (OELL) at SCDE meet its goals of improving equitable access to high-quality PD for educators and equitable access to high-quality instruction for students by training facilitators to implement the PLC–EL in a large sample of preschool centers in four separate regions of the state. In addition, the study findings will provide the OELL at SCDE with actionable information about facilitators and barriers to implementation that can be used to inform scale-up initiatives across the state.

Dated: January 30, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–02196 Filed 2–1–23; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 124774]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Rescindment of a system of records notice.

SUMMARY: The FCC's Consumer and Governmental Affairs Bureau (CGB) Stakeholder Database stores the personally identifiable information of individuals who voluntarily submit contact information to CGB. FCC/CGB–5 covers the personally identifiable information (PII) contained in a database of CGB stakeholders which is used to facilitate outreach about FCC public events and recent developments.

DATES: The rescindment will become effective 30 days after publication.

ADDRESSES: Comments can be submitted to *Privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For further information please contact Brendan McTaggart, (202) 418–1738 or *Privacy@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act provides that an agency may collect or maintain in its records only information about individuals that is relevant and necessary to accomplish a purpose that is required by a statute or executive order. The FCC has determined that this system no longer meets this standard, because the only types of personally identifiable information currently being collected and maintained in this system is outreach information or business contact information and two new systems—FCC–1, Outreach and FCC–2, Business Contacts and Certification—were developed to maintain this type of outreach and business contact information. Therefore, the FCC proposes to rescind FCC/CGB–5 and expunge or transfer the outreach records it contains to FCC–1, and the business contact information it contains to FCC–2, in accordance with the requirements in the SORN and the applicable records retention or disposition schedule approved by the National Archives and Records Administration.

SYSTEM NAME AND NUMBER:

FCC/CGB–5, CGB Stakeholder Database.

HISTORY:

81 FR 46922 (July 19, 2016).

Marlene Dortch,

Secretary.

[FR Doc. 2023–02202 Filed 2–1–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 124776]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Rescindment of a system of records notice.

SUMMARY: The FCC's Public Safety and Homeland Security Bureau (PSHSB) Contacts Database stores the personally identifiable information of individuals who voluntarily submit their contact information to the PSHSB.

DATES: The rescindment will become effective 30 days after publication.

ADDRESSES: Comments can be submitted to *Privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For further information please contact Brendan McTaggart, (202) 418–1738 or *Privacy@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act provides that an agency may collect or maintain in its records only information about individuals that is relevant and necessary to accomplish a purpose that is required by a statute or executive order. The FCC has determined that this system no longer meets this standard, because the only type of personally identifiable information currently being collected and maintained in this system is business contact information and a new system—FCC–2—was developed to maintain this type of business contact information. Therefore, the FCC proposes to rescind FCC/PSHSB–2 and expunge or transfer the records it contains to FCC–2 in accordance with the requirements in the SORN and the applicable records retention or disposition schedule approved by the National Archives and Records Administration.

SYSTEM NAME AND NUMBER:

FCC/PSHSB–2, PSHSB Contact Database.

HISTORY:

77 FR 1487 (January 10, 2012).

Marlene Dortch,

Secretary.

[FR Doc. 2023–02203 Filed 2–1–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, February 7, 2023 at 10:30 a.m. and its continuation at the conclusion of the open meeting on February 9, 2023.

PLACE: 1050 First Street NE, Washington, DC and virtual. (This meeting will be a hybrid meeting.)

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Information the premature disclosure of which would be likely to have a

considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b.)

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2023–02333 Filed 1–31–23; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

[NOTICE 2023–03]

Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold

AGENCY: Federal Election Commission.

ACTION: Notice of adjustments to contribution and expenditure limitations and lobbyist bundling disclosure threshold.

SUMMARY: As mandated by provisions of the Federal Election Campaign Act (''the Act''), the Federal Election Commission (''the Commission'') is adjusting certain contribution and expenditure limitations and the lobbyist bundling disclosure threshold set forth in the Act, to index the amounts for inflation. Additional details appear in the supplemental information that follows.

DATES: The new limitation at 52 U.S.C. 30116(a)(1)(A) applies beginning on November 9, 2022. The new limitations at 52 U.S.C. 30104(i)(3)(A), 30116(a)(1)(B), 30116(d) and 30116(h) apply beginning on January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 1050 First Street NE, Washington, DC 20463; (202) 694–1100 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Under the Federal Election Campaign Act, 52 U.S.C. 30101–45, coordinated party expenditure limits (52 U.S.C. 30116(d)(2) and (3)), certain contribution limits (52 U.S.C. 30116(a)(1)(A) and (B), and (h)), and the disclosure threshold for contributions bundled by lobbyists (52 U.S.C. 30104(i)(3)(A)) are adjusted periodically to reflect changes in the consumer price index. *See* 52 U.S.C. 30104(i)(3)(B), 30116(c); 11 CFR 109.32(a)(2), (b)(3), 110.17(a) and (f). The Commission is publishing this notice to announce the adjusted limits and disclosure threshold.

Coordinated Party Expenditure Limits for 2023

Under 52 U.S.C. 30116(c), the Commission must adjust the expenditure limitations established by 52 U.S.C. 30116(d) (the limits on expenditures by national party committees, state party committees, or their subordinate committees in connection with the general election campaign of candidates for Federal office) annually to account for inflation. This expenditure limitation is increased by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 1974). 52 U.S.C. 30116(c)(1)(B)(i) and (2)(B)(i).

1. Expenditure Limitation for House of Representatives in States With More Than One Congressional District

Both the national and state party committees have an expenditure limitation for each general election held to fill a seat in the House of Representatives in states with more than one congressional district. *See* 52 U.S.C. 30116(d)(3)(B). This limitation also applies to the District of Columbia and territories that elect individuals to the office of Delegate or Resident Commissioner.[1] *Id.* The formula used to calculate the expenditure limitation in such states and territories multiplies the base figure of $10,000 by the difference in the price index (5.93544), rounding to the nearest $100. *See* 52 U.S.C. 30116(c)(1)(B) and (d)(3)(B); 11 CFR 109.32(b) and 110.17. Based upon this formula, the expenditure limitation for 2023 general elections for House candidates in these states, districts, and territories is $59,400.

2. Expenditure Limitation for Senate and for House of Representatives in States With Only One Congressional District

Both the national and state party committees have an expenditure limitation for a general election held to fill a seat in the Senate or in the House of Representatives in states with only one congressional district. *See* 52 U.S.C. 30116(d)(3)(A). The formula used to calculate this expenditure limitation considers not only the price index but also the voting age population (''VAP'') of the state. *Id.* The VAP figures used to calculate the expenditure limitations were certified by the U.S. Census Bureau. The VAP of each state is also published annually in the **Federal Register** by the U.S. Department of Commerce. 11 CFR 110.18. The general election expenditure limitation is the greater of: The base figure ($20,000) multiplied by the difference in the price index, 5.93544 (which totals $118,700); or $0.02 multiplied by the VAP of the state, multiplied by 5.93544. *See* 52 U.S.C. 30116(c)(1)(B) and (d)(3)(A); 11 CFR 109.32(b) and 110.17. Amounts are rounded to the nearest $100. 52 U.S.C. 30116(c)(1)(B)(iii); 11 CFR 109.32(b)(3) and 110.17(c). The chart below provides the state-by-state breakdown of the 2023 general election expenditure limitations for Senate elections. The expenditure limitation for 2023 House elections in states with only one congressional district[2] is $118,700.

SENATE GENERAL ELECTION COORDINATED EXPENDITURE LIMITS—2023 ELECTIONS[3]

State	Voting age population (VAP)	VAP × .02 × the price index (5.93544)	Senate expenditure limit (the greater of the amount in column 3 or $118,700)
Alabama	3,962,734	$470,400	$470,400
Alaska	557,060	66,100	118,700

[1] Currently, these are Puerto Rico, American Samoa, Guam, the United States Virgin Islands and the Northern Mariana Islands. *See http://www.house.gov/representatives.*

[2] Currently, these states are: Alaska, Delaware, North Dakota, South Dakota, Vermont and Wyoming. *See http://www.house.gov/representatives/.*

SENATE GENERAL ELECTION COORDINATED EXPENDITURE LIMITS—2023 ELECTIONS [3]—Continued

State	Voting age population (VAP)	VAP × .02 × the price index (5.93544)	Senate expenditure limit (the greater of the amount in column 3 or $118,700)
Arizona	5,770,187	685,000	685,000
Arkansas	2,348,518	278,800	278,800
California	30,523,315	3,623,400	3,623,400
Colorado	4,624,351	549,000	549,000
Connecticut	2,895,175	343,700	343,700
Delaware	810,269	96,200	118,700
Florida	17,948,469	2,130,600	2,130,600
Georgia	8,402,753	997,500	997,500
Hawaii	1,142,870	135,700	135,700
Idaho	1,475,629	175,200	175,200
Illinois	9,861,901	1,170,700	1,170,700
Indiana	5,263,114	624,800	624,800
Iowa	2,476,028	293,900	293,900
Kansas	2,246,318	266,700	266,700
Kentucky	3,507,735	416,400	416,400
Louisiana	3,528,548	418,900	418,900
Maine	1,137,442	135,000	135,000
Maryland	4,818,071	571,900	571,900
Massachusetts	5,644,540	670,100	670,100
Michigan	7,924,418	940,700	940,700
Minnesota	4,423,022	525,100	525,100
Mississippi	2,261,996	268,500	268,500
Missouri	4,813,049	571,400	571,400
Montana	889,114	105,500	118,700
Nebraska	1,491,246	177,000	177,000
Nevada	2,487,994	295,300	295,300
New Hampshire	1,142,307	135,600	135,600
New Jersey	7,267,590	862,700	862,700
New Mexico	1,653,831	196,300	196,300
New York	15,687,863	1,862,300	1,862,300
North Carolina	8,404,094	997,600	997,600
North Dakota	596,486	70,800	118,700
Ohio	9,193,508	1,091,400	1,091,400
Oklahoma	3,066,654	364,000	364,000
Oregon	3,403,149	404,000	404,000
Pennsylvania	10,347,543	1,228,300	1,228,300
Rhode Island	889,822	105,600	118,700
South Carolina	4,164,762	494,400	494,400
South Dakota	690,659	82,000	118,700
Tennessee	5,513,202	654,500	654,500
Texas	22,573,234	2,679,600	2,679,600
Utah	2,449,192	290,700	290,700
Vermont	532,307	63,200	118,700
Virginia	6,816,709	809,200	809,200
Washington	6,139,213	728,800	728,800
West Virginia	1,423,234	169,000	169,000
Wisconsin	4,646,910	551,600	551,600
Wyoming	451,267	53,600	118,700

Limitations on Contributions by Individuals, Non-Multicandidate Committees and Certain Political Party Committees Giving to U.S. Senate Candidates for the 2023–2024 Election Cycle

The Act requires inflation indexing of: (1) The limitations on contributions made by persons under 52 U.S.C. 30116(a)(1)(A) (contributions to candidates) and 30116(a)(1)(B) (contributions to national party committees); and (2) the limitation on contributions made to U.S. Senate candidates by certain political party committees at 52 U.S.C. 30116(h). *See* 52 U.S.C. 30116(c). These contribution limitations are increased by multiplying the respective statutory contribution amount by 1.65284, the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 2001). 52 U.S.C. 30116(c)(1)(B)(i) and (2)(B)(ii). The resulting amount is rounded to the nearest multiple of $100. *See* 52 U.S.C. 30116(c); 11 CFR 110.17(b). Contribution limitations shall be adjusted accordingly:

[3] This expenditure limit does not apply to the District of Columbia, Puerto Rico, American Samoa, Guam, the United States Virgin Islands, and the Northern Mariana Islands because those jurisdictions do not elect Senators. *See* 52 U.S.C. 30116(d)(3)(A); 11 CFR 109.32(b)(2)(i).

Statutory provision	Statutory amount	2023–2024 Limit
52 U.S.C. 30116(a)(1)(A)	$2,000	$3,300
52 U.S.C. 30116(a)(1)(B)	25,000	41,300
52 U.S.C. 30116(h)	35,000	57,800

The limitation at 52 U.S.C. 30116(a)(1)(A) is to be in effect for the two-year period beginning on the first day following the date of the general election in the preceding year and ending on the date of the next regularly scheduled election. 52 U.S.C. 30116(c)(1)(C); 11 CFR 110.1(b)(1)(ii). Thus the $3,300 figure above is in effect from November 9, 2022, to November 5, 2024. The limitations under 52 U.S.C. 30116(a)(1)(B) and 30116(h) shall be in effect beginning January 1st of the odd-numbered year and ending on December 31st of the next even-numbered year. 11 CFR 110.1(c)(1)(ii). Thus the new contribution limitations under 52 U.S.C. 30116(a)(1)(B) and 30116(h) are in effect from January 1, 2023, to December 31, 2024. *See* 11 CFR 110.17(b)(1).

Lobbyist Bundling Disclosure Threshold for 2023

The Act requires certain political committees to disclose contributions bundled by lobbyists/registrants and lobbyist/registrant political action committees once the contributions exceed a specified threshold amount. 52 U.S.C. 30104(i)(1) and (i)(3)(A). The Commission must adjust this threshold amount annually to account for inflation. 52 U.S.C. 30104(i)(3)(B). The disclosure threshold is increased by multiplying the $15,000 statutory disclosure threshold by 1.45167, the difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 2006). *See* 52 U.S.C. 30104(i)(3) and 30116(c)(1)(B); 11 CFR 104.22(g). The resulting amount is rounded to the nearest multiple of $100. 52 U.S.C. 30104(i)(3)(B) and 30116(c)(1)(B)(iii); 11 CFR 104.22(g)(4). Based upon this formula ($15,000 × 1.45167), the lobbyist bundling disclosure threshold for calendar year 2023 is $21,800.

Dated: January 27, 2023.

On behalf of the Commission,

Dara S. Lindenbaum,

Chair, Federal Election Commission.

[FR Doc. 2023–02135 Filed 2–1–23; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 17, 2023.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309; Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Mary Susan DeFoor, Ooltewah, Tennessee;* to acquire voting shares of Millennium Bancshares, Inc., and thereby indirectly acquire voting shares of Millennium Bank, both of Ooltewah, Tennessee.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–02190 Filed 2–1–23; 8:45 am]

BILLING CODE P

GOVERNMENT ACCOUNTABILITY OFFICE

Financial Management and Assurance; Government Auditing Standards

AGENCY: U.S. Government Accountability Office.

ACTION: Notice of document availability.

SUMMARY: On January 30, 2023, the U.S. Government Accountability Office (GAO) issued an exposure draft of proposed revisions to Government Auditing Standards (GAGAS), also known as the Yellow Book. To help ensure that the standards continue to meet the needs of the government community and the public it serves, the Comptroller General of the United States appointed the Advisory Council on Government Auditing Standards to review GAO's proposed revisions of the standards and consider other necessary changes. The advisory council includes experts from all levels of government, the private sector, and academia. This exposure draft includes the advisory council's input regarding the proposed changes. We are requesting public comments on the proposed revisions in the 2023 exposure draft. All comments received from the public will be considered a matter of public record and will be posted on the GAO website. GAO first issued the standards in 1972. The proposed changes in the exposure draft update GAGAS to reflect major developments in the accountability and audit professions and emphasize specific considerations applicable to the government environment.

DATES: Comments will be accepted through April 28, 2023.

ADDRESSES: A copy of the exposure draft (GAO–23–106303) can be obtained on the GAO internet page at *https://www.gao.gov/yellowbook.*

FOR FURTHER INFORMATION CONTACT: Cecil Davis at (202) 512–9362.

SUPPLEMENTARY INFORMATION: To ensure that your comments are considered by GAO and the advisory council in their deliberations, please submit them by April 28, 2023. Please send your comments electronically to *YellowBookComments@gao.gov.*

Authority: Public Law 67–13, 42 Stat. 20 (June 10, 1921).

James R. Dalkin,

Director, Financial Management and Assurance, U.S. Government Accountability Office.

[FR Doc. 2023–02124 Filed 2–1–23; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2826]

Allergan Sales LLC., et. al.; Withdrawal of Approval of 10 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** on November 21, 2022. The document announced the withdrawal of approval (as of December 21, 2022) of 10 abbreviated new drug applications (ANDAs) from multiple applicants. The document indicated that FDA was withdrawing approval of the following ANDAs after receiving withdrawal requests from Sunstar Americas, Inc., 301 East Central Rd., Schaumburg, IL 60195: ANDA 076434, Chlorhexidine Gluconate Solution, 0.12%; Sofgen Pharmaceuticals, LLC, 21500 Biscayne Blvd., Suite 600, Aventura, FL 33180: ANDA 201832, Nimodipine Capsules, 30 milligrams (mg); and Indicus Pharma, LLC, 2530 Meridian Parkway, Durham, NC 27713: ANDA 203419, Donepezil HCl Tablets, 23 mg. Before FDA withdrew the approval of these ANDAs, Sunstar Americas, Inc., Sofgen Pharmaceuticals, LLC, and Indicus Pharma, LLC informed FDA that they did not want the approval of the ANDAs withdrawn. Because Sunstar Americas, Inc. timely requested that approval of ANDA 076434 not be withdrawn, Sofgen Pharmaceuticals, LLC timely requested that the approval of ANDA 201832 not be withdrawn, and Indicus Pharma, LLC timely requested that the approval of ANDA 203419 not be withdrawn, the approvals are still in effect.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–6980, *Martha.Nguyen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Monday, November 21, 2022 (87 FR 223), in FR Doc. 2022–25315, the following correction is made:

On page 70835, in the table, the entries for ANDAs 076434, 201832, and 203419 are removed.

Dated: January 30, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02155 Filed 2–1–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0086]

Agency Information Collection Activities; Proposed Collection; Comment Request; Potential Tobacco Product Violations Reporting Form

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 Potential Tobacco Product Violations Reporting Form.

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–2014–N–0086 for ''Potential Tobacco Product Violations Reporting Form.'' 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.

Potential Tobacco Product Violations Reporting Form

OMB Control Number 0910–0716—Extension

This information collection supports the opportunity to accept consumer and other stakeholder feedback and notification of potential violations of the FD&C Act, as amended by the Tobacco Control Act. Tobacco products are generally governed by chapter IX of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (sections 900 through 920) (21 U.S.C. 387 through 21 U.S.C. 387t). The FD&C Act provides FDA authority to monitor compliance with Federal tobacco laws and regulations and take corrective action when violations occur.

As part of its enforcement strategy, FDA accepts information from the public regarding potential tobacco product violations of the FD&C Act. Potential tobacco product violations include (but are not limited to): (1) sales to underage purchasers (persons under 21); (2) flavored cigarette sales; (3) illegal marketing and advertising; (4) distribution of free samples of tobacco products except in limited circumstances; (5) placement of cigarette or smokeless tobacco product vending machines in prohibited areas (or providing access to self-service or direct access of tobacco products in prohibited areas); and (6) sale of cigarettes in packages of less than 20.

FDA currently provides a form that may be used to collect this information from the public (Form FDA 3779, Potential Tobacco Product Violations Report). The Potential Tobacco Product Violations Report, Form FDA 3779, asks for the following information: (1) date potential violation occurred; (2) product type (*e.g.,* cigarette, smokeless, roll-your-own, cigar, e-cigarette, hookah, pipe tobacco); (3) tobacco brand; (4) potential violation type; (5) type of potentially violative promotional materials; (6) who potentially violated; (7) name, address, phone number, and email address of the potential violator (if known); (8) potential violator's website or internet address URL (if available); (9) description of the potential violation; and (10) any additional files or information pertinent to the potential violation.

The public and interested stakeholders can report possible tobacco product violations of the FD&C Act by submitting information on Form FDA 3779 online, via email or postal mail, or by calling FDA's Tobacco Call Center. Information on how to submit possible tobacco product violations using the options above can be found at *https://www.accessdata.fda.gov/scripts/ptvr/index.cfm.* Further details about reporting possible tobacco product violations of the FD&C Act can also be found at *https://www.fda.gov/tobacco-products/compliance-enforcement-training/report-potential-tobacco-product-violation.*

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity and form FDA 3779	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Reporting potential tobacco product violations of the FD&C Act.	3,000	2	6,000	0.25 (15 minutes)	1,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden hour estimates for this collection of information were based on the type and rate of reporting submitted through the Potential Tobacco Violation Report Form and based on a review of the information collection since our last

request for OMB approval. FDA estimates that submitting the information (online, telephone, email, or mail) will take 0.25 hours (*i.e.,* 15 minutes) per response.

FDA estimates the number of annual respondents to this collection of information will be 3,000, who will each submit 2 reports. Each report is expected to take 0.25 hours to complete and submit; therefore, total burden hours for this collection of information is estimated to be 1,500 hours (6,000 responses × 0.25 hours per response).

Our estimated burden for the information collection reflects an overall increase of 157 hours and a corresponding increase of 630 responses. We attribute this adjustment to an increase in the number of submissions we received over the last few years.

Dated: January 30, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02172 Filed 2–1–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–2109]

Sami Anwar; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is denying a request for a hearing submitted by Sami Anwar (Anwar) and is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) permanently debarring Anwar from providing services in any capacity to a person having an approved or pending drug product application. FDA bases this order on a finding that Anwar was convicted of felonies under Federal law for conduct relating to the development or approval of any drug product or otherwise relating to the regulation of a drug product under the FD&C Act. Anwar failed to file with the Agency information and analysis sufficient to create a basis for a hearing concerning this action.

DATES: The order is applicable February 2, 2023.

ADDRESSES: Any application for special termination of debarment by Anwar under section 306(d) of the FD&C Act (application) may be submitted as follows:

Electronic Submissions

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. An application submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application 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 application, that information will be posted on *https://www.regulations.gov.*
- If you want to submit an application with confidential information that you do not wish to be made available to the public, submit the application 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 a written/paper application submitted to the Dockets Management Staff, FDA will post your application, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: Your application must include the Docket No. FDA–2020–N–2109. An application will be placed in the docket and, unless 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 an application with confidential information that you do not wish to be made publicly available, submit your application 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 your application. 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 application 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, 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 between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT: Rachael Vieder Linowes, Office of Scientific Integrity, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4206, Silver Spring, MD 20993, 240–402–5931.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2) of the FD&C Act (21 U.S.C. 335a(a)(2)) mandates permanent debarment if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product or otherwise relating to the regulation of any drug product under the FD&C Act.

On October 1, 2020, the U.S. District Court for the Eastern District of Washington entered a judgment against Anwar, after a jury verdict, for 24 counts of wire fraud in violation of 18 U.S.C. 1349, 15 counts of mail fraud in violation of 18 U.S.C. 1341, 1 count of conspiracy to commit mail fraud in violation of 18 U.S.C. 371, 6 counts of fraudulently obtaining controlled substances in violation of 21 U.S.C. 843(a)(3), and 1 count of furnishing false or fraudulent material information to

the Drug Enforcement Administration in violation of 21 U.S.C. 843(a)(4)(A). As described below, the basis of Anwar's convictions stems from Anwar and his companies' falsifying research data for human clinical trials, including forging and falsifying documents to make it appear as though such clinical trials were performed and supervised by a qualified and licensed physician and falsifying medical records and data to admit dozens of ineligible subjects into the clinical trials.

By letter dated January 6, 2021, FDA's Office of Regulatory Affairs (ORA) notified Anwar of a proposal to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application and provided him an opportunity to request a hearing. As explained in the notice, the basis for the proposed debarment is Anwar's felony convictions in the U.S. District Court for the Eastern District of Washington. According to ORA, Anwar is subject to debarment based on a finding, under section 306(a)(2) of the FD&C Act (21 U.S.C. 335a(a)(2)), that he was convicted of felonies under Federal law for conduct relating to the development or approval of any drug product or otherwise relating to the regulation of a drug product under the FD&C Act.

The proposal to debar states that the convictions relate to Anwar's role as owner and operator of Mid-Columbia Research LLC and Zain Research LLC, contract research organizations that oversaw and conducted clinical research trials on a contract basis for various drug sponsors. As described in the proposal, Anwar directed and carried out a conspiracy to have his companies fraudulently pose as legitimate human clinical research trial sites, and Anwar provided false clinical research trial data regarding drug safety and drug efficacy to dozens of drug companies and, through them, FDA, which regulates human clinical trials in the United States. Anwar also posed as a doctor and forged the signatures of the doctors he employed. In addition, Anwar directed his employees to assist in committing the fraud, including: (1) falsifying medical records and data to admit dozens of ineligible research subjects, (2) falsifying research data vital signs, (3) stealing blood samples taken from patients without their knowledge or consent, (4) directing patients to dispose of study medications and then falsely record dispensing as required by the study, (5) fraudulently obtaining and acquiring opioids intended to be dispensed to study subjects, and (6) falsifying subject diaries. In the proposal to debar, ORA found that Anwar's convictions, and underlying conduct, relate to the process for development or approval, including the process for development or approval, of any drug product and for conduct relating to the regulation of any drug product under the FD&C Act.

In a letter dated January 22, 2021, Anwar submitted a ''request for an extension of the hearing.'' This letter did not contain a request for a hearing, but the Director of the Office of Scientific Integrity, who has the authority to rule upon debarment matters, construed it as one. In addition, Anwar was given an extension to submit any information or factual analyses in support of his request for a hearing until April 15, 2021. Anwar has not filed any additional information to support his request.

Under the authority delegated to her by the Commissioner of Food and Drugs, the Chief Scientist has considered Anwar's request for a hearing. Hearings are granted only if there is a genuine and substantial issue of fact. Hearings will not be granted on issues of policy or law, on mere allegations, denials or general descriptions of positions and contentions, or on data and information insufficient to justify the factual determination urged (see 21 CFR 12.24(b)).

Since Anwar has not presented any information to support his hearing request, the Chief Scientist concludes that Anwar failed to raise a genuine and substantial issue of fact requiring a hearing. Therefore, the Chief Scientist denies Anwar's request for a hearing.

II. Findings and Order

The Chief Scientist, under section 306(a)(2) of the FD&C Act and under the authority delegated to her, finds that Sami Anwar has been convicted of felonies under Federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product or otherwise relating to the regulation of a drug product under the FD&C Act.

As a result of the foregoing findings, Sami Anwar is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**) (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(dd)). Any person with an approved or pending drug product application who knowingly uses the services of Anwar, in any capacity during his period of debarment, will be subject to civil money penalties. See section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6)). If Anwar, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. See section 307(a)(7) of the FD&C Act (21 U.S.C. 335b(a)(7)). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Anwar during his period of debarment.

Dated: January 27, 2023.

Namandjé N. Bumpus,

Chief Scientist.

[FR Doc. 2023–02161 Filed 2–1–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3771]

Report on the Performance of Drug and Biologics Firms in Conducting Postmarketing Requirements and Commitments; 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 the Agency's annual report entitled ''Report on the Performance of Drug and Biologics Firms in Conducting Postmarketing Requirements and Commitments.'' Under the Federal Food, Drug, and Cosmetic Act (FD&C Act), FDA is required to report annually on the status of postmarketing requirements (PMRs) and postmarketing commitments (PMCs) required of, or agreed upon by, application holders of approved drug and biological products. The report on the status of the studies and clinical trials that applicants are required to, or have agreed to, conduct is on FDA's website entitled ''Postmarketing Requirements and Commitments: Reports'' (*https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PostmarketingPhaseIVCommitments/ucm064436.htm*).

FOR FURTHER INFORMATION CONTACT: Kathy Weil, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5367, Silver Spring, MD 20993–0002, 301–796–0700; or Diane Maloney, Center for Biologics

Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7242, Silver Spring, MD 20993–0002, 240–402–8113.

SUPPLEMENTARY INFORMATION:

I. Background

Section 506B(c) of the FD&C Act (21 U.S.C. 356b(c)) requires FDA to publish an annual report on the status of postmarketing studies that applicants are required to, or have committed to, conduct and for which annual status reports have been submitted. Under §§ 314.81(b)(2)(vii) and 601.70 (21 CFR 314.81(b)(2)(vii) and 601.70), applicants of approved drug products and licensed biological products are required to submit annually a report on the status of each clinical safety, clinical efficacy, clinical pharmacology, and nonclinical toxicology study or clinical trial either required by FDA (PMRs) or that they have committed to conduct (PMCs), either at the time of approval or after approval of their new drug application, abbreviated new drug application, or biologics license application, as applicable. The status of PMCs concerning chemistry, manufacturing, and production controls and the status of other studies or clinical trials conducted on an applicant's own initiative are not required to be reported under §§ 314.81(b)(2)(vii) and 601.70 and are not addressed in this report. Furthermore, section 505(o)(3)(E) of the FD&C Act (21 U.S.C. 355(o)(3)(E)) requires that applicants report periodically on the status of each required study or clinical trial and each study or clinical trial ''otherwise undertakento investigate a safety issue . . . .''

An applicant must report on the progress of the PMR/PMC on the anniversary of the drug product's approval [1] until the PMR/PMC is completed or terminated and FDA determines that the PMR/PMC has been fulfilled or that the PMR/PMC is either no longer feasible or would no longer provide useful information.

II. Fiscal Year 2021 Report

With this notice, FDA is announcing the availability of the Agency's annual report entitled ''Report on the Performance of Drug and Biologics Firms in Conducting Postmarketing Requirements and Commitments.'' Information in this report covers any PMR/PMC that was established, in writing, at the time of approval or after approval of an application or a supplement to an application and summarizes the status of PMRs/PMCs in fiscal year (FY) 2021 (*i.e.,* as of September 30, 2021). Information summarized in the report reflects combined data from the Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research and includes the following: (1) the number of applicants with open PMRs/PMCs; (2) the number of open PMRs/PMCs; (3) the timeliness of applicant submission of the annual status reports (ASRs); (4) FDA-verified status of open PMRs/PMCs reported in § 314.81(b)(2)(vii) or § 601.70 ASRs; (5) the status of closed PMRs/PMCs; and (6) the distribution of the status by fiscal year (FY) of establishment [2] (FY2015 to FY2021) for PMRs and PMCs open at the end of FY2021, or those closed within FY2021. Additional information about PMRs/PMCs is provided on FDA's website at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Post-marketingPhaseIVCommitments/default.htm.*

Dated: January 30, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02156 Filed 2–1–23; 8:45 am]

BILLING CODE 4164–01–P

[1] An applicant must submit an annual status report on the progress of each open PMR/PMC within 60 days of the anniversary date of U.S. approval of the original application or on an alternate reporting date that was granted by FDA in writing. Some applicants have requested and been granted by FDA alternate annual reporting dates to facilitate harmonized reporting across multiple applications.

[2] The establishment date is the date of the formal FDA communication to the applicant that included the final FDA-required (PMR) or requested (PMC) postmarketing study or clinical trial.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[OMB No. 0915–0386–Extension]

Agency Information Collection Activities: Proposed Collection: Public Comment Request Information Collection Request Title: Delta States Rural Development Network Grant Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR must be received no later than April 3, 2023.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the HRSA Information Collection Clearance Officer, at 301–594–4394.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Delta States Rural Development Network Grant Program, OMB No. 0915–0386–Extension.

Abstract: The Delta States Rural Development Network Grant (Delta) Program is authorized by the Public Health Service Act, Section 330A(f) (42 U.S.C. 254c(f)). The Delta Program supports projects that demonstrate evidence based and/or promising approaches around cardiovascular disease, diabetes, acute ischemic stroke, or obesity in order to improve health status in rural communities throughout the Delta Region. Key features of Delta Program-supported projects are collaboration, adoption of an evidence-based approach, demonstration of health outcomes, program replicability, and sustainability. HRSA collects information from Delta Program award recipients using an OMB-approved set of performance measures and seeks to extend that approved information collection.

Need and Proposed Use of the Information: For this program, performance measures were drafted to provide data useful to the program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act of 1993 (Pub. L. 103–62). These measures cover the principal topic areas of interest to HRSA including the following: (a) access to care, (b) population demographics, (c) staffing, (d) sustainability, (e) project specific domains, and (f) health related clinical measures. These measures

encompass HRSA's progress toward meeting the goals set.

Likely Respondents: Grant recipients of the Delta Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Delta States Rural Development Network Program Performance Improvement Measurement System	12	1	12	1.66	*20
Total	12		12		20

*Number is rounded to the nearest whole number.

HRSA specifically requests comments on (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.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–02197 Filed 2–1–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Emphasis Panel; Nucleic Acid Therapeutic Delivery (NATD).

Date: February 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: Vinod Charles, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, 301–435–0902, *charlesvi@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Services; Quality and Effectiveness Study Section.

Date: March 1–2, 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: Angela Denise Thrasher, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000J, Bethesda, MD 20892, (301) 480–6894, *thrasherad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships; Behavioral Neuroscience.

Date: March 2–3, 2023.

Time: 8:00 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: Simone Chebabo Weiner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011K, Bethesda, MD 20892, (301) 435–1042, *weinersc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR Panel; Cancer Nanotechnology.

Date: March 2–3, 2023.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Raj K. Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 435–1047, *kkrishna@csr.nih.gov.*

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Molecular and Cellular Biology of Virus Infection Study Section.

Date: March 2–3, 2023.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Kenneth M. Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; Advancing Therapeutics A Study Section.

Date: March 2–3, 2023.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW, Washington, DC 20001.

Contact Person: Maureen Shuh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–4097, *maureen.shuh@nih.gov.*

Name of Committee: Applied Immunology and Disease Control Integrated Review Group; Vaccines Against Infectious Diseases Study Section.

Date: March 2–3, 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: Jian Wang, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 213–9853, *wangjia@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Digestive System Host Defense, Microbial Interactions and Immune and Inflammatory Disease Study Section.

Date: March 2–3, 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: Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov.*

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Cellular and Molecular Immunology—B Study Section.

Date: March 2–3, 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: Liying Guo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, (301) 827–7728, *lguo@mail.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 30, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02194 Filed 2–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group; Genome Research Study Section (GNOM–G).

Date: March 2, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3180, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sarah Jo Wheelan, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3180, Bethesda, MD 20892, (301) 402–8823, *wheelansj@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 30, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02193 Filed 2–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Building Infrastructure for Precision Medicine Rh on Minority Health and Disparities in Alzheimer's Disease (AD) and AD-Related Dementias.

Date: March 3, 2023.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carmen Moten, Ph.D., Scientific Review Officer, National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–8589, *cmoten@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 27, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02148 Filed 2–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Proteostasis of Aging and Neurodegenerative Diseases.

Date: March 6, 2023.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ivan Tadeu Rebustini, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 496–2879, *Ivan.rebestuni@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 27, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02147 Filed 2–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2021–1 Phase II/PHS 2023–1 Phase I: Data Science Tools for Infectious, Immune, and Allergic Research (Topic 100, Topic 122/Topic 123).

Date: February 24, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Richard G. Kostriken, Ph.D., Scientific Review Officer, Scientific Review Program, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22, Bethesda, MD 20892, 240–669–2075, *richard.kostriken@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 27, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02136 Filed 2–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; RCMAR 2.

Date: February 27, 2023.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *firthkm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 27, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02146 Filed 2–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Multi-Omics for Health and Disease.

Date: March 3, 2023.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sarah Jo Wheelan, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3180, Bethesda, MD 20892, (301) 402–8823, *wheelansj@nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; MorPhiC Data-Validation Centers.

Date: March 9, 2023.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3180, Bethesda, MD 20892, 301–594–4280, *mckenneyk@mail.nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Multi Omics Coordination Center.

Date: March 15, 2023.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3180, Bethesda, MD 20892, 301–594–4280, *mckenneyk@mail.nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; AnVIL Renewal—Genomic Data Science Analysis.

Date: March 16, 2023.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research

Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3180, Bethesda, MD 20892, (301) 402–0838, *pozzattr@mail.nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Multi-Omics Production Center.

Date: March 31, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3180, Bethesda, MD 20892, (301) 402–0838, *pozzattr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 30, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02195 Filed 2–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; RCMAR 1.

Date: February 27, 2023.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health National Institute on Aging Gateway Building, 7201 Wisconsin Avenue Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building 7201 Wisconsin Avenue, Suite 2C212 Bethesda, MD 20892 301–402–7702 *firthkm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 27, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02145 Filed 2–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Policy and AD and ADRD Healthcare Disparities: Access, Utilization, and Quality.

Date: March 16–17, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carmen Moten, Ph.D., Scientific Review Officer, National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–8589, *cmoten@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS).

Dated: January 27, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02144 Filed 2–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 2023–2026 National Survey on Drug Use and Health: Methodological Field Tests (OMB No. 0930–0290)—Extension

The National Survey on Drug Use and Health (NSDUH) is a survey of the U.S. civilian, non-institutionalized population aged 12 years old or older. The data are used to provide estimates of substance use and mental illness at the national, state, and substate levels. NSDUH data also help to identify the extent of substance use and mental illness among different subgroups, estimate trends over time, and determine the need for treatment services. The results are used by SAMHSA, the Office of National Drug Control Policy (ONDCP), Federal Government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

Methodological tests will continue to examine the feasibility, quality, and efficiency of new procedures or revisions to existing survey protocol. Specifically, the tests will measure the

reliability and validity of certain questionnaire sections and items through multiple measurements on a set of respondents; assess new methods for gaining cooperation and participation of respondents with the goal of increasing response and decreasing potential bias in the survey estimates; and assess the impact of new sampling techniques and technologies on respondent behavior and reporting. Research will involve focus groups, cognitive testing, and field tests. Prior to each methodological test, a separate clearance memo (under this generic clearance) will be presented to OMB for review.

These methodological tests will continue to examine ways to increase data quality, lower operating costs, and gain a better understanding of sources and effects of non-sampling error on NSDUH estimates. Particular attention will be given to minimizing the impact of design changes so survey data can be comparable over time. If findings suggest changes that might lead to improvements to the study, current procedures or data collection instruments may be revised.

The number of respondents to be included in each field test will vary, depending on the nature of the subject being tested and the target population. However, the total estimated response burden is 14,801 hours. The exact number of subjects and burden hours for each test are unknown at this time, but will be clearly outlined in each individual submission. These estimated burden hours over three years are as follows:

ESTIMATED TOTAL BURDEN FOR NSDUH METHODOLOGICAL FIELD TESTS

Activity	Number of respondents	Responses per respondent	Total number of responses	Average burden per response (hrs)	Total burden (hrs.)
a. Focus Groups	378	1	378	2.0	756
b. Respondent screening for a	473	1	473	0.083	39
c. Cognitive testing	420	1	420	1.0	420
d. Respondent screening for c	800	1	800	0.083	66
e. Field Tests	12,000	1	12,000	1.0	12,000
f. Household screening for e	16,200	1	16,200	0.083	1,345
g. Screening Verification for e	804	1	804	0.067	54
h. Interview Verification for e	1,800	1	1,800	0.067	121
Total	32,875		32,875		14,801

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, 5600 Fisher Lane, Room 15E57A, Rockville, MD 20852 *OR* email him a copy at *carlos.graham@samhsa.hhs.gov.* Written comments should be received by April 3, 2023.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2023–02188 Filed 2–1–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0093]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0069

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0069, Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters; without change.

Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before April 3, 2023.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2023–0093] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2023–0093], and must be received by April 3, 2023.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters.

OMB Control Number: 1625–0069.

Summary: This collection requires the master of a vessel to provide information that details the vessel operator's ballast water management efforts.

Need: The information is needed to ensure compliance with 33 U.S.C. 1251 and the requirements in 33 CFR part 151, subparts C and D regarding the management of ballast water, to prevent the introduction and spread of aquatic nuisance species into U.S. waters. The information is also used for research and periodic reporting to Congress.

Forms:

- Ballast Water Management Report.
- Ballast Water Management (BWM) Equivalent Reporting Program Application.

Respondents: Owners and operators of certain vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 61,819 hours to 87,509 hours a year, due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: January 24, 2023.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2023–02166 Filed 2–1–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6704–B; 234.LLAK944000.L14100000.HY0000.P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface estate in certain lands to Ahtna, Incorporated, Successor in Interest to Tazlina, Incorporated for the Native village of Tazlina, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA). The subsurface estate in the same lands will be conveyed to Ahtna, Incorporated when the surface estate is conveyed to Ahtna, Incorporated, Successor in Interest to Tazlina, Incorporated.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: Matthew R. Lux, Land Law Examiner, BLM Alaska State Office, 907–271–3176, or *mlux@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to Ahtna, Incorporated, Successor in Interest to Tazlina, Incorporated. The decision approves conveyance of the surface estate in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*), as amended. Tazlina, Incorporated, the original ANCSA corporation for the Native village of Tazlina, merged with Ahtna, Incorporated in 1980 under the authority of the Act of January 2, 1976, 43 U.S.C. 1627. The subsurface estate in the same lands will be conveyed to Ahtna, Incorporated when the surface estate is conveyed to Ahtna, Incorporated, as Successor-in-Interest to Tazlina, Incorporated. The lands are located in the vicinity of Tazlina, Alaska, and are described as:

Copper River Meridian, Alaska

T. 3 N., R. 2 E.,
Secs. 2 to 5, inclusive.
Containing 2,560 acres.
T. 4 N., R. 1 W.,
Tract C.
Containing approximately 2,560 acres.
T. 3 N., R. 2 W.,
Sec. 7;
Secs. 26, 27, and 28;
Secs. 33 to 36, inclusive.
Containing 5,091.55 acres.
T. 2 N., R. 3 W.,
Secs. 4 and 9;
Secs. 34 and 35.
Containing 2,560 acres.
T. 3 N., R. 3 W.,
Secs. 9 to 12, inclusive.
Containing 2,560 acres.
Aggregating approximately 15,332 acres.

The decision addresses public access easements, if any, to be reserved to the United States pursuant to Sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands described above.

The BLM will also publish notice of the decision once a week for four consecutive weeks in the Anchorage Daily News newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall

have until March 6, 2023 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Matthew R. Lux,

Land Law Examiner, Adjudication Section.

[FR Doc. 2023–02137 Filed 2–1–23; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–35207; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before January 21, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by February 17, 2023.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before January 21, 2023. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations Submitted by State or Tribal Historic Preservation Officers

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

INDIANA

Allen County

General Electric Fort Wayne Electric Works Historic District, 1635 Broadway and 1030 Stanley Ave., Fort Wayne, SG100008658

Carroll County

Camden First Baptist Church, 225 East Main St., Camden, SG100008659

Jasper County

Nowels, David & Sarah, House, 500 North McKinley, Rensselaer, SG100008660

Jennings County

Hicklin House and Settlement, 2330 South Cty. Rd. 675 East, San Jacinto vicinity, SG10000866

Marion County

Forebears, 4849 Buttonwood Crescent, Indianapolis, SG100008662

Monroe County

Stinesville Historic District, Roughly bounded by North., Sycamore, Elm, and East Sts. including east side of Main St. to Broadway St., Stinesville, SG100008663

Perry County

Tell City Carnegie Library, 548 9th St., Tell City, SG100008664

St. Joseph County

Lowell Heights-Olivet African Methodist Episcopal Church, 719 North Notre Dame Ave., South Bend, SG100008665

NEW YORK

Onondaga County

Hanford, George C., House, 506 West Onondaga St., Syracuse, SG100008656

OHIO

Hamilton County

Winton Terrace Historic District, 4848,4802–5070 and 4803–5089 Winneste Ave., 402–512 Kings Run Dr., 4703–4861, Este Ave., 1–293 Craft St., 3–59 Kings Run Ct., and 3–110 Topridge Pl., Cincinnati, SG100008657

A request for removal has been made for the following resource:

INDIANA

Allen County

Craigville Depot, Ryan and Edgerton Rds., New Haven vicinity, OT84000181

A request to move has been received for the following resource:

INDIANA

Vanderburgh County

USS LST 325 (tank landing ship), 610 NW Riverside Dr., Evansville, MV09000434

Nomination Submitted by Federal Preservation Officer

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

ARKANSAS

Crawford County

Wing School, (Public Schools in the Ozarks MPS), 15312 AR 59, Natural Dam, MP100008655

Authority: Section 60.13 of 36 CFR part 60.

Dated: January 25, 2023.

Sherry A Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2023–02176 Filed 2–1–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–NCPTT–35090; PPWOCRADS2, PCU00PT14.GT0000]

Request for Nominations for the Preservation Technology and Training Board

AGENCY: National Park Service, Interior.

ACTION: Request for nominations.

SUMMARY: The National Park Service (NPS), U.S. Department of the Interior, is requesting nominations for qualified persons to serve as members of the Preservation Technology and Training Board (Board).

DATES: Written nominations must be postmarked by March 6, 2023.

ADDRESSES: Nominations should be sent to Kirk A. Cordell, Executive Director, National Center for Preservation Technology and Training, National Park Service, 645 University Parkway, Natchitoches, Louisiana 71457, via

telephone (318) 356–7444, or email at *ncptt@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Kirk A. Cordell, via telephone (318) 356–7444. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: Established within the Department of the Interior, the National Center for Preservation Technology and Training (Center) is located at Northwestern State University of Louisiana in Natchitoches, Louisiana. Title IV, section 404 of Public Law 102–575, October 30, 1992, established the Board to provide advice and professional oversight to the Secretary of the Interior and the Center regarding the activities of the Center and to submit an annual report to the President and the Congress.

The Board is comprised of 13 representative members appointed for 4-year terms, as follows: (a) one member serving as the Secretary's designee; (b) six members who represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations; and (c) six members on the basis of outstanding professional qualifications who represent major organizations in the fields of archeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

We are currently seeking members on the basis of outstanding professional qualifications who represent major organizations in the fields of archeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education. Nominations should be typed and should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Board and permit the Department of the Interior to contact a potential member. All documentation, including letters of recommendation, must be compiled and submitted in one complete package. All those interested in membership, including current members whose terms are expiring, must follow the nomination process. Members may not appoint deputies or alternates.

Members of the Board serve without compensation. However, while away from their homes or regular places of business in the performance of services for the Board as approved by the NPS, members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed such expenses under section 5703 of title 5 of the United States Code.

Authority: 5 U.S.C. 10.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2023–02121 Filed 2–1–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–009]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 8, 2023 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–679 and 731–TA–1585 (Final) (Sodium Nitrite from India). The Commission currently is scheduled to complete and file its determinations and views of the Commission on February 20, 2023.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Acting Supervisory Hearings and Information Officer, 202–205–2595.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: January 31, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–02338 Filed 1–31–23; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–008]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 7, 2023 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. No. 731–TA–1073 (Fifth Review) (Furfuryl Alcohol from China). The Commission currently is scheduled to complete and file its determinations and views of the Commission on February 15, 2023.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Acting Supervisory Hearings and Information Officer, 202–205–2595.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: January 30, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–02247 Filed 1–31–23; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Reynaldo De Los Angeles, M.D.; Decision and Order

On October 24, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Reynaldo De Los Angeles, M.D. (hereinafter, Registrant). Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 2 (OSC), at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. FD5611365 at the registered address of 1617 W 39th Street, Ste. 1, Kearney, NE 68845–2713. *Id.* at 1. The OSC alleged that Registrant's registration

should be revoked because Registrant is ''without authority to handle controlled substance[s] in Nebraska, the state in which [he is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its RFAA dated December 20, 2022.[1]

Findings of Fact

On October 5, 2022, the Nebraska Department of Health and Human Services (NDHHS) issued an Order temporarily suspending Registrant's Nebraska medical license based on Registrant's state criminal conviction from August of 2022.[2] RFAAX 3, Appendix A, at 1–4. On December 7, 2022, NDHHS issued an Order revoking Registrant's Nebraska medical license based on both his state criminal conviction and on his lengthy disciplinary history with NDHHS. RFAAX 3, Appendix B, at 1, 5–6; *see also id.* at 12–70

According to Nebraska's online records, of which the Agency takes official notice, Registrant's license is still revoked.[3] Nebraska Department of Health and Human Services License Information System Search, *https://www.nebraska.gov/LISSearch/search.cgi* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to engage in the practice of medicine in Nebraska, the state in which he is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* FR 27616, 27617 (1978).[4]

According to Nebraska statute, ''[d]ispense means to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery.'' Neb. Rev. Stat. § 28–401(8) (2022). Further, a ''[p]ractitioner means a physician . . . or any other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of practice or research in this state . . . .'' *Id.* at § 28–401(21).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice medicine in Nebraska. As discussed above, a physician must be a licensed practitioner to dispense a controlled substance in Nebraska. Thus, because Registrant lacks authority to practice medicine in Nebraska and, therefore, is not authorized to handle controlled substances in Nebraska, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FD5611365 issued to Reynaldo De Los Angeles, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending applications of Reynaldo De Los Angeles, M.D., to renew or modify this registration, as well as any other pending application of Reynaldo De Los Angeles, M.D., for additional registration in Nebraska. This Order is effective March 6, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on January 25, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–02132 Filed 2–1–23; 8:45 am]

BILLING CODE 4410–09–P

[1] Based on a Declaration from a DEA Diversion Investigator, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAAX 3, 2–3. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a written statement or corrective action plan and therefore has waived any such rights. RFAA, at 2; *see also* 21 CFR 1301.43 and 21 U.S.C. 824(c)(2).

[2] Registrant's Nebraska medical license expired by its terms on October 1, 2022. RFAAX 3, Appendix F.

[3] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.gov.*

[4] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . ., to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton,* 43 FR at 27617.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Dylan E. O'Connor, M.D.; Decision and Order

On September 15, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Dylan E. O'Connor, M.D. (hereinafter, Registrant). Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 1

(OSC), at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. FO7776644 at the registered address of 300 Pasteur Dr., Stanford, CA 94305–2295. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is ''without authority to handle controlled substances in the State of California, the state in which [he is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its RFAA,[1] which was received on January 5, 2023.[2]

Findings of Fact

On May 26, 2022, the Medical Board of California issued a Notice of Automatic Revocation of License that revoked Registrant's California medical license. RFAAX 2, Attachment C, at 1–3. According to California's online records, of which the Agency takes official notice, Registrant's California medical license is revoked.[3] Medical Board of California License Verification, *https://www.mbc.ca.gov/License-Verification* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to engage in the practice of medicine in California, the state in which he is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978).[4]

According to California statute, ''dispense'' means ''to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery.'' Cal. Health & Safety Code § 11010 (West 2022). Further, a ''practitioner'' means a person ''licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in [the] state.'' *Id.* at § 11026(c).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice medicine in California. As discussed above, a physician must be a licensed practitioner to dispense a controlled substance in California. Thus, because Registrant lacks authority to practice medicine in California and, therefore, is not authorized to handle controlled substances in California, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FO7776644 issued to Dylan E. O'Connor, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Dylan E. O'Connor, M.D., to renew or modify this registration, as well as any other pending application of Dylan E. O'Connor, M.D., for additional registration in California. This Order is effective March 6, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on January 25, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–02120 Filed 2–1–23; 8:45 am]

BILLING CODE 4410–09–P

[1] The Government's RFAA is dated November 29, 2022. RFAA, at 5.

[2] Based on a Declaration from a DEA Diversion Investigator, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAAX 2, at 2. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a written statement or corrective action plan and therefore has waived any such rights. RFAA, at 1–2; *see also* 21 CFR 1301.43 and 21 U.S.C. 824(c)(2).

[3] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.gov.*

[4] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . ., to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(g)(1) (this section, formerly § 823(f), was redesignated as part of the Medical Marijuana and Cannabidiol Research Expansion Act, Public Law 117–215, 136 Stat. 2257 (2022)). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton,* 43 FR at 27617.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Fernando Mendez, P.A.; Decision and Order

On August 9, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Fernando Mendez, P.A. (hereinafter, Registrant). Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 1 (OSC), at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. MM3333109 at the registered address of 1001 East Tyler

Avenue, Harlingen, Texas 78550. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is ''currently without authority to handle controlled substances in the State of Texas, the state in which [he is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its RFAA dated January 3, 2023.[1]

Findings of Fact

On July 20, 2021, the Texas Physician Assistant Board issued an Order of Temporary Suspension that suspended Registrant's Texas physician assistant license. RFAAX 3, Attachment B, at 1, 5–6. According to Texas online records, of which the Agency takes official notice, Registrant's license is still suspended.[2] Texas Medical Board License Verification, *https://profile.tmb.state.tx.us* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not currently licensed to engage in the practice of medicine in Texas, the state in which he is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978).[3]

According to Texas statute, ''[d]ispense'' means ''the delivery of a controlled substance in the course of professional practice or research, by a practitioner or person acting under the lawful order of a practitioner, to an ultimate user or research subject. The term includes the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for delivery.'' Tex. Health & Safety Code Ann. section 481.002(12) (2022). Further, a ''practitioner'' means a ''a physician . . . or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state.'' *Id.* at section 481.002(39)(A).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Texas. As discussed above, a person must be a licensed practitioner to dispense a controlled substance in Texas. Thus, because Registrant lacks authority to practice medicine in Texas and, therefore, is not authorized to handle controlled substances in Texas, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. MM3333109 issued to Fernando Mendez, P.A. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending applications of Fernando Mendez, P.A., to renew or modify this registration, as well as any other pending application of Fernando Mendez, P.A., for additional registration in Texas. This Order is effective March 6, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on January 25, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–02122 Filed 2–1–23; 8:45 am]

BILLING CODE 4410–09–P

[1] Based on the Declarations from a DEA Diversion Investigator and a DEA Special Agent, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAAX 2, at 1–2; RFAAX 3, at 2–3. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a written statement or corrective action plan and therefore has waived any such rights. RFAA, at 3; RFAAX 3, at 3; *see also* 21 CFR 1301.43 and 21 U.S.C. 824(c)(2).

[2] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.gov.*

[3] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR 71371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton,* 43 FR at 27617.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 22–22]

Ester Mark, M.D.; Decision and Order

On March 12, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Ester Mark, M.D. (hereinafter, Respondent) of California, alleging that Respondent materially falsified both her April 2019 initial application for a DEA Certificate of Registration and her February 2022 renewal application for that same

registration. OSC, at 3–4 (citing 21 U.S.C. 824(a)(1)).[1]

A hearing was held before DEA Administrative Law Judge Paul E. Soeffing (hereinafter, the ALJ), who on October 3, 2022, issued his Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (hereinafter, RD). The RD recommended revocation of Respondent's registration and denial of Respondent's application for renewal of her registration. RD, at 18. Respondent did not file exceptions to the RD.[2] Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety of the ALJ's rulings, credibility findings,[3] findings of fact, conclusions of law, sanctions analysis, and recommended sanction found in the RD. I. Findings of Fact

The following facts are undisputed. On or about June 12, 2015, the Medical Board of California filed an accusation against Respondent seeking a decision to revoke or suspend Respondent's California medical license. RD, at 3. Further, on or about December 9, 2015, a felony complaint was filed against Respondent in the Superior Court of California, County of Orange, alleging five counts of unlawfully possessing for sale a controlled substance and five counts of unlawfully prescribing a controlled substance without a legitimate medical purpose. *Id.* Both the accusation filed against Respondent's state medical license and the criminal case against Respondent remained pending at all relevant times. *Id.* at 3, 5 (citing Tr. 35–36; Government Exhibit (hereinafter, GX) 4–8, 11). On or about July 7, 2017, DEA issued an OSC, proposing to revoke Respondent's DEA Certificate of Registration No. BM5370123 because Respondent's continued registration was inconsistent with the public interest. RD, at 2–3. On March 31, 2021, DEA issued a Final Order revoking that registration. *Id.* at 3.

On April 2, 2019, Respondent applied for a new DEA Certificate of Registration.[4] Tr. 16, 40–42, 47; GX 2, at 1. The first question on the application asked whether Respondent had ''ever been convicted of a crime in connection with controlled substance(s) under state or federal law . . . or [is] any such action pending?'' and Respondent answered ''no,'' even though she had a pending criminal action against her. RD, at 10–11; Tr. 40–41; GX 2, at 1; GX 6–8. The second question on the application asked whether Respondent had ''ever surrendered (for cause) or had a federal controlled substance registration revoked, suspended, restricted or denied, or is any such action pending?'' and Respondent answered ''no,'' even though she had a pending OSC against her for her previous DEA registration. RD, at 10–11; Tr. 41–42, 44–45; GX 2, at 1; GX 9–10. Finally, the third question on the application asked whether Respondent had ''ever surrendered (for cause) or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, or is any such action pending?'' and Respondent answered, ''no,'' even though she had a pending disciplinary action with the Medical Board of California. RD, at 9–12; Tr. 47; GX 2, at 1; GX 4–5, 11.

Here, the Agency finds that Respondent's answers to the liability questions on her initial application for DEA registration were clearly false; nonetheless, on January 31, 2022, Respondent applied for renewal of her registration and once again falsely answered ''no'' to the first and third liability questions on the application.[5] RD, at 12; Tr. 16–17, 20–21, 28–29; GX 3, at 1; GX 4–8, 11. The Agency also finds from clear, unequivocal, convincing, and unrebutted evidence that in each of the instances in which Respondent provided an incorrect answer to a liability question, she either knew or should have known that her answers were incorrect due to her awareness of the status of the various actions against her.[6]

Regarding her incorrect answers to the liability questions on both her initial and renewal applications, Respondent testified that she had thought that she was responding truthfully but had been confused. Tr. 80; RD, at 6–7.[7] Conversely, the DI testified that she contacted Respondent in November 2021 regarding the incorrect answers on her initial application, but Respondent did not ask for clarification regarding any confusion that she had had with the liability questions and went on to again answer ''no'' to the first and third liability questions on her renewal application even after the DI had spoken with her regarding ''liability questions as a whole'' and the pending criminal and disciplinary charges. Tr. at 99–100; *see also* GX 3, at 1. In regards to her conversation with the DI, Respondent testified that the DI ''wasn't really fair,'' ''was never specific,'' and ''just told [her] that [she] [had] lied on the application.'' Tr. at 90, 105–106. Here, the Agency finds, as the ALJ found, that

[1] The Government sought to revoke the registration in question, No. FM8267052 at the registered address of 9950 Research Drive #A, Irvine, California 92618. *Id.* at 1.

[2] On October 26, 2022, Respondent filed a Motion to Extend Deadline to File Exceptions. On October 27, 2022, the ALJ issued an Order Denying Respondent's Untimely Motion to Extend Deadline to File Exceptions.

[3] The Agency adopts the ALJ's summary of each of the witnesses' testimonies as well as the ALJ's assessment of each of the witnesses' credibility. *See* RD, at 3–7. The Agency agrees with the ALJ that the Diversion Investigator's testimony, which was focused on the non-controversial introduction of documentary evidence and the Diversion Investigator's contact with the case, was credible in that it was consistent, genuine, and without indication of any animosity towards Respondent. *Id.* at 5. Further, the Agency agrees with the ALJ that Respondent's testimony was at times irrelevant, non-responsive, defensive, and dismissive and was not fully credible. *Id.* at 7.

[4] Both initial and renewal applications for a DEA registration include four liability questions, and if a registrant answers ''yes'' to any of the four questions, then the application is flagged for review before it can be approved. RD, at 4–5; Tr. 17. In contrast, if a registrant answers ''no'' to all four liability questions, then the application is automatically approved. RD, at 4; Tr. 50. Because Respondent answered ''no'' to all four liability questions, her application was automatically approved and she received a new DEA registration. RD, at 4; Tr. 48, 50.

[5] Regarding the first liability question, the Diversion Investigator (hereinafter, the DI) testified that Respondent's answer of ''no'' was untruthful because at the time of her renewal application, Respondent was still ''pending state charges.'' Tr. at 21–20, 35–36; GX 3, at 1; GX 6–8. Regarding the third liability question, the DI testified that Respondent's answer of ''no'' was untruthful because at the time of her renewal application, Respondent still had a pending disciplinary action with the Medical Board of California. Tr. 28–29, 35–36; GX 4–5, 11; RD, at 5–6, 12.

[6] Regarding the first liability question on both her initial and renewal applications, Respondent testified that she had been aware of the pending criminal action against her at the time of both her initial and renewal applications. Tr. 67–68, 74–75, 88; *see also* GX 6–8. As such, Respondent knew or should have known at the time of her initial and renewal applications that she had a pending criminal action against her and thus knew or should have known that her answers of ''no'' to the first liability question on both applications were false. *See* GX 2, at 1; GX 3, at 1. Regarding the second liability question on Respondent's initial application, Respondent testified that she went through the administrative hearing process and filed exceptions and so had been aware of the pending OSC against her for her previous DEA registration at the time of her initial application. Tr. 74; *see also* GX 9–10. As such, Respondent knew or should have known at the time of her initial application that she had a pending OSC against her for her previous DEA registration and thus knew or should have known that her answer of ''no'' to the second liability question was false. *See* GX 2, at 1. Finally, regarding the third liability question on both her initial and renewal applications, Respondent testified that she had been aware of the Medical Board of California's pending accusation against her at the time of both her initial and renewal applications. Tr. 70–71, 74–75, 89; *see also* GX 4–5; GX 11. As such, Respondent knew or should have known at the time of her initial and renewal applications that she had a pending disciplinary action with the Medical Board of California and thus knew or should have known that her answers of ''no'' to the third liability question on both applications were false. *See* GX 2, at 1; GX 3, at 1.

[7] *See also* Tr. 66–75, 79, 84–85, 87; GX 2, at 1; GX 3, at 1.

''the Respondent's arguments that her false statements were made because she was 'confused' are not credible.'' RD, at 14.[8]

II. Discussion

The Administrator is authorized to revoke a registration if the registrant has materially falsified an application for registration. 21 U.S.C. 824(a)(1); *see also* RD, at 8. Further, Agency decisions have repeatedly held that false responses to the liability questions on an application for registration are material. *Kevin J. Dobi, APRN,* 87 FR 38184, 38184 (2022) (collecting cases); *see also* RD, at 9, 12–15. Regarding Respondent's claims that she had thought that she was responding truthfully to the liability questions on both her initial and renewal applications, *see supra* I, Agency precedent has found that the Government must only show that a respondent knew or *should have known* that her response to a liability question was false. *Narciso A. Reyes, M.D.,* 83 FR 61678, 61680 (2018) (citing *Samuel S. Jackson, D.D.S.,* 72 FR 23848, 23852 (2007)); *see also* RD, at 12–15. As such, a respondent's claim that she misunderstood a liability question, or otherwise inadvertently provided a false answer to a liability question, is not a defense when the Government has made such a showing. *Reyes,* 83 FR 61680 (citing *Alvin Darby, M.D.,* 75 FR 26993, 26999 (2010)). Indeed, the respondent bears the responsibility to carefully read the liability questions and to answer them honestly; ''[a]llegedly misunderstanding or misinterpreting liability questions does not relieve the [respondent] of this responsibility.'' *Zelideh I. Cordova-Velazco, M.D.,* 83 FR 62902, 62906 (2018) (internal citations omitted).

Having read and analyzed the record, the Agency finds from clear, unequivocal, convincing, and unrebutted evidence that Respondent's initial application for a new registration, submitted in April 2019, contains three material falsifications and that Respondent's renewal application for her registration, submitted in January 2022, contains two material falsifications. *See supra* I. Moreover, even if it is true that Respondent's incorrect answers to the liability questions were caused by confusion or were otherwise inadvertent, it is inconsequential. As such, the Agency finds that the Government has established a *prima facie* case for revocation of Respondent's registration pursuant to 21 U.S.C. 824(a)(1).

III. Sanction

Here, the Government has established grounds to revoke Respondent's registration; thus, the burden shifts to Respondent to show why she can be entrusted with the responsibility of registration. *Garret Howard Smith, M.D.,* 83 FR 18882, 18910 (2018). When a registrant has committed acts inconsistent with the public interest, she must both accept responsibility and demonstrate that she has undertaken corrective measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195,* 77 FR 62316, 62339 (2012) (internal quotations omitted). Here, as the ALJ found, Respondent ''failed to unequivocally accept responsibility at any point during her testimony.'' RD, at 15–16. Respondent instead offered various excuses and reasoning as to why she incorrectly answered the liability questions and continually emphasized that she had been confused, blaming the wording of the questions, the DI, and the Agency for her false answers that she knew or should have known were false. *See supra* I; RD, at 16–17.

When a registrant fails to make the threshold showing of acceptance of responsibility, the Agency need not address the registrant's remedial measures. *Ajay S. Ahuja, M.D.,* 84 FR 5479, 5498 n.33 (2019) (citing *Jones Total Health Care Pharmacy, L.L.C. & SND Health Care, L.L.C.,* 81 FR 79188, 79202–03 (2016)); *Daniel A. Glick, D.D.S.,* 80 FR 74800, 74801, 74810 (2015). Even so, in the current matter, Respondent has made no showing of any remedial measures other than changing her response to the second liability question from ''no'' to ''yes'' on her renewal application once she became aware of the revocation of her previous DEA registration. *See supra* I. Because Respondent still continued to incorrectly answer ''no'' to the first and third liability questions on her renewal application and because Respondent has not offered evidence of any additional measures that she has taken to ensure that she will correctly answer any liability questions in the future, Respondent has not sufficiently demonstrated that she is ready to be entrusted with the responsibility of registration.

In addition to acceptance of responsibility, the Agency considers both specific and general deterrence when determining an appropriate sanction. *Daniel A. Glick, D.D.S.,* 80 FR 74810. In this case, the Agency believes that revocation of Respondent's registration would deter Respondent and the general registrant community from failing to meet their obligation to provide accurate and truthful responses on an application for DEA registration. *Kareem Hubbard, M.D.,* 87 FR 21156, 21164 (2022); RD, at 17. Moreover, Respondent's misconduct was also egregious. *See Garrett Howard Smith, M.D.,* 83 FR 18910 (collecting cases). As the ALJ noted, ''[t]he Respondent's actions of submitting not one, but two applications that include multiple material falsifications goes 'to the heart of the CSA.' '' RD, at 17 (quoting *Crosby Pharmacy and Wellness,* 87 FR 21212, 21215 (2022)).

Having reviewed the record in its entirety, the Agency finds that Respondent cannot be entrusted with the responsibility of DEA registration. Accordingly, the Agency will order that Respondent's registration be revoked and that Respondent's application for renewal of her registration be denied.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FM8267052 issued to Ester Mark, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending applications of Ester Mark, M.D., to renew or modify this registration, as well as any other pending application of Ester Mark, M.D., for additional registration in California. This Order is effective March 6, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on January 25, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–02128 Filed 2–1–23; 8:45 am]

BILLING CODE 4410–09–P

[8] Further, even if it was true that Respondent had been confused, as the ALJ noted, ''the Respondent had the opportunity to resolve any confusion she had when she spoke with the DI regarding her [renewal] application, but she did not do so.'' *Id.; see also* Tr. 92, 99–100.

DEPARTMENT OF LABOR

Agency Information Collection Activities; Request for Intervention, Longshore and Harbor Workers' Compensation Act

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before March 6, 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.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: OWCP administers the Longshore and Harbor Workers' Compensation Act which, through these collections, provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 2, 2022 (87 FR 66210).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Request for Intervention, Longshore and Harbor Workers' Compensation Act.

OMB Control Number: 1240–0058.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 12,414.

Total Estimated Number of Responses: 12,414.

Total Estimated Annual Time Burden: 3,198 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–02142 Filed 2–1–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Claim for Compensation by Dependents Information Reports

AGENCY: Office of Workers' Compensation Programs, Division of Federal Employees', Longshore and Harbor Workers' Compensation—DFELHWC–FECA

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Claim for Compensation by Dependents Information Reports.'' This request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by April 3, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Background: The forms included in this package are forms used by Federal employees and their dependents to claim benefits, to prove continued eligibility for benefits, to show entitlement to remaining compensation payments of a deceased employee and to show dependency under the Federal Employees' Compensation Act. There are six items in this information collection request. The information collected by Forms CA–5 is used by dependents for claiming compensation for the work-related death of a Federal employee and Form CA–5b is used by other survivors. Form Letter CA–1031 is used in disability cases and provides information to determine whether a claimant is supporting a dependent and is entitled to additional compensation. Form Letter CA–1074 is a follow up to

CA–5b to request clarification of any information that is unclear and incomplete in the CA–5b. The Form Letter ''Compensation Due at Death'' is used to request information necessary to distribute compensation due when an employee dies who was receiving or who was entitled to compensation at the time of death for either disability benefits or a scheduled award. The Form Letter ''Student Dependency'' is used to obtain information regarding the student status of a dependent. When a child reaches 18 years of age, they are no longer considered an eligible dependent unless they are a full time student or incapable of self-support. This information collection is currently approved for use through July 31, 2023.

This information collection is authorized by 5 CFR 1320.3(c)(3) and is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1240–0013.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL-Office of Workers' Compensation Programs.

Type of Review: Extension.

Title of Collection: Claim for Compensation by Dependents Information Reports.

Forms: CA–5, CA–5b; Form Letters (CA–1031, CA–1074, Compensation Due at Death, and Student Dependency).

OMB Control Number: 1240–0013.

Affected Public: Individuals or Households.

Number of Respondents: 1,241.

Frequency: On occasion.

Number of Responses: 1,241.

Annual Burden Hours: 1,063.

Annual Respondent or Recordkeeper Cost: $556.00.

Authority: 44 U.S.C. 3506(c)(2)(A).

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2023–02143 Filed 2–1–23; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Special Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), National Foundation of the Arts and the Humanities (NFAH).

ACTION: Notice of meeting.

SUMMARY: The National Museum and Library Services Board, which advises the Director of the Institute of Museum and Library Services in awarding national awards and medals, will meet by teleconference on March 1, 2023, to review nominations for the 2023 National Medal for Museum and Library Service.

DATES: The meeting will be held on Wednesday, March 1, 2022, from 3 p.m. Eastern Time until adjourned.

ADDRESSES: The meeting will convene virtually.

FOR FURTHER INFORMATION CONTACT: Katherine Maas, Chief of Staff and Alternate Designated Federal Officer, Institute of Museum and Library Services, Suite 4000, 955 L'Enfant Plaza North SW, Washington, DC 20024; (202) 653–4798; *kmaas@imls.gov.*

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is meeting pursuant to the National Museum and Library Service Act, 20 U.S.C., 9105a, and the Federal Advisory Committee Act (FACA) as amended, 5 U.S.C. app. to review nominations for the 2023 National Medal for Museum and Library Service.

The meeting will be closed to the public pursuant to subsections (c)(4), (c)(6) and (c)(9) of section 552b of title 5, United States Code, as amended. The closed meeting will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action.

Dated: January 30, 2023.

Brianna Ingram,

Paralegal Specialist.

[FR Doc. 2023–02184 Filed 2–1–23; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0145]

Information Collection: Reporting of Defects and Noncompliance

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Reporting of Defects and Noncompliance.''

DATES: Submit comments by April 3, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission 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:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0145. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed

in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0145 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–2022–0145. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2022–0145 on this website.

• *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 supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML22206A216 and ML22206A217.

• *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 and 4 p.m. (ET), Monday through Friday, except Federal holidays.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include NRC–2022–0145 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, 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 comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 21, Reporting of Defects and Noncompliance.

2. *OMB approval number:* 3150–0035.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* On occasion. Defects and noncompliances are reportable as they occur.

6. *Who will be required or asked to respond:* Individual directors and responsible officers of firms constructing, owning, operating, or supplying the basic components of any facility or activity licensed under the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended, to report immediately to the NRC the discovery of defects in basic components or failures to comply that could create a substantial safety hazard.

7. *The estimated number of annual responses:* 755 responses (43 reporting responses + 357 third party disclosure response + 355 recordkeepers).

8. *The estimated number of annual respondents:* 355.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 28,975 (3,407 reporting hours + 25,200 hours recordkeeping + 368 hours third party disclosure).

10. *Abstract:* Part 21 of title 10 of the Code of Federal Regulations (10 CFR), requires each individual, corporation, partnership, commercial grade dedicating entity, or other entity subject to the regulations in this part to adopt appropriate procedures to evaluate deviations and failures to comply to determine whether a defect exists that could result in a substantial safety hazard. Depending upon the outcome of the evaluation, a report of the defect must be submitted to the NRC. Reports submitted under 10 CFR part 21 are reviewed by the NRC staff to determine whether the reported defects or failures to comply in basic components at the NRC licensed facilities or activities are potentially generic safety problems. These reports have been the basis for the issuance of numerous NRC Generic Communications that have contributed to the improved safety of the nuclear industry. The records required to be maintained in accordance with 10 CFR part 21 are subject to inspection by the NRC to determine compliance with the subject regulation.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.

2. Is the estimate of the burden of the information collection accurate? Please explain your answer.

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

5. Are the current burden estimates for recordkeeping accurate given that records must be retained for longer than three years (for example, entities providing a certified design or design approval under Part 52 retain any

notifications sent to purchasers and affected licensees for a minimum of 5 years after the date of the notification, and retain a record of the purchasers for 15 years after delivery of the design)? Please explain your answer.

Dated: January 30, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–02151 Filed 2–1–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–025; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Combined license amendment; issuance and opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued License Amendment No. 189 to Combined License (COL) NPF–91. The COL amendment involved changes to Vogtle Electric Generating Plant (VEGP), Unit 3, COL appendix A, Technical Specifications. Specifically, the amendment involved changes necessary to facilitate rework of two piping supports to address elevated piping line vibration located on the ''B'' and ''D'' Automatic Depressurization System (ADS) stage 4 lines that discharge to the No. 2 steam generator compartment. Southern Nuclear Operating Company, Inc., (SNC) is licensed to construct and operate VEGP, Unit 3, located in Burke County, Georgia.

DATES: The amendment was issued on January 13, 2023. Submit comments by March 6, 2023. A request for a hearing or petition for leave to intervene must be filed by April 3, 2023.

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–2008–0252. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William (Billy) Gleaves, Vogtle Project Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2008–0252 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–2008–0252.
- *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–2008–0252 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. Introduction

The NRC is issuing License Amendment No. 189 to COL NPF–91. With the requested amendment, SNC sought proposed changes to COL, Appendix A, Technical Specifications (TS) in an application dated January 12, 2023, titled, ''Emergency License Amendment Request: Technical Specification (TS) Limiting Conditions for Operation (LCO) 3.4.11, 3.4.12, and 3.4.13 Operability Requirements for Automatic Depressurization System (ADS) Stage 4 Flow Paths Prior to Initial Criticality,'' designated as license amendment request (LAR) 23–002. Specifically, the changes add Notes to the TS that details the specific conditions under which the specified LCOs would not apply to ADS stage 4 flow paths. The licensee requested the changes to facilitate rework of two piping supports on the ''B'' and ''D'' ADS stage 4 lines. If the rework was performed under the current TS, it would require shutdown and cooldown actions that may take additional time, require reduction in operating mode, and possibly require additional actions. The letter to SNC, the NRC safety evaluation, and the amendment document are available in ADAMS under Package Accession No. ML23013A214.

III. Notice of Issuance of Amendment To Combined License, Final Determination of No Significant Hazards Consideration, Opportunity To Comment, and Opportunity for a Hearing (Emergency Situation)

By letter dated January 12, 2023 (ADAMS Accession No. ML23012A238), SNC requested that the NRC amend COL NPF–91 for VEGP, Unit 3. The Commission has issued the proposed amendment, which is described in section II of this **Federal Register** notice.

The Commission has determined for this amendment that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in Chapter 1 of title 10 of the *Code of Federal Regulations* (10 CFR), which are set forth in the license amendment.

Because of the emergency situation associated with the date the amendment was needed, there was not time for the Commission to publish before issuance its usual notice of consideration of issuance of amendment, proposed no significant hazards consideration (NSHC) determination and opportunity for public comment, and opportunity for a hearing. The Commission was able to consult the State official before issuance. The State of Georgia had no comment.

Where the Commission finds that an emergency situation exists, in that failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may issue a license amendment involving no significant hazards consideration without prior notice and opportunity for a hearing or for public comment. Also, under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that NSHC is involved.

The Commission has applied the standards of 10 CFR 50.92, ''Issuance of amendment,'' and has made a final determination that the amendment involves NSHC. The basis for this determination is contained in the NRC documents listed in section II of this notice. Accordingly, the amendment has been issued and made effective as indicated. Because the amendment was issued in an emergency situation, the Commission is with this notice providing an opportunity for public comment on the NSHC determination and an opportunity for hearing on the amendment. Please provide comments by March 6, 2023. A request for a hearing or petition for leave to intervene must be filed by April 3, 2023, as discussed later in this notice.

The Commission has determined that the amendment satisfies the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

For further details with respect to this action, including the Commission's final NSHC determination or discussion of emergency circumstances, see the amendment and associated documents such as the Commission's letter and safety evaluation, which are referenced in section II of this notice.

IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and a petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/cfr.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov*, or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/*

getting-started.html. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

VI. Conclusion

For the reasons set forth in the safety evaluation, the staff issued the amendment that SNC requested on January 13, 2023, as part of a package to SNC (ADAMS Package Accession No. ML23013A214).

Dated: January 30, 2023.

For the Nuclear Regulatory Commission.

Victor E. Hall,

Director, Vogtle Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–02204 Filed 2–1–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Product Change—Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* February 2, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on January 19, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Parcel Select Contract 59 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–109, CP2023–110.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2023–02168 Filed 2–1–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96762; File No. SR–EMERALD–2023–02]

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX Emerald, LLC To Amend Exchange Rule 531, Reports, Market Data Products and Services, To Provide for the New ''Liquidity Taker Event Report—Resting Simple Orders''

January 27, 2023.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 18, 2023, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 531 to provide for the new ''Liquidity Taker Event Report—Resting Simple Orders''.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald* at MIAX Emerald's 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 531 to provide for the new ''Liquidity Taker Event Report—Resting Simple Orders'' (the ''Report''). The proposed Report will be an optional product [3] available to Members.[4] Currently, the Exchange provides two types of Liquidity Taker Event Reports, one including information about incoming orders seeking to remove liquidity from the Simple Order Book [5] described under Exchange Rule 531(a), and a second including the same information but about incoming Complex Orders that seek to remove Complex Orders resting on the Strategy Book [6] described under Exchange Rule 531(b). Both of these existing reports provide data for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange. But for the modified timeframe and one difference described below, the proposed Report would include the same data as the Liquidity Taker Event Report for Simple Orders but would focus on executions and contra-side responses that occurred after 200 microseconds of the time the resting order was received by the Exchange and within 200 microseconds of receipt of the first attempt to execute against the resting order after the initial 200 microsecond time period has expired as described further below.

Like for the existing reports, the Exchange believes the additional data points from the matching engine outlined below for the proposed Report may also help Members gain a better understanding about their interactions with the Exchange. The Exchange believes the proposed Report will provide Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates. The proposed Report will increase transparency and democratize information so that all firms that subscribe to the Report have access to the same information on an equal basis, even for firms that do not have the appropriate resources to generate a similar report regarding interactions with the Exchange. Like the existing reports, none of the components of the proposed Report include real-time market data.

Members generally would use a liquidity accessing order if there is a high probability that it will execute against an order resting on the Simple Order Book. Like the existing reports, the proposed Report would identify by how much time an order that may have been marketable missed an execution but would focus on a later timeframe than the existing reports. The proposed Report will provide greater visibility into the missed trading execution, which will allow Members to optimize their models and trading patterns to yield better execution results.

Like the existing reports, the proposed Report will be a Member-specific report and will help Members to better understand by how much time a particular order missed executing against a specific resting order, thus allowing that Member to determine whether it wants to invest in the necessary resources and technology to mitigate missed executions against certain resting orders on the Simple Order Book. Like the existing reports, the Exchange proposes to provide the Report on a T+1 basis. As further described below, the proposed Report will be specific and tailored to the Member that is subscribed to the Report and any data included in the Report that relates to a Member other than the Member receiving the Report will be anonymized.

The Exchange proposes to provide the proposed Report in response to additional Member demand for data concerning the timeliness of their incoming orders and executions against certain resting orders that have been resting on the Simple Order Book for at least 200 microseconds and within 200 microseconds of receipt of the first attempt to execute against the resting order after the initial 200 microsecond time period has expired.. Certain Members that subscribe to the existing reports have requested the same information as the Simple Order report but for the later timeframe described herein so that they can better understand the timeliness of their incoming orders and efficacy of their attempts to execute against resting liquidity on the Exchange's Simple Order Book. The purpose of the proposed Report is to provide Members the necessary data in a standardized format on a T+1 basis to those that subscribe to the Report on an equal basis.

Proposed Exchange Rule 531(c) would provide that the Report is a daily report that provides a Member (''Recipient Member'') with its liquidity response time details for executions of an order resting on the Book, where that Recipient Member attempted to execute against such resting order within an extended timeframe that meets certain criteria described below.[7]

Report Content

The content of the proposed Report is basically identical to that of the existing Liquidity Taker Event Report for Simple Orders described under Exchange Rule 531(a) with two differences. The first difference is the timeframe of the proposed Report mentioned above and described in more detail below. The second difference is that, unlike the existing Liquidity Taker Event Report for Simple Orders, the proposed Report would not include the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange. Each of these differences are described below. All other aspects of the proposed Report are identical to the existing Liquidity Taker Event Report for Simple Orders described under Exchange Rule 531(a).

Like current paragraph (a)(1) of Exchange Rule 531 for the existing Liquidity Taker Event Report for Simple Orders, proposed paragraph (c)(1) of Rule 531 would describe the content of the proposed Report and delineate which information would be provided

[3] The Exchange intends to submit a separate filing with the Commission pursuant to Section 19(b)(1) to propose fees for the Liquidity Taker Event Report—Resting Simple Orders.

[4] 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.

[5] The term ''Simple Order Book'' means ''the Exchange's regular electronic book of orders and quotes.'' *See* Exchange Rule 518(a)(15).

[6] The term ''Complex Strategy'' means ''a particular combination of components and their ratios to one another. New complex strategies can be created as the result of the receipt of a complex order or by the Exchange for a complex strategy that is not currently in the System.'' *See* Exchange Rule 518(a)(6). The term ''Strategy Book'' means the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17). The Strategy Book is organized by Complex Strategy in that individual orders for a defined Complex Strategy are organized together in a book that is separate from the orders for a different Complex Strategy.

[7] The Exchange proposes to renumber current Exchange Rule 531(c), Market Data Products, as Exchange Rule 531(d), and current Exchange Rule 531(d), High Precision Network Time Signal Service (''HPNTSS''), as Exchange Rule 531(e). The Exchange does not propose to amend the rule text of either rule.

regarding the resting order,[8] the response that successfully executed against the resting order, and the response submitted by the Recipient Member that missed executing against the resting order. It is important to note that the content of the Report will be specific to the Recipient Member and the Report will not include any information related to any Member other than the Recipient Member, other than certain information about the resting order described below. The Exchange will restrict all other market participants, including the Recipient Member, from receiving another market participant's data.

Resting Order Information. Like current paragraph (a)(1)(i) of Exchange Rule 531 for the existing Liquidity Taker Event Report for Simple Orders, proposed Exchange Rule 531(c)(1)(i) would provide that the following information would be included in the Report regarding the resting order: (A) the time the resting order was received by the Exchange; [9] (B) symbol; (C) order reference number, which is a unique reference number assigned to a new order at the time of receipt; (D) whether the Recipient Member is an Affiliate [10] of the Member that entered the resting order; [11] (E) origin type (*e.g.,* Priority Customer,[12] Market Maker [13]); (F) side (buy or sell); and (G) displayed price and size of the resting order.[14]

Execution Information. Like current paragraph (a)(1)(ii) of Exchange Rule 531 for the existing Liquidity Taker Event Report for Simple Orders, proposed Exchange Rule 531(c)(1)(ii) would provide that the following information would be included in the Report regarding the execution of the resting order: (A) the EBBO [15] at the time of execution; [16] (B) the ABBO [17] at the time of execution; [18] (C) the time first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response; [19] and (D) whether the response was entered by the Recipient Member. If the resting order executes against multiple contra-side responses, only the EBBO and ABBO at the time of the execution against the first response will be included.

Exchange Rule 531(a)(1)(ii)(D) provides that the existing Liquidity Taker Event Report for Simple Orders also includes the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange. The proposed Report would not include the same information because that timeframe could be for an extended period of time since the proposed Report focuses on orders that have been resting on the Simple Order Book for longer than 200 microseconds and, therefore, the Exchange believes is less likely to be valuable to the Recipient Member.

Recipient Member's Response Information. Like current paragraph (a)(1)(iii) of Exchange Rule 531 for the existing Liquidity Taker Event Report for Simple Orders, proposed Rule 531(c)(1)(iii) would provide that the following information would be included in the Report regarding response(s) sent by the Recipient Member: (A) Recipient Member identifier; (B) the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not; [20] (C) size and type of each response submitted by Recipient Member; and (D) response reference number, which is a unique reference number attached to the response by the Recipient Member.

Timeframe for Data Included in Report

The timeframe covered by the proposed Report is the primary difference between it and the existing Liquidity Taker Event Report for Simple Orders. The existing Liquidity Taker Event Report for Simple Orders provides data for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange. Meanwhile, the proposed Report would include the same data as the Liquidity Taker Event Report for Simple Orders but would focus on executions and contra-side responses that occurred after 200 microseconds of the time the resting order was received by the Exchange, and within 200 microseconds of receipt of any Member's first attempt to execute against the resting order after the initial 200 microsecond time period has expired. More specifically, the resting order must rest on the Simple Order Book for at least 200 microseconds and once that initial 200 microsecond period has passed, a Member must then submits an order to attempt to execute against that resting order. This event starts a second 200 microsecond period within which the proposed Report would include data on executions and contra-side responses submitted by the Recipient Member to execute against that resting order.

For example, Member A submits an order that is posted to the Simple Order Book. 200 microseconds passes and Member A's order remains posted to the Simple Order Book. Then Member B enters a marketable order to execute against Member A's resting order, starting the second 200 microsecond window. Within this next 200 microsecond window, Member C sends a marketable order to execute against Member A's resting Order. Because Member B's order is received by the

[8] Only displayed orders will be included in the Report. The Exchange notes that it does not currently offer any non-displayed orders types on its options trading platform.

[9] The time the Exchange received the resting order would be in nanoseconds and is the time the resting order was received by the Exchange's System.

[10] The term ''affiliate'' of or person ''affiliated with'' another person means a person who, directly, or indirectly, controls, is controlled by, or is under common control with, such other person. *See* Exchange Rule 100.

[11] The Report will simply indicate whether the Recipient Member is an Affiliate of the Member that entered the resting order and not include any other information that may indicate the identity of the Member that entered the resting order.

[12] 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). The number of orders shall be counted in accordance with Interpretation and Policy .01 to Exchange Rule 100. *See* Exchange Rule 100.

[13] The term ''Market Maker'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[14] The Exchange notes that the displayed price and size are also disseminated via the Exchange's proprietary data feeds and the Options Price Reporting Authority (''OPRA''). The Exchange also notes that the displayed price of the resting order may be different than the ultimate execution price. This may occur when a resting order is displayed and ranked at different prices upon entry to avoid a locked or crossed market.

[15] The term ''EBBO'' means the best bid or offer on the Exchange. *See* Exchange Rule 100.

[16] Exchange Rule 531(c)(1)(ii)(A) would further provide that if the resting order executes against multiple contra-side responses, only the EBBO at the time of the execution against the first response will be included.

[17] The term ''ABBO'' or ''Away Best Bid or Offer'' means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[18] Exchange Rule 531(c)(1)(ii)(B) would further provide that if the resting order executes against multiple contra-side responses, only the ABBO at the time of the execution against the first response will be included.

[19] The time the Exchange received the response order would be in nanoseconds and would be the time the response was received by the Exchange's network, which is before the time the response would be received by the System.

[20] For purposes of calculating this duration of time, the Exchange will use the time the resting order and the Recipient Member's response(s) is received by the Exchange's network, both of which would be before the order and response(s) would be received by the System. This time difference would be provided in nanoseconds.

Exchange before Member C's order, Member B's order executes against Member A's resting order. The proposed Report would provide Member C the data points necessary for that firm to calculate by how much time they missed executing against Member A's resting order.

The above timeframe would be codified under proposed paragraph (c)(2) of Rule 531 which would provide that the proposed Report would include the data set forth under Rule 531(c)(1) described above for executions and contra-side responses that occurred (i) after 200 microseconds of the time the resting order was received by the Exchange and (ii) within 200 microseconds of receipt of the first attempt to execute against the resting order after the initial 200 microsecond time period under (c)(2)(i) of this paragraph has expired.

Scope of Data Included in the Report

Like current paragraph (a)(3) of Exchange Rule 531 for the existing Liquidity Taker Event Report for Simple Orders, proposed paragraph (c)(3) of Exchange Rule 531 would provide that the proposed Report will only include trading data related to the Recipient Member and, subject to the proposed paragraph (4) of Rule 531(c) described below, will not include any other Member's trading data other than that listed in paragraphs (1)(i) and (ii) of Exchange Rule 531(c) described above.

Historical Data

Like current paragraph (a)(4) of Exchange Rule 531 for the existing Liquidity Taker Event Report for Simple Orders, proposed paragraph (c)(4) of Rule 531 would specify that the proposed Report will contain historical data from the prior trading day and will be available after the end of the trading day, generally on a T+1 basis.

2. Statutory Basis

The Exchange believes the 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.[21] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the optional Report to those interested in subscribing to receive the data. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[23] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The timeframe covered by the proposed Report is the primary difference between it and the existing Liquidity Taker Event Report for Simple Orders. However, this difference only pertains to the timeframe covered by each report, with each report containing the exact same data fields with one exception described here. The existing Liquidity Taker Event Report for Simple Orders provides data for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange. Meanwhile, the proposed Report would basically include the same data as the Liquidity Taker Event Report for Simple Orders but would focus on executions and contra-side responses that occurred after 200 microseconds of the time the resting order was received by the Exchange and one additional difference. The one difference is that unlike the existing Liquidity Taker Event Report for Simple Orders, the proposed Report would not include the time difference between the time the resting order and first response that executes against the resting order are received by the Exchange. Each report focuses on 200 microsecond windows with the existing Report's window starting at the time of receipt of the resting order and the proposed Report's window starting with the first attempt to execute against the resting order after the order was resting on the Simple Order Book for at least 200 microseconds.

The Exchange believes the proposed Report will serve to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest because it will benefit investors by facilitating their prompt access to the value added information that is included in the proposed Report. The proposed Report will allow Members to access information regarding their trading activity that they may utilize to evaluate their own trading behavior and order interactions.

Like the existing Liquidity Taker Event Report for Simple Orders, the proposed Report is designed for Members that are interested in gaining insight into latency in connection with orders that failed to execute against an order resting on the Exchange's Simple Order Book by providing those Members data to analyze by how much time their order may have missed an execution against a contra-side order resting on the Book. The Exchange believes that providing this optional latency data to interested Members is consistent with facilitating transactions in securities, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest because it provides greater visibility into the latency of Members' incoming orders. Members may use this data to optimize their models and trading patterns in an effort to yield better execution results by calculating by how much time their order may have missed an execution.

Like the existing Liquidity Taker Event Report for Simple Orders, the proposed Report is designed to offer latency information in a systematized way and standardized format to any Member that chooses to subscribe to the proposed Report. As a result, the proposal will make latency information for liquidity-seeking orders available in an equalized manner and will increase transparency, particularly for Recipient Members that may not have the expertise to generate the same information on their own. The proposed Report may better enable Recipient Members to increase the fill rates for their liquidity-seeking orders. At the same time, as is also discussed above, the Report is designed to prevent a Recipient Member from learning other Members' sensitive trading information. The Report would not be a real-time market data product, as it would provide only historical trading data for the previous trading day, generally on a T+1 basis. In addition, the data in the Report regarding incoming orders that failed to execute would be specific to the Recipient Member's orders, and other information in the proposed Report regarding resting orders and executions would be anonymized if it relates to a Member other than the Recipient Member.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] *Id.*

The proposed Report generally contains three buckets of information, each of which are identical to the same buckets of information contained in the existing Liquidity Taker Event Report for Simple Orders, with one exception discussed herein and again below. The first two buckets include information about the resting order and the execution of the resting order. This information is generally available from other public sources, such as OPRA and the Exchange's proprietary data feeds, or is similar to information included in a report offered by another exchange. For example, OPRA provides bids, offers, and consolidated last sale and quotation information for options trading on all national securities exchanges, including the Exchange. In addition, the Exchange offers the Top of Market (''ToM'') feed which provides real-time quote and last sale information for all displayed orders on the Book.[24]

Specifically, the first bucket of information contained in the Report for the resting order includes the time the resting order was received by the Exchange, the symbol, unique reference number assigned at the time of receipt, side (buy or sell), and the displayed price and size of the resting order. Further, the symbol, origin type, side (buy or sell), and displayed price and size are also available either via OPRA or the Exchange's proprietary data feeds. The first bucket of information also indicates whether the Recipient Member is an Affiliate of the Member that entered the resting order. This data field will not indicate the identity of the Member that entered the resting order and would simply allow the Recipient Member to better understand the scenarios in which it may execute against the orders of its Affiliates.[25]

The secondbucket of information contained in the Report regards the execution of the resting order and includes the EBBO and ABBO at the time of execution. These data points are also available either via OPRA or the Exchange's proprietary data feeds. The second bucket of information will also indicate whether the response was entered by the Recipient Member. This data point is simply provided as a convenience. If not entered by the Recipient Member, this data point will be left blank so as not to include any identifying information about other Member activity. The second bucket of information also includes the size, as well as the time and type of first response that executes against the resting order. These data points would assist the Recipient Member in analyzing by how much time their order may have missed an execution against a contra-side order resting on the Book. Unlike the existing Liquidity Taker Event Report for Simple Orders, the proposed Report would not include the time difference between the time the resting order and first response that executes against the resting order are received by the Exchange. The proposed Report would not include this data point because the Exchange understands Recipient Members may not find it useful due to the fact that the proposed Report focuses on orders that have been resting on the Simple Order Book for longer than 200 microseconds. Therefore, the Exchange does not propose to include this data point as a means to streamline the proposed Report and remove unnecessary data.

The third bucket of information is about the Recipient Member's response(s) and the time their response(s) is received by the Exchange. This includes the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not. As above, this data point would assist the Recipient Member in analyzing by how much time their order may have missed an execution against a contra-side order resting on the Book. This bucket would also include the size and type of each response submitted by the Recipient Member, the Recipient Member identifier, and a response reference number which is selected by the Recipient Member. Each of these data points are unique to the Recipient Member and should already be known by Recipient Member even if not included in the Report.

Like the existing Liquidity Taker Event Report for Simple Orders, the Exchange proposes to provide the Report on a voluntary basis and no Member will be required to subscribe to the Report. The Exchange notes that there is no rule or regulation that requires the Exchange to produce, or that a Member elect to receive, the Report. It is entirely a business decision of each Member to subscribe to the Report. The Exchange proposes to offer the Report as a convenience to Members to provide them with additional information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Member that chooses to subscribe to the Report may discontinue receiving the Report at any time if that Member determines that the information contained in the Report is no longer useful.

In summary, the proposed Report will help to protect a free and open market by providing additional data (offered on an optional basis) to the marketplace and by providing investors with greater choices.[26] Additionally, the proposal would not permit unfair discrimination because the proposed Report will be available to all Exchange Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange believes that the proposed Report will enhance competition[27] by providing a new option for receiving market data to Members. The proposed Report will also further enhance competition between exchanges by allowing the Exchange to expand its product offerings to include an additional report to provide latency information requested by Members.

In this instance, the proposed rule change to offer the optional Report is in response to Member interest and requests for such information, including from some Members that subscribe to the existing Liquidity Taker Event Report for Simple Orders. The Exchange does not believe the proposed Report will have an inappropriate burden on intra-market competition between Recipient Members and other Members who do not receive the Report. As discussed above, the first two buckets of information included in the Report contain information about the resting order and the execution of the resting order, both of which are generally available to Members that choose not to receive the Report from other public sources, such as OPRA and the Exchange's proprietary data feeds. The third bucket of information is about the Recipient Member's response and the time their response is received by the Exchange, information which the Recipient Member would be able to obtain without receiving the Report. Additionally, some Members may already be able to derive a substantial amount of the same data that is provided by some of the components

[24] *See* Section 6)a) of the Exchange's fee schedule.

[25] The Exchange's surveils to monitor for abhorrent behavior related to internalized trades and identify potential wash sales.

[26] *See* Sec. Indus. Fin. Mkts. Ass'n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data).

[27] *Id.*

based on their own executions and algorithms.

In sum, if the proposed Report is unattractive to Members, Members will opt not to receive it. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [28] and Rule 19b–4(f)(6) [29] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–EMERALD–2023–02 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–EMERALD–2023–02. 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–EMERALD–2023–02, and should be submitted on or before February 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–02127 Filed 2–1–23; 8:45 am]

BILLING CODE 8011–01–P

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96763; File No. SR–NYSEARCA–2023–09]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

January 27, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 26, 2023, NYSE Arca, Inc. (''NYSE Arca'' 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 modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding the Floor Broker Fixed Cost Prepayment Incentive Program and certain manual execution fees. The Exchange proposes to implement the fee change effective January 26, 2023.[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on December 30, 2022 (SR–NYSEARCA–2022–86), with an effective date of January 3, 2023, then withdrew such filing and amended the Fee Schedule on January 13, 2023 (SR–NYSEARCA–2023–08), which latter filing the Exchange withdrew on January 26, 2023.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Floor Broker Fixed Cost Prepayment Incentive Program (the ''FB Prepay Program'') and to modify certain fees relating to manual executions. The Exchange proposes to implement the rule change on January 26, 2023.

Professional Customer Manual Executions

The Exchange proposes to modify the fees for Professional Customer manual executions (''Professional Customer Manual Fees'').[5] The Fee Schedule currently provides for a $0.25 per contract fee for such executions, which fee the Exchange has waived for the period August 1, 2022 to December 31, 2022.[6] The Exchange now proposes to make the waiver permanent by modifying the fee for Professional Customer manual executions to $0.00.[7] The Exchange also proposes to delete the asterisk-denoted statement regarding the period of the waiver, as the language would no longer be relevant in light of this proposed change and following the expiration of the waiver period on December 31, 2022. The proposed change is intended to continue to attract manually executed Professional Customer orders to the Exchange, and the Exchange believes that all market participants stand to benefit from an increase in such volume, which would promote market depth, facilitate tighter spreads and enhance price discovery, and may lead to a corresponding increase in order flow from other market participants as well.

Firm and Broker Dealer Monthly Fee Cap

The Exchange also proposes to modify the Firm and Broker Dealer Monthly Fee Cap (the ''Monthly Fee Cap'').[8] Currently, combined Firm proprietary fees and Broker Dealer fees for transactions in standard option contracts cleared in the customer range for manual executions and QCC transactions are capped at $100,000 per month. A Firm or Broker Dealer currently may also qualify for a decreased fee cap by achieving Customer Penny Posting Credit Tier levels.[9]

The Exchange proposes to raise the Monthly Fee Cap to $150,000 per month and to eliminate the decreased fee caps for Firms or Broker Dealers that achieve Customer Penny Posting Credit Tiers, such that all Firms and Broker Dealers would be eligible for a $150,000 monthly fee cap. Accordingly, the Exchange proposes to modify the Fee Schedule to replace $100,000 with $150,000 in the description of the Monthly Fee Cap and to delete the sentence and table describing decreased fee caps offered to Firms or Broker Dealers that achieve Customer Penny Posting Credit Tiers. The Exchange does not otherwise propose any changes to the provisions of the Monthly Fee Cap. Strategy executions, royalty fees, and firm trades executed via a Joint Back Office agreement will continue to be excluded from fees to which the Monthly Fee Cap would apply. The incremental service fee of $0.01 per contract for Firm or Broker Dealer manual transactions other than QCC transactions (for which there is no incremental service fee) will continue to apply once the Monthly Fee Cap has been reached.

The Exchange believes that the proposed change, despite increasing the amount of the Monthly Fee Cap, would continue to incentivize Firms and Broker Dealers to direct order flow to the Exchange to achieve the benefits of a fee cap. The Exchange also notes that the proposed change would provide for a uniform fee cap amount that would be applicable to all Firms and Broker Dealers and sets the Monthly Fee Cap at an amount similar to the firm fee cap established by other options exchanges.[10]

FB Prepay Program

The FB Prepay Program is a prepayment incentive program that allows Floor Brokers to prepay certain of their annual Eligible Fixed Costs in exchange for volume rebates. Currently, the FB Prepay Program offers participating Floor Brokers who prepay certain annual fixed costs an opportunity to qualify for rebates by achieving growth in billable manual volume by a certain percentage as measured against one of two benchmarks (the ''Percentage Growth Incentive'').[11] Specifically, the Percentage Growth Incentive is designed to encourage Floor Brokers to increase their average daily volume in billable manual contract sides to qualify for a Tier; each Tier of the FB Prepay Program corresponds to an annual rebate equal to the greater of the ''Total Percentage Reduction of pre-paid annual Eligible Fixed Costs'' or the ''Alternative Rebate.''[12] In either case, participating Floor Brokers receive their annual rebate amount in the following January.[13] Floor Brokers that wish to participate in the FB Prepay Program for the following calendar year must notify the Exchange no later than the last business day of December in the current year.[14]

The Exchange now proposes to simplify the FB Prepay Program by eliminating the Percentage Growth Incentive and accompanying annual rebates[15] and instead providing FB

[5] *See* Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, TRANSACTION FEE FOR MANUAL EXECUTIONS—PER CONTRACT.

[6] *See* Securities Exchange Act Release No. 95412 (August 3, 2022), 87 FR 48523 (August 9, 2022) (SR–NYSEARCA–2022–47) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the NYSE Arca Options Fee Schedule) (the ''Professional Customer Manual Fee Filing'').

[7] The Professional Customer Manual Fee Filing also modified the Fee Schedule's description of the FB Prepay Program to provide that volume from Professional Customer manual executions would still be included in the calculation of billable volume for purposes of the FB Prepay Program when Professional Customer manual execution fees are waived. *See id.* The Exchange proposes to delete this statement further to its proposal to eliminate the fee for Professional Customer manual executions and consistent with the proposed changes to the FB Prepay Program as described below.

[8] *See* Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, FIRM AND BROKER DEALER MONTHLY FEE CAP.

[9] *See id.* at CUSTOMER PENNY POSTING TIERS.

[10] *See, e.g.,* NYSE American Options Fee Schedule, Section I.I., Firm Monthly Fee Cap (providing for $150,000 cap on fees associated with firm manual transactions); Nasdaq PHLX LLC, Options 7 Pricing Schedule, Section 4 (providing for a ''Monthly Firm Fee Cap'' capping firm fees at $150,000). The Exchange believes its proposed fee cap is of a comparable amount to those offered by these other options exchanges, although the volumes considered to qualify for the various fee caps differ.

[11] *See* Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the ''FB Prepay Program''). ''Eligible Fixed Costs'' include the OTP Trading Participant Rights fee for a Floor Broker, Floor Broker Order Capture Device—Market Data Fees, Floor Booth fees, the Options Floor Access Fee, and Wire Services fees, as set forth in the table in the Fee Schedule.

[12] *See id.* The Percentage Growth Incentive excludes Customer volume, Firm Facilitation and Broker Dealer facilitating a Customer trades, and QCCs. Any volume calculated to achieve the Firm and Broker Dealer Monthly Fee Cap and the Limit of Fees on Options Strategy Executions (''Strategy Cap''), will likewise be excluded from the Percentage Growth Incentive because fees on such volume are already capped and therefore do not increase billable manual volume. *See id.*

[13] *See id.*

[14] *See id.*

[15] To effect the proposed change to eliminate the Percentage Growth Incentive and related rebates, the Exchange also proposes to delete the last sentence of the description of the FB Prepay Program (which currently provides that Floor Brokers in the FB Prepay Program will receive their rebate in the following January), as such text would no longer apply to the FB Prepay Program, as modified.

Prepay Program participants with monthly rebates through the Manual Billable Rebate Program. Specifically, all Floor Brokers that participate in the FB Prepay Program are eligible for a rebate on manual billable volume of ($0.08) per billable side. In addition, FB Prepay Program participants that achieve more than 500,000 billable sides in a month will be eligible for an additional rebate of ($0.02) per billable side, which would be payable back to the first billable side. The calculation of volume on which rebates earned through the Manual Billable Rebate Program would be paid is based on transactions including at least one side for which manual transaction fees are applicable and excludes QCCs.[16] The Exchange proposes to continue to exclude any volume calculated to achieve the Strategy Cap, regardless of whether the cap is achieved, because fees on such volume are already capped and therefore such volume does not increase billable manual volume.[17]

The Exchange further proposes to provide that Submitting Broker QCC credits [18] and Floor Broker rebates earned through the Manual Billable Rebate Program shall not combine to exceed $2,000,000 per month per firm.

Finally, the Exchange proposes to modify the date it will use for the calculation of a Floor Broker's Eligible Fixed Costs for the following calendar year. The FB Prepay Program currently specifies that a Floor Broker that commits to the program will be invoiced in January for Eligible Fixed Costs, based on annualizing their Eligible Fixed Costs incurred in November 2020. The Exchange proposes to modify the Fee Schedule to specify that the annualization of Eligible Fixed Costs would be based on costs incurred in November 2022, which the Exchange believes would more accurately reflect Eligible Fixed Costs for the coming calendar year.

Although the Exchange cannot predict with certainty whether the proposed changes to the FB Prepay Program would encourage Floor Brokers to participate in the program or to increase either their manual billable volume, the Exchange believes that the proposed changes would continue to incentivize Floor Brokers to participate in the FB Prepay Program by simplifying the structure of the program, modifying the qualifying criteria and rebates offered through the program to be on a monthly (rather than annual) basis, and offering additional rebates on manual billable volume through the Manual Billable Rebate Program. All Floor Brokers are eligible to participate in the FB Prepay Program and qualify for the proposed rebates, and the rebates are achievable in any given month without regard to volumes from any other month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[20] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [21]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[22] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2022, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[23]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, modifications to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed changes are reasonable because they are designed to incent OTP Holders to increase the number of manual transactions sent to the Exchange by offering rebates to Floor Brokers on manual transactions with at least one billable side and eliminating Professional Customer Manual Fees. The proposed increase to the Monthly Fee Cap is likewise reasonable because the Exchange believes the fee cap, although higher, would continue to incentivize Firms and Broker Dealers to direct order flow to the Exchange to receive the benefits of capped fees. Moreover, the proposed Monthly Fee Cap would provide for a cap amount that would be applicable to all Firms and Broker Dealers (regardless of their qualification for Customer Penny Posting Credit Tiers) and establishes a cap amount similar to that offered by other options exchanges.[24] The Exchange also believes that the proposed maximum monthly amount that a firm could earn from Submitting Broker QCC credits and Floor Broker rebates on manual billable volume is set at an amount that would encourage OTP

[16] The Exchange proposes to continue to exclude volume from QCC transactions from the calculation of eligible volume for rebates paid through the Manual Billable Rebate Program, as proposed, because Floor Brokers would be eligible for separate credits and rebates for QCC transactions.

[17] The Exchange proposes to remove references to the exclusion of Customer volume and Firm Facilitation and Broker Dealer facilitating a Customer trades as redundant because such volume is not billable. The Exchange also proposes that it would no longer exclude volume calculated to achieve the Monthly Fee Cap from the Manual Billable Rebate Program and proposes conforming changes to reflect the deletion of references to the same. The Exchange proposes to include volume calculated to achieve the Monthly Fee Cap in calculations for the Manual Billable Rebate Program in light of the proposed change to the Monthly Fee Cap (as described in this filing), which would result in more non-facilitation Firm and Broker Dealer volume being subject to regular transaction fees.

[18] *See* Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, QUALIFIED CONTINGENT CROSS (''QCC'') TRANSACTION FEES AND CREDITS. The Exchange provides a ($0.22) per contract credits to Submitting Brokers for Non-Customer vs. Non-Customer QCC transactions and a ($0.16) per contract credit to Submitting Brokers for Customer vs. Non-Customer QCC transactions.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4) and (5).

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[22] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[23] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.,* the Exchange's market share in equity-based options decreased from 12.99% for the month of November 2021 to 12.31% for the month of November 2022.

[24] *See* note 10, *supra.*

Holders to direct QCC transactions and manual billable volume to the Exchange to receive the existing credits and proposed rebates.

With respect to the FB Prepay Program, the Exchange also believes that the proposed changes are reasonable because participation in the program is optional, and Floor Brokers can elect to participate in the program to be eligible for the rebates offered through the Manual Billable Rebate Program or not. The Exchange also believes that the proposed modification of the FB Prepay Program is reasonable because it is designed to simplify the program, to continue to encourage Floor Brokers to participate in the FB Prepay Program, and to provide liquidity on the Exchange. Specifically, the Exchange believes that the proposed restructuring of the FB Prepay Program to offer participating Floor Brokers rebates on manual billable volume is reasonable because it would streamline both the incentives offered to Floor Brokers and the qualification basis for such incentives; all Floor Brokers participating in the FB Prepay Program would be eligible for the same rebate on manual billable volume and would qualify for the same additional rebate on manual billable volume by meeting a set volume threshold (which the Exchange believes is reasonable and attainable based on recent manual billable volume executed by Floor Brokers). The Exchange also believes that the proposed modification of the qualifying criteria for and rebates offered through the FB Prepay Program to be on a monthly basis is reasonable and could increase opportunities for participating Floor Brokers to qualify for and receive the benefit of the incentives offered. The Exchange further believes that the proposed change to focus the FB Prepay Program on manual billable volume is reasonable because the proposed change is intended to incentivize Floor Brokers to increase manual billable volume executed on the Exchange, and any increase in such volume would benefit all market participants. Finally, the Exchange believes the proposed rebate amounts are reasonable and comparable to rebate amounts offered by another options exchange to Floor Brokers on manual transactions.[25]

To the extent that the proposed changes attract more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange notes that all market participants stand to benefit from any increase in volume entered by Floor Brokers, which could promote market depth, facilitate tighter spreads and enhance price discovery, to the extent the proposed change encourages OTP Holders to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants. In addition, any increased liquidity on the Exchange would result in enhanced market quality for all participants.

The Exchange also believes that the proposed change to update the date used for the calculation of Eligible Fixed Costs from November 2020 to November 2022 is reasonable because it expects Floor Broker organizations' more recent November 2022 costs to provide a more accurate basis for annualizing Eligible Fixed Costs for the coming calendar year based on anticipated fixed costs in 2023.

Finally, to the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the 16 options exchanges, including an exchange offering Floor Broker rebates on manual transactions.[26] Thus, OTP Holders have a choice of where they direct their order flow, including their manual transactions. The proposed rule changes are designed to continue to incent OTP Holders to direct liquidity and, in particular, manual transactions to the Exchange. In addition, to the extent OTP Holders are incentivized to aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for market participants.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits because the proposal is based on the amount and type of business transacted on the Exchange. Professional Customers can opt to submit orders for trading electronically or for manual execution on the Trading Floor. Floor Brokers are not obligated to participate in the FB Prepay Program, and those who do can choose to execute manual billable volume to earn rebates through the Manual Billable Rebate Program or not. The Exchange also believes that the proposed modification of the qualifying criteria for and rebates offered through the FB Prepay Program to be on a monthly basis is equitable because it could provide participating Floor Brokers opportunities each month to qualify for and receive the benefit of the incentives offered through the program. In addition, the proposed Manual Billable Rebate Program is equally available to all Floor Brokers that participate in the FB Prepay Program (with the additional rebate available to all participating Floor Brokers that execute the required number of manual billable transactions), and the proposed monthly limit on the amount that firms could earn from Floor Broker manual billable rebates and Submitting Broker QCC credits combined would apply to all firms equally. The proposed elimination of Professional Customer Manual Fees would likewise equally impact all Professional Customers executing manual transactions. The Exchange also believes that the proposed modification of the Monthly Fee Cap is equitable because it would apply to all Firms and Broker Dealers equally and, by eliminating the decreased caps available to Firms and Broker Dealers that achieve Customer Penny Posting Credit Tiers, would provide for the same fee cap amount for all Firms and Broker Dealers. To the extent the proposed changes continue to encourage increased liquidity to the Exchange, all market participants would benefit from enhanced opportunities for price improvement and order execution.

The Exchange also notes that the proposed changes are designed to encourage Floor Brokers that have previously enrolled in the FB Prepay Program to reenroll for the upcoming year, as well as to attract Floor Brokers that have not yet participated in the program. Moreover, the Exchange believes that the proposed modifications to the FB Prepay Program are an equitable allocation of fees and credits

[25] *See, e.g.,* BOX Options Exchange Fee Schedule, Section V.C. (offering rebates to Floor Brokers on orders presented on the Trading Floor, including a $0.075 rebate for Broker Dealer and Market Maker orders).

[26] *See id.*

because they would apply to participating Floor Brokers equally and are intended to encourage the role performed by Floor Brokers in facilitating the execution of orders via open outcry, a function which the Exchange wishes to support for the benefit of all market participants. The Exchange further believes that the proposed change with respect to the calculation of Eligible Fixed Costs is equitable because it would continue to be based on each Floor Broker organization's annualized costs and because the November 2022 basis for annualizing costs would provide a more accurate reflection of Eligible Fixed Costs for the coming calendar year based on anticipated fixed costs in 2023.

Moreover, the proposed changes are designed to continue to incent Floor Brokers to encourage OTP Holders to aggregate their executions at the Exchange as a primary execution venue. To the extent that the proposed change achieves its purpose in attracting more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed change is not unfairly discriminatory because it is based on the amount and type of business transacted on the Exchange. Floor Brokers are not obligated to execute manual billable transactions or participate in the FB Prepay Program, and the proposed rebates offered through the Manual Billable Rebate Program are available to all Floor Brokers that participate in the FB Prepay Program on a non-discriminatory basis. The proposed changes are designed to streamline the structure of the FB Prepay Program by offering all participating Floor Brokers the same rebate on manual billable volume (and, for qualifying Floor Brokers, the same additional rebate on such volume) and to encourage Floor Brokers to utilize the Exchange as a primary trading venue for all transactions (if they have not done so previously) and increase manual billable volume sent to the Exchange.

The Exchange believes that the proposed change to Professional Customer Manual Fees is not unfairly discriminatory because it would apply to all manually executed Professional Customer orders on an equal and non-discriminatory basis. The proposed change is also not unfairly discriminatory to other market participants because Professional Customers are an important source of order flow to the Exchange for execution via open outcry, which promotes price discovery, and the Exchange thus believes that it is appropriate to continue to encourage manually executed Professional Customer orders by eliminating the fee charged for such orders, which would apply to all similarly situated Professional Customers on an equal and non-discriminatory basis.

The Exchange also believes that the proposed changes to the Monthly Fee Cap are not unfairly discriminatory because the fee cap, as proposed, would be available to all similarly situated Firms and Broker Dealers, any of which could continue to be incentivized to direct order flow to the Exchange to qualify for the fee cap. Moreover, the proposed change to the Monthly Fee Cap is not unfairly discriminatory because it would apply the same fee cap amount to all Firms and Broker Dealers, regardless of whether they achieve Customer Penny Posting Credit Tiers. Similarly, the proposed monthly maximum amount of Submitting Broker credits paid for QCC trades and rebates paid through the Manual Billable Rebate Program is not unfairly discriminatory because it would apply to all Firms and Broker Dealers equally. The Exchange notes that offering the Monthly Fee Cap to Firms and Broker Dealers but not other market participants is not unfairly discriminatory because the Monthly Fee Cap would not be meaningful for Customers or Professional Customers because neither Customers nor Professional Customers pay transaction charges for manual transactions (as proposed) or QCC transactions and is not unfairly discriminatory towards Market Makers, as Market Makers are generally charged a lower fee for manual executions and have alternative avenues to reduce transaction fees.[27]

The Exchange further believes that the proposed change with respect to the calculation of Eligible Fixed Costs is not unfairly discriminatory because it would continue to be based on each Floor Broker organization's annualized costs and because the Exchange expects that using November 2022 as the basis for annualizing costs would provide a more accurate reflection of Eligible Fixed Costs for the coming calendar year.

To the extent that the proposed change attracts more manual transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''[28]

Intramarket Competition. The proposed rebates on manual billable volume and the proposed modification of Professional Customer Manual Fees are designed to attract additional order flow to the Exchange (particularly in manual billable transactions), which could increase the volumes of contracts traded on the Exchange. The proposed

[27] *See generally* Fee Schedule (various incentives available to Market Makers for posted monthly volume, including on executions in penny issues, non-penny issues, and SPY).

[28] *See* Reg NMS Adopting Release, *supra* note 21, at 37499.

modification of the FB Prepay Program is likewise intended to incent Floor Brokers specifically to direct manual billable transactions to the Exchange, as well as encourage Floor Brokers to participate in the program. The proposed rebates would be available to all similarly situated Floor Brokers that participate in the FB Prepay Program. Greater liquidity benefits all market participants on the Exchange, and increased manual transactions could increase opportunities for execution of other trading interest. The modification of the monthly maximum Submitting Broker credits paid for QCC trades and rebates paid through the Manual Billable Rebate Program, would likewise apply equally to all similarly situated Floor Brokers, as would the elimination of Professional Customer Manual Fees impact all Professional Customers equally.

With respect to the modification of the Monthly Fee Cap, the Exchange believes that the proposed change (even though it would raise the amount of the fee cap) would continue to incentivize Firms and Broker Dealers to direct order flow to the Exchange to be eligible for the benefits of capped fees on Manual transactions, thereby promoting liquidity on the Exchange to the benefit of all market participants

To the extent that the proposed changes impose an additional competitive burden on non-Floor Brokers or, with respect to the proposed elimination of Professional Customer Manual Fees, on market participants other than Professional Customers, the Exchange believes that any such burden would be appropriate because Floor Brokers serve an important function in facilitating the execution of orders and price discovery for all market participants and, to the extent the proposed change encourages Professional Customers to submit additional orders to the Exchange to be executed via open outcry, such increase in manually executed Professional Customer orders would also benefit all market participants by promoting opportunities for price discovery.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[29] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2022, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[30]

The Exchange believes that the proposed changes reflect this competitive environment because they modify the Exchange's fees and rebates in a manner designed to continue to incent OTP Holders to direct trading interest (particularly manual transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that Floor Brokers are encouraged to participate in the FB Prepay Program and/or incentivized to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement. The Exchange similarly believes that the proposed change relating to Professional Customer Manual Fees would continue to encourage Professional Customers to direct manual orders to the Exchange, which in turn would provide liquidity and attract order flow to the Exchange. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased trading opportunities.

The Exchange further believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer rebates on manual transactions and similar firm fee caps, by encouraging additional orders to be sent to the Exchange for execution.[31]

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.

[29] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[30] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.,* the Exchange's market share in equity-based options decreased from 12.99% for the month of November 2021 to 12.31% for the month of November 2022.

[31] *See* notes 10 & 25, *supra.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[32] of the Act and subparagraph (f)(2) of Rule 19b–4[33] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[34] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2023–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2023–09. 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

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(2).

[34] 15 U.S.C. 78s(b)(2)(B).

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–NYSEARCA–2023–09, and should be submitted on or before February 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–02129 Filed 2–1–23; 8:45 am]

BILLING CODE 8011–01–P

[35] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17757 and #17758; California Disaster Number CA–00366]

Presidential Declaration Amendment of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of California (FEMA–4683–DR), dated 01/14/2023.

Incident: Severe Winter Storms, Flooding, Landslides, and Mudslides.

Incident Period: 12/27/2022 and continuing.

DATES: Issued on 01/23/2023.

Physical Loan Application Deadline Date: 03/16/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 10/16/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of California, dated 01/14/2023, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Calaveras.

Contiguous Counties (Economic Injury Loans Only):

California: Alpine.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Recovery and Resilience.

[FR Doc. 2023–02174 Filed 2–1–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17757 and #17758; California Disaster Number CA–00366]

Presidential Declaration Amendment of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of California (FEMA–4683–DR), dated 01/14/2023.

Incident: Severe Winter Storms, Flooding, Landslides, and Mudslides.

Incident Period: 12/27/2022 and continuing.

DATES: Issued on 01/26/2023.

Physical Loan Application Deadline Date: 03/16/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 10/16/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of California, dated 01/14/2023, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): San Mateo

Contiguous Counties (Economic Injury Loans Only):

California: San Francisco.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Recovery and Resilience.

[FR Doc. 2023–02175 Filed 2–1–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17759 and #17760; ALABAMA Disaster Number AL–00128]

Presidential Declaration Amendment of a Major Disaster for the State of Alabama

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Alabama (FEMA–4684–DR), dated 01/15/2023.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 01/12/2023.

DATES: Issued on 01/26/2023.

Physical Loan Application Deadline Date: 03/16/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 10/16/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of ALABAMA, dated 01/15/2023, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Greene, Sumter, Tallapoosa

Contiguous Counties (Economic Injury Loans Only):

Alabama: Chambers, Choctaw, Lee, Pickens, Randolph.

Mississippi: Kemper, Lauderdale, Noxubee.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Recovery and Resilience.

[FR Doc. 2023–02169 Filed 2–1–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17767 and #17768; California Disaster Number CA–00368]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of California (FEMA–4683–DR), dated 01/26/2023.

Incident: Severe Winter Storms, Flooding, Landslides, and Mudslides.

Incident Period: 12/27/2022 and continuing.

DATES: Issued on 01/26/2023.

Physical Loan Application Deadline Date: 03/27/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 10/26/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/26/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Merced, Monterey, Sacramento, San Benito, Santa Barbara, Santa Cruz, Tulare, Ventura.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17767 B and for economic injury is 17768 0.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Recovery and Resilience.

[FR Doc. 2023–02171 Filed 2–1–23; 8:45 am]

BILLING CODE 8026–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36662]

Stefan Soloviev, Executor, Estate of Sheldon H. Solow—Continuance in Control Exemption—Colorado Pacific Rio Grande Railroad, LLC

Stefan Soloviev, Executor, Estate of Sheldon H. Solow (the Estate), a noncarrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of the Colorado Pacific Rio Grande Railroad, LLC (CP Rio Grande), a noncarrier controlled by the Estate, upon CP Rio Grande's becoming a Class III rail carrier. According to the verified notice, the Estate currently controls 50% of KCVN, LLC, which in turn owns 100% of the Colorado Pacific Railroad, LLC (CXR), a Class III carrier.

In December 2022, CP Rio Grande filed a verified notice of exemption in *Colorado Pacific Rio Grande Railroad, LLC—Acquisition & Operation Exemption Containing Interchange Commitment—San Luis & Rio Grande Railroad, Inc.,* Docket No. FD 36656, for authority to acquire, in bankruptcy, and operate substantially all of the tracks and other rail assets of the San Luis & Rio Grande Railroad, Inc. (SLRG), between milepost 299.30 near Derrick, Colo., and milepost 180.00 near Walsenberg, Colo., and between milepost 251.7 at Alamosa, Colo., and milepost 281.78 at Antonito, Colo., a total distance of approximately 149.38 miles (the Lines), and incidental trackage rights conveyed to SLRG by Union Pacific Railroad Company in the vicinity of Walsenburg between milepost 180.00 and milepost 175.00.[1]

The earliest this transaction may be consummated is February 16, 2023, the effective date of the exemption (30 days after the verified notice was filed).

The Estate will continue in control of CP Rio Grande upon CP Rio Grande's becoming a Class III rail carrier, while remaining in control of one other Class III carrier, CXR.

The Estate verifies that: (1) the Lines do not connect with the lines of the one other Class III railroad currently controlled by the Estate; (2) this continuance in control transaction is not part of a series of anticipated transactions that would result in such a connection; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than February 9, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36662, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423. In addition, a copy of each pleading must be served on the Estate's representative, Thomas W. Wilcox, Law Office of Thomas W. Wilcox, LLC, 1629 K Street NW, Suite 300, Washington, DC 20006.

According to the Estate, this action is excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at *www.stb.gov.*

Decided: January 27, 2023.

[1] Notice of the exemption was served and published in the **Federal Register** on January 5, 2023 (88 FR 899). The exemption became effective on January 19, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2023–02183 Filed 2–1–23; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0029]

Amtrak's Request To Conduct Regression Testing of Its Certified Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that on January 6, 2023, the National Railroad Passenger Corporation (Amtrak) submitted a document entitled ''Advanced Civil Speed Enforcement System (ACSES II) Regression Test Waiver Request,'' to FRA. Amtrak asks FRA to approve its request to conduct regression testing of its FRA-certified ACSES II positive train control (PTC) system on its PTC-equipped track.

DATES: FRA will consider comments received by April 3, 2023. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES: All comments concerning this proceeding should identify the agency name and Docket Number FRA–2010–0029, and may be submitted on *https://www.regulations.gov.* Follow the online instructions for submitting comments. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: On June 6, 2017, FRA certified Amtrak's ACSES II PTC system under title 49 Code of Federal Regulations (CFR) section 236.1015 and title 49 United States Code (U.S.C.) 20157(h). Pursuant to 49 CFR 236.1035, a railroad must obtain FRA's approval before field testing an uncertified PTC system, or a product of an uncertified PTC system, or any regression testing of a certified PTC system on the general rail system. *See* 49 CFR 236.1035(a). Please see Amtrak's test request for the required information, including a complete description of Amtrak's Concept of Operations and its specific test procedures, including the measures that will be taken to ensure safety during testing.

Amtrak's test request is available for review online at *https://www.regulations.gov* (Docket No. FRA–2010–0029). Interested parties are invited to comment on the test request by submitting written comments or data. During its review of the test request, FRA will consider any comments or data submitted. However, FRA may elect not to respond to any particular comment, and under 49 CFR 236.1035, FRA maintains the authority to approve, approve with conditions, or deny the test request at its sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2023–02201 Filed 2–1–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0004; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming Model Year 2020 Henan Webetter WB–400ST Food Service Trailers Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: This document announces the National Highway Traffic Safety Administration (NHTSA) receipt of a petition for a decision that model year (MY) 2020 Henan Webetter WB–400ST food service trailers that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 6, 2023.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy

form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard along with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Robert Mazurowski, Office of Vehicle Safety Compliance, NHTSA (202–366–1012).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same MY as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice of each petition that it receives in the **Federal Register**, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. (WETL), (Registered Importer R–90–005), of Houston, Texas has petitioned NHTSA to decide whether nonconforming MY 2020 Henan Webetter WB–400ST food service trailers are eligible for importation into the United States. The petitioner believes the vehicles are capable of being readily altered to conform to all applicable FMVSS. The vehicle is a tandem axle trailer with a stated GVWR of 7,054 lbs. (3,200 kg).

Wallace Environmental Testing Laboratories, Inc. (WETL) submitted information with its petition intended to demonstrate that non-U.S. certified MY 2020 Henan Webetter WB–400ST food service trailers, as originally manufactured, conform to many applicable FMVSS, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that the non-U.S. certified MY 2020 Henan Webetter WB–400ST food service trailers, as originally manufactured, are only subject to: FMVSS No. 108, *Lamps, Reflective Devices and Associated Equipment* and FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less.* The petitioner also contends that the subject non-U.S. certified vehicles are capable of being readily altered to meet the following FMVSS, in the manner indicated:

FMVSS No. 108, *Lamps, Reflective Devices and Associated Equipment:* installation of rear reflectors, side markers, side reflectors, clearance lamps, identification lamps and upper lights, front side marker lamps and reflectors, intermediate side marker lamps and reflectors, and license plate lamp. The petitioner states ''On the rear, 3 lamps will be installed as close as practical to the top of the vehicle at the same height and as close as practical to the center line with lamp centers spaced not less than 6 inches or more than 12 inches. The two red lamps on the rear and two amber lamps on the front must be replaced with lamps conforming to the requirements. The brake and turn signal lamps must be replaced as well. These parts can easily be found at local auto parts retailers.''

FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less:* the petitioner claims the tires rims are within conformity of this standard.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2023–02149 Filed 2–1–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. DOT–NHTSA–2023–0002]

Request for Comment; Draft Model Minimum Uniform Crash Criteria (MMUCC) Guideline, Sixth Edition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for public comment: 60-Day notice.

SUMMARY: The Model Minimum Uniform Crash Criteria (MMUCC) provides States a guideline for describing crashes involving motor vehicles in-transport to generate the information necessary to improve traffic safety. The primary benefit of using MMUCC is increased crash data uniformity so traffic safety insights can be developed more quickly. Since its inception in 1998, MMUCC has been a voluntary guideline for States; however, standardization of crash data is essential to NHTSA and its safety stakeholders. The crash data that NHTSA obtains from the States supports several of NHTSA's efforts such as the Fatality Analysis Reporting System (FARS) and the Crash Report Sampling System (CRSS), which are essential to NHTSA's traffic safety activities as well other Federal, State, and local agencies. Therefore, it is critical that the recommended MMUCC data elements be designed with clarity, purpose, and feasibility. NHTSA is revising the Model Minimum Uniform Crash Criteria (MMUCC) 5th Edition and requests comments on the draft MMUCC Guideline, Sixth Edition available at *Regulations.gov,* to inform appropriate improvements and identify stakeholder concerns. For example, crash data collectors may wish to comment on the feasibility of collecting data elements and attributes from the scene of a crash. Crash database administrators, managers, and technicians may wish to comment on the challenges and concerns with implementation and data

governance. Crash data users may wish to comment on the utility of the draft MMUCC Guideline, Sixth Edition data elements as well as other guidance and suggest additional changes. Feedback will be reviewed by NHTSA and the Chartered MMUCC Committee to inform updates to the forthcoming Sixth Edition of the MMUCC guideline, anticipated in 2024.

DATES: Comments must be received within April 3, 2023.

ADDRESSES: You may submit comments bearing the Federal Docket Management System Docket ID, Docket DOT–NHTSA–2023–0002 using any of the following methods:

- *Federal Rulemaking Portal:* Go to *https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590.
- *Fax:* Written comments may be faxed to (202) 493–2251.
- *Hand Delivery:* If you plan to submit written comments by hand or courier, please do so at 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m./ Eastern Time, Monday through Friday, except Federal holidays.

Please submit all comments to the Docket by April 3, 2023.

When you submit your comments, please remember to mention the agency and the docket number of this document within your correspondence. Please note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading below.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comments, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3336) or at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices* (select ''Department Wide System of Record Notices,'' then select DOTALL 14 Federal Docket Management System).

Confidential Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, 1200 New Jersey Avenue SE, Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

Docket: For access to the docket to read the proposed changes to MMUCC, background documents, or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the dockets. Or go to West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information, please contact Beau Burdett, National Center for Statistics and Analysis, NHTSA (telephone: 202–366–7338 or email: *beau.burdett@dot.gov*).

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29A.

Chou Lin Chen,

Associate Administrator, National Center for Statistics and Analysis.

[FR Doc. 2023–02140 Filed 2–1–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Provisional Foreign Tax Credit Agreement

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on this request.

DATES: Comments should be received on or before March 6, 2023 to be assured of consideration.

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: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Provisional Foreign Tax Credit Agreement.

OMB Control Number: 1545–2296.

Type of Review: Revision of a currently approved collection.

Description: Sections 901 and 905 allow a taxpayer to claim a foreign tax credit for foreign income taxes paid or accrued in a taxable year, depending on taxpayer's method of accounting for such taxes. However, regardless of the year in which the credit is allowed based on taxpayer's method of accounting, the foreign tax credit is allowed only to the extent the foreign income taxes are ultimately both owed and actually remitted to the foreign country. For accrual method taxpayers, section 461(f) (flush language), section 1.461–2(a)(2)(i), and section 1.905–1(d)(3) provide that a foreign income tax liability that is contested does not accrue and is not creditable until the contest is resolved. For cash method taxpayers, a foreign income tax liability that is contested is not a reasonable approximation of the taxpayer's final foreign income tax liability and, thus, under section 1.901–2(e)(2)(i), is not considered an amount of tax paid for purposes of section 901 until the contest is resolved.

However, sections 1.905–1(c)(3) and 1.905–1(d)(4) allow taxpayers to make an election to claim a provisional foreign tax credit for a contested foreign income tax liability to the extent that the taxpayer has remitted the contested tax to the foreign country. As a condition for making this election, the taxpayer must enter into a provisional foreign tax credit agreement, in which the taxpayer gives the IRS information

regarding the contested foreign income tax liability and agrees to comply with the conditions of the election, including agreeing to not to assert the statute of limitations on assessment as a defense to assessment of taxes and interest by the IRS with respect to the contested tax for a period of three years from the year in which taxpayer notifies the IRS of the resolution of the contest. See section 1.905–1(d)(4)(ii). The IRS is adding a new Form 7204 for respondents to report this information.

Form: 7204.

Affected Public: U.S. persons who pay or accrue foreign income taxes.

Estimated Number of Respondents: 11,400.

Frequency of Response: Annually, On Occasion.

Estimated Total Number of Annual Responses: 11,400.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 22,800.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2023–02187 Filed 2–1–23; 8:45 am]

BILLING CODE 4830–01–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings

TIME AND DATE: February 9, 2023, 12:00 p.m. to 3:00 p.m., Eastern time.

PLACE: This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll), Meeting ID: 922 4392 6406, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/meeting/register/tJYvc-qhrD0uGtLL50ixEUs9e0MaorNIF3RM.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Audit Subcommittee (the ''Subcommittee'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Call to Order—UCR Audit Subcommittee Chair

The UCR Audit Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Audit Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules—UCR Audit Subcommittee Chair

For Discussion and Possible Subcommittee Action

The agenda will be reviewed, and the Subcommittee will consider adoption.

Ground Rules

Subcommittee action only to be taken in designated areas on the agenda.

IV. Review and Approval of Subcommittee Minutes From the November 3, 2022 Meeting—UCR Audit Subcommittee Chair

For Discussion and Possible Subcommittee Action

Draft minutes from the November 3, 2022 Subcommittee meeting via teleconference will be reviewed. The Subcommittee will consider action to approve.

V. Discuss Options To Replace the Retreat Audit Program With a Program That Relies on Roadside Inspection Data—UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair, and DSL Transportation

For Discussion and Possible Subcommittee Action

The UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair, and DSL Transportation will lead a discussion on options to replace the Retreat Audit Program currently utilized by the States with a roadside inspection data driven audit for non-IRP plated commercial motor vehicles and the motor carriers operating this type of registered equipment. The Subcommittee may consider and take action to recommend to the UCR Board an alternative to the current Retreat Audit Program.

VI. Discuss Impacts of Reducing the Previous Year's Registration Timeline for Registrants—UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair, and DSL Transportation

The UCR Audit Subcommittee Chair and UCR Audit Subcommittee Vice-Chair and DSL Transportation will lead a discussion on the potential impact to State Auditors, if the previous registration year's registration period for registrants is reduced by three months.

VII. Update for Hosting a Monthly Question and Answer Session for State Auditors—UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair, and UCR Executive Director

The UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair and UCR Executive Director will lead a discussion regarding the value of a series of 60-minute virtual question and answer sessions for state auditors.

VIII. Review Snapshot of State Audit Compliance Percentages for Years 2021 and 2022—UCR Audit Subcommittee Chair

The UCR Subcommittee Chair will review state audit compliance rates for registration years 2021 and 2022 and related compliance percentages for FARs, retreat audits and registration compliance percentages.

IX. General Review and Discussion of Audit Program—UCR Audit Subcommittee Chair and UCR Subcommittee Vice-Chair

The UCR Audit Subcommittee Chair and UCR Audit Subcommittee Vice-Chair will lead discussion on auditing performance standards and direction of the program.

X. Other Business—UCR Audit Subcommittee Chair

The UCR Audit Subcommittee Chair will call for any other items Subcommittee members would like to discuss.

XI. Adjournment—UCR Audit Subcommittee Chair

The UCR Audit Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, January 30, 2023 at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of

Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2023–02337 Filed 1–31–23; 4:15 pm]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

Health Services Research and Development Service Scientific Merit Review Board, 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 Health Services Research and Development Service Scientific Merit Review Board will be held March 8, 2023, via Webex. The meeting will be held between noon and 1:30 p.m. EST. The meeting will be partially closed to the public from 12:15–1:30 p.m. EST for the discussion, examination and reference to the research applications and scientific review. Discussions will involve reference to staff and consultant critiques of research proposals. Discussions will deal with scientific merit of each proposal and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. As provided by Public Law 92–463 subsection 10(d), as amended by Public Law 94–409, closing the committee meeting is in accordance with 5 U.S.C. 552b(c) (6) and (9)(B).

The objective of the Board is to provide for the fair and equitable selection of the most meritorious research projects for support by VA research funds and to offer advice for research program officials on program priorities and policies. The ultimate objective of the Board is to ensure the high quality and mission relevance of VA's legislatively mandated Health Services Research and Development program.

Board members advise the Director, Health Services Research and Development Service and the Chief Research and Development Officer on the scientific and technical merit, the mission relevance, and the protection of human subjects of Health Services Research and Development proposals. The Board does not consider grants, contracts, or other forms of extramural research.

Members of the public may attend the open portion of the meeting in listen-only mode as the time limited open agenda does not enable public comment presentations. To attend the open portion of the meeting (12:00–12:15 p.m. EST), the public may join by dialing the phone number 1–404–397–1596 and entering the meeting number (access code): 2762 513 7674.

Written public comments must be sent to Tiffin Ross-Shepard, Designated Federal Officer, Health Services Research and Development Service, Department of Veterans Affairs (14RDH), 810 Vermont Avenue NW, Washington, DC 20420, or to *Tiffin.Ross-Shepard@va.gov* at least five days before the meeting via the email listed above. The written public comments will be shared with the board members. The public may not attend the closed portion of the meeting as disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals (Pub. L. 92–463 subsection 10(d), as amended by Public Law 94–409, closing the committee meeting is in accordance with title 5 U.S.C. 552b(c) (6) and (9)(B).

Dated: January 30, 2023.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–02165 Filed 2–1–23; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 88 Thursday,

No. 22 February 2, 2023

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Technical Corrections for 62 Wildlife and Plant Species on the Lists of Endangered and Threatened Wildlife and Plants; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2022–0062; FXES11130900000C6–234–FF09E42000]

RIN 1018–BG77

Endangered and Threatened Wildlife and Plants; Technical Corrections for 62 Wildlife and Plant Species on the Lists of Endangered and Threatened Wildlife and Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Direct final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce technical corrections for 62 wildlife and plant species under the Endangered Species Act of 1973, as amended (Act). These corrections include changes to scientific names of 11 wildlife species and 14 plant species due to taxonomic reclassification; changes to common names of 21 wildlife species and 13 plant species; and corrections to errors in scientific or common names, listing citations, or taxonomic heading placement for 4 wildlife species and 14 plant species. We are revising the List of Endangered and Threatened Wildlife and the List of Endangered and Threatened Plants (''the Lists'') to reflect the current scientifically accepted taxonomy and nomenclature of these species that occur in Idaho and the Pacific islands.

DATES: This rule is effective May 3, 2023 without further action, unless significant adverse comment is received by March 6, 2023. If significant adverse comment is received regarding taxonomic changes for any of these species, we will publish a timely withdrawal of the relevant portions of the rule in the **Federal Register**.

ADDRESSES: You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov*. In the Search box, enter FWS–R1–ES–2022–0062, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Rule box to locate this document. You may submit a comment by clicking on ''Comment.''
- *By hard copy:* Submit comments by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2022–0062, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

See Public Comments in **SUPPLEMENTARY INFORMATION**, below, for more information about submitting comments.

FOR FURTHER INFORMATION CONTACT: Marilet Zablan, Program Manager for Restoration and Endangered Species Classification, U.S. Fish and Wildlife Service, Pacific Regional Office, Ecological Services, 911 NE 11th Avenue, Portland, OR 97232; telephone 503–231–6131. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

See Species-specific Inquiries and Information in **SUPPLEMENTARY INFORMATION**, below, for relevant names and contact information.

SUPPLEMENTARY INFORMATION:

Public Comments

You may submit your comments and materials regarding the taxonomic revisions, identified below in table 1, by one of the methods listed in **ADDRESSES**. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include. We will not consider comments sent by email or fax, or to an address not listed in **ADDRESSES**.

We will post all comments on *https://www.regulations.gov*. Before including your address, phone number, email address, or other personal information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we use in preparing this direct final rule, will be available for public inspection on the internet at *https://www.regulations.gov*. Please note that comments posted to *https://www.regulations.gov* are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission. Information regarding this rule is available in alternative formats upon request (see **FOR FURTHER INFORMATION CONTACT**).

Species-Specific Inquiries and Information

For information pertaining to specific species, please contact our Ecological Services field offices as follows:

Species	Contact person	Contact phone and email	Contact address
Pacific islands species.	Megan Laut, Fish and Wildlife Biologist ...	808–792–9400; *megan_laut@fws.gov*	Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., Room 3–122, Honolulu, HI 96813.
Idaho snails	Greg Burak, Fish and Wildlife Biologist	208–378–5654; *greg_burak@fws.gov*	Idaho Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1387 S Vinnell Way, Room 368, Boise, ID 83709.

Background

The List of Endangered and Threatened Wildlife and the List of Endangered and Threatened Plants (''the Lists''), set forth in title 50 of the Code of Federal Regulations (CFR) at 17.11 and 17.12, respectively, contain the names of endangered species and threatened species federally listed pursuant to the Act (16 U.S.C. 1531 *et seq.*).

The regulations at 50 CFR 17.11(c) and 17.12(b) require us to use the most recently accepted scientific name of any wildlife or plant species, respectively, that we have determined to be an endangered or threatened species.

Purpose of Direct Final Rule and Final Action

The purpose of this direct final rule is to notify the public that we are revising the Lists at 50 CFR 17.11(h) and 17.12(h) to reflect scientifically accepted taxonomy and nomenclature for 23 wildlife species and 26 plant species listed under section 4 of the Act. These

changes to the Lists of Endangered and Threatened Wildlife and Plants reflect the most recently accepted scientific names in accordance with 50 CFR 17.11(c) and 17.12(b).

We are publishing this rule without a prior proposal because this is a noncontroversial action that is in the best interest of the public and should be undertaken in as timely a manner as possible. For the taxonomic revisions provided below in table 1, this rule will be effective, as published in this document, on the effective date specified in **DATES**, unless we receive significant adverse comments on or before the comment due date specified in **DATES**. Significant adverse comments are comments that provide strong justifications as to why this rule should not be adopted or why it should be changed.

If we receive significant adverse comments regarding the taxonomic changes for any of the species included in table 1, below, we will publish a document in the **Federal Register** withdrawing this rule for the appropriate species before the effective date, and we will publish a proposed rule to initiate promulgation of those changes to 50 CFR 17.11(h) and/or 17.12(h).

In addition, we are notifying the public that we have identified editorial errors in the Lists, and they will be corrected on the effective date of this rule (see **DATES**, above). The identified errors are provided below in table 2. While you may submit comments by one of the methods listed in **ADDRESSES** on the corrections provided below in table 2, we consider these corrections purely administrative, and we intend to make these editorial corrections on the effective date of this rule.

None of these changes are regulatory in nature; they are for accuracy and clarity. These revisions do not alter species' protections or status in any way. Any actions altering a species' protection or status would require a separate rulemaking action following the procedures of 50 CFR part 424.

Summary Tables of Taxonomic Changes and Editorial Corrections

Table 1 provides taxonomic changes we are making to reflect the scientifically accepted taxonomy and nomenclature of 23 wildlife and 26 plant species listed under section 4 of the Act. These changes reflect the most recently accepted scientific nomenclature in accordance with 50 CFR 17.11(c) and 17.12(b). The second column of table 1 also identifies correct usage of Hawaiian and Chamorro diacritical marks in common names for certain species; however, as we explain below, the text to be codified in the CFR will omit diacritical marks. Thus, corrections to common names that involve only addition of diacritical marks will not result in changes in the CFR.

TABLE 1—TAXONOMIC REVISIONS TO THE LISTS REFLECTING THE CURRENT SCIENTIFICALLY ACCEPTED TAXONOMY AND NOMENCLATURE FOR THESE SPECIES

Species name as currently listed	Corrected species name
Common name [*scientific name*]	Common name [*scientific name*]
§ 17.11 Endangered and Threatened Wildlife	
MAMMALS	
Hawaiian hoary bat [*Lasiurus cinereus semotus*]	Hawaiian hoary bat (ʻōpeʻapeʻa) [*Aeorestes semotus*].
BIRDS	
Crested honeycreeper (Akohekohe) [*Palmeria dolei*]	ʻĀkohekohe (crested honeycreeper) [*Palmeria dolei*].
Oahu creeper [*Paroreomyza maculata*]	Oʻahu ʻalauahio [*Paroreomyza maculata*].
Hawaiian coot [*Fulica americana alai*]	Hawaiian coot (ʻalae keʻokeʻo) [*Fulica alai*].
Hawaii creeper [*Oreomystis mana*]	Hawaii creeper (ʻalawī) [*Loxops mana*].
Hawaiian crow [*Corvus hawaiiensis*]	Hawaiian crow (ʻalalā) [*Corvus hawaiiensis*].
Mariana crow [*Corvus kubaryi*]	Mariana crow (åga) [*Corvus kubaryi*].
Hawaiian duck [*Anas wyvilliana*]	Hawaiian duck (koloa maoli) [*Anas wyvilliana*].
Laysan finch (honeycreeper) [*Telespyza cantans*]	Laysan finch [*Telespiza cantans*].
Nihoa finch (honeycreeper) [*Telespyza ultima*]	Nihoa finch [*Telespiza ultima*].
Guam Micronesian kingfisher [*Halcyon cinnamomina cinnamomina*]	Guam kingfisher (sihek) [*Todiramphus cinnamominus*].
Micronesian (=La Perouse's) megapode [*Megapodius laperouse*]	Micronesian megapode (sasangat) [*Megapodius laperouse*].
Mariana common moorhen [*Gallinula chloropus guami*]	Mariana common moorhen (pulattat) [*Gallinula chloropus guami*].
Molokai thrush [*Myadestes lanaiensis rutha*]	Molokaʻi olomaʻo [*Myadestes lanaiensis rutha*].
Small Kauai thrush [*Myadestes palmeri*]	Puaiohi [*Myadestes palmeri*].
Hawaiian petrel [*Pterodroma sandwichensis*]	Hawaiian petrel (ʻuaʻu) [*Pterodroma sandwichensis*].
Guam rail [*Rallus owstoni*]	Guam rail (koʻkoʻ) [*Gallirallus owstoni*].
Newell's Townsend's shearwater [*Puffinus auricularis newelli*]	Newell's shearwater (ʻaʻo) [*Puffinus newelli*].
Band-rumped storm-petrel (Hawaii DPS) [*Oceanodroma castro*]	Band-rumped storm-petrel (ʻakēʻakē) (Hawaii DPS) [*Hydrobates castro*].
Mariana gray swiftlet [*Aerodramus vanikorensis bartschi*]	Mariana swiftlet (yayaguak) [*Aerodramus bartschi*].
Rota bridled white-eye [*Zosterops rotensis*]	Rota white-eye (nosaʻ Luta) [*Zosterops rotensis*].
SNAILS	
Banbury Springs limpet [*Lanx* sp.]	Banbury Springs limpet [*Idaholanx fresti*].
Snake River physa snail [*Physa natricina*]	Snake River physa snail [*Physella natricina*].

TABLE 1—TAXONOMIC REVISIONS TO THE LISTS REFLECTING THE CURRENT SCIENTIFICALLY ACCEPTED TAXONOMY AND NOMENCLATURE FOR THESE SPECIES

Species name as currently listed	Corrected species name
§ 17.12 Endangered and Threatened Plants	
Scientific name [*common name*]	Scientific name [*common name*]
FLOWERING PLANTS	
Abutilon menziesii [koʻoloaʻula]	*Abutilon menziesii* [koʻoloaʻula].
Argyroxiphium sandwicense ssp. *macrocephalum* [ʻahinahina]	*Argyroxiphium sandwicense* ssp. *macrocephalum* [ʻāhinahina].
Argyroxiphium sandwicense ssp. *sandwicense* [ʻahinahina]	*Argyroxiphium sandwicense* ssp. *sandwicense* [ʻāhinahina].
Chamaesyce skottsbergii var. *skottsbergii* [akoko (Ewa Plains akoko)]	*Euphorbia skottsbergii* var. *skottsbergii* [ʻakoko].
Cyrtandra crenata [haʻiwale]	*Cyrtandra crenata* [haʻiwale].
Cyrtandra limahuliensis [haiwale]	*Cyrtandra kealiae* ssp. *kealiae* [haʻiwale].
Gardenia brighamii [Hawaiian gardenia (naʻu)]	*Gardenia brighamii* [nānū].
Kanaloa kahoolawensis [kohe malama malama o kanaloa]	*Kanaloa kahoolawensis* [kohe malama malama o Kanaloa, ka palupalu o Kanaloa].
Kokia cookei [Cooke's kokiʻo]	*Kokia cookei* [kokiʻo].
Kokia drynarioides [kokiʻo]	*Kokia drynarioides* [kokiʻo].
Kokia kauaiensis [kokiʻo]	*Kokia kauaiensis* [kokiʻo].
Mucuna sloanei var. *persericea* [sea bean]	*Mucuna persericea* [sea bean].
Platydesma cornuta var. *cornuta* [no common name]	*Melicope cornuta* var. *cornuta* [no common name].
Platydesma cornuta var. *decurrens* [no common name]	*Melicope cornuta* var. *decurrens* [no common name].
Platydesma remyi [no common name]	*Melicope remyi* [no common name].
Platydesma rostrata [pilo kea lau lii]	*Melicope rostrata* [pilo kea lau liʻi].
Pleomele fernaldii [hala pepe]	*Dracaena fernaldii* [hala pepe].
Pleomele forbesii [hala pepe]	*Dracaena forbesii* [hala pepe].
Pleomele hawaiiensis [hala pepe]	*Dracaena konaensis* [hala pepe].
Psychotria hexandra ssp. *oahuensis* [kopiko]	*Psychotria hexandra* var. *oahuensis* [kōpiko].
FERNS AND ALLIES	
Adenophorus periens [pendent kihi fern]	*Adenophorus periens* [palai lāʻau].
Asplenium dielerectum [asplenium-leaved diellia]	*Asplenium dielerectum* [no common name].
Cyclosorus boydiae [kupukupu makalii]	*Menisciopsis boydiae* [kupukupu makaliʻi].
Huperzia mannii [wawaeʻiole]	*Phlegmariurus mannii* [wāwaeʻiole].
Huperzia nutans [wawaeiole]	*Phlegmariurus nutans* [wāwaeʻiole].
Huperzia stemmermanniae [no common name]	*Phlegmariurus stemmermanniae* [no common name].

Table 2 identifies the editorial corrections we are making in this rule. In table 2 (and the text), ''2016 Reformatting'' refers to an August 4, 2016, final rule (81 FR 51550) that the Service published to update the format of the Lists. The purpose of the 2016 Reformatting was to make the Lists easier to understand by changing the format to reflect current practices and standards, to correct identified errors in entries such as footnotes and spelling, and to update common names, among other changes. Following publication of the 2016 Reformatting we identified editorial errors in the updated Lists. Reference in table 2 to ''80 FR 59424'' indicates the citation for the final rule listing 23 species in Micronesia (80 FR 59424; October 1, 2015), which incorrectly listed *Cycas micronesica* under the taxonomic subheading ''Flowering Plants.'' The third column of table 2 also identifies correct usage of Hawaiian diacritical marks in common names for certain species; however, as we explain below, the text to be codified in the CFR will omit diacritical marks.

Five species are listed in both table 1 and table 2. For the Guam kingfisher, we consider the changes to the scientific name and English common name to be editorial corrections, while parenthetical addition of the Chamorro common name is a revision in nomenclature. For the Guam rail, we consider the changes to the listing citations to be editorial corrections, while the change in scientific name and parenthetical addition of the Chamorro common name are revisions in nomenclature. For *Argyroxiphium sandwicense* ssp. *sandwicense,* we consider the changes to the listing citations to be an editorial correction, while the change in the common name is a revision in nomenclature. For *Euphorbia skottsbergii* var. *skottsbergii,* we consider the changes to scientific name and listing citations to be editorial corrections, while the change in the common name is a revision in nomenclature. For *Phlegmariurus nutans,* we consider the changes to the listing citations and critical habitat designation's CFR citation to be editorial corrections, while the change in the scientific name is a revision in nomenclature.

TABLE 2—EDITORIAL CORRECTIONS TO THE LISTS

Current listed name	Error: action	Correction
Wildlife		
Guam Micronesian kingfisher [*Halcyon cinnamomina cinnamomina*].	Error in 2016 Formatting: Correct English common name and scientific name; correct listing citations to refer to critical habitat designation by its CFR citation.	Guam kingfisher [*Todiramphus cinnamominus*]; remove "69 FR 62943; 10/28/2004".
Guam rail [*Rallus owstoni*]	Error in 2016 Formatting: Correct listing citation for first Guam rail entry (endangered) to remove expired emergency listing rule and misplaced experimental population rule.	Remove "49 FR 14354; 4/11/1984" and "54 FR 43966; 10/30/1989".
Flying earwig Hawaiian damselfly [*Megalagrion nesiotes*].	Error in 2016 Formatting: Correct listing citation	75 FR 35990, 6/24/2010.
Pacific Hawaiian damselfly [*Megalagrion pacificum*]	Error in 2016 Formatting: Correct listing citation	75 FR 35990, 6/24/2010.
Plants		
Argyroxiphium sandwicense ssp. *sandwicense* [ʻahinahina].	Error in 2016 Formatting: Correct date in listing citation.	3/21/1986.
Chamaesyce skottsbergii var. *skottsbergii* [Akoko (Ewa Plains akoko)].	Error in 2016 Formatting: Correct scientific name; correct listing citations to refer to critical habitat designation by its CFR citation.	*Euphorbia skottsbergii* var. *skottsbergii;* remove "77 FR 57647; 9/18/2012".
Cyanea gibsonii [no common name]	Error in 2016 Formatting: Correct common name	hāhā.
Cyanea humboltiana [haha]	Error in 2016 Formatting: Correct scientific name	*Cyanea humboldtiana.*
Cyanea platyphylla [haha]	Error in 2016 Formatting: Correct common name	ʻakūʻakū.
Cycas micronesica [fadang, faadang]	Error in 80 FR 59424: Correct taxonomic subheading	Move under subheading "Conifers and Allies".
Delissea rivularis [haha]	Error in 2016 Formatting: Correct scientific name; correct listing citations to refer to critical habitat designation by its CFR citation.	*Cyanea rivularis;* remove "68 FR 9115; 2/27/2003".
Hedyotis cookiana [awiwi]	Error in 2016 Formatting: Correct scientific name	*Kadua cookiana.*
Limnanthes floccosa ssp. *grandiflora* [large-flowered woolly meadowfoam].	Error in 2016 Formatting: Correct scientific name	*Limnanthes pumila* ssp. *grandiflora.*
Mezoneuron kavaiense [uhi uhi]	Error in 2016 Formatting: Correct common name	uhiuhi.
Plantago hawaienis [laukahi kuahiwi]	Error in 2016 Formatting: Correct scientific name	*Plantago hawaiensis.*
Asplenium (=*Diellia*) *dielfalcatum* (=*falcate*) [no common name].	Error in 2016 Formatting: Correct scientific name	*Asplenium* (=*Diellia*) *dielfalcatum* (=*falcata*).
Asplenium (=*Diellia*) *dielpallicum* (=*pallida*) [no common name].	Error in 2016 Formatting: Correct scientific name	*Asplenium* (=*Diellia*) *dielpallidum* (=*pallida*).
Huperzia nutans [wawaeiole]	Error in 2016 Formatting: Correct listing citation and a critical habitat designation's CFR citation.	59 FR 14482, 3/28/1994; 50 CFR 17.99(a)(1);[CH] 50 CFR 17.99(i).[CH]

Description of Taxonomic Revisions and Editorial Corrections

Using the best available scientific information, this direct final rule documents taxonomic changes of the scientific names to 11 entries on the List of Endangered and Threatened Wildlife (50 CFR 17.11(h)) and 14 entries on the List of Endangered and Threatened Plants (50 CFR 17.12(h)). The basis for these taxonomic changes is supported by published studies in peer-reviewed journals.

Accordingly, we revise the scientific names of these wildlife species under section 4 of the Act (16 U.S.C. 1531 *et seq.*) as follows: Hawaiian hoary bat (*Aeorestes semotus*), Hawaiian coot (*Fulica alai*), Hawaii creeper (*Loxops mana*), Laysan finch (*Telespiza cantans*), Nihoa finch (*Telespiza ultima*), Guam rail (*Gallirallus owstoni*), Newell's shearwater (*Puffinus newelli*), band-rumped storm-petrel (*Hydrobates castro*), Mariana swiftlet (*Aerodramus bartschi*), Banbury Springs limpet (*Idaholanx fresti*), and Snake River physa snail (*Physella natricina*). We make these changes to the List of Endangered and Threatened Wildlife to reflect the most recently accepted scientific names in accordance with 50 CFR 17.11(c). Additionally, common names of 21 wildlife species (including 9 of the above species: Hawaiian hoary bat, Hawaiian coot, Hawaii creeper, Laysan finch, Nihoa finch, Guam rail, Newell's shearwater, band-rumped storm-petrel, and Mariana swiftlet) are revised to reflect currently accepted usage and/or to include accepted common names in the Hawaiian or Chamorro languages. The first common name listed is the one used by the primary taxonomic authority for the appropriate taxonomic group (*e.g.,* American Society of Mammalogists, American Ornithological Society, MolluscaBase), while alternative names are presented parenthetically.

Similarly, we revise the scientific names of these plant species under section 4 of the Act (16 U.S.C. 1531 *et seq.*) as follows: *Cyrtandra kealiae* ssp. *kealiae* (haʻiwale), *Mucuna persericea* (sea bean), *Melicope cornuta* var. *cornuta* (no common name), *Melicope cornuta* var. *decurrens* (no common name), *Melicope remyi* (no common name), *Melicope rostrata* (pilo kea lau liʻi), *Dracaena fernaldii* (hala pepe), *Dracaena forbesii* (hala pepe), *Dracaena konaensis* (hala pepe), *Psychotria hexandra* var. *oahuensis* (kōpiko), *Menisciopsis boydiae* (kupukupu makaliʻi), *Phlegmariurus mannii* (wāwaeʻiole), *Phlegmariurus nutans* (wāwaeʻiole), and *Phlegmariurus stemmermanniae* (no common name). Additionally, common names of 13 plant species are revised to reflect currently accepted usage or for orthographic consistency.

Several species that are the subjects of the taxonomic revisions or editorial corrections in this direct final rule have a designated experimental population or critical habitat. For clarity and consistency, we are revising the text of the experimental population for Guam rail (50 CFR 17.84(f)) to correct the scientific name. We are also revising the text of the critical habitat for the following species where necessary to correct scientific or common names: Guam kingfisher (*Todiramphus cinnamominus*) and Rota white-eye (*Zosterops rotensis*) at § 17.95; *Limnanthes pumila* ssp. *grandiflora* (large-flowered woolly meadowfoam) at § 17.96; and *Cyanea rivularis* (haha), *Cyrtandra kealiae* ssp. *kealiae* (haʻiwale), *Dracaena forbesii* (hala

pepe), *Dracaena konaensis* (hala pepe), *Euphorbia skottsbergii* var. *skottsbergi* (ʻakoko), *Kadua cookiana* (awiwi), *Kokia cookei* (kokiʻo), *Melicope cornuta* var. *cornuta* (no common name), *Melicope cornuta* var. *decurrens* (no common name), *Melicope rostrata* (pilo kea lau liʻi), *Mucuna persericea* (sea bean), *Psychotria hexandra* var. *oahuensis* (kōpiko), *Adenophorus periens* (palai lāʻau), *Asplenium dielerectum* (no common name), *Asplenium dielfalcatum* (no common name), *Asplenium dielpallidum* (no common name), *Phlegmariurus mannii* (wāwaeʻiole), and *Phlegmariurus nutans* (wāwaeʻiole) at § 17.99. These revisions are not regulatory in nature and do not alter the boundaries of critical habitat or the protections of the Act in any way.

The 2016 Reformatting (81 FR 51550; August 4, 2016) inadvertently introduced typographic errors in scientific names, common names, or listing citations for several listed species. This rule also did not fully incorporate corrections to the Lists that had previously been made in the direct final rules published on June 23, 2015 (80 FR 35860) and February 17, 2016 (81 FR 8004) and a final critical habitat rule published on March 30, 2016 (81 FR 17790). As summarized above in table 2, we are updating the Lists to correct these and several other errors.

We prefer to, and will, include Hawaiian and Chamorro language spellings, including diacritical marks, to the degree possible and appropriate in the preambles of our **Federal Register** documents. For the text to be codified in the CFR, however, we will omit diacritical marks to ensure that no errors are inadvertently incorporated during the codification process.

We make other minor editorial corrections to the Lists to ensure uniformity and clarity in the way we present information in the ''Listing citations and applicable rules'' columns. The information in these columns is not regulatory but is presented as helpful information for the reader.

These revisions and corrections are not regulatory in nature; they are administrative and for the purpose of clarity. The corrections do not alter species' protections, listing status, or critical habitat; an action changing a species' protections, listing status, or critical habitat would require a separate rulemaking following the procedures set forth at 50 CFR part 424.

Taxonomic Classification

Hawaiian Hoary Bat

The Hawaiian hoary bat was originally listed as endangered (35 FR 16047; October 13, 1970) under the scientific name *Lasiurus cinereus semotus.* However, genetic analyses of mitochondrial and nuclear DNA (Baird et al. 2015, pp. 10–13; Baird et al. 2017, pp. 18–22; Baird et al. 2021, pp. 285–288) resulted in a split of the genus *Lasiurus,* assigning hoary bats to the genus *Aeorestes,* and reclassification of the subspecies *semotus* as a full species. Initial analyses of mitochondrial DNA and nuclear DNA from chymase gene alleles (Baird et al. 2015, pp. 1264–1265; Baird et al. 2017, pp. 13–20) indicated that some hoary bats on the islands of Maui and Oahu grouped within the North American species *Aeorestes cinereus;* however, Pinzari et al. (2020, pp. 1509–1510) conducted a whole-genome analysis of single-nucleotide polymorphisms that provided finer resolution of phylogeny and concluded all hoary bats in the Hawaiian islands are one species that share a common ancestor from a single colonization event. The Integrated Taxonomic Information System (ITIS) has treated the Hawaiian hoary bat as a full species, *Aeorestes semotus,* since the latest record review for the genus in 2021 (ITIS 2022, unpaginated). This classification has also been adopted by the American Society of Mammalogists (2022, unpaginated). Thus, the current scientific name of the Hawaiian hoary bat is *Aeorestes semotus.* This taxonomic change does not affect the range or endangered status of the Hawaiian hoary bat.

Hawaiian Coot

The Hawaiian coot, a waterbird endemic to the Hawaiian Islands, was classified by Bryan and Greenway (1944, p. 109) as a subspecies of the American coot (*Fulica americana*). Following this taxonomic treatment, the Hawaiian coot was originally listed as endangered (35 FR 16047; October 13, 1970) under the scientific name *Fulica americana alai.* However, Pratt (1987, p. 27) concluded that based on characteristics of the plumage, bill, and frontal shield there was no reason to consider the Hawaiian coot more closely allied to the American coot than to any of five other related coot species. Consequently, the American Ornithologists' Union (AOU; now known as the American Ornithological Society (AOS)) (1993, p. 677) designated the Hawaiian coot as a full species; the scientific name of the Hawaiian coot is now *Fulica alai.* This taxonomic change does not affect the range or endangered status of the Hawaiian coot.

Hawaiian Creepers

The Hawaii creeper, a songbird endemic to the island of Hawaii, was classified by Amadon (1950, pp. 166–167) as one of six island endemic subspecies of *Loxops maculata.* Following this taxonomic treatment, the Hawaii creeper was originally listed as endangered (40 FR 44149; September 25, 1975) under the scientific name *Loxops maculata mana.* However, the AOU (1982, p. 16CC) subsequently split *Loxops maculata* into five species divided among the genera *Oreomystis* (Hawaii and Kauai) and *Paroreomyza* (Maui/Lānaʻi, Molokaʻi, and Oʻahu); the Hawaii creeper was thus treated as a full species, *Oreomystis mana.* The List of Endangered and Threatened Wildlife (50 CFR 17.11(h)) currently reflects this taxonomy for the species.

The Hawaii creeper is similar in morphology and behavior to the ʻakikiki (*Oreomystis bairdi*) (Pratt 1992, pp. 837–843; Reding et al. 2009, p. 221). However, analyses of genetic and osteological data (Fleischer et al. 1998, pp. 538–539; James 2004, pp. 235–241; Reding et al. 2009, pp. 222–223; Lerner et al. 2011, pp. 1839–1841) indicate that these similarities are a result of convergent evolution, and that the Hawaii creeper is more closely related to the ʻākepa species (genus *Loxops*) than to the ʻakikiki. Consequently, the AOU has transferred the Hawaii creeper to the genus *Loxops* (Chesser et al. 2013, p. 567); the scientific name of the Hawaii creeper is now *Loxops mana.* This taxonomic change does not affect the range or endangered status of the Hawaii creeper.

The List of Endangered and Threatened Wildlife (50 CFR 17.11(h)) also currently includes the Oʻahu creeper (*Paroreomyza maculata*). While this scientific name continues to be accepted, the AOU (1993, p. 680) adopted the Hawaiian name ''Oʻahu ʻalauahio'' as the common name for this species. This change in common name does not affect the range or endangered status of this taxon.

Guam Rail

The Guam rail was originally listed as endangered (49 FR 33881; August 27, 1984) under the scientific name *Rallus owstoni.* However, Olson (1973, pp. 394–397) classified this species and several other Pacific islands rail taxa within the genus *Gallirallus* based on differences in plumage and body structure, also noting that *Gallirallus* has priority over the alternative generic name *Hypotaenidia.* This classification has subsequently been adopted by the eBird/Clements Checklist of Birds of the

World: v2021 (Clements et al. 2021, unpaginated), and is also used by the Service on the List of Migratory Birds (50 CFR 10.13). ITIS has also treated the Guam rail as *Gallirallus owstoni* since the latest record review for the genus in 2006 (ITIS 2022, unpaginated). Thus, we consider the current scientific name of the Guam rail to be *Gallirallus owstoni.* This taxonomic change does not affect the range or endangered status of the Guam rail.

Newell's Shearwater

On September 25, 1975, we published a final rule (40 FR 44149) listing the Newell's Manx shearwater (*Puffinus puffinus newelli*), a seabird native to the Hawaiian Islands, as threatened. At the time of listing, the taxon *newelli* was treated as a subspecies of the Manx shearwater (*Puffinus puffinus*), following Murphy (1952, pp. 1–21) who had recognized eight subspecies worldwide (*puffinus* [North Atlantic], *mauretanicus* [western Mediterranean], *yelkouan* [eastern Mediterranean], *gavia* [New Zealand], *huttoni* [New Zealand], *newelli* [Hawaiian Islands], *auricularis* [Revillagigedo Islands, Mexico], and *opisthomelas* [Baja California]).

Subsequently the AOU (1983, pp. 24–25) restricted the Manx shearwater to the North Atlantic and Mediterranean forms, recognizing *newelli* and *auricularis* as subspecies of the distinct species Townsend's shearwater (*Puffinus auricularis*). The List of Endangered and Threatened Wildlife currently follows this taxonomy, identifying the listed entity as Newell's Townsend's shearwater (*P. auricularis newelli*).

The Hawaiian and Revillagigedo Islands populations differ substantially from one another in their plumage (Howell et al. 1994, pp. 171–176), breeding chronology (Ainley et al. 1997, unpaginated), and foraging ecology (Spear et al. 1995, pp. 621–637). Despite apparent similarity in mitochondrial DNA of the two populations (Martinez-Gomez et al. 2015, pp. 1025–1034), the AOU considered these differences sufficient to function as isolating mechanisms and, following unanimous recommendation of the North American Classification Committee, classified Newell's shearwater (*Puffinus newelli*) as a full species distinct from Townsend's shearwater (*Puffinus auricularis*) (Chesser et al. 2015, pp. 751–752; AOU 2015, unpaginated). This approach is also followed by the eBird/Clements Checklist of Birds of the World: v2021 (Clements et al. 2021, unpaginated) and the International Ornithological Committee (IOC, now known as the International Ornithologists' Union (IOU)) World Bird List (Gill et al. 2021, unpaginated). This taxonomic change does not affect the range or threatened status of the Newell's shearwater.

Band-Rumped Storm-Petrel

The Hawaii distinct population segment (DPS) of the band-rumped storm-petrel was listed as endangered (81 FR 67786; September 30, 2016) under the scientific name *Oceanodroma castro.* However, analysis of nuclear and mitochondrial DNA (Penhallurick and Wink 2004, p. 136; Wallace et al. 2017, pp. 39–47) has shown that some species in the genus *Oceanodroma* are more closely related to storm-petrel species in the genus *Hydrobates.* Because the name *Hydrobates* has taxonomic priority over *Oceanodroma,* the AOS (Chesser et al. 2019, p. 8) has transferred all species of *Oceanodroma* to *Hydrobates.* Thus, the scientific name of the band-rumped storm-petrel is now *Hydrobates castro.* This taxonomic change does not affect the range or endangered status of the Hawaii DPS of the band-rumped storm-petrel.

Mariana Swiftlet

Swiftlets in the Marianas archipelago were considered by Medway (1966, pp. 159–160; 1975, pp. 154–155) to be a subspecies of the Vanikoro swiflet (*Aerodramus vanikorensis bartschi*) based on plumage and nest structure. Following this taxonomic approach, the Vanikoro swiftlet in the Marianas islands was listed as endangered under the scientific name *Aerodramus* [=*Collocalia*] *vanikorensis bartschi* (49 FR 33881; August 27, 1984).

The AOU (1983, p. 783) similarly considered *bartschi* as a subspecies of *Aerodramus vanikorensis,* adopting the common name of ''gray swiftlet'' for the species. The current treatment of this taxon on the List of Endangered and Threatened Wildlife (50 CFR 17.11(h)) continues to follow this approach. However, on further analysis, Browning (1993, pp. 101–104) identified substantial differences in size, morphology, plumage, and nest structure and recommended that the Marianas taxon *bartschi* be treated as a full species in the genus *Collocalia.* Consequently, the AOU (1995, p. 821) treated the Marianas taxon as a full species, *Collocalia bartschi,* with the common name of ''Guam swiftlet.'' Subsequently, this treatment was further modified to return the taxon to the genus *Aerodramus* (AOU 1997, p. 545), following genetic research by Lee et al. (1996, pp. 7093–7096), and to adopt the common name ''Mariana swiftlet'' (Banks et al. 2002, p. 901). Other global bird checklists (*e.g.,* Clements et al. 2021, unpaginated; Gill et al. 2021, unpaginated) similarly describe this taxon as the Mariana swiftlet, *Aerodramus bartschi.* This taxonomic change does not affect the range or endangered status of the Mariana swiftlet.

Other Pacific Islands Landbirds

The List of Endangered and Threatened Wildlife (50 CFR 17.11(h)) currently includes the crested honeycreeper (*Palmeria dolei*), small Kauai thrush (*Myadestes palmeri*), and Molokaʻi thrush (*Myadestes lanaiensis rutha*). While these scientific names continue to be accepted, the AOU (1985, p. 684; 1998, p. 678) has adopted Hawaiian names as the common names for these three species: ʻākohekohe (*Palmeria dolei*), puaiohi (*Myadestes palmeri*), and olomaʻo (*Myadestes lanaiensis*). The subspecies *M. lanaiensis lanaiensis* historically occurred on Lānaʻi but is now extinct and was not listed under the Act; the common name of ''Molokaʻi olomaʻo'' may be used to specifically refer to the listed subspecies *M. lanaiensis rutha* on Molokaʻi. These changes in common name do not affect the range or endangered status of these taxa.

The List of Endangered and Threatened Wildlife (50 CFR 17.11(h)) also currently includes the Rota bridled white-eye (*Zosterops rotensis*). This scientific name continues to be accepted. However, this common name originated from the taxon having been formerly considered as a subspecies of the bridled white-eye (*Zosterops conspicillatus*) (Mees 1969, p. 148). Because it is now considered a separate species on the basis of mitochondrial DNA data (Slikas et al. 2000, p. 364), the common name ''Rota white-eye'' is more appropriate. Recent global checklists (Clements et al. 2021, unpaginated; Gill et al. 2021, unpaginated) have adopted this terminology. This change in common name does not affect the range or endangered status of this taxon.

In addition, on the List of Endangered and Threatened Wildlife, the generic name for Laysan finch and Nihoa finch should be changed from *Telespyza* to *Telespiza.* A spelling error in the original description of these species has been amended by the American Ornithologists Union (AOU 1987, p. 594), and *Telespiza* is now considered the accepted spelling. In the common name for these species, the parenthetical ''honeycreeper'' is unnecessary and will be deleted.

In the common name for the Micronesian megapode (*Megapodius laperouse*), the parenthetical ''La

Perouse's'' is unnecessary and will be deleted.

Hawaiian and Chamorro Names

Several mammal and bird species currently appear on the List of Endangered and Threatened Wildlife only by their English common name, although their names in the Hawaiian or Chamorro languages are also regularly used and, in previous Service documents, we have often informally referred to them by those names. Various recovery plans and other documents cite Hawaiian names for Hawaiian hoary bat (ʻōpeʻapeʻa) (USFWS 1998, p. 1), Hawaiian coot (ʻalae keʻokeʻo) and Hawaiian duck (koloa maoli) (USFWS 2012, p. 1), Hawaii creeper (ʻalawī) (DLNR 2017, unpaginated), Newell's shearwater (ʻaʻo) and Hawaiian petrel (ʻuaʻu) (USFWS 1983, p. 1), band-rumped storm-petrel (ʻakēʻakē) (USFWS 2022, p. 12), and Hawaiian crow (ʻalalā) (USFWS 2009, p. 1); and Chamorro names for Mariana crow (åga) (USFWS 2006, p. 1), Guam kingfisher (sihek) (USFWS 2008, p. 1), Guam rail (ko'ko') and Mariana swiftlet (yayaguak) (USFWS 1990, p. 2), Mariana common moorhen (pulattat) (USFWS 1991, p. 2), Micronesian megapode (sasangat) (USFWS 1998, p. 3), and Rota white-eye (nosa' Luta) (USFWS 2007, p. 1). To improve public communication, understanding, and engagement with local conservation partners, we are including these on the List as accepted common names for the respective species.

As previously noted, Hawaiian and Chamorro orthographic characters are included here and elsewhere in the preamble section of this rule to reflect accurate spelling of these common names; references supporting the correct spelling and orthography of these names include Wagner et al. (1999, entire), Ranker et al. (2019, entire), and Ulukau (2022, unpaginated). However, the text below in this rule that is to be codified in the CFR uses only standard English characters to prevent inadvertent errors during the codification process. Currently, the List of Endangered and Threatened Plants is inconsistent in its representation of Hawaiian names that include the glottal stop or ʻokina (ʻ); for most species the glottal stop is omitted entirely, and for a few it is incorrectly represented by a grave accent (‘). Because the grave accent no longer accurately represents the ʻokina, for consistency, we are amending the List of Endangered and Threatened Plants to remove the grave accent mark from the common names of these species: *Abutilon menziesii* (koʻoloaʻula), *Argyroxiphium sandwicense* ssp. *macrocephalum* (ʻāhinahina), *Argyroxiphium sandwicense* ssp. *sandwicense* (ʻāhinahina), *Cyrtandra crenata* (haʻiwale), *Kokia drynarioides* (kokiʻo), *Kokia kauaiensis* (kokiʻo), and *Huperzia* (amended to *Phlegmariurus* in this rule) *mannii* (wāwaeʻiole).

Hawaiian Birds Not Addressed

Five Hawaiian bird species for which outstanding nomenclatural issues exist were proposed for delisting due to extinction on September 30, 2021 (86 FR 54298). In the List of Endangered and Threatened Wildlife (50 CFR 17.11(h)), the scientific name of Kauai ʻakialoa appears in error as *Hemignathus stejnegeri,* although the currently accepted scientific name is *Akialoa stejnegeri,* as set forth in our direct final rule published on February 17, 2016 (81 FR 8004). The large Kauai thrush (*Myadestes myadestinus*) is also known by the Hawaiian common name of kāmaʻo (AOU 1998, p. 501); the Molokaʻi creeper (*Paroreomyza flammea*) is also known by the Hawaiian common name of kākāwahie (AOU 1998, p. 676). In addition, the common names of the Kauai ʻoʻo (*Moho braccatus*) and poʻouli (*Melamprosops phaeosoma*) incorrectly use the grave accent mark to represent the ʻokina. Because these species may be removed from the List of Endangered and Threatened Wildlife when that proposed rule is finalized, we are not including them in this direct final rule. In addition, we published a proposed rule to reclassify the Hawaiian stilt (*Himantopus mexicanus knudseni*) from an endangered species to a threatened species on March 25, 2021 (86 FR 15855); the addition of the Hawaiian common names to the List for this subspecies (aeʻo, kukuluaeʻo) is being addressed through that rulemaking process. Therefore, we are not including the Hawaiian stilt in this direct final rule.

Idaho Snails

The Banbury Springs limpet (*Lanx* (n.) sp.) is listed as endangered (see 57 FR 59244; December 14, 1992). It is a freshwater gastropod in the subfamily Lancinae, which are limpet-like gastropods within the family Lymnaidae. All known species within the Lancinae are restricted to the northwestern United States in river and tributary systems ranging from the Sacramento River north to the Kootenai River, a tributary of the Columbia. Although not formally described in the scientific literature at the time of its listing under the Act, the Banbury Springs limpet was identified as a unique species with a highly restricted range, from springs derived from a single aquifer system that feeds the middle reaches of the Snake River in Idaho. At the time of its discovery by the late Dr. Terry Frest in 1988, the Banbury Springs limpet was placed in the genus *Lanx,* with a temporary assignment of *Lanx* (n.) sp., as a congener with two other species, *L. patelloides* and *L. alta* (Campbell et al. 2017).

An unpublished genetic and morphological analysis by S.A. Clark (*in litt.* 2007) supported the Banbury Springs limpet as a unique species and suggested a level of differentiation that might warrant the erection of a separate genus. Despite this work, the species remained undescribed until a recent, more thorough investigation by Campbell et al. (2017, entire), who analyzed genetic sequences from four DNA regions from samples of the three described lancine species as well as samples from the four known populations of Banbury Springs limpet. Comparisons with other members of the subfamily also included differences in shell shape, shape and location of the columnar musculature, and genital morphology, all of which support Clark's earlier taxonomic analysis and placement of Banbury Springs limpet within its own genus. The new genus, *Idaholanx,* describes the species' endemicity within the State of Idaho, with the species name honoring Dr. Frest. The taxonomic revision to *Idaholanx fresti* does not affect the range or endangered status of the Banbury Springs limpet.

The Snake River physa snail, a freshwater gastropod endemic to the Snake River in southern Idaho, was originally described as *Physa natricina* (Taylor 1988, entire) and was federally listed as endangered (see 57 FR 59244; December 14, 1992). Subsequently, the species was transferred by Taylor (2003, pp. 12, 147–148) to the genus *Haitia,* part of a new tribe Haitiini, based primarily on penile morphology. Taylor's 2003 revision of the family Physidae designated 11 new genera, including *Haitia* into which he placed the Snake River physa snail based on internal anatomy. Using analyses of phylogenetic trees based on sequences of two mitochondrial genes along with reproductive morphology, Wethington and Lydeard (2007, p. 252) found inconsistencies in Taylor's classifications. While the six anatomical groups they identified fit loosely with Taylor's tribes, the molecular data of Wethington and Lydeard found his more finely divided classification to not be warranted.

The validity of the Snake River physa snail as a species was later called into

question based on a morphological (shell) analysis of Physidae specimens from the Snake River (Rogers and Wethington 2007, entire), but later genetic analyses confirmed *Physa natricina* as a distinct species (Gates et al. 2013, entire).

More recently, Young et al. (2021, entire) used an array of species delineation analyses based on mitochondrial and nuclear gene sequences to re-evaluate species designations among Physidae in North America. Their analyses strongly supported the Snake River physa snail as a distinct taxon in the *Physella* clade (Young et al. 2021, pp. 7–8; MolluscaBase 2021, unpaginated), supporting recognition of *Physella natricina* as the adopted nomenclature for the Snake River physa snail.

The taxonomic revision to *Physella natricina* does not affect the range or endangered status of the Snake River physa snail.

Hawaiian Plants

On February 25, 1994, we published a final rule (59 FR 9304) to list the Hawaiian plant *Cyrtandra limahuliensis* (haʻiwale) as threatened. Subsequent examination of floral morphology and localities for specimens that were previously identified as this species and *C. kealiae* indicate that these taxa represent two subspecies of the same species that occur in different regions of the island of Kauai (Wagner and Lorence 2000, entire). Thus, specimens previously assigned to *C. kealiae* are now considered to represent the non-listed subspecies *C. kealiae* ssp. *urceolata,* while specimens assigned to *Cyrtandra limahuliensis* represent the subspecies *C. kealiae* ssp. *kealiae.* This taxonomic revision does not affect the range or threatened status of the taxon.

The endemic Hawaiian plant *Mucuna sloanei* var. *persericea* (sea bean) is listed as endangered (see 78 FR 32014; May 28, 2013). The species *Mucuna sloanei* is widespread in the tropics; however, examination of herbarium records shows Hawaiian specimens are distinct in flower and leaflet morphology, and they are now considered a distinct species (Moura et al. 2012, entire). Thus, the scientific name of the listed taxon is changed to *Mucuna persericea.* This taxonomic revision does not affect the range or endangered status of the taxon.

Four Hawaiian plants in the genus *Platydesma* are listed as endangered: *P. rostrata* (pilo kea lau liʻi) (see 75 FR 18960; April 13, 2010), *P. cornuta* var. *cornuta* and *P. cornuta* var. *decurrens* (no common name) (see 77 FR 57648; September 18, 2012), and *P. remyi* (no common name) (see 78 FR 64638; October 29, 2013). Recent molecular studies indicate that the genus *Platydesma* is nested within the widely distributed genus *Melicope* (Appelhans et al. 2017, pp. 125–137). Thus, the scientific names of the four listed species are changed to *Melicope rostrata, M. cornuta* var. *cornuta, M. cornuta* var. *decurrens,* and *M. remyi.* This taxonomic revision does not affect the range or endangered status of these taxa.

Three Hawaiian plants in the genus *Pleomele* (hala pepe) are listed as endangered: *P. hawaiiensis* (see 61 FR 53137; October 10, 1996), *P. forbesii* (see 77 FR 57648; September 18, 2012), and *P. fernaldii* (see 78 FR 32014; May 28, 2013). *Pleomele hawaiiensis* is synonymous with the species *P. konaensis,* which has nomenclatural priority (St. John 1985, pp. 185–187; L. Weisenberger in litt. 2021). Phylogenetic analysis of chloroplast DNA, as well as differences in floral morphology and diurnal flowering pattern, indicate that Hawaiian *Pleomele* species are a distinct group; this group has been alternatively treated as the genus *Chrysodracon* (Lu and Morden 2014, pp. 92–98), but based on new genetic analyses, *Chrysodracon* is now considered a subgenus nested within the genus *Dracaena* (Jankalski 2008, pp. 17–21; Takawira-Nyenya 2018, p. 265). Thus, the scientific names of the three listed species are changed to *Dracaena konaensis, D. forbesii,* and *D. fernaldii.* This taxonomic revision does not affect the range or endangered status of these species.

The Hawaiian plant *Psychotria hexandra* ssp. *oahuensis* (kōpiko) is listed as endangered (see 77 FR 57648; September 18, 2012). On review of its taxonomic history, it was determined that this taxon has been validly published as a variety but not as a subspecies (Wagner *in litt.* 2021). Therefore, the scientific name of this taxon is changed to *Psychotria hexandra* var. *oahuensis.* This taxonomic revision does not affect the range or endangered status of this taxon.

The Hawaiian fern *Cyclosorus boydiae* (kupukupu makaliʻi) is listed as endangered (see 81 FR 67786; September 30, 2016). Based on morphology and molecular phylogenetic data, Fawcett and Smith (2021, p. 53) transferred this species to the genus *Menisciopsis.* Thus, its scientific name is changed to *Menisciopsis boydiae.*

Three Hawaiian lycophytes in the genus *Huperzia* are listed as endangered: *H. mannii* (wāwaeʻiole) (see 57 FR 20772; May 15, 1992), *H. nutans* (wāwaeʻiole) (see 59 FR 14482; March 28, 1994), and *H. stemmermanniae* (no common name) (see 81 FR 67786; September 30, 2016). Palmer (2003, pp. 257–259) recognized *Phlegmariurus* as a group within *Huperzia,* and in the most recent taxonomic treatment of the Hawaiian fern and lycophyte flora, *Phlegmariurus* was recognized as a distinct genus that includes the three listed species (Ranker et al. 2019, pp. 55–56, following Pteridophyte Phylogeny Group 2016, p. 570). Thus, the scientific names of these species are changed to *Phlegmariurus mannii, P. nutans,* and *P. stemmermanniae.* This taxonomic revision does not affect the range or endangered status of the species.

The Hawaiian plant *Euphorbia skottsbergii* var. *skottsbergii* (ʻEwa Plains ʻakoko) is listed as endangered (see 47 FR 36846; August 24, 1982). The common name of this taxon is changed to ʻakoko following Wagner et al. (1999, pp. 614–615).

The Hawaiian plant *Gardenia brighamii* (Hawaiian gardenia [nāʻū]) is listed as endangered (see 50 FR 33728; August 21, 1985). The common name of this taxon is changed to nānū following Wagner et al. (1999, pp. 1131–1133) and for consistency with common names of the other listed taxa in the genus (*G. mannii* and *G. remyi*).

The Hawaiian plant *Kanaloa kahoolawensis* (kohe malama malama o Kanaloa) is listed as endangered (see 64 FR 48307; September 3, 1999). An alternative common name of this species, ka palupalu o Kanaloa, has also been adopted (K. Wood *in litt.* 2021).

The Hawaiian plant *Kokia cookei* (Cooke's kokiʻo) is listed as endangered (see 44 FR 62470; October 30, 1979). The common name of this species is changed to kokiʻo following Wagner et al. (1999, pp. 889–890).

The Hawaiian fern *Adenophorus periens* (pendent kihi fern) is listed as endangered (see 59 FR 56333; November 10, 1994). The common name of this species is changed to palai lāʻau following Ranker et al. (2019) (supplemental data).

The Hawaiian fern *Asplenium dielerectum* (asplenium-leaved diellia) is listed as endangered (see 59 FR 56333; November 10, 1994). The common name of this species reflects its former classification in the genus *Diellia,* but is no longer accurate, and is changed to ''no common name'' following Ranker et al. (2019) (supplemental data).

Correction of Errors

To remedy errors in the Lists (50 CFR 17.11 and 17.12) that were introduced in the 2016 Reformatting (81 FR 51550; August 4, 2016), we are revising the

common and/or scientific names of 1 wildlife species (Guam kingfisher, also addressed above to parenthetically include its Chamorro common name) and 11 plant species as follows. On the List of Endangered and Threatened Wildlife, we change the scientific name of Guam Micronesian kingfisher from *Halcyon cinnamomina cinnamomina* to *Todiramphus cinnamominus* and its English common name to Guam kingfisher. On the List of Endangered and Threatened Plants, we correct typographic errors in scientific names by changing *Asplenium dielpallicum* to *Asplenium dielpallidum,* changing *Cyanea humboltiana* to *Cyanea humboldtiana,* changing *Plantago hawaienis* to *Plantago hawaiensis,* and changing the parenthetical term in the scientific name of *Asplenium dielfalcatum* from (=*falcate*) to (=*falcata*); we also correct a typographic error in the common name of *Mezoneuron kavaiense* by changing uhi uhi to uhiuhi (following Wagner et al. 1999, p. 647). In addition, we change the scientific name of *Chamaesyce skottsbergii* var. *skottsbergii* to *Euphorbia skottsbergii* var. *skottsbergii,* change the scientific name of *Delissea rivularis* to *Cyanea rivularis,* change the scientific name of *Hedyotis cookiana* to *Kadua cookiana,* change the scientific name of *Limnanthes floccosa* ssp. *grandiflora* to *Limnanthes pumila* ssp. *grandiflora,* and change the common name of *Cyanea platyphylla* from hāhā to ʻakūʻakū (following Wagner et al. 1999, p. 459); the rationales for these taxonomic changes were previously presented in our direct final rule published on June 23, 2015 (80 FR 35860). On the List of Endangered and Threatened Plants, we change the common name of *Cyanea gibsonii* from ''no common name'' to hāhā (following Wagner et al. 1999, p. 437). This change in common name was previously published in our final critical habitat rule of March 30, 2016 (81 FR 17790).

In addition, on the List of Endangered and Threatened Wildlife, the listing rule citations for flying earwig Hawaiian damselfly (*Megalagrion nesiotes*) and Pacific Hawaiian damselfly (*Megalagrion pacificum*) are incorrect as currently printed, and we are changing them to reflect the actual listing rule of June 24, 2010 (75 FR 35990).

Finally, on the List of Endangered and Threatened Plants, *Cycas micronesica* (fadang, faadang) is incorrectly listed under the heading of ''Flowering Plants.'' Existing headings on the List of Endangered and Threatened Plants include ''Flowering Plants,'' ''Conifers,'' ''Ferns and Allies,'' and ''Lichens.'' This species is a cycad in the family Cycadaceae (80 FR 59424; October 1, 2015), which is a group of gymnosperm plants that is not included in the division Coniferae (conifers) but is more closely related to conifers than to flowering plants. This species is currently the only non-conifer gymnosperm listed under the Act. To accurately represent the classification of this species, we are revising the heading ''Conifers'' on the List of Endangered and Threatened Plants to ''Conifers and Allies'' and moving *Cycas micronesica* under that heading on the List.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

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

(c) Use clear language rather than jargon;

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

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To help us to revise this rule, your comments should be as specific as possible.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations issued pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (43 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments' '' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that this rule will not affect Tribes or Tribal lands.

References Cited

A complete list of the referenced materials is provided in Docket No FWS–R1–ES–2022–0062 at *https://www.regulations.gov*, or is available upon request from the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16. U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11, in paragraph (h), the List of Endangered and Threatened Wildlife, by:

■ a. Under MAMMALS, revising the entry for ''Bat, Hawaiian hoary'';

■ b. Under BIRDS:

■ i. Adding, in alphabetical order, entries for ''Akohekohe (crested honeycreeper)'' and ''Alauahio, Oahu'';

■ ii. Revising the entries for ''Coot, Hawaiian'' and ''Creeper, Hawaii'';

■ iii. Removing the entry for ''Creeper, Oahu'';

■ iv. Revising the entries for ''Crow, Hawaiian'', ''Crow, Mariana'', ''Duck, Hawaiian'', ''Finch, Laysan'', and ''Finch, Nihoa'';

■ v. Removing the entry for ''Honeycreeper, crested (Akohekohe)'';

■ vi. Adding, in alphabetical order, an entry for ''Kingfisher, Guam (sihek)'';

■ vii. Removing the entries for ''Kingfisher, Guam Micronesian'' and ''Megapode, Micronesian (=La Perouse's)'';

■ viii. Adding, in alphabetical order, an entry for ''Megapode, Micronesian (sasangat)'';
■ ix. Revising the entry for ''Moorhen, Mariana common'';
■ x. Adding, in alphabetical order, an entry for ''Olomao, Molokai'';
■ xi. Revising the entry for ''Petrel, Hawaiian'';
■ xii. Adding, in alphabetical order, an entry for ''Puaiohi'';
■ xiii. Revising both entries for ''Rail, Guam'';
■ xiv. Removing the entry for ''Shearwater, Newell's Townsend's'';
■ xv. Adding, in alphabetical order, an entry for ''Shearwater, Newell's (ao)'';
■ xvi. Revising the entry for ''Storm-petrel, band-rumped (Hawaii DPS)'';
■ xvii. Adding, in alphabetical order, an entry for ''Swiftlet, Mariana (yayaguak)'';
■ xviii. Removing the entries for ''Swiftlet, Mariana gray'', ''Thrush, Molokai'', and ''Thrush, small Kauai'';
■ xix. Adding, in alphabetical order, an entry for ''White-eye, Rota (nosa Luta)'';
and
■ xx. Removing the entry for ''White-eye, Rota bridled'';
■ c. Under SNAILS, revising the entries for ''Limpet, Banbury Springs'' and ''Snail, Snake River physa''; and
■ d. Under INSECTS, revising the entries for ''Damselfly, flying earwig Hawaiian'' and ''Damselfly, Pacific Hawaiian''.

The additions and revisions read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
		MAMMALS		
*	*	*	*	*
Bat, Hawaiian hoary (opeapea)	*Aeorestes semotus*	Wherever found	E	35 FR 16047, 10/13/1970.
*	*	*	*	*
		BIRDS		
*	*	*	*	*
Akohekohe (crested honeycreeper)	*Palmeria dolei*	Wherever found	E	32 FR 4001, 3/11/1967; 50 CFR 17.95(b).[CH]
Alauahio, Oahu	*Paroreomyza maculata*	Wherever found	E	35 FR 16047, 10/13/1970.
*	*	*	*	*
Coot, Hawaiian (alae keokeo)	*Fulica alai*	Wherever found	E	35 FR 16047, 10/13/1970.
*	*	*	*	*
Creeper, Hawaii (alawi)	*Loxops mana*	Wherever found	E	40 FR 44149, 9/25/1975.
*	*	*	*	*
Crow, Hawaiian (alala)	*Corvus hawaiiensis*	Wherever found	E	32 FR 4001, 3/11/1967.
Crow, Mariana (aga)	*Corvus kubaryi*	Wherever found	E	49 FR 33881, 8/27/1984; 50 CFR 17.95(b).[CH]
*	*	*	*	*
Duck, Hawaiian (koloa maoli)	*Anas wyvilliana*	Wherever found	E	32 FR 4001, 3/11/1967.
*	*	*	*	*
Finch, Laysan	*Telespiza cantans*	Wherever found	E	32 FR 4001, 3/11/1967.
Finch, Nihoa	*Telespiza ultima*	Wherever found	E	32 FR 4001, 3/11/1967.
*	*	*	*	*
Kingfisher, Guam (sihek)	*Todiramphus cinnamominus*	Wherever found	E	49 FR 33881, 8/27/1984; 50 CFR 17.95(b).[CH]
*	*	*	*	*
Megapode, Micronesian (sasangat)	*Megapodius laperouse*	Wherever found	E	35 FR 8491, 6/2/1970.
*	*	*	*	*
Moorhen, Mariana common (pulattat).	*Gallinula chloropus guami*	Wherever found	E	49 FR 33881, 8/27/1984.
*	*	*	*	*
Olomao, Molokai	*Myadestes lanaiensis rutha*	Wherever found	E	35 FR 16047, 10/13/1970.
*	*	*	*	*
Petrel, Hawaiian (uau)	*Pterodroma sandwichensis*	Wherever found	E	32 FR 4001, 3/11/1967.
*	*	*	*	*
Puaiohi	*Myadestes palmeri*	Wherever found	E	32 FR 4001, 3/11/1967.
*	*	*	*	*
Rail, Guam (koko)	*Gallirallus owstoni*	Wherever found, except where listed as an experimental population.	E	49 FR 33881, 8/27/1984.
Rail, Guam (koko)	*Gallirallus owstoni*	Rota	XN	54 FR 43966, 10/30/1989; 50 CFR 17.84(f).[10j]
*	*	*	*	*
Shearwater, Newell's (ao)	*Puffinus newelli*	Wherever found	T	40 FR 44149, 9/25/1975.
*	*	*	*	*
Storm-petrel, band-rumped (akeake) [Hawaii DPS].	*Hydrobates castro*	U.S.A. (HI)	E	81 FR 67786, 9/30/2016.

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	* *	* *	*	*
Swiftlet, Mariana (yayaguak)	*Aerodramus bartschi*	Wherever found	E	49 FR 33881, 8/27/1984.
*	* *	* *	*	*
White-eye, Rota (nosa Luta)	*Zosterops rotensis*	Wherever found	E	69 FR 3022, 1/22/2004; 50 CFR 17.95(b).[CH]
*	* *	* *	*	*
		SNAILS		
*	* *	* *	*	*
Limpet, Banbury Springs	*Idaholanx fresti*	Wherever found	E	57 FR 59244, 12/14/1992.
*	* *	* *	*	*
Snail, Snake River physa	*Physella natricina*	Wherever found	E	57 FR 59244, 12/14/1992.
*	* *	* *	*	*
		INSECTS		
*	* *	* *	*	*
Damselfly, flying earwig Hawaiian	*Megalagrion nesiotes*	Wherever found	E	75 FR 35990, 6/24/2010; 50 CFR 17.95(i).[CH]
*	* *	* *	*	*
Damselfly, Pacific Hawaiian	*Megalagrion pacificum*	Wherever found	E	75 FR 35990, 6/24/2010; 50 CFR 17.95(i).[CH]
*	* *	* *	*	*

■ 3. Amend § 17.12, in paragraph (h), the List of Endangered and Threatened Plants, by:

■ a. Under FLOWERING PLANTS:

■ i. Revising the entries for ''*Abutilon menziesii*'', ''*Argyroxiphium sandwicense* ssp. *macrocephalum*'', and ''*Argyroxiphium sandwicense* ssp. *sandwicense*'';

■ ii. Removing the entry for ''*Chamaesyce skottsbergii* var. *skottsbergii*'';

■ iii. Revising the entry for ''*Cyanea gibsonii*'';

■ iv. Adding, in alphabetical order, an entry for ''*Cyanea humboldtiana*'';

■ v. Removing the entry for ''*Cyanea humboltiana*'';

■ vi. Revising the entry for ''*Cyanea platyphylla*'';

■ vii. Adding, in alphabetical order, an entry for ''*Cyanea rivularis*'';

■ viii. Removing the entry for ''*Cycas micronesica*'';

■ ix. Revising the entry for ''*Cyrtandra crenata*'';

■ x. Adding, in alphabetical order, an entry for ''*Cyrtandra kealiae* ssp. *kealiae*'';

■ xi. Removing the entries for ''*Cyrtandra limahuliensis*'' and ''*Delissea rivularis*'';

■ xii. Adding, in alphabetical order, entries for ''*Dracaena fernaldii*'', ''*Dracaena forbesii*'', ''*Dracaena konaensis*'', and ''*Euphorbia skottsbergii* var. *skottsbergii*'';

■ xiii. Revising the entry for ''*Gardenia brighamii*'';

■ xiv. Removing the entry for ''*Hedyotis cookiana*'';

■ xv. Adding, in alphabetical order, an entry for ''*Kadua cookiana*'';

■ xvi. Revising the entries for ''*Kanaloa kahoolawensis*'', ''*Kokia cookei*'', ''*Kokia drynarioides*'', and ''*Kokia kauaiensis*'';

■ xvii. Removing the entry for ''*Limnanthes floccosa* ssp. *grandiflora*'';

■ xviii. Adding, in alphabetical order, entries for ''*Limnanthes pumila* ssp. *grandiflora*'', ''*Melicope cornuta* var. *cornuta*'', ''*Melicope cornuta* var. *decurrens*'', ''*Melicope remyi*'', and ''*Melicope rostrata*'';

■ xix. Revising the entry for ''*Mezoneuron kavaiense*'';

■ xx. Adding, in alphabetical order, an entry for ''*Mucuna persericea*'';

■ xxi. Removing the entries for ''*Mucuna sloanei* var. *persericea*'' and ''*Plantago hawaienis*'';

■ xxii. Adding, in alphabetical order, an entry for ''*Plantago hawaiensis*'';

■ xxiii. Removing the entries for ''*Platydesma cornuta* var. *cornuta*'', ''*Platydesma cornuta* var. *decurrens*'', ''*Platydesma remyi*'', ''*Platydesma rostrata*'', ''*Pleomele fernaldii*'', ''*Pleomele forbesii*'', ''*Pleomele hawaiiensis*'', and ''*Psychotria hexandra* ssp. *oahuensis*''; and

■ xxiv. Adding, in alphabetical order, an entry for ''*Psychotria hexandra* var. *oahuensis*'';

■ b. Revising the heading CONIFERS to read CONIFERS AND ALLIES;

■ c. Under CONIFERS AND ALLIES, adding, in alphabetical order, an entry for ''*Cycas micronesica*''; and

■ d. Under FERNS AND ALLIES:

■ i. Revising the entries for ''*Adenophorus periens*'' and ''*Asplenium dielerectum*'';

■ ii. Removing the entries for ''*Asplenium* (=*Diellia*) *dielfalcatum* (=*falcate*)'' and ''*Asplenium* (=*Diellia*) *dielpallicum* (=*pallida*)'';

■ iii. Adding, in alphabetical order, entries for ''*Asplenium* (=*Diellia*) *dielfalcatum* (=*falcata*)'' and ''*Asplenium* (=*Diellia*) *dielpallidum* (=*pallida*)'';

■ iv. Removing the entries for ''*Cyclosorus boydiae*'', ''*Huperzia mannii*'', ''*Huperzia nutans*'', and ''*Huperzia stemmermanniae*''; and

■ v. Adding, in alphabetical order, entries for ''*Menisciopsis boydiae*'', ''*Phlegmariurus mannii*'', ''*Phlegmariurus nutans*'', and ''*Phlegmariurus stemmermanniae*''.

The revisions and additions read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
Flowering Plants				
*	*	*	*	*
Abutilon menziesii	Kooloaula	Wherever found	E	51 FR 34412, 9/26/1986.
*	*	*	*	*
Argyroxiphium sandwicense ssp. *macrocephalum.*	Ahinahina	Wherever found	T	57 FR 20772, 5/15/1992; 50 CFR 17.99(e)(1).[CH]
Argyroxiphium sandwicense ssp. *sandwicense.*	Ahinahina	Wherever found	E	51 FR 9814, 3/21/1986.
*	*	*	*	*
Cyanea gibsonii	Haha	Wherever found	E	56 FR 47686, 9/20/1991.
*	*	*	*	*
Cyanea humboldtiana	Haha	Wherever found	E	61 FR 53089, 10/10/1996; 50 CFR 17.99(i).[CH]
*	*	*	*	*
Cyanea platyphylla	Haha, akuaku	Wherever found	E	61 FR 53137, 10/10/1996; 50 CFR 17.99(k).[CH]
*	*	*	*	*
Cyanea rivularis	Haha	Wherever found	E	61 FR 53070, 10/10/1996; 50 CFR 17.99(a)(1).[CH]
*	*	*	*	*
Cyrtandra crenata	Haiwale	Wherever found	E	59 FR 14482, 3/28/1994.
*	*	*	*	*
Cyrtandra kealiae ssp. *kealiae*	Haiwale	Wherever found	T	59 FR 9304, 2/25/1994; 50 CFR 17.99(a)(1).[CH]
*	*	*	*	*
Dracaena fernaldii	Hala pepe	Wherever found	E	78 FR 32014, 5/28/2013.
Dracaena forbesii	Hala pepe	Wherever found	E	77 FR 57648, 9/18/2012; 50 CFR 17.99(i).[CH]
Dracaena konaensis	Hala pepe	Wherever found	E	61 FR 53137, 10/10/1996; 50 CFR 17.99(k).[CH]
*	*	*	*	*
Euphorbia skottsbergii var. *skottsbergi*	Akoko	Wherever found	E	47 FR 36846, 8/24/1982; 50 CFR 17.99(i).[CH]
*	*	*	*	*
Gardenia brighamii	Nanu	Wherever found	E	50 FR 33728, 8/21/1985.
*	*	*	*	*
Kadua cookiana	Awiwi	Wherever found	E	59 FR 9304, 2/25/1994; 50 CFR 17.99(a)(1).[CH]
*	*	*	*	*
Kanaloa kahoolawensis	Ka palupalu o Kanaloa, Kohe malama malama o Kanaloa.	Wherever found	E	64 FR 48307, 9/3/1999; 50 CFR 17.99(e)(2).[CH]
*	*	*	*	*
Kokia cookei	Kokio	Wherever found	E	44 FR 62470, 10/30/1979; 50 CFR 17.99(c).[CH]
Kokia drynarioides	Kokio	Wherever found	E	49 FR 47397, 12/4/1984; 50 CFR 17.96(a).[CH]
Kokia kauaiensis	Kokio	Wherever found	E	61 FR 53070, 10/10/1996; 50 CFR 17.99(a)(1).[CH]
*	*	*	*	*
Limnanthes pumila ssp. *grandiflora*	Large-flowered woolly meadowfoam	Wherever found	E	67 FR 68004, 11/7/2002; 50 CFR 17.96(a).[CH]
*	*	*	*	*
Melicope cornuta var. *cornuta*	No common name	Wherever found	E	77 FR 57648, 9/18/2012; 50 CFR 17.99(i).[CH]
Melicope cornuta var. *decurrens*	No common name	Wherever found	E	77 FR 57648, 9/18/2012; 50 CFR 17.99(i).[CH]
*	*	*	*	*
Melicope remyi	No common name	Wherever found	E	78 FR 64638, 10/29/2013.
Melicope rostrata	Pilo kea lau lii	Wherever found	E	75 FR 18960, 4/13/2010; 50 CFR 17.99(a)(1).[CH]
*	*	*	*	*
Mezoneuron kavaiense	Uhiuhi	Wherever found	E	51 FR 24672, 7/8/1986.
*	*	*	*	*
Mucuna persericea	Sea bean	Wherever found	E	78 FR 32014, 5/28/2013; 50 CFR 17.99(e)(1).[CH]
*	*	*	*	*
Plantago hawaiensis	Laukahi kuahiwi	Wherever found	E	59 FR 10305, 3/4/1994; 50 CFR 17.99(k).[CH]
*	*	*	*	*
Psychotria hexandra var. *oahuensis*	Kopiko	Wherever found	E	77 FR 57648, 9/18/2012; 50 CFR 17.99(i).[CH]

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
Conifers and Allies				
*	*	*	*	*
Cycas micronesica	Fadang, faadang	Wherever found	T	80 FR 59424, 10/1/2015.
*	*	*	*	*
Ferns and Allies				
*	*	*	*	*
Adenophorus periens	Palai laau	Wherever found	E	59 FR 56333, 11/10/1994; 50 CFR 17.99(a)(1); [CH] 50 CFR 17.99(e)(1); [CH] 50 CFR 17.99(i); [CH] 50 CFR 17.99(k).[CH]
*	*	*	*	*
Asplenium dielerectum	No common name	Wherever found	E	59 FR 56333, 11/10/1994; 50 CFR 17.99(a)(1); [CH] 50 CFR 17.99(c); [CH] 50 CFR 17.99(e)(1);[CH] 50 CFR 17.99(i); [CH] 50 CFR 17.99(k).[CH]
*	*	*	*	*
Asplenium (=*Diellia*) *dielfalcatum* (=*falcata*).	No common name	Wherever found	E	56 FR 55770, 10/29/1991; 50 CFR 17.99(i).[CH]
*	*	*	*	*
Asplenium (=*Diellia*) *dielpallidum* (=*pallida*).	No common name	Wherever found	E	59 FR 9304, 2/25/1994; 50 CFR 17.99(a)(1).[CH]
*	*	*	*	*
Menisciopsis boydiae	Kupukupu makalii	Wherever found	E	81 FR 67786, 9/30/2016.
*	*	*	*	*
Phlegmariurus mannii	Wawaeiole	Wherever found	E	57 FR 20772, 5/15/1992; 50 CFR 17.99(e)(1).[CH]
Phlegmariurus nutans	Wawaeiole	Wherever found	E	59 FR 14482, 3/28/1994; 50 CFR 17.99(a)(1); [CH] 50 CFR 17.99(i).[CH]
Phlegmariurus stemmermanniae	No common name	Wherever found	E	81 FR 67786, 9/30/2016.
*	*	*	*	*

§ 17.84 [Amended]

■ 4. In § 17.84, amend paragraph (f) introductory text by removing the word ''*Rallus*'' and adding in its place the word ''*Gallirallus*''.

■ 5. Amend § 17.95, in paragraph (b), by:

■ a. In the entry ''Guam Micronesian Kingfisher (*Halcyon cinnamomina cinnamomina*)'':

■ i. Removing the heading ''Guam Micronesian Kingfisher (*Halcyon cinnamomina cinnamomina*)'' and adding in its place the heading ''Guam Kingfisher (*Todiramphus cinnamominus*)'';

■ ii. In paragraph (1) and the introductory text of paragraph (2), removing the word ''Micronesian'';

■ iii. Revising the introductory text of paragraph (4)(i);

■ iv. In the introductory text of paragraph (4)(ii), removing the word ''Micronesian''; and

■ v. Revising the introductory text of paragraph (4)(ii)(B); and

■ b. In the entry ''Rota Bridled White-eye (*Zosterops rotensis*)'':

■ i. Removing the heading ''Rota Bridled White-eye (*Zosterops rotensis*)'' and adding in its place the heading ''Rota White-eye (*Zosterops rotensis*)'';

■ ii. In the introductory text of paragraphs (2) and (5), removing the word ''bridled''; and

■ iii. Revising the introductory text of paragraph (5)(ii).

The revisions read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Guam Kingfisher (*Todiramphus cinnamominus*)

* * * * *

(4) * * *

(i) *Note:* The reference to ''Guam Micronesian Kingfisher'' on the map is equivalent to ''Guam Kingfisher.'' Map 1 showing the general location of the Guam kingfisher unit follows:

* * * * *

(ii) * * *

(B) *Note:* The reference to ''Guam Micronesian Kingfisher'' on the map is equivalent to ''Guam Kingfisher.'' Map 2 showing Guam kingfisher unit follows:

* * * * *

Rota White-eye (*Zosterops rotensis*)

* * * * *

(5) * * *

(ii) *Note:* The reference to ''Rota Bridled White-eye'' on the map is equivalent to ''Rota White-eye.'' Map 1 of the critical habitat for Rota white-eye follows:

* * * * *

■ 6. Amend § 17.96, in paragraph (a), the entry for ''Family Limnanthaceae: *Limnanthes floccosa* ssp. *grandiflora* (large-flowered woolly meadowfoam)'', by:

■ a. Removing the heading ''Family Limnanthaceae: *Limnanthes floccosa* ssp. *grandiflora* (large-flowered woolly meadowfoam)'' and adding in its place the heading ''Family Limnanthaceae: *Limnanthes pumila* ssp. *grandiflora* (large-flowered woolly meadowfoam)'';

■ b. In the introductory text of paragraphs (2) and (2)(i), and in paragraph (2)(iv), removing the word ''*floccosa*'' and adding in its place the word ''*pumila*'';

■ c. Revising the introductory text of paragraph (5);

■ d. In the introductory text of paragraph (6), removing the word

''*floccosa*'' and adding in its place the word ''*pumila*'';

■ e. Revising the introductory text of paragraph (6)(ii);

■ f. In the introductory text of paragraph (7), removing the word ''*floccosa*'' and adding in its place the word ''*pumila*'';

■ g. Revising the introductory text of paragraph (7)(ii);

■ h. In the introductory text of paragraph (8), removing the word ''*floccosa*'' and adding in its place the word ''*pumila*'';

■ i. Revising the introductory text of paragraph (8)(ii);

■ j. In the introductory text of paragraph (9), removing the word ''*floccosa*'' and adding in its place the word ''*pumila*'';

■ k. Revising the introductory text of paragraph (9)(ii);

■ l. In the introductory text of paragraph (10), removing the word ''*floccosa*'' and adding in its place the word ''*pumila*'';

■ m. Revising the introductory text of paragraph (10)(ii);

■ n. In the introductory text of paragraphs (11) and (11)(i), removing the word ''*floccosa*'' and adding in its place the word ''*pumila*'';

■ o. Revising the introductory text of paragraph (11)(ii);

■ p. In the introductory text of paragraph (12), removing the word ''*floccosa*'' and adding in its place the word ''*pumila*'';

■ q. Revising the introductory text of paragraph (12)(ii);

■ r. In the introductory text of paragraph (13), removing the word ''*floccosa*'' and adding in its place the word ''*pumila*''; and

■ s. Revising the introductory text of paragraph (13)(ii).

The revisions read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Limnanthaceae: *Limnanthes pumila* ssp. *grandiflora* (large-flowered woolly meadowfoam)

* * * * *

(5) *Note:* The reference to ''*Limnanthes floccosa* ssp. *grandiflora*'' on the map is equivalent to ''*Limnanthes pumila* ssp. *grandiflora.*'' Index map for critical habitat in Jackson County, Oregon, follows:

* * * * *

(6) * * *

(ii) *Note:* The reference to ''*Limnanthes floccosa* ssp. *grandiflora*'' on the map is equivalent to ''*Limnanthes pumila* ssp. *grandiflora.*'' Map of Unit RV1 follows:

* * * * *

(7) * * *

(ii) *Note:* The reference to ''*Limnanthes floccosa* ssp. *grandiflora*'' on the map is equivalent to ''*Limnanthes pumila* ssp. *grandiflora.*'' Map of Unit RV2 follows:

* * * * *

(8) * * *

(ii) *Note:* The reference to ''*Limnanthes floccosa* ssp. *grandiflora*'' on the map is equivalent to ''*Limnanthes pumila* ssp. *grandiflora.*'' Map of Unit RV3 follows:

* * * * *

(9) * * *

(ii) *Note:* The reference to ''*Limnanthes floccosa* ssp. *grandiflora*'' on the map is equivalent to ''*Limnanthes pumila* ssp. *grandiflora.*'' Map of Unit RV4 follows:

* * * * *

(10) * * *

(ii) *Note:* The reference to ''*Limnanthes floccosa* ssp. *grandiflora*'' on the map is equivalent to ''*Limnanthes pumila* ssp. *grandiflora.*'' Map of Unit RV5 follows:

* * * * *

(11) * * *

(ii) *Note:* The reference to ''*Limnanthes floccosa* ssp. *grandiflora*'' on the map is equivalent to ''*Limnanthes pumila* ssp. *grandiflora.*'' Map of Unit RV6 follows:

* * * * *

(12) * * *

(ii) *Note:* The reference to ''*Limnanthes floccosa* ssp. *grandiflora*'' on the map is equivalent to ''*Limnanthes pumila* ssp. *grandiflora.*'' Map of Unit RV7 follows:

* * * * *

(13) * * *

(ii) *Note:* The reference to ''*Limnanthes floccosa* ssp. *grandiflora*'' on the map is equivalent to ''*Limnanthes pumila* ssp. *grandiflora.*'' Map of Unit RV8 follows:

* * * * *

■ 7. Amend § 17.99 as follows:

■ a. In paragraph (a)(1), by:

■ i. In paragraph (a)(1)(vi)(A), removing the words ''Kauai 4–*Platydesma rostrata*–a'' and adding in their place the words ''Kauai 4–*Melicope rostrata*–a'';

■ ii. Revising paragraph (a)(1)(vi)(B) introductory text;

■ iii. In paragraph (a)(1)(xiv) introductory text, removing the words ''Kauai 4–*Cyrtandra limahuliensis*–a'' and adding in their place the words ''Kauai 4–*Cyrtandra kealiae* ssp. *kealiae*–a'';

■ iv. Revising paragraph (a)(1)(xiv)(B) introductory text;

■ v. In paragraph (a)(1)(xv) introductory text, removing the words ''Kauai 4—*Cyrtandra limahuliensis*—b'' and adding in their place the words ''Kauai 4—*Cyrtandra kealiae* ssp. *kealiae*—b'';

■ vi. Revising paragraph (a)(1)(xv)(B) introductory text;

■ vii. In paragraph (a)(1)(xxix) introductory text, removing the words ''Kauai 4—*Platydesma rostrata*—a'' and adding in their place the words ''Kauai 4—*Melicope rostrata*—a'';

■ viii. In paragraph (a)(1)(xxxiv)(A), removing the words ''Kauai 7—*Platydesma rostrata*—b'' and adding in their place the words ''Kauai 7—*Melicope rostrata*—b'';

■ ix. Revising paragraph (a)(1)(xxxiv)(B) introductory text;

■ x. In paragraph (a)(1)(xlix) introductory text, removing the words ''Kauai 7—*Platydesma rostrata*—b'' and adding in their place the words ''Kauai 7—*Melicope rostrata*—b'';

■ xi. In paragraph (a)(1)(lvii)(A), removing the words ''Kauai 10—*Platydesma rostrata*—c'' and adding in their place the words ''Kauai 10—*Melicope rostrata*—c'';

■ xii. Revising paragraph (a)(1)(lvii)(B) introductory text;

■ xiii. In paragraph (a)(1)(lix)(A), removing the words ''Kauai 10—*Platydesma rostrata*—d'' and adding in their place the words ''Kauai 10—*Melicope rostrata*—d'';

■ xiv. Revising paragraph (a)(1)(lix)(B) introductory text;

■ xv. In paragraph (a)(1)(lx)(A), removing the words ''Kauai 10—*Platydesma rostrata*—e'' and adding in their place the words ''Kauai 10—*Melicope rostrata*—e'';

■ xvi. Revising paragraph (a)(1)(lx)(B) introductory text;

■ xvii. In paragraph (a)(1)(lxxii) introductory text, removing the words ''Kauai 10—*Cyrtandra limahuliensis*—c'' and adding in their place the words ''Kauai 10—*Cyrtandra kealiae* ssp. *kealiae*—c'';

■ xviii. Revising paragraph (a)(1)(lxxii)(B) introductory text;

■ xix. In paragraph (a)(1)(civ) introductory text, removing the words ''Kauai 10—*Huperzia nutans*—a'' and adding in their place the words ''Kauai 10—*Phlegmariurus nutans*—a'';

■ xx. Revising paragraph (a)(1)(civ)(B) introductory text;

■ xxi. In paragraph (a)(1)(cviii) introductory text, removing the words ''Kauai 10—*Platydesma rostrata*—c'' and adding in their place the words ''Kauai 10—*Melicope rostrata*—c'';

■ xxii. In paragraph (a)(1)(cix) introductory text, removing the words ''Kauai 10—*Platydesma rostrata*—d'' and adding in their place the words ''Kauai 10—*Melicope rostrata*—d'';

■ xxiii. In paragraph (a)(1)(cx) introductory text, removing the words ''Kauai 10—*Platydesma rostrata*—e'' and adding in their place the words ''Kauai 10—*Melicope rostrata*—e'';

■ xxiv. In paragraph (a)(1)(cxxx)(A), removing the words ''Kauai 11—*Platydesma rostrata*—f'' and adding in their place the words ''Kauai 11—*Melicope rostrata*—f'';
■ xxv. Revising paragraph (a)(1)(cxxx)(B) introductory text;
■ xxvi. In paragraph (a)(1)(cxxxiii)(A), removing the words ''Kauai 11—*Platydesma rostrata*—g'' and adding in their place the words ''Kauai 11—*Melicope rostrata*—g'';
■ xxvii. Revising paragraph (a)(1)(cxxxiii)(B) introductory text;
■ xxviii. In paragraph (a)(1)(cxl)(A), removing the words ''Kauai 11—*Platydesma rostrata*—h'' and adding in their place the words ''Kauai 11—*Melicope rostrata*—h'';
■ xxix. Revising paragraph (a)(1)(cxl)(B) introductory text;
■ xxx. In paragraph (a)(1)(cxli)(A), removing the words ''Kauai 11—*Platydesma rostrata*—i'' and adding in their place the words ''Kauai 11—*Melicope rostrata*—i'';
■ xxxi. Revising paragraph (a)(1)(cxli)(B) introductory text;
■ xxxii. In paragraph (a)(1)(cxlvi)(A), removing the words ''Kauai 11—*Platydesma rostrata*—j'' and adding in their place the words ''Kauai 11—*Melicope rostrata*—j'';
■ xxxiii. Revising paragraph (a)(1)(cxlvi)(B) introductory text;
■ xxxiv. In paragraph (a)(1)(clxi) introductory text, removing the words ''Kauai 11—*Cyrtandra limahuliensis*—d'' and adding in their place the words ''Kauai 11—*Cyrtandra kealiae* ssp. *kealiae*—d'';
■ xxxv. Revising paragraph (a)(1)(clxi)(B) introductory text;
■ xxxvi. In paragraph (a)(1)(clxii) introductory text, removing the words ''Kauai 11—*Cyrtandra limahuliensis*—e'' and adding in their place the words ''Kauai 11—*Cyrtandra kealiae* ssp. *kealiae*—e'';
■ xxxvii. Revising paragraph (a)(1)(clxii)(B) introductory text;
■ xxxviii. In paragraph (a)(1)(clxviii) introductory text, removing the words ''Kauai 11—*Delissea rivularis*—a'' and adding in their place the words ''Kauai 11—*Cyanea rivularis*—a'';
■ xxxix. Revising paragraph (a)(1)(clxviii)(B) introductory text;
■ xl. In paragraph (a)(1)(clxxiii) introductory text, removing the words ''Kauai 11—*Diellia pallida*—a'' and adding in their place the words ''Kauai 11—*Asplenium dielpallidum*-a'';
■ xli. Revising paragraph (a)(1)(clxxiii)(B) introductory text;
■ xlii. In paragraph (a)(1)(clxxiv) introductory text, removing the words ''Kauai 11—*Diellia pallida*—b'' and adding in their place the words ''Kauai 11—*Asplenium dielpallidum*—b'';
■ xliii. Revising paragraph (a)(1)(clxxiv)(B) introductory text;
■ xliv. In paragraph (a)(1)(cciii) introductory text, removing the words ''Kauai 11—*Hedyotis cookiana*—a'' and adding in their place the words ''Kauai 11—*Kadua cookiana*—a'';
■ xlv. Revising paragraph (a)(1)(cciii)(B) introductory text;
■ xlvi. In paragraph (a)(1)(cclxxvii) introductory text, removing the words ''Kauai 11—*Platydesma rostrata*—f'' and adding in their place the words ''Kauai 11—*Melicope rostrata*—f'';
■ xlvii. In paragraph (a)(1)(cclxxviii) introductory text, removing the words ''Kauai 11—*Platydesma rostrata*—g'' and adding in their place the words ''Kauai 11—*Melicope rostrata*—g'';
■ xlviii. In paragraph (a)(1)(cclxxix) introductory text, removing the words ''Kauai 11—*Platydesma rostrata*—h'' and adding in their place the words ''Kauai 11—*Melicope rostrata*—h'';
■ xlix. In paragraph (a)(1)(cclxxx) introductory text, removing the words ''Kauai 11—*Platydesma rostrata*—i'' and adding in their place the words ''Kauai 11—*Melicope rostrata*—i'';
■ l. In paragraph (a)(1)(cclxxxi) introductory text, removing the words ''Kauai 11—*Platydesma rostrata*—j'' and adding in their place the words ''Kauai 11—*Melicope rostrata*—j'';
■ li. In paragraph (a)(1)(cccli)(A), removing the words ''Kauai 18—*Platydesma rostrata*—k'' and adding in their place the words ''Kauai 18—*Melicope rostrata*—k'';
■ lii. Revising paragraph (a)(1)(cccli)(B) introductory text;
■ liii. In paragraph (a)(1)(ccclx) introductory text, removing the words ''Kauai 18—*Platydesma rostrata*—k'' and adding in their place the words ''Kauai 18—*Melicope rostrata*—k'';
■ liv. In paragraph (a)(1)(ccclxi)(A), removing the words ''Kauai 19—*Platydesma rostrata*—l'' and adding in their place the words ''Kauai 19—*Melicope rostrata*—l'';
■ lv. Revising paragraph (a)(1)(ccclxi)(B) introductory text;
■ lvi. In paragraph (a)(1)(ccclxx) introductory text, removing the words ''Kauai 19—*Platydesma rostrata*—l'' and adding in their place the words ''Kauai 19—*Melicope rostrata*—l'';
■ lvii. In paragraph (a)(1)(ccclxxi)(A), removing the words ''Kauai 20—*Platydesma rostrata*—m'' and adding in their place the words ''Kauai 20—*Melicope rostrata*—m'';
■ lviii. Revising paragraph (a)(1)(ccclxxi)(B) introductory text;
■ lix. In paragraph (a)(1)(ccclxxxiii) introductory text, removing the words ''Kauai 20—*Platydesma rostrata*—m'' and adding in their place the words ''Kauai 20—*Melicope rostrata*—m'';
■ lx. In paragraph (a)(1)(ccclxxxvii)(A), removing the words ''Kauai 21—*Platydesma rostrata*—n'' and adding in their place the words ''Kauai 21—*Melicope rostrata*—n'';
■ lxi. Revising paragraph (a)(1)(ccclxxxvii)(B) introductory text;
■ lxii. In paragraph (a)(1)(cccxcii) introductory text, ''Kauai 21—*Platydesma rostrata*—o'' and adding in their place the words ''Kauai 21—*Melicope rostrata*—n'';
■ lxiii. In paragraph (a)(1)(cccxcvi)(A), removing the words ''Kauai 22—*Platydesma rostrata*—o'' and adding in their place the words ''Kauai 22—*Melicope rostrata*—o'';
■ lxiv. Revising paragraph (a)(1)(cccxcvi)(B) introductory text;
■ lxv. In paragraph (a)(1)(cdi) introductory text, removing the words ''Kauai 22—*Platydesma rostrata*—o'' and adding in their place the words ''Kauai 22—*Melicope rostrata*—o'';
■ lxvi. In paragraph (a)(1)(cdv)(A), removing the words ''Kauai 23—*Platydesma rostrata*—p'' and adding in their place the words ''Kauai 23—*Melicope rostrata*—p'';
■ lxvii. Revising paragraph (a)(1)(cdv)(B) introductory text;
■ lxviii. In paragraph (a)(1)(cdxx) introductory text, removing the words ''Kauai 23—*Platydesma rostrata*—p'' and adding in their place the words ''Kauai 23—*Melicope rostrata*—p'';
■ lxix. In paragraph (a)(1)(cdxxiii)(A), removing the words ''Kauai 24—*Platydesma rostrata*—q'' and adding in their place the words ''Kauai 24—*Melicope rostrata*—q'';
■ lxx. Revising paragraph (a)(1)(cdxxiii)(B) introductory text;
■ lxxi. In paragraph (a)(1)(cdxxxviii) introductory text, removing the words ''Kauai 24—*Platydesma rostrata*—q'' and adding in their place the words ''Kauai 24—*Melicope rostrata*—q'';
■ lxxii. In paragraph (a)(1)(cdxli)(A), removing the words ''Kauai 25—*Platydesma rostrata*—r'' and adding in their place the words ''Kauai 25—*Melicope rostrata*—r'';
■ lxxiii. Revising paragraph (a)(1)(cdxli)(B) introductory text;
■ lxxiv. In paragraph (a)(1)(cdlvi) introductory text, removing the words ''Kauai 25—*Platydesma rostrata*—r'' and adding in their place the words ''Kauai 25—*Melicope rostrata*—r''; and
■ lxxv. In paragraph (a)(1)(cdlix), the Table of Protected Species Within Each Critical Habitat Unit for Kauai:
■ *1.* Removing the entries for ''Kauai 4—*Cyrtandra limahuliensis*—a'', ''Kauai 4—*Cyrtandra limahuliensis*—b'', ''Kauai 4—*Platydesma rostrata*—a'', ''Kauai 7—*Platydesma rostrata*—b'', ''Kauai 10—*Cyrtandra limahuliensis*—c'', ''Kauai

10—*Huperzia nutans*—a'', ''Kauai 10—*Platydesma rostrata*—c'', ''Kauai 10—*Platydesma rostrata*—d'', ''Kauai 10—*Platydesma rostrata*—e'', ''Kauai 11—*Cyrtandra limahuliensis*—d'', ''Kauai 11—*Cyrtandra limahuliensis*—e'', ''Kauai 11—*Delissea rivularis*—a'', ''Kauai 11—*Diellia pallida*—a'', ''Kauai 11—*Diellia pallida*—b'', ''Kauai 11—*Hedyotis cookiana*—a'', ''Kauai 11—*Platydesma rostrata*—f'', ''Kauai 11—*Platydesma rostrata*—g'', ''Kauai 11—*Platydesma rostrata*—h'', ''Kauai 11—*Platydesma rostrata*—i'', ''Kauai 11—*Platydesma rostrata*—j'', ''Kauai 18—*Platydesma rostrata*—k'', ''Kauai 19—*Platydesma rostrata*—l'', ''Kauai 20—*Platydesma rostrata*—m'', ''Kauai 21—*Platydesma rostrata*—n'', ''Kauai 22—*Platydesma rostrata*—o'', ''Kauai 23—*Platydesma rostrata*—p'', ''Kauai 24—*Platydesma rostrata*—q'', and ''Kauai 25—*Platydesma rostrata*—r''; and

■ *2.* Adding, in order by unit number and then alphabetical order by scientific name within the unit, entries for ''Kauai 4—*Cyrtandra kealiae* ssp. *kealiae*—a'', ''Kauai 4—*Cyrtandra kealiae* ssp. *kealiae*—b'', ''Kauai 4—*Melicope rostrata*—a'', ''Kauai 7—*Melicope rostrata*—b'', ''Kauai 10—*Cyrtandra kealiae* ssp. *kealiae*—c'', ''Kauai 10—*Melicope rostrata*—c'', ''Kauai 10—*Melicope rostrata*—d'', ''Kauai 10—*Melicope rostrata*—e'', ''Kauai 10—*Phlegmariurus nutans*—a'', ''Kauai 11—*Asplenium dielpallidum*—a'', ''Kauai 11—*Asplenium dielpallidum*—b'', ''Kauai 11—*Cyanea rivularis*—a'', ''Kauai 11—*Cyrtandra kealiae* ssp. *kealiae*—d'', ''Kauai 11—*Cyrtandra kealiae* ssp. *kealiae*—e'', ''Kauai 11—*Kadua cookiana*—a'', ''Kauai 11—*Melicope rostrata*—f'', ''Kauai 11—*Melicope rostrata*—g'', ''Kauai 11—*Melicope rostrata*—h'', ''Kauai 11—*Melicope rostrata*—i'', ''Kauai 11—*Melicope rostrata*—j'', ''Kauai 18—*Melicope rostrata*—k'', ''Kauai 19—*Melicope rostrata*—l'', ''Kauai 20—*Melicope rostrata*—m'', ''Kauai 21—*Melicope rostrata*—n'', ''Kauai 22—*Melicope rostrata*—o'', ''Kauai 23—*Melicope rostrata*—p'', ''Kauai 24—*Melicope rostrata*—q'', and ''Kauai 25—*Melicope rostrata*—r'';

■ b. In paragraph (b)(1), by:

■ i. Removing the heading ''Family Campanulaceae: *Delissea rivularis* (oha)'' and adding in its place the heading ''Family Campanulaceae: *Cyanea rivularis* (oha)'';

■ ii. Under the new heading ''Family Campanulaceae: *Cyanea rivularis* (oha)'', in the introductory text:

■ *1.* Removing the words ''Kauai 11—*Delissea rivularis*—a'' and adding in their place the words ''Kauai 11—*Cyanea rivularis*—a''; and

■ *2.* Removing the words ''*Delissea rivularis*'' and adding in their place the words ''*Cyanea rivularis*'';

■ iii. Removing the heading ''Family Gesneriaceae: *Cyrtandra limahuliensis* (haiwale)'' and adding in its place the heading ''Family Gesneriaceae: *Cyrtandra kealiae* ssp. *kealiae* (haiwale)'';

■ iv. Under the new heading ''Family Gesneriaceae: *Cyrtandra kealiae* ssp. *kealiae* (haiwale)'', revising the introductory text;

■ v. Removing the heading ''Family Rubiaceae: *Hedyotis cookiana* (awiwi)'' and adding in its place the heading ''Family Rubiaceae: *Kadua cookiana* (awiwi)'';

■ vi. Under the new heading ''Family Rubiaceae: *Kadua cookiana* (awiwi)'', in the introductory text:

■ *1.* Removing the words ''Kauai 11—*Hedyotis cookiana*—a'' and adding in their place the words ''Kauai 11—*Kadua cookiana*—a''; and

■ *2.* Removing the words ''*Hedyotis cookiana*'' and adding in their place the words ''*Kadua cookiana*'';

■ vii. Removing the heading ''Family Rutaceae: *Platydesma rostrata* (pilo kea lau lii)'' and adding in its place the heading ''Family Rutaceae: *Melicope rostrata* (pilo kea lau lii)''; and

■ viii. Under the new heading ''Family Rutaceae: *Melicope rostrata* (pilo kea lau lii)'', revising the entry's introductory text and the introductory text of paragraphs (i), (ii), (iii), (iv), and (v);

■ c. In paragraph (b)(2), by:

■ i. Removing the heading ''Family Aspleniaceae: *Asplenium dielerectum* (asplenium-leaved diellia'' and adding in its place the heading ''Family Aspleniaceae: *Asplenium dielerectum* (no common name)'';

■ ii. Removing the heading ''Family Aspleniaceae: *Diellia pallida* (no common name)'' and adding in its place the heading ''Family Aspleniaceae: *Asplenium dielpallidum* (no common name)'';

■ iii. Under the new heading ''Family Aspleniaceae: *Asplenium dielpallidum* (no common name)'', revising the introductory text;

■ iv. Removing the heading ''Family Grammitidaceae: *Adenophorus periens* (pendent kihi fern)'' and adding in its place the heading ''Family Grammitidaceae: *Adenophorus periens* (palai laau)'';

■ v. Removing the heading ''Family Lycopodiaceae: *Huperzia nutans* (wawaeiole)'' and adding in its place the heading ''Family Lycopodiaceae: *Phlegmariurus nutans* (wawaeiole)''; and

■ vi. Under the new heading ''Family Lycopodiaceae: *Phlegmariurus nutans* (wawaeiole)'', in the introductory text:

■ *1.* Removing the words ''Kauai 10—*Huperzia nutans*—a'' and adding in their place the words ''Kauai 10—*Phlegmariurus nutans*—a''; and

■ *2.* Removing the words ''*Huperzia nutans*'' and adding in their place the words ''*Phlegmariurus nutans*'';

■ d. In paragraph (d)(1), under Family Malvaceae, by removing the heading ''Kokia cookei (COOKE'S KOKIO)'' and adding in its place the heading ''Kokia cookei (KOKIO)'';

■ e. In paragraph (d)(2), by:

■ i. Under Family Aspleniaceae, removing the heading ''Asplenium dielerectum (ASPLENIUM–LEAVED DIELLIA)'' and adding in its place the heading ''Asplenium dielerectum (NCN)''; and

■ ii. Under Family Grammitidaceae, removing the heading ''Adenophorus periens (PENDANT KIHI FERN)'' and adding in its place the heading ''Adenophorus periens (PALAI LAAU)'';

■ f. In paragraph (e)(1), by:

■ i. In paragraph (e)(1)(xii)(A), removing the words ''*Huperzia mannii*'' and adding in their place the words ''*Phlegmariurus mannii*'';

■ ii. In paragraph (e)(1)(xiv)(A):

■ *1.* Removing the words ''*Huperzia mannii*'' and adding in their place the words ''*Phlegmariurus mannii*''; and

■ *2.* Removing the words ''*Mucuna sloanei* var. *persericea*'' and adding in their place the words ''*Mucuna persericea*'';

■ iii. In paragraph (e)(1)(xv)(A), removing the words ''*Huperzia mannii*'' and adding in their place the words ''*Phlegmariurus mannii*'';

■ iv. In paragraph (e)(1)(xvi)(A), removing the words ''*Huperzia mannii*'' and adding in their place the words ''*Phlegmariurus mannii*'';

■ v. Immediately following paragraph (e)(1)(xvi), after Map 16, adding paragraph (e)(1)(xvii) introductory text;

■ vi. In paragraph (e)(1)(xvii)(A), removing the words ''*Huperzia mannii*'' and adding in their place the words ''*Phlegmariurus mannii*'';

■ vii. In paragraph (e)(1)(xviii)(A), removing the words ''*Huperzia mannii*'' and adding in their place the words ''*Phlegmariurus mannii*'';

■ viii. In paragraph (e)(1)(xix)(A), removing the words ''*Huperzia mannii*'' and adding in their place the words ''*Phlegmariurus mannii*'';

■ ix. In paragraph (e)(1)(xx)(A), removing the words ''*Huperzia mannii*'' and adding in their place the words ''*Phlegmariurus mannii*''; and

■ x. In paragraph (e)(1)(xxix), the table titled ''Occupancy of Species by

Designated Critical Habitat Units for Maui,'' revising the entries for Maui—Lowland Mesic—Unit 1, Maui—Lowland Wet—Unit 1, Maui—Lowland Wet—Unit 2, Maui—Lowland Wet—Unit 3, Maui—Lowland Wet—Unit 4, Maui—Lowland Wet—Unit 5, Maui—Lowland Wet—Unit 6, Maui—Lowland Wet—Unit 7, Maui—Lowland Wet—Unit 8, Maui—Montane Wet—Unit 1, Maui—Montane Wet—Unit 2, Maui—Montane Wet—Unit 3, Maui—Montane Wet—Unit 4, Maui—Montane Wet—Unit 5, Maui—Montane Wet—Unit 6, Maui—Montane Wet—Unit 7, Maui—Montane Mesic—Unit 1, Maui—Montane Mesic—Unit 2, Maui—Montane Mesic—Unit 3, Maui—Montane Mesic—Unit 4, and Maui—Montane Mesic—Unit 5;

■ g. In paragraph (f)(1), under Family Fabaceae, by:

■ i. Removing the heading ''Mucuna sloanei var. persericea (SEA BEAN)'' and adding in its place the heading ''Mucuna persericea (SEA BEAN)''; and

■ ii. Under the new heading ''Mucuna persericea (SEA BEAN)'', in the introductory text, removing the words ''*Mucuna sloanei* var. *persericea*'' and adding in their place the words ''*Mucuna persericea*'';

■ h. In paragraph (f)(2), by:

■ i. Under Family Aspleniaceae, removing the heading ''Asplenium dielerectum (ASPLENIUM–LEAVED DIELLIA)'' and adding in its place the heading ''Asplenium dielerectum (NCN)'';

■ ii. Under Family Grammitidaceae, removing the heading ''Adenophorus periens (PENDANT KIHI FERN)'' and adding in its place the heading ''Adenophorus periens (PALAI LAAU)''; and

■ iii. Under Family Lycopodiaceae:

■ *1.* Removing the heading ''Huperzia mannii (WAWAEIOLE)'' and adding in its place the heading ''Phlegmariurus mannii (WAWAEIOLE)''; and

■ *2.* Under the new heading ''Phlegmariurus mannii (WAWAEIOLE)'', in the introductory text, removing the words ''*Huperzia mannii*'' and adding in their place the words ''*Phlegmariurus mannii*'';

■ i. In paragraph (i), by:

■ i. In paragraph (i)(9)(i), removing the words ''*Pleomele forbesii*'' and adding in their place the words ''*Dracaena forbesii*'';

■ ii. In paragraph (i)(12)(i), removing the words ''*Chamaesyce skottsbergii* var. *skottsbergii*'' and adding in their place the words ''*Euphorbia skottsbergii* var. *skottsbergii*'';

■ iii. In paragraph (i)(13)(i):

■ *1.* Removing the words ''*Diellia falcata*'' and adding in their place the words ''*Asplenium dielfalcatum*'';

■ *2.* Removing the words ''*Platydesma cornuta* var. *decurrens*'' and adding in their place the words ''*Melicope cornuta* var. *decurrens*''; and

■ *3.* Removing the words ''*Pleomele forbesii*'' and adding in their place the words ''*Dracaena forbesii*'';

■ iv. In paragraph (i)(14)(i):

■ *1.* Removing the words ''*Diellia falcata*'' and adding in their place the words ''*Asplenium dielfalcatum*'';

■ *2.* Removing the words ''*Platydesma cornuta* var. *decurrens*'' and adding in their place the words ''*Melicope cornuta* var. *decurrens*''; and

■ *3.* Removing the words ''*Pleomele forbesii*'' and adding in their place the words ''*Dracaena forbesii*'';

■ v. In paragraph (i)(15)(i):

■ *1.* Removing the words ''*Diellia falcata*'' and adding in their place the words ''*Asplenium dielfalcatum*'';

■ *2.* Removing the words ''*Platydesma cornuta* var. *decurrens*'' and adding in their place the words ''*Melicope cornuta* var. *decurrens*''; and

■ *3.* Removing the words ''*Pleomele forbesii*'' and adding in their place the words ''*Dracaena forbesii*'';

■ vi. In paragraph (i)(16)(i):

■ *1.* Removing the words ''*Diellia falcata*'' and adding in their place the words ''*Asplenium dielfalcatum*''; and

■ *2.* Removing the words ''*Pleomele forbesii*'' and adding in their place the words ''*Dracaena forbesii*'';

■ vii. In paragraph (i)(17)(i):

■ *1.* Removing the words ''*Diellia falcata*'' and adding in their place the words ''*Asplenium dielfalcatum*''; and

■ *2.* Removing the words ''*Pleomele forbesii*'' and adding in their place the words ''*Dracaena forbesii*'';

■ viii. In paragraph (i)(18)(i):

■ *1.* Removing the words ''*Diellia falcata*'' and adding in their place the words ''*Asplenium dielfalcatum*''; and

■ *2.* Removing the words ''*Pleomele forbesii*'' and adding in their place the words ''*Dracaena forbesii*'';

■ ix. In paragraph (i)(22)(i):

■ *1.* Removing the words ''*Huperzia nutans*'' and adding in their place the words ''*Phlegmariurus nutans*'';

■ *2.* Removing the words ''*Platydesma cornuta* var. *cornuta*'' and adding in their place the words ''*Melicope cornuta* var. *cornuta*''; and

■ *3.* Removing the words ''*Psychotria hexandra* ssp. *oahuensis*'' and adding in their place the words ''*Psychotria hexandra* var. *oahuensis*'';

■ x. In paragraph (i)(23)(i):

■ *1.* Removing the words ''*Huperzia nutans*'' and adding in their place the words ''*Phlegmariurus nutans*'';

■ *2.* Removing the words ''*Platydesma cornuta* var. *cornuta*'' and adding in their place the words ''*Melicope cornuta* var. *cornuta*''; and

■ *3.* Removing the words ''*Psychotria hexandra* ssp. *oahuensis*'' and adding in their place the words ''*Psychotria hexandra* var. *oahuensis*'';

■ xi. In paragraph (i)(24)(i):

■ *1.* Removing the words ''*Huperzia nutans*'' and adding in their place the words ''*Phlegmariurus nutans*'';

■ *2.* Removing the words ''*Platydesma cornuta* var. *cornuta*'' and adding in their place the words ''*Melicope cornuta* var. *cornuta*''; and

■ *3.* Removing the words ''*Psychotria hexandra* ssp. *oahuensis*'' and adding in their place the words ''*Psychotria hexandra* var. *oahuensis*'';

■ xii. In paragraph (i)(25)(i):

■ *1.* Removing the words ''*Huperzia nutans*'' and adding in their place the words ''*Phlegmariurus nutans*'';

■ *2.* Removing the words ''*Platydesma cornuta* var. *cornuta*'' and adding in their place the words ''*Melicope cornuta* var. *cornuta*''; and

■ *3.* Removing the words ''*Psychotria hexandra* ssp. *oahuensis*'' and adding in their place the words ''*Psychotria hexandra* var. *oahuensis*'';

■ xiii. In paragraph (i)(27)(i):

■ *1.* Removing the words ''*Diellia falcata*'' and adding in their place the words ''*Asplenium dielfalcatum*'';

■ *2.* Removing the words ''*Platydesma cornuta* var. *decurrens*'' and adding in their place the words ''*Melicope cornuta* var. *decurrens*''; and

■ *3.* Removing the words ''*Pleomele forbesii*'' and adding in their place the words ''*Dracaena forbesii*'';

■ xiv. In paragraph (i)(28)(i):

■ *1.* Removing the words ''*Diellia falcata*'' and adding in their place the words ''*Asplenium dielfalcatum*'';

■ *2.* Removing the words ''*Platydesma cornuta* var. *decurrens*'' and adding in their place the words ''*Melicope cornuta* var. *decurrens*''; and

■ *3.* Removing the words ''*Pleomele forbesii*'' and adding in their place the words ''*Dracaena forbesii*'';

■ xv. In paragraph (i)(29)(i):

■ *1.* Removing the words ''*Diellia falcata*'' and adding in their place the words ''*Asplenium dielfalcatum*'';

■ *2.* Removing the words ''*Platydesma cornuta* var. *decurrens*'' and adding in their place the words ''*Melicope cornuta* var. *decurrens*''; and

■ *3.* Removing the words ''*Pleomele forbesii*'' and adding in their place the words ''*Dracaena forbesii*'';

■ xvi. In paragraph (i)(33)(i):

■ *1.* Removing the words ''*Huperzia nutans*'' and adding in their place the words ''*Phlegmariurus nutans*''; and

■ *2.* Removing the words ''*Psychotria hexandra* ssp. *oahuensis*'' and adding in their place the words ''*Psychotria hexandra* var. *oahuensis*''*;*
■ xvii. In paragraph (i)(34)(i):
■ *1.* Removing the words ''*Huperzia nutans*'' and adding in their place the words ''*Phlegmariurus nutans*''*;* and
■ *2.* Removing the words ''*Psychotria hexandra* ssp. *oahuensis*'' and adding in their place the words ''*Psychotria hexandra* var. *oahuensis*''*;* and
■ xviii. In paragraph (i)(35), the ''Table of Protected Species Within Each Critical Habitat Unit for Oahu,'' revising the entries for Oahu—Lowland Dry—Unit 1, Oahu—Lowland Dry—Unit 2, Oahu—Lowland Dry—Unit 8, Oahu—Lowland Dry—Unit 9, Oahu—Lowland Dry—Unit 10, Oahu—Lowland Dry—Unit 11, Oahu—Lowland Mesic—Unit 1, Oahu—Lowland Mesic—Unit 2, Oahu—Lowland Mesic—Unit 3, Oahu—Lowland Mesic—Unit 4, Oahu—Lowland Mesic—Unit 5, Oahu—Lowland Mesic—Unit 6, Oahu—Lowland Mesic—Unit 7, Oahu—Lowland Wet—Unit 6, Oahu—Lowland Wet–Unit 7, Oahu—Lowland Wet—Unit 8, Oahu—Lowland Wet—Unit 9, Oahu—Lowland Wet—Unit 10, Oahu—Lowland Wet—Unit 11, Oahu—Lowland Wet—Unit 12, Oahu—Lowland Wet—Unit 13, Oahu—Lowland Wet—Unit 14, Oahu—Lowland Wet—Unit 15, Oahu—Lowland Wet—Unit 16, Oahu—Dry Cliff—Unit 1, Oahu—Dry Cliff—Unit 2, Oahu—Dry Cliff–Unit 3, Oahu—Dry Cliff–Unit 4, Oahu—Dry Cliff—Unit 5, Oahu—Dry Cliff—Unit 6, Oahu—Dry Cliff—Unit 7, Oahu–Dry Cliff—Unit 7a, Oahu—Dry Cliff—Unit 7b, Oahu—Dry Cliff—Unit 8, Oahu—Wet Cliff—Unit 6, Oahu—Wet Cliff—Unit 7, and Oahu—Wet Cliff—Unit 8;
■ j. In paragraph (j)(1), by:
■ i. Under Family Asparagaceae:
■ *1.* Removing the heading ''*Pleomele forbesii* (HALA PEPE)'' and adding in its place the heading ''*Dracaena forbesii* (HALA PEPE)''; and
■ *2.* Under the new heading ''*Dracaena forbesii* (HALA PEPE)'', in the introductory text, removing the words ''*Pleomele forbesii*'' and adding in their place the words ''*Dracaena forbesii*''*;*
■ ii. Under Family Euphorbiaceae:
■ *1.* Removing the heading ''*Chamaesyce skottsbergii* var. *skottsbergii* (EWA PLAINS AKOKO)'' and adding in its place the heading ''*Euphorbia skottsbergii* var. *skottsbergii* (AKOKO)''; and
■ *2.* Under the new heading ''*Euphorbia skottsbergii* var. *skottsbergii* (AKOKO)'', in the introductory text, removing the words ''*Chamaesyce skottsbergii* var. *skottsbergii*'' and adding in their place the words ''*Euphorbia skottsbergii* var. *skottsbergii*''*;*
■ iii. Under Family Rubiaceae:
■ *1.* Removing the heading ''*Psychotria hexandra* ssp. *oahuensis* (KOPIKO)'' and adding in its place the heading ''*Psychotria hexandra* var. *oahuensis* (KOPIKO)''; and
■ *2.* Under the new heading ''*Psychotria hexandra* var. *oahuensis* (KOPIKO)'', in the introductory text, removing the words ''*Psychotria hexandra* ssp. *oahuensis*'' and adding in their place the words ''*Psychotria hexandra* var. *oahuensis*''*;* and
■ iv. Under Family Rutaceae:
■ *1.* Removing the heading ''*Platydesma cornuta* var. *cornuta* (NCN)'' and adding in its place the heading ''*Melicope cornuta* var. *cornuta* (NCN)''*;*
■ *2.* Under the new heading ''*Melicope cornuta* var. *cornuta* (NCN)'', in the introductory text, removing the words ''*Platydesma cornuta* var. *cornuta*'' and adding in their place the words ''*Melicope cornuta* var. *cornuta*''*;*
■ *3.* Removing the heading ''*Platydesma cornuta* var. *decurrens* (NCN)'' and adding in its place the heading ''*Melicope cornuta* var. *decurrens* (NCN)''; and
■ *4.* Under the new heading ''*Melicope cornuta* var. *decurrens* (NCN)'', in the introductory text, removing the words ''*Platydesma cornuta* var. *decurrens*'' and adding in their place the words ''*Melicope cornuta* var. *decurrens*''*;*
■ k. In paragraph (j)(2), by:
■ i. Under Family Aspleniaceae,
■ *1.* Removing the heading ''*Asplenium dielerectum* (ASPLENIUM–LEAVED DIELLIA)'' and adding in its place the heading ''*Asplenium dielerectum* (NCN)''*;*
■ *2.* Removing the heading ''*Diellia falcata* (NCN)'' and adding in its place the heading ''*Asplenium dielfalcatum* (NCN)''*;*
■ *3.* Under the new heading ''*Asplenium dielfalcatum* (NCN)'', in the introductory text, removing the words ''*Diellia falcata*'' and adding in their place the words ''*Asplenium dielfalcatum*''*;*
■ ii. Under Family Grammitidaceae, removing the heading ''*Adenophorus periens* (PENDANT KIHI FERN)'' and adding in its place the heading ''*Adenophorus periens* (PALAI LAAU)''*;*
■ iii. Under Family Lycopodiaceae:
■ *1.* Removing the heading ''*Huperzia nutans* (WAWAEIOLE)'' and adding in its place the heading ''*Phlegmariurus nutans* (WAWAEIOLE)''; and
■ *2.* Under the new heading ''*Phlegmariurus nutans* (WAWAEIOLE)'', in the introductory text, removing the words ''*Huperzia nutans*'' and adding in their place the words ''*Phlegmariurus nutans*''*;*
■ (l) In paragraph (k), by:
■ i. In paragraph (k)(26):
■ *1.* In the introductory text, removing the words ''Hawaii 7—*Pleomele hawaiiensis*—a'' and adding in their place the words ''Hawaii 7—*Dracaena konaensis*—a''; and
■ *2.* In paragraph (k)(26)(ii), revising the introductory text;
■ ii. In paragraph (k)(51):
■ *1.* In the introductory text, removing the words ''Hawaii 10—*Pleomele hawaiiensis*—b'' and adding in their place the words ''Hawaii 10—*Dracaena konaensis*—b''; and
■ *2.* In paragraph (k)(51)(ii), revising the introductory text;
■ iii. In paragraph (k)(69):
■ *1.* In the introductory text, removing the words ''Hawaii 18—*Pleomele hawaiiensis*—c'' and adding in their place the words ''Hawaii 18—*Dracaena konaensis*—c''; and
■ *2.* In paragraph (k)(69)(ii), revising the introductory text;
■ iv. In paragraph (k)(74):
■ *1.* In the introductory text, removing the words ''Hawaii 23—*Pleomele hawaiiensis*—d'' and adding in their place the words ''Hawaii 23—*Dracaena konaensis*—d''; and
■ *2.* In paragraph (k)(74)(ii), revising the introductory text; and
■ v. In paragraph (k)(115), the Table of Protected Species Within Each Critical Habitat Unit for the Island of Hawaii:
■ *1.* Removing the entries for Hawaii 7—*Pleomele hawaiiensis*—a, Hawaii 10—*Pleomele hawaiiensis*—b, Hawaii 17—*Diellia erecta*—a, Hawaii 18—*Diellia erecta*—b, Hawaii 18—*Pleomele hawaiiensis*—c, and Hawaii 23—*Pleomele hawaiiensis*—d; and
■ *2.* Adding, in order by unit number and then alphabetical order by scientific name within the unit, entries for Hawaii 7—*Dracaena konaensis*—a, Hawaii 10—*Dracaena konaensis*—b, Hawaii 17—*Asplenium dielerectum*—a, Hawaii 18—*Asplenium dielerectum*—b, Hawaii 18—*Dracaena konaensis*—c, and Hawaii 23—*Dracaena konaensis*—d;
■ (m) In paragraph (l)(1), by:
■ a. Removing the heading ''Family Campanulaceae: *Cyanea platyphylla* (haha)'' and adding in its place the heading ''Family Campanulaceae: *Cyanea platyphylla* (akuaku)''*;*
■ b. Removing the heading ''Family Liliaceae: *Pleomele hawaiiensis* (hala pepe)'' and adding in its place the heading ''Family Liliaceae: *Dracaena konaensis* (hala pepe)''*;*
■ c. Under the new heading ''Family Liliaceae: *Dracaena konaensis* (hala pepe)'', revising the introductory text; and
■ d. Immediately before the entry for ''Family Aspleniaceae: *Asplenium*

peruvianum var. *insulare* (NCN)'', add the paragraph designation and heading ''(2) *Fern and allies.*'';

■ (n) In newly designated paragraph (l)(2), by:

■ a. Removing the heading ''Family Aspleniaceae: *Diellia erecta* (asplenium-leaved diellia)'' and adding in its place the heading ''Family Aspleniaceae: *Asplenium dielerectum* (NCN)''; and

■ b. Removing the heading ''Family Grammitidaceae: *Adenophorus periens* (pendent kihi fern)'' and adding in its place the heading ''Family Grammitidaceae: *Adenophorus periens* (palai laau)''.

The revisions and additions read as follows:

§ 17.99 Critical habitat; plants on the Hawaiian Islands.

(a) * * *

(1) * * *

(vi) * * *

(B) *Note:* The reference to ''Kauai 4—*Platydesma rostrata*—a'' on the map is equivalent to ''Kauai 4—*Melicope rostrata*—a''. Map 5a follows:

* * * * *

(xiv) * * *

(B) *Note:* The reference to ''Unit 4—*Cyrtandra limahuliensis*—a'' on the map is equivalent to ''Kauai 4—*Cyrtandra kealiae* ssp. *kealiae*—a''. Map 11 follows:

* * * * *

(xv) * * *

(B) *Note:* The reference to ''Unit 4—*Cyrtandra limahuliensis*—b'' on the map is equivalent to ''Kauai 4—*Cyrtandra kealiae* ssp. *kealiae*—b''. Map 12 follows:

* * * * *

(xxxiv) * * *

(B) *Note:* The reference to ''Kauai 7—*Platydesma rostrata*—b'' on the map is equivalent to ''Kauai 7—*Melicope rostrata*—b''. Map 23a follows:

* * * * *

(lvii) * * *

(B) *Note:* The reference to ''Kauai 10—*Platydesma rostrata*—c'' on the map is equivalent to ''Kauai 10—*Melicope rostrata*—c''. Map 35a follows:

* * * * *

(lix) * * *

(B) *Note:* The reference to ''Kauai 10—*Platydesma rostrata*—d'' on the map is equivalent to ''Kauai 10—*Melicope rostrata*—d''. Map 36a follows:

* * * * *

(lx) * * *

(B) *Note:* The reference to ''Kauai 10—*Platydesma rostrata*—e'' on the map is equivalent to ''Kauai 10—*Melicope rostrata*—e''. Map 36b follows:

* * * * *

(lxxii) * * *

(B) *Note:* The reference to ''Unit 10—*Cyrtandra limahuliensis*—c'' on the map is equivalent to ''Kauai 10—*Cyrtandra kealiae* ssp. *kealiae*—c''. Map 40 follows:

* * * * *

(civ) * * *

(B) *Note:* The reference to ''Unit 10—*Huperzia nutans*—a'' on the map is equivalent to ''Kauai 10—*Phlegmariurus nutans*—a''. Map 49 follows:

* * * * *

(cxxx) * * *

(B) *Note:* The reference to ''Kauai 11—*Platydesma rostrata*—f'' on the map is equivalent to ''Kauai 11—*Melicope rostrata*—f''. Map 64a follows:

* * * * *

(cxxxiii) * * *

(B) *Note:* The reference to ''Kauai 11—*Platydesma rostrata*—g'' on the map is equivalent to ''Kauai 11—*Melicope rostrata*—g''. Map 66a follows:

* * * * *

(cxl) * * *

(B) *Note:* The reference to ''Kauai 11—*Platydesma rostrata*—h'' on the map is equivalent to ''Kauai 11—*Melicope rostrata*—h''. Map 70a follows:

* * * * *

(cxli) * * *

(B) *Note:* The reference to ''Kauai 11—*Platydesma rostrata*—i'' on the map is equivalent to ''Kauai 11—*Melicope rostrata*—i''. Map 70b follows:

* * * * *

(cxlvi) * * *

(B) *Note:* The reference to ''Kauai 11—*Platydesma rostrata*—j'' on the map is equivalent to ''Kauai 11—*Melicope rostrata*—j''. Map 70c follows:

* * * * *

(clxi) * * *

(B) *Note:* The reference to ''Unit 11—*Cyrtandra limahuliensis*—d'' on the map is equivalent to ''Kauai 11—*Cyrtandra kealiae* ssp. *kealiae*—d''. Map 79 follows:

* * * * *

(clxii) * * *

(B) *Note:* The reference to ''Unit 11—*Cyrtandra limahuliensis*—e'' on the map is equivalent to ''Kauai 11—*Cyrtandra kealiae* ssp. *kealiae*—e''. Map 80 follows:

* * * * *

(clxviii) * * *

(B) *Note:* The reference to ''Unit 11—*Delissea rivularis*—a'' on the map is equivalent to ''Kauai 11—*Cyanea rivularis*—a''. Map 83 follows:

* * * * *

(clxxiii) * * *

(B) *Note:* The reference to ''Unit 11—*Diellia pallida*—a'' on the map is equivalent to ''Kauai 11—*Asplenium dielpallidum*—a''. Map 87 follows:

* * * * *

(clxxiv) * * *

(B) *Note:* The reference to ''Unit 11—*Diellia pallida*—b'' on the map is equivalent to ''Kauai 11—*Asplenium dielpallidum*—b''. Map 88 follows:

* * * * *

(cciii) * * *

(B) *Note:* The reference to ''Unit 11—*Hedyotis cookiana*—a'' on the map is equivalent to ''Kauai 11—*Kadua cookiana*—a''. Map 109 follows:

* * * * *

(cccli) * * *

(B) *Note:* The reference to ''Kauai 18—*Platydesma rostrata*—k'' on the map is equivalent to ''Kauai 18—*Melicope rostrata*—k''. Map 217a follows:

* * * * *

(ccclxi) * * *

(B) *Note:* The reference to ''Kauai 19—*Platydesma rostrata*—l'' on the map is equivalent to ''Kauai 19—*Melicope rostrata*—l''. Map 217b follows:

* * * * *

(ccclxxi) * * *

(B) *Note:* The reference to ''Kauai 20—*Platydesma rostrata*—m'' on the map is equivalent to ''Kauai 20—*Melicope rostrata*—m''. Map 217c follows:

* * * * *

(ccclxxxvii) * * *

(B) *Note:* The reference to ''Kauai 21—*Platydesma rostrata*—n'' on the map is equivalent to ''Kauai 21—*Melicope rostrata*—n''. Map 217d follows:

* * * * *

(cccxcvi) * * *

(B) *Note:* The reference to ''Kauai 22—*Platydesma rostrata*—o'' on the map is equivalent to ''Kauai 22—*Melicope rostrata*—o''. Map 217e follows:

* * * * *

(cdv) * * *

(B) *Note:* The reference to ''Kauai 23—*Platydesma rostrata*—p'' on the map is equivalent to ''Kauai 23—*Melicope rostrata*—p''. Map 217f follows:

* * * * *

(cdxxiii) * * *

(B) *Note:* The reference to ''Kauai 24—*Platydesma rostrata*—q'' on the map is equivalent to ''Kauai 24—*Melicope rostrata*—q''. Map 217g follows:

* * * * *

(cdxli) * * *

(B) *Note:* The reference to ''Kauai 25—*Platydesma rostrata*—r'' on the map is equivalent to ''Kauai 25—*Melicope rostrata*—r''. Map 217h follows:

* * * * *

(cdlix) * * *

Unit name	Species occupied	Species unoccupied
* *	* * *	* *
Kauai 4—*Cyrtandra kealiae* ssp. *kealiae*—a	*Cyrtandra kealiae* ssp. *kealiae*.	
Kauai 4—*Cyrtandra kealiae* ssp. *kealiae*—b	*Cyrtandra kealiae* ssp. *kealiae*.	
* *	* * *	* *
Kauai 4—*Melicope rostrata*—a		*Melicope rostrata*.
* *	* * *	* *
Kauai 7—*Melicope rostrata*—b		*Melicope rostrata*.
* *	* * *	* *
Kauai 10—*Cyrtandra kealiae* ssp. *kealiae*—c	*Cyrtandra kealiae* ssp. *kealiae*.	
* *	* * *	* *
Kauai 10—*Melicope rostrata*—c	*Melicope rostrata*	*Melicope rostrata*.
Kauai 10—*Melicope rostrata*—d	*Melicope rostrata*	*Melicope rostrata*.
Kauai 10—*Melicope rostrata*—e	*Melicope rostrata*	*Melicope rostrata*.
* *	* * *	* *
Kauai 10—*Phlegmariurus nutans*—a		*Phlegmariurus nutans*.
* *	* * *	* *
Kauai 11—*Asplenium dielpallidum*—a	*Asplenium dielpallidum*.	
Kauai 11—*Asplenium dielpallidum*—b	*Asplenium dielpallidum*.	
* *	* * *	* *
Kauai 11—*Cyanea rivularis*—a	*Cyanea rivularis*.	
* *	* * *	* *
Kauai 11—*Cyrtandra kealiae* ssp. *kealiae*—d	*Cyrtandra kealiae* ssp. *kealiae*.	
Kauai 11—*Cyrtandra kealiae* ssp. *kealiae*—e	*Cyrtandra kealiae* ssp. *kealiae*.	
* *	* * *	* *
Kauai 11—*Kadua cookiana*—a	*Kadua cookiana*.	
* *	* * *	* *
Kauai 11—*Melicope rostrata*—f	*Melicope rostrata*	*Melicope rostrata*.
Kauai 11—*Melicope rostrata*—g	*Melicope rostrata*	*Melicope rostrata*.
Kauai 11—*Melicope rostrata*—h	*Melicope rostrata*	*Melicope rostrata*.
Kauai 11—*Melicope rostrata*—i		*Melicope rostrata*
Kauai 11—*Melicope rostrata*—j	*Melicope rostrata*	*Melicope rostrata*.
* *	* * *	* *
Kauai 18—*Melicope rostrata*—k	*Melicope rostrata*	*Melicope rostrata*.
* *	* * *	* *
Kauai 19—*Melicope rostrata*—l		*Melicope rostrata*.
* *	* * *	* *
Kauai 20—*Melicope rostrata*—m		*Melicope rostrata*.
* *	* * *	* *
Kauai 21—*Melicope rostrata*—n		*Melicope rostrata*.
* *	* * *	* *
Kauai 22—*Melicope rostrata*—o		*Melicope rostrata*.
* *	* * *	* *
Kauai 23—*Melicope rostrata*—p	*Melicope rostrata*	*Melicope rostrata*.
* *	* * *	* *
Kauai 24—*Melicope rostrata*—q	*Melicope rostrata*	*Melicope rostrata*.
* *	* * *	* *
Kauai 25—*Melicope rostrata*—r	*Melicope rostrata*	*Melicope rostrata*.
* *	* * *	* *

(b) * * *

(1) * * *

* * * * *

Family Gesneriaceae: Cyrtandra Kealiae ssp. Kealiae (Haiwale)

Kauai 4—*Cyrtandra kealiae* ssp. *kealiae*—a, Kauai 4—*Cyrtandra kealiae* ssp. *kealiae*—b, Kauai 10—*Cyrtandra kealiae* ssp. *kealiae*—c, Kauai 11—*Cyrtandra kealiae* ssp. *kealiae*—d, and Kauai 11—*Cyrtandra kealiae* ssp. *kealiae*—e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyrtandra kealiae* ssp. *kealiae* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

* * * * *

Family Rutaceae: Melicope Rostrata (Pilo Kea Lau Lii)

Kauai 4—*Melicope rostrata*—a, Kauai 7—*Melicope rostrata*—b, Kauai 10—*Melicope rostrata*—c, Kauai 10—

Melicope rostrata—d, Kauai 10—*Melicope rostrata*—e, Kauai 11—*Melicope rostrata*—f, Kauai 11—*Melicope rostrata*—g, Kauai 11—*Melicope rostrata*—h, Kauai 11—*Melicope rostrata*—i, Kauai 11—*Melicope rostrata*—j, Kauai 18—*Melicope rostrata*—k, Kauai 19—*Melicope rostrata*—l, Kauai 20—*Melicope rostrata*—m, Kauai 21—*Melicope rostrata*—n, Kauai 22—*Melicope rostrata*—o, Kauai 23—*Melicope rostrata*—p, Kauai 24—*Melicope rostrata*—q, and Kauai 25—*Melicope rostrata*—r, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Platydesma rostrata* on Kauai.

(i) In units Kauai 7—*Melicope rostrata*—b and Kauai 11—*Melicope rostrata*—g, the primary constituent elements of critical habitat are:

* * * * *

(ii) In units Kauai 10—*Melicope rostrata*—d, Kauai 11—*Melicope rostrata*—h, and Kauai 20—*Melicope rostrata*—m, the primary constituent elements of critical habitat are:

* * * * *

(iii) In units Kauai 11—*Melicope rostrata*—j, Kauai 21—*Melicope rostrata*—n, and Kauai 22—*Melicope rostrata*—o, the primary constituent elements of critical habitat are:

* * * * *

(iv) In units Kauai 10—*Melicope rostrata*—c, Kauai 11—*Melicope rostrata*—f, Kauai 23—*Melicope rostrata*—p, Kauai 24—*Melicope rostrata*—q, and Kauai 25—*Melicope rostrata*—r, the primary constituent elements of critical habitat are:

* * * * *

(v) In units Kauai 4—*Melicope rostrata*—a, Kauai 10—*Melicope rostrata*—e, Kauai 11—*Melicope rostrata*—i, Kauai 18—*Melicope rostrata*—k, and Kauai 19—*Melicope rostrata*—l, the primary constituent elements of critical habitat are:

* * * * *

(2) * * *

* * * * *

Family Aspleniaceae: Asplenium Dielpallidum (No Common Name)

Kauai 11—*Asplenium dielpallidum*—a and Kauai 11—*Asplenium dielpallidum*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Asplenium dielpallidum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

* * * * *

(e) * * *

(1) * * *

(xvii) Maui—Montane Wet—Unit 1 (2,110 ac, 854 ha), Maui—Montane Wet—Unit 2 (14,583 ac, 5,901 ha), Maui—Montane Wet—Unit 3 (2,228 ac, 902 ha), Maui—Montane Wet—Unit 4 (1,833 ac, 742 ha), and Maui—Montane Wet—Unit 5 (387 ac, 156 ha).

* * * * *

(xxix) * * *

Unit name	Species occupied	Species unoccupied
* *	* * *	* *
Maui—Lowland Mesic—Unit 1	.....	*Ctenitis squamigera.*
	Cyanea asplenifolia.	
	Cyanea copelandii ssp. *haleakalaensis.*	
	Phlegmariurus mannii.	
		Solanum incompletum.
* *	* * *	* *
Maui—Lowland Wet—Unit 1	*Bidens campylotheca* ssp. *waihoiensis.*	
		Clermontia oblongifolia ssp. *mauiensis.*
		Clermontia peleana.
	Clermontia samuelii.	
	Cyanea asplenifolia.	
	Cyanea copelandii ssp. *haleakalaensis.*	
	Cyanea duvalliorum.	
	Cyanea hamatiflora ssp. *hamatiflora.*	
	Cyanea kunthiana.	
	Cyanea maritae.	
	Cyanea mceldowneyi.	
	Melicope balloui.	
	Melicope ovalis.	
		Mucuna persericea.
	Phlegmariurus mannii.	
		Phyllostegia haliakalae.
		Wikstroemia villosa.
Maui—Lowland Wet—Unit 2	.....	*Alectryon macrococcus.*
		Asplenium dielerectum.
		Bidens conjuncta.
		Bidens micrantha ssp. *kalealaha.*
		Clermontia oblongifolia ssp. *mauiensis.*
		Ctenitis squamigera.
		Cyanea asplenifolia.
		Cyanea glabra.
		Cyanea kunthiana.
		Cyanea lobata.
		Cyanea magnicalyx.
		Cyrtandra filipes.
		Cyrtandra munroi.
		Diplazium molokaiense.
		Hesperomannia arborescens.
		Hesperomannia arbuscula.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Peucedanum sandwicense.
		Phlegmariurus mannii.
		Phyllostegia bracteata.
		Pteris lidgatei.

Unit name	Species occupied	Species unoccupied
		Remya mauiensis.
	Santalum haleakalae var. *lanaiense.*	
		Wikstroemia villosa.
Maui—Lowland Wet—Unit 3		*Alectryon macrococcus.*
		Asplenium dielerectum.
	Bidens conjuncta.	
		Bidens micrantha ssp. *kalealaha.*
		Clermontia oblongifolia ssp. *mauiensis.*
		Ctenitis squamigera.
	Cyanea asplenifolia.	
		Cyanea glabra.
		Cyanea kunthiana.
		Cyanea lobata.
		Cyanea magnicalyx.
		Cyrtandra filipes.
		Cyrtandra munroi.
		Diplazium molokaiense.
		Hesperomannia arborescens.
		Hesperomannia arbuscula.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Peucedanum sandwicense.
		Phlegmariurus mannii.
		Phyllostegia bracteata.
	Pteris lidgatei.	
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense.*
		Wikstroemia villosa.
Maui—Lowland Wet—Unit 4		*Alectryon macrococcus.*
		Asplenium dielerectum.
		Bidens conjuncta.
		Bidens micrantha ssp. *kalealaha.*
		Clermontia oblongifolia ssp. *mauiensis.*
		Ctenitis squamigera.
	Cyanea asplenifolia.	
		Cyanea glabra.
		Cyanea kunthiana.
		Cyanea lobata.
		Cyanea magnicalyx.
		Cyrtandra filipes.
		Cyrtandra munroi.
		Diplazium molokaiense.
		Hesperomannia arborescens.
		Hesperomannia arbuscula.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Peucedanum sandwicense.
		Phlegmariurus mannii.
		Phyllostegia bracteata.
		Pteris lidgatei.
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense.*
		Wikstroemia villosa.
Maui—Lowland Wet—Unit 5		*Alectryon macrococcus.*
		Asplenium dielerectum.
		Bidens conjuncta.
		Bidens micrantha ssp. *kalealaha.*
		Clermontia oblongifolia ssp. *mauiensis.*
		Ctenitis squamigera.
		Cyanea asplenifolia.
		Cyanea glabra.
		Cyanea kunthiana.
		Cyanea lobata.
		Cyanea magnicalyx.
		Cyrtandra filipes.
		Cyrtandra munroi.
		Diplazium molokaiense.
		Hesperomannia arborescens.
		Hesperomannia arbuscula.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Peucedanum sandwicense.
		Phlegmariurus mannii.
		Phyllostegia bracteata.
		Pteris lidgatei.
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense.*
		Wikstroemia villosa.
Maui—Lowland Wet—Unit 6		*Alectryon macrococcus.*
		Asplenium dielerectum.
		Bidens conjuncta.
		Bidens micrantha ssp. *kalealaha.*
		Clermontia oblongifolia ssp. *mauiensis.*

Unit name	Species occupied	Species unoccupied
		Ctenitis squamigera.
		Cyanea asplenifolia.
		Cyanea glabra.
		Cyanea kunthiana.
		Cyanea lobata.
		Cyanea magnicalyx.
		Cyrtandra filipes.
		Cyrtandra munroi.
		Diplazium molokaiense.
		Hesperomannia arborescens.
		Hesperomannia arbuscula.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Peucedanum sandwicense.
		Phlegmariurus mannii.
		Phyllostegia bracteata.
		Pteris lidgatei.
		Remya mauiensis.
	Santalum haleakalae var. *lanaiense.*	
		Wikstroemia villosa.
Maui—Lowland Wet—Unit 7	*Alectryon macrococcus.*	
		Asplenium dielerectum.
		Bidens conjuncta.
		Bidens micrantha ssp. *kalealaha.*
		Clermontia oblongifolia ssp. *mauiensis.*
		Ctenitis squamigera.
		Cyanea asplenifolia.
		Cyanea glabra.
		Cyanea kunthiana.
		Cyanea lobata.
		Cyanea magnicalyx.
		Cyrtandra filipes.
		Cyrtandra munroi.
		Diplazium molokaiense.
		Hesperomannia arborescens.
		Hesperomannia arbuscula.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Peucedanum sandwicense.
		Phlegmariurus mannii.
		Phyllostegia bracteata.
		Pteris lidgatei.
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense.*
		Wikstroemia villosa.
Maui—Lowland Wet—Unit 8		*Alectryon macrococcus.*
		Asplenium dielerectum.
		Bidens conjuncta.
		Bidens micrantha ssp. *kalealaha.*
		Clermontia oblongifolia ssp. *mauiensis.*
		Ctenitis squamigera.
		Cyanea asplenifolia.
		Cyanea glabra.
		Cyanea kunthiana.
		Cyanea lobata.
		Cyanea magnicalyx.
		Cyrtandra filipes.
		Cyrtandra munroi.
		Diplazium molokaiense.
		Hesperomannia arborescens.
		Hesperomannia arbuscula.
		Isodendrion pyrifolium.
		Kadua laxiflora.
		Peucedanum sandwicense.
		Phlegmariurus mannii.
		Phyllostegia bracteata.
		Pteris lidgatei.
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense.*
		Wikstroemia villosa.
Maui—Montane Wet—Unit 1		*Adenophorus periens.*
		Asplenium peruvianum var. *insulare.*
		Bidens campylotheca ssp. *pentamera.*
		Bidens campylotheca ssp. *waihoiensis.*
		Clermontia oblongifolia ssp. *mauiensis.*
		Clermontia samuelii.
		Cyanea copelandii ssp. *haleakalaensis.*
	Cyanea duvalliorum.	
		Cyanea glabra.
		Cyanea hamatiflora ssp. *hamatiflora.*
		Cyanea horrida.
		Cyanea kunthiana.
	Cyanea maritae.	

Unit name	Species occupied	Species unoccupied
	Cyanea mceldowneyi.	
		Cyrtandra ferripilosa.
		Diplazium molokaiense.
		Geranium hanaense.
		Geranium multiflorum.
	Melicope balloui.	
		Melicope ovalis.
		Peperomia subpetiolata.
	Phlegmariurus mannii.	
		Phyllostegia bracteata.
		Phyllostegia haliakalae.
		Phyllostegia mannii.
	Phyllostegia pilosa.	
		Platanthera holochila.
		Schiedea jacobii.
		Wikstroemia villosa.
Maui—Montane Wet—Unit 2		*Adenophorus periens.*
		Asplenium peruvianum var. *insulare.*
	Bidens campylotheca ssp. *pentamera.*	
		Bidens campylotheca ssp. *waihoiensis.*
		Clermontia oblongifolia ssp. *mauiensis.*
	Clermontia samuelii.	
	Cyanea copelandii ssp. *haleakalaensis.*	
	Cyanea duvalliorum.	
		Cyanea glabra.
	Cyanea hamatiflora ssp. *hamatiflora.*	
	Cyanea horrida.	
	Cyanea kunthiana.	
		Cyanea maritae.
	Cyanea mceldowneyi.	
		Cyrtandra ferripilosa.
		Diplazium molokaiense.
	Geranium hanaense.	
	Geranium multiflorum.	
		Melicope balloui.
		Melicope ovalis.
		Peperomia subpetiolata.
		Phlegmariurus mannii.
		Phyllostegia bracteata.
		Phyllostegia haliakalae.
		Phyllostegia mannii.
		Phyllostegia pilosa.
		Platanthera holochila.
		Schiedea jacobii.
	Wikstroemia villosa.	
Maui—Montane Wet—Unit 3		*Adenophorus periens.*
		Asplenium peruvianum var. *insulare.*
	Bidens campylotheca ssp. *pentamera.*	
	Bidens campylotheca ssp. *waihoiensis.*	
		Clermontia oblongifolia ssp. *mauiensis.*
		Clermontia samuelii.
	Cyanea copelandii ssp. *haleakalaensis.*	
		Cyanea duvalliorum.
		Cyanea glabra.
	Cyanea hamatiflora ssp. *hamatiflora.*	
		Cyanea horrida.
		Cyanea kunthiana.
	Cyanea maritae.	
		Cyanea mceldowneyi.
		Cyrtandra ferripilosa.
		Diplazium molokaiense.
		Geranium hanaense.
		Geranium multiflorum.
		Melicope balloui.
	Melicope ovalis.	
		Peperomia subpetiolata.
		Phlegmariurus mannii.
		Phyllostegia bracteata.
		Phyllostegia haliakalae.
		Phyllostegia mannii.
		Phyllostegia pilosa.
		Platanthera holochila.
		Schiedea jacobii.
		Wikstroemia villosa.
Maui—Montane Wet—Unit 4		*Adenophorus periens.*
		Asplenium peruvianum var. *insulare.*
		Bidens campylotheca ssp. *pentamera.*
		Bidens campylotheca ssp. *waihoiensis.*
		Clermontia oblongifolia ssp. *mauiensis.*
	Clermontia samuelii.	
	Cyanea copelandii ssp. *haleakalaensis.*	
		Cyanea duvalliorum.
		Cyanea glabra.

Unit name	Species occupied	Species unoccupied
	Cyanea hamatiflora ssp. *hamatiflora*.	
	Cyanea horrida.	
	Cyanea kunthiana.	
	Cyanea maritae.	
		Cyanea mceldowneyi.
	Cyrtandra ferripilosa.	
		Diplazium molokaiense.
		Geranium hanaense.
		Geranium multiflorum.
		Melicope balloui.
		Melicope ovalis.
		Peperomia subpetiolata.
	Phlegmariurus mannii.	
		Phyllostegia bracteata.
		Phyllostegia haliakalae.
		Phyllostegia mannii.
		Phyllostegia pilosa.
		Platanthera holochila.
		Schiedea jacobii.
		Wikstroemia villosa.
Maui—Montane Wet—Unit 5		*Adenophorus periens*.
		Asplenium peruvianum var. *insulare*.
	Bidens campylotheca ssp. *pentamera*.	
		Bidens campylotheca ssp. *waihoiensis*.
		Clermontia oblongifolia ssp. *mauiensis*.
		Clermontia samuelii.
		Cyanea copelandii ssp. *haleakalaensis*.
		Cyanea duvalliorum.
		Cyanea glabra.
		Cyanea hamatiflora ssp. *hamatiflora*.
		Cyanea horrida.
		Cyanea kunthiana.
		Cyanea maritae.
		Cyanea mceldowneyi.
		Cyrtandra ferripilosa.
		Diplazium molokaiense.
		Geranium hanaense.
		Geranium multiflorum.
		Melicope balloui.
		Melicope ovalis.
		Peperomia subpetiolata.
		Phlegmariurus mannii.
		Phyllostegia bracteata.
		Phyllostegia haliakalae.
		Phyllostegia mannii.
		Phyllostegia pilosa.
		Platanthera holochila.
		Schiedea jacobii.
		Wikstroemia villosa.
Maui—Montane Wet—Unit 6		*Acaena exigua*.
	Bidens conjuncta.	
	Calamagrostis hillebrandii.	
	Cyanea kunthiana.	
		Cyrtandra oxybapha.
	Geranium hillebrandii.	
	Myrsine vaccinioides.	
		Phlegmariurus mannii.
		Phyllostegia bracteata.
		Platanthera holochila.
	Sanicula purpurea.	
Maui—Montane Wet—Unit 7		*Acaena exigua*.
		Bidens conjuncta.
		Calamagrostis hillebrandii.
		Cyanea kunthiana.
	Cyrtandra oxybapha.	
		Geranium hillebrandii.
		Myrsine vaccinioides.
		Phlegmariurus mannii.
		Phyllostegia bracteata.
	Platanthera holochila.	
		Sanicula purpurea.
Maui—Montane Mesic—Unit 1		*Alectryon macrococcus*.
	Argyroxiphium sandwicense ssp. *macrocephalum*.	
	Asplenium dielerectum.	
	Asplenium peruvianum var. *insulare*.	
		Bidens campylotheca ssp. *pentamera*.
		Bidens micrantha ssp. *kalealaha*.
	Clermontia lindseyana.	
		Cyanea glabra.
		Cyanea hamatiflora ssp. *hamatiflora*.
	Cyanea horrida.	
		Cyanea kunthiana.
		Cyanea mceldowneyi.

Unit name	Species occupied	Species unoccupied
	Cyanea obtusa.	
	Cyrtandra ferripilosa.	
	Cyrtandra oxybapha.	
	Diplazium molokaiense.	
	Geranium arboreum.	
	Geranium multiflorum.	
	Melicope adscendens.	
	Neraudia sericea.	
	Phlegmariurus mannii.	
		Phyllostegia bracteata.
		Phyllostegia mannii.
		Santalum haleakalae var. *lanaiense.*
		Wikstroemia villosa.
		Zanthoxylum hawaiiense.
Maui—Montane Mesic—Unit 2	*Ctenitis squamigera.*	
	Cyanea magnicalyx.	
	Diplazium molokaiense.	
		Geranium hillebrandii
	Lysimachia lydgatei.	
		Phlegmariurus mannii.
	Remya mauiensis.	
	Santalum haleakalae var. *lanaiense.*	
		Stenogyne kauaulaensis.
		Zanthoxylum hawaiiense.
Maui—Montane Mesic—Unit 3		*Ctenitis squamigera.*
		Cyanea magnicalyx.
		Diplazium molokaiense.
	Geranium hillebrandii.	
		Lysimachia lydgatei.
		Phlegmariurus mannii.
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense.*
		Stenogyne kauaulaensis.
		Zanthoxylum hawaiiense.
Maui—Montane Mesic—Unit 4		*Ctenitis squamigera.*
		Cyanea magnicalyx.
		Diplazium molokaiense.
		Geranium hillebrandii.
		Lysimachia lydgatei.
		Phlegmariurus mannii.
		Remya mauiensis.
		Santalum haleakalae var. *lanaiense.*
		Stenogyne kauaulaensis.
		Zanthoxylum hawaiiense.
Maui—Montane Mesic—Unit 5		*Ctenitis squamigera.*
		Cyanea magnicalyx.
		Diplazium molokaiense.
		Geranium hillebrandii.
		Lysimachia lydgatei.
		Phlegmariurus mannii.
	Remya mauiensis.	
	Santalum haleakalae var. *lanaiense.*	
		Stenogyne kauaulaensis.
		Zanthoxylum hawaiiense.
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Unit name	Species occupied	Species unoccupied
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Oahu—Lowland Dry—Unit 1		*Achyranthes splendens* var. *rotundata.*
	Bidens amplectens	*Bidens amplectens.*
		Bonamia menziesii.
		Chamaesyce celastroides var. *kaenana.*
		Dracaena forbesii.
		Euphorbia haeleeleana.
		Gouania meyenii.
		Gouania vitifolia.
	Hibiscus brackenridgei	*Hibiscus brackenridgei.*
		Isodendrion pyrifolium.
		Melanthera tenuifolia.
		Neraudia angulata.
	Nototrichium humile	*Nototrichium humile.*
		Schiedea hookeri.
	Schiedea kealiae	*Schiedea kealiae.*
		Spermolepis hawaiiensis.

Unit name	Species occupied	Species unoccupied
Oahu—Lowland Dry—Unit 2		*Achyranthes splendens* var. *rotundata*.
		Bidens amplectens.
	Bonamia menziesii	*Bonamia menziesii*.
		Chamaesyce celastroides var. *kaenana*.
	Dracaena forbesii	*Dracaena forbesii*.
		Euphorbia haeleeleana.
		Gouania meyenii.
		Gouania vitifolia.
		Hibiscus brackenridgei.
		Isodendrion pyrifolium.
	Melanthera tenuifolia	*Melanthera tenuifolia*.
		Neraudia angulata.
	Nototrichium humile	*Nototrichium humile*.
		Schiedea hookeri.
		Schiedea kealiae.
		Spermolepis hawaiiensis.
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Oahu—Lowland Dry—Unit 8		*Achyranthes splendens* var. *rotundata*.
		Bidens amplectens.
		Bonamia menziesii.
		Chamaesyce celastroides var. *kaenana*.
		Euphorbia haeleeleana.
		Euphorbia skottsbergii var. *skottsbergii*.
		Gouania meyenii.
		Gouania vitifolia.
		Hibiscus brackenridgei.
		Isodendrion pyrifolium.
		Melanthera tenuifolia.
		Neraudia angulata.
		Nototrichium humile.
		Schiedea hookeri.
		Schiedea kealiae.
		Spermolepis hawaiiensis.
Oahu—Lowland Dry—Unit 9	*Achyranthes splendens* var. *rotundata*	*Achyranthes splendens* var. *rotundata*.
		Bidens amplectens.
		Bonamia menziesii.
		Chamaesyce celastroides var. *kaenana*.
		Euphorbia haeleeleana.
		Euphorbia skottsbergii var. *skottsbergii*.
		Gouania meyenii.
		Gouania vitifolia.
		Hibiscus brackenridgei.
		Isodendrion pyrifolium.
		Melanthera tenuifolia.
		Neraudia angulata.
		Nototrichium humile.
		Schiedea hookeri.
		Schiedea kealiae.
		Spermolepis hawaiiensis.
Oahu—Lowland Dry—Unit 10		*Achyranthes splendens* var. *rotundata*.
		Bidens amplectens.
		Bonamia menziesii.
		Chamaesyce celastroides var. *kaenana*.
		Euphorbia haeleeleana.
	Euphorbia skottsbergii var. *skottsbergii*	*Euphorbia skottsbergii* var. *skottsbergii*.
		Gouania meyenii.
		Gouania vitifolia.
		Hibiscus brackenridgei.
		Isodendrion pyrifolium.
		Melanthera tenuifolia.
		Neraudia angulata.
		Nototrichium humile.
		Schiedea hookeri.
		Schiedea kealiae.
		Spermolepis hawaiiensis.
Oahu—Lowland Dry—Unit 11		*Achyranthes splendens* var. *rotundata*.
		Bidens amplectens.
		Bonamia menziesii.
		Chamaesyce celastroides var. *kaenana*.
		Euphorbia haeleeleana.
	Euphorbia skottsbergii var. *skottsbergii*	*Euphorbia skottsbergii* var. *skottsbergii*.
		Gouania meyenii.
		Gouania vitifolia.
		Hibiscus brackenridgei.
		Isodendrion pyrifolium.
		Melanthera tenuifolia.
		Neraudia angulata.
		Nototrichium humile.
		Schiedea hookeri.
		Schiedea kealiae.
		Spermolepis hawaiiensis.
Oahu—Lowland Mesic—Unit 1	*Abutilon sandwicense*	*Abutilon sandwicense*.

Unit name	Species occupied	Species unoccupied
	Alectryon macrococcus	*Alectryon macrococcus.*
	Asplenium dielfalcatum	*Asplenium dielfalcatum.*
	Bonamia menziesii	*Bonamia menziesii.*
	Cenchrus agrimonioides	*Cenchrus agrimonioides.*
		Chamaesyce celastroides var. *kaenana.*
	Chamaesyce herbstii	*Chamaesyce herbstii.*
	Colubrina oppositifolia	*Colubrina oppositifolia.*
	Ctenitis squamigera	*Ctenitis squamigera.*
	Cyanea acuminata	*Cyanea acuminata.*
	Cyanea calycina	*Cyanea calycina.*
	Cyanea grimesiana ssp. *grimesiana*	*Cyanea grimesiana* ssp. *grimesiana.*
	Cyanea grimesiana ssp. *obatae*	*Cyanea grimesiana* ssp. *obatae.*
	Cyanea longiflora	*Cyanea longiflora.*
		Cyanea pinnatifida.
	Cyanea superba	*Cyanea superba.*
		Cyperus pennatiformis.
	Cyrtandra dentata	*Cyrtandra dentata.*
	Delissea subcordata	*Delissea subcordata.*
		Diellia unisora.
		Diplazium molokaiense.
	Dracaena forbesii	*Dracaena forbesii.*
	Dubautia herbstobatae	*Dubautia herbstobatae.*
	Eragrostis fosbergii	*Eragrostis fosbergii.*
		Eugenia koolauensis.
	Euphorbia haeleeleana	*Euphorbia haeleeleana.*
	Flueggea neowawraea	*Flueggea neowawraea.*
		Gardenia mannii.
		Gouania meyenii.
		Gouania vitifolia.
	Hesperomannia arborescens	*Hesperomannia arborescens.*
	Hesperomannia arbuscula	*Hesperomannia arbuscula.*
	Hibiscus brackenridgei	*Hibiscus brackenridgei.*
	Isodendrion laurifolium	*Isodendrion laurifolium.*
	Isodendrion longifolium	*Isodendrion longifolium.*
		Kadua coriacea.
	Kadua degeneri	*Kadua degeneri.*
		Kadua parvula.
		Labordia cyrtandrae.
	Lobelia niihauensis	*Lobelia niihauensis.*
	Melanthera tenuifolia	*Melanthera tenuifolia.*
	Melicope cornuta var. *decurrens*	*Melicope cornuta* var. *decurrens.*
	Melicope makahae	*Melicope makahae.*
	Melicope pallida	*Melicope pallida.*
		Melicope saint-johnii.
	Neraudia angulata	*Neraudia angulata.*
	Nototrichium humile	*Nototrichium humile.*
		Phyllostegia hirsuta.
	Phyllostegia kaalaensis	*Phyllostegia kaalaensis.*
		Phyllostegia mollis.
		Phyllostegia parviflora.
		Plantago princeps.
	Pteralyxia macrocarpa	*Pteralyxia macrocarpa.*
		Sanicula mariversa.
	Schiedea hookeri	*Schiedea hookeri.*
	Schiedea kaalae	*Schiedea kaalae.*
	Schiedea nuttallii	*Schiedea nuttallii.*
	Schiedea obovata	*Schiedea obovata.*
		Silene perlmanii.
		Solanum sandwicense.
		Stenogyne kanehoana.
		Tetramolopium lepidotum ssp. *lepidotum.*
		Urera kaalae.
	Viola chamissoniana ssp. *chamissoniana*	*Viola chamissoniana* ssp. *chamissoniana.*
Oahu—Lowland Mesic—Unit 2	*Abutilon sandwicense*	*Abutilon sandwicense.*
	Alectryon macrococcus	*Alectryon macrococcus.*
	Asplenium dielfalcatum	*Asplenium dielfalcatum.*
		Bonamia menziesii.
	Cenchrus agrimonioides	*Cenchrus agrimonioides.*
		Chamaesyce celastroides var. *kaenana.*
	Chamaesyce herbstii	*Chamaesyce herbstii.*
		Colubrina oppositifolia.
		Ctenitis squamigera.
		Cyanea acuminata.
	Cyanea calycina	*Cyanea calycina.*
		Cyanea grimesiana ssp. *grimesiana.*
	Cyanea grimesiana ssp. *obatae*	*Cyanea grimesiana* ssp. *obatae.*
		Cyanea longiflora.
		Cyanea pinnatifida.
		Cyanea superba.
		Cyperus pennatiformis.
		Cyrtandra dentata.
	Delissea subcordata	*Delissea subcordata.*
		Diellia unisora.
		Diplazium molokaiense.

Unit name	Species occupied	Species unoccupied
	Dracaena forbesii	*Dracaena forbesii.*
		Dubautia herbstobatae.
		Eragrostis fosbergii.
		Eugenia koolauensis.
		Euphorbia haeleeleana.
		Flueggea neowawraea.
	Gardenia mannii	*Gardenia mannii.*
		Gouania meyenii.
		Gouania vitifolia.
		Hesperomannia arborescens.
		Hesperomannia arbuscula.
		Hibiscus brackenridgei.
		Isodendrion laurifolium.
		Isodendrion longifolium.
		Kadua coriacea.
		Kadua degeneri.
		Kadua parvula.
		Labordia cyrtandrae.
		Lobelia niihauensis.
		Melanthera tenuifolia.
	Melicope cornuta var. *decurrens*	*Melicope cornuta* var. *decurrens.*
		Melicope makahae.
		Melicope pallida.
		Melicope saint-johnii.
		Neraudia angulata.
		Nototrichium humile.
	Phyllostegia hirsuta	*Phyllostegia hirsuta.*
	Phyllostegia kaalaensis	*Phyllostegia kaalaensis.*
	Phyllostegia mollis	*Phyllostegia mollis.*
		Phyllostegia parviflora.
		Plantago princeps.
	Pteralyxia macrocarpa	*Pteralyxia macrocarpa.*
		Sanicula mariversa.
	Schiedea hookeri	*Schiedea hookeri.*
	Schiedea kaalae	*Schiedea kaalae.*
		Schiedea nuttallii.
		Schiedea obovata.
		Silene perlmanii.
	Solanum sandwicense	*Solanum sandwicense.*
	Stenogyne kanehoana	*Stenogyne kanehoana.*
		Tetramolopium lepidotum ssp. *lepidotum.*
	Urera kaalae	*Urera kaalae.*
		Viola chamissoniana ssp. *chamissoniana.*
Oahu—Lowland Mesic—Unit 3		*Abutilon sandwicense.*
	Alectryon macrococcus	*Alectryon macrococcus.*
	Asplenium dielfalcatum	*Asplenium dielfalcatum.*
		Bonamia menziesii.
	Cenchrus agrimonioides	*Cenchrus agrimonioides.*
		Chamaesyce celastroides var. *kaenana.*
		Chamaesyce herbstii.
		Colubrina oppositifolia.
		Ctenitis squamigera.
		Cyanea acuminata.
		Cyanea calycina.
		Cyanea grimesiana ssp. *grimesiana.*
		Cyanea grimesiana ssp. *obatae.*
		Cyanea longiflora.
		Cyanea pinnatifida.
		Cyanea superba.
		Cyperus pennatiformis.
		Cyrtandra dentata.
	Delissea subcordata	*Delissea subcordata.*
	Diellia unisora	*Diellia unisora.*
		Diplazium molokaiense.
	Dracaena forbesii	*Dracaena forbesii.*
		Dubautia herbstobatae.
		Eragrostis fosbergii.
		Eugenia koolauensis.
		Euphorbia haeleeleana.
		Flueggea neowawraea.
		Gardenia mannii.
		Gouania meyenii.
		Gouania vitifolia.
		Hesperomannia arborescens.
	Hesperomannia arbuscula	*Hesperomannia arbuscula.*
		Hibiscus brackenridgei.
		Isodendrion laurifolium.
		Isodendrion longifolium.
		Kadua coriacea.
		Kadua degeneri.
		Kadua parvula.

Unit name	Species occupied	Species unoccupied
		Labordia cyrtandrae.
		Lobelia niihauensis.
		Melanthera tenuifolia.
		Melicope cornuta var. *decurrens*.
		Melicope makahae.
		Melicope pallida.
	Melicope saint-johnii	*Melicope saint-johnii*.
		Neraudia angulata.
		Nototrichium humile.
		Phyllostegia hirsuta.
		Phyllostegia kaalaensis.
	Phyllostegia mollis	*Phyllostegia mollis*.
	Phyllostegia parviflora	*Phyllostegia parviflora*.
	Plantago princeps	*Plantago princeps*.
	Pteralyxia macrocarpa	*Pteralyxia macrocarpa*.
		Sanicula mariversa.
		Schiedea hookeri.
	Schiedea kaalae	*Schiedea kaalae*.
		Schiedea nuttallii.
		Schiedea obovata.
	Silene perlmanii	*Silene perlmanii*.
		Solanum sandwicense.
		Stenogyne kanehoana.
		Tetramolopium lepidotum ssp. *lepidotum*.
	Urera kaalae	*Urera kaalae*.
		Viola chamissoniana ssp. *chamissoniana*.
Oahu—Lowland Mesic—Unit 4		*Alectryon macrococcus*.
		Asplenium dielerectum.
		Asplenium dielfalcatum.
		Bonamia menziesii.
		Chamaesyce celastroides var. *kaenana*.
		Ctenitis squamigera.
		Cyanea acuminata.
		Cyanea calycina.
		Cyanea crispa.
		Cyanea grimesiana ssp. *grimesiana*.
		Cyanea lanceolata.
		Cyanea longiflora.
		Cyanea truncata.
		Cyrtandra dentata.
		Cyrtandra polyantha.
		Delissea subcordata.
		Dracaena forbesii.
		Eugenia koolauensis.
		Gardenia mannii.
		Hesperomannia arborescens.
		Isodendrion laurifolium.
		Isodendrion longifolium.
		Kadua coriacea.
		Labordia cyrtandrae.
		Lobelia monostachya.
		Melicope lydgatei.
		Melicope saint-johnii.
		Phyllostegia hirsuta.
		Phyllostegia mollis.
		Phyllostegia parviflora.
		Plantago princeps.
		Pteralyxia macrocarpa.
		Schiedea kaalae.
		Schiedea nuttallii.
		Solanum sandwicense.
		Tetraplasandra gymnocarpa.
		Tetraplasandra lydgatei.
Oahu—Lowland Mesic—Unit 5		*Alectryon macrococcus*.
		Asplenium dielerectum.
		Asplenium dielfalcatum.
		Bonamia menziesii.
		Chamaesyce celastroides var. *kaenana*.
		Ctenitis squamigera.
		Cyanea acuminata.
		Cyanea calycina.
		Cyanea crispa.
		Cyanea grimesiana ssp. *grimesiana*.
		Cyanea lanceolata.
		Cyanea longiflora.
		Cyanea truncata.
		Cyrtandra dentata.
		Cyrtandra polyantha.
		Delissea subcordata.
		Dracaena forbesii.
		Eugenia koolauensis.
		Gardenia mannii.

Unit name	Species occupied	Species unoccupied
		Hesperomannia arborescens.
		Isodendrion laurifolium.
		Isodendrion longifolium.
		Kadua coriacea.
		Labordia cyrtandrae.
		Lobelia monostachya.
		Melicope lydgatei.
		Melicope saint-johnii.
		Phyllostegia hirsuta.
		Phyllostegia mollis.
		Phyllostegia parviflora.
		Plantago princeps.
		Pteralyxia macrocarpa.
		Schiedea kaalae.
		Schiedea nuttallii.
		Solanum sandwicense.
		Tetraplasandra gymnocarpa.
		Tetraplasandra lydgatei.
Oahu—Lowland Mesic—Unit 6		*Alectryon macrococcus.*
		Asplenium dielerectum.
		Asplenium dielfalcatum.
		Bonamia menziesii.
		Chamaesyce celastroides var. *kaenana.*
		Ctenitis squamigera.
	Cyanea acuminata	*Cyanea acuminata.*
		Cyanea calycina.
	Cyanea crispa	*Cyanea crispa.*
		Cyanea grimesiana ssp. *grimesiana.*
		Cyanea lanceolata.
		Cyanea longiflora.
	Cyanea truncata	*Cyanea truncata.*
		Cyrtandra dentata.
		Cyrtandra polyantha.
		Delissea subcordata.
		Dracaena forbesii.
		Eugenia koolauensis.
	Gardenia mannii	*Gardenia mannii.*
		Hesperomannia arborescens.
		Isodendrion laurifolium.
		Isodendrion longifolium.
		Kadua coriacea.
		Labordia cyrtandrae.
		Lobelia monostachya.
		Melicope lydgatei.
		Melicope saint-johnii.
		Phyllostegia hirsuta.
		Phyllostegia mollis.
		Phyllostegia parviflora.
		Plantago princeps.
	Pteralyxia macrocarpa	*Pteralyxia macrocarpa.*
	Schiedea kaalae	*Schiedea kaalae.*
		Schiedea nuttallii.
		Solanum sandwicense.
		Tetraplasandra gymnocarpa.
		Tetraplasandra lydgatei.
Oahu—Lowland Mesic—Unit 7		*Alectryon macrococcus.*
	Asplenium dielerectum	*Asplenium dielerectum.*
		Asplenium dielfalcatum.
	Bonamia menziesii	*Bonamia menziesii.*
		Chamaesyce celastroides var. *kaenana.*
		Ctenitis squamigera.
	Cyanea acuminata	*Cyanea acuminata.*
		Cyanea calycina.
		Cyanea crispa.
	Cyanea grimesiana ssp. *grimesiana*	*Cyanea grimesiana* ssp. *grimesiana.*
	Cyanea lanceolata	*Cyanea lanceolata.*
		Cyanea longiflora.
		Cyanea truncata.
		Cyrtandra dentata.
	Cyrtandra polyantha	*Cyrtandra polyantha.*
		Delissea subcordata.
	Dracaena forbesii	*Dracaena forbesii.*
		Eugenia koolauensis.
		Gardenia mannii.
		Hesperomannia arborescens.
		Isodendrion laurifolium.
		Isodendrion longifolium.
		Kadua coriacea.
		Labordia cyrtandrae.

Unit name	Species occupied	Species unoccupied
	Lobelia monostachya	*Lobelia monostachya.*
		Melicope lydgatei.
		Melicope saint-johnii.
		Phyllostegia hirsuta.
		Phyllostegia mollis.
		Phyllostegia parviflora.
		Plantago princeps.
	Pteralyxia macrocarpa	*Pteralyxia macrocarpa.*
		Schiedea kaalae.
		Schiedea nuttallii.
		Solanum sandwicense.
		Tetraplasandra gymnocarpa.
	Tetraplasandra lydgatei	*Tetraplasandra lydgatei.*
* *	* * *	* *
Oahu—Lowland Wet—Unit 6		*Adenophorus periens.*
		Chamaesyce rockii.
		Cyanea acuminata.
		Cyanea calycina.
		Cyanea crispa.
		Cyanea grimesiana ssp. *grimesiana.*
		Cyanea humboldtiana.
		Cyanea koolauensis.
		Cyanea lanceolata.
		Cyanea purpurellifolia.
		Cyanea st.-johnii.
		Cyanea truncata.
		Cyrtandra dentata.
		Cyrtandra gracilis.
		Cyrtandra kaulantha.
		Cyrtandra polyantha.
		Cyrtandra sessilis.
		Cyrtandra subumbellata.
		Cyrtandra viridiflora.
		Cyrtandra waiolani.
		Gardenia mannii.
	Hesperomannia arborescens	*Hesperomannia arborescens.*
		Isodendrion longifolium.
		Labordia cyrtandrae.
		Lobelia gaudichaudii ssp. *koolauensis.*
		Lobelia oahuensis.
		Melicope cornuta var. *cornuta.*
		Melicope hiiakae.
		Melicope lydgatei.
		Myrsine juddii.
		Phlegmariurus nutans.
		Phyllostegia hirsuta.
		Phyllostegia parviflora.
		Plantago princeps.
		Platanthera holochila.
		Psychotria hexandra var. *oahuensis.*
		Pteralyxia macrocarpa.
		Pteris lidgatei.
		Sanicula purpurea.
		Tetraplasandra gymnocarpa.
		Trematolobelia singularis.
		Viola oahuensis.
		Zanthoxylum oahuense.
Oahu—Lowland Wet—Unit 7		*Adenophorus periens.*
	Chamaesyce rockii	*Chamaesyce rockii.*
	Cyanea acuminata	*Cyanea acuminata.*
	Cyanea calycina	*Cyanea calycina.*
		Cyanea crispa.
		Cyanea grimesiana ssp. *grimesiana.*
	Cyanea humboldtiana	*Cyanea humboldtiana.*
		Cyanea koolauensis.
		Cyanea lanceolata.
	Cyanea purpurellifolia	*Cyanea purpurellifolia.*
		Cyanea st.-johnii.
	Cyanea truncata	*Cyanea truncata.*
		Cyrtandra dentata.
		Cyrtandra gracilis.
		Cyrtandra kaulantha.
		Cyrtandra polyantha.
		Cyrtandra sessilis.
		Cyrtandra subumbellata.
	Cyrtandra viridiflora	*Cyrtandra viridiflora.*
		Cyrtandra waiolani.
	Gardenia mannii	*Gardenia mannii.*
	Hesperomannia arborescens	*Hesperomannia arborescens.*
		Isodendrion longifolium.

Unit name	Species occupied	Species unoccupied
		Labordia cyrtandrae.
		Lobelia gaudichaudii ssp. *koolauensis*
		Lobelia oahuensis.
	Melicope cornuta var. *cornuta*	*Melicope cornuta* var. *cornuta.*
		Melicope hiiakae.
		Melicope lydgatei.
	Myrsine juddii	*Myrsine juddii.*
	Phlegmariurus nutans	*Phlegmariurus nutans.*
	Phyllostegia hirsuta	*Phyllostegia hirsuta.*
		Phyllostegia parviflora.
		Plantago princeps.
		Platanthera holochila.
		Psychotria hexandra var. *oahuensis.*
	Pteralyxia macrocarpa	*Pteralyxia macrocarpa.*
	Pteris lidgatei	*Pteris lidgatei.*
		Sanicula purpurea.
	Tetraplasandra gymnocarpa	*Tetraplasandra gymnocarpa.*
		Trematolobelia singularis.
	Viola oahuensis	*Viola oahuensis.*
	Zanthoxylum oahuense	*Zanthoxylum oahuense.*
Oahu—Lowland Wet—Unit 8		*Adenophorus periens.*
		Chamaesyce rockii.
		Cyanea acuminata.
		Cyanea calycina.
		Cyanea crispa.
		Cyanea grimesiana ssp. *grimesiana.*
		Cyanea humboldtiana.
		Cyanea koolauensis.
		Cyanea lanceolata.
		Cyanea purpurellifolia.
		Cyanea st.-johnii.
		Cyanea truncata.
		Cyrtandra dentata.
		Cyrtandra gracilis.
	Cyrtandra kaulantha	*Cyrtandra kaulantha.*
		Cyrtandra polyantha.
		Cyrtandra sessilis.
		Cyrtandra subumbellata.
		Cyrtandra viridiflora.
		Cyrtandra waiolani.
		Gardenia mannii.
		Hesperomannia arborescens.
		Isodendrion longifolium.
		Labordia cyrtandrae.
		Lobelia gaudichaudii ssp. *koolauensis.*
		Lobelia oahuensis.
		Melicope cornuta var. *cornuta.*
		Melicope hiiakae.
		Melicope lydgatei.
		Myrsine juddii.
		Phlegmariurus nutans.
		Phyllostegia hirsuta.
		Phyllostegia parviflora.
		Plantago princeps.
		Platanthera holochila.
		Psychotria hexandra var. *oahuensis.*
		Pteralyxia macrocarpa.
		Pteris lidgatei.
		Sanicula purpurea.
		Tetraplasandra gymnocarpa.
		Trematolobelia singularis.
		Viola oahuensis.
		Zanthoxylum oahuense.
Oahu—Lowland Wet—Unit 9		*Adenophorus periens.*
	Chamaesyce rockii	*Chamaesyce rockii.*
		Cyanea acuminata.
	Cyanea calycina	*Cyanea calycina.*
		Cyanea crispa.
		Cyanea grimesiana ssp. *grimesiana.*
	Cyanea humboldtiana	*Cyanea humboldtiana.*
	Cyanea koolauensis	*Cyanea koolauensis.*
		Cyanea lanceolata.
		Cyanea purpurellifolia.
	Cyanea st.-johnii	*Cyanea st.-johnii.*
		Cyanea truncata.
		Cyrtandra dentata.
		Cyrtandra gracilis.
		Cyrtandra kaulantha.
		Cyrtandra polyantha.
		Cyrtandra sessilis.
		Cyrtandra subumbellata.
	Cyrtandra viridiflora	*Cyrtandra viridiflora.*
		Cyrtandra waiolani.

Unit name	Species occupied	Species unoccupied
	Gardenia mannii	*Gardenia mannii.*
	Hesperomannia arborescens	*Hesperomannia arborescens.*
		Isodendrion longifolium.
	Labordia cyrtandrae	*Labordia cyrtandrae.*
		Lobelia gaudichaudii ssp. *koolauensis.*
	Lobelia oahuensis	*Lobelia oahuensis.*
	Melicope cornuta var. *cornuta*	*Melicope cornuta* var. *cornuta.*
	Melicope hiiakae	*Melicope hiiakae.*
	Melicope lydgatei	*Melicope lydgatei.*
		Myrsine juddii.
		Phlegmariurus nutans.
	Phyllostegia hirsuta	*Phyllostegia hirsuta.*
	Phyllostegia parviflora	*Phyllostegia parviflora.*
	Plantago princeps	*Plantago princeps.*
		Platanthera holochila.
		Psychotria hexandra var. *oahuensis.*
		Pteralyxia macrocarpa.
	Pteris lidgatei	*Pteris lidgatei.*
		Sanicula purpurea.
	Tetraplasandra gymnocarpa	*Tetraplasandra gymnocarpa.*
		Trematolobelia singularis.
	Viola oahuensis	*Viola oahuensis.*
	Zanthoxylum oahuense	*Zanthoxylum oahuense.*
Oahu—Lowland Wet—Unit 10		*Adenophorus periens.*
		Chamaesyce rockii.
		Cyanea acuminata.
		Cyanea calycina.
		Cyanea crispa.
		Cyanea grimesiana ssp. *grimesiana.*
		Cyanea humboldtiana.
		Cyanea koolauensis.
		Cyanea lanceolata.
		Cyanea purpurellifolia.
		Cyanea st.-johnii.
		Cyanea truncata.
		Cyrtandra dentata.
		Cyrtandra gracilis.
		Cyrtandra kaulantha.
		Cyrtandra polyantha.
		Cyrtandra sessilis.
		Cyrtandra subumbellata.
		Cyrtandra viridiflora.
		Cyrtandra waiolani.
		Gardenia mannii.
		Hesperomannia arborescens.
		Isodendrion longifolium.
		Labordia cyrtandrae.
		Lobelia gaudichaudii ssp. *koolauensis.*
		Lobelia oahuensis.
		Melicope cornuta var. *cornuta.*
		Melicope hiiakae.
		Melicope lydgatei.
		Myrsine juddii.
		Phlegmariurus nutans.
		Phyllostegia hirsuta.
		Phyllostegia parviflora.
		Plantago princeps.
		Platanthera holochila.
		Psychotria hexandra var. *oahuensis.*
		Pteralyxia macrocarpa.
		Pteris lidgatei.
		Sanicula purpurea.
		Tetraplasandra gymnocarpa.
		Trematolobelia singularis.
		Viola oahuensis.
		Zanthoxylum oahuense.
Oahu—Lowland Wet—Unit 11		*Adenophorus periens.*
		Chamaesyce rockii.
		Cyanea acuminata.
		Cyanea calycina.
		Cyanea crispa.
		Cyanea grimesiana ssp. *grimesiana.*
		Cyanea humboldtiana.
		Cyanea koolauensis.
		Cyanea lanceolata.
		Cyanea purpurellifolia.
		Cyanea st.-johnii.
		Cyanea truncata.
		Cyrtandra dentata.
		Cyrtandra gracilis.

Unit name	Species occupied	Species unoccupied
		Cyrtandra kaulantha.
		Cyrtandra polyantha.
		Cyrtandra sessilis.
		Cyrtandra subumbellata.
		Cyrtandra viridiflora.
		Cyrtandra waiolani.
		Gardenia mannii.
		Hesperomannia arborescens.
		Isodendrion longifolium.
		Labordia cyrtandrae.
		Lobelia gaudichaudii ssp. *koolauensis*.
		Lobelia oahuensis.
		Melicope cornuta var. *cornuta*.
		Melicope hiiakae.
		Melicope lydgatei.
		Myrsine juddii.
		Phlegmariurus nutans.
		Phyllostegia hirsuta.
		Phyllostegia parviflora.
		Plantago princeps.
		Platanthera holochila.
		Psychotria hexandra var. *oahuensis*.
		Pteralyxia macrocarpa.
		Pteris lidgatei.
		Sanicula purpurea.
		Tetraplasandra gymnocarpa.
		Trematolobelia singularis.
		Viola oahuensis.
		Zanthoxylum oahuense.
Oahu—Lowland Wet—Unit 12		*Adenophorus periens*.
		Chamaesyce rockii.
		Cyanea acuminata.
		Cyanea calycina.
		Cyanea crispa.
		Cyanea grimesiana ssp. *grimesiana*.
		Cyanea humboldtiana.
		Cyanea koolauensis.
		Cyanea lanceolata.
		Cyanea purpurellifolia.
		Cyanea st.-johnii.
		Cyanea truncata.
		Cyrtandra dentata.
		Cyrtandra gracilis.
		Cyrtandra kaulantha.
		Cyrtandra polyantha.
		Cyrtandra sessilis.
		Cyrtandra subumbellata.
		Cyrtandra viridiflora.
		Cyrtandra waiolani.
		Gardenia mannii.
		Hesperomannia arborescens.
		Isodendrion longifolium.
		Labordia cyrtandrae.
		Lobelia gaudichaudii ssp. *koolauensis*.
		Lobelia oahuensis.
		Melicope cornuta var. *cornuta*.
		Melicope hiiakae.
		Melicope lydgatei.
		Myrsine juddii.
		Phlegmariurus nutans.
		Phyllostegia hirsuta.
		Phyllostegia parviflora.
		Plantago princeps.
		Platanthera holochila.
		Psychotria hexandra var. *oahuensis*.
		Pteralyxia macrocarpa.
		Pteris lidgatei.
		Sanicula purpurea.
		Tetraplasandra gymnocarpa.
		Trematolobelia singularis.
		Viola oahuensis.
		Zanthoxylum oahuense.
Oahu—Lowland Wet—Unit 13		*Adenophorus periens*.
		Chamaesyce rockii.
		Cyanea acuminata.
		Cyanea calycina.
		Cyanea crispa.
		Cyanea grimesiana ssp. *grimesiana*.
		Cyanea humboldtiana.
		Cyanea koolauensis.

Unit name	Species occupied	Species unoccupied
		Cyanea lanceolata.
		Cyanea purpurellifolia.
		Cyanea st.-johnii.
		Cyanea truncata.
		Cyrtandra dentata.
		Cyrtandra gracilis.
		Cyrtandra kaulantha.
		Cyrtandra polyantha.
		Cyrtandra sessilis.
		Cyrtandra subumbellata.
		Cyrtandra viridiflora.
		Cyrtandra waiolani.
		Gardenia mannii.
		Hesperomannia arborescens.
		Isodendrion longifolium.
		Labordia cyrtandrae.
		Lobelia gaudichaudii ssp. *koolauensis*.
		Lobelia oahuensis.
		Melicope cornuta var. *cornuta*.
		Melicope hiiakae.
		Melicope lydgatei.
		Myrsine juddii.
		Phlegmariurus nutans.
		Phyllostegia hirsuta.
		Phyllostegia parviflora.
		Plantago princeps.
		Platanthera holochila.
		Psychotria hexandra var. *oahuensis*.
		Pteralyxia macrocarpa.
		Pteris lidgatei.
		Sanicula purpurea.
		Tetraplasandra gymnocarpa.
		Trematolobelia singularis.
		Viola oahuensis.
		Zanthoxylum oahuense.
Oahu—Lowland Wet—Unit 14		*Adenophorus periens*.
		Chamaesyce rockii.
		Cyanea acuminata.
		Cyanea calycina.
		Cyanea crispa.
		Cyanea grimesiana ssp. *grimesiana*.
		Cyanea humboldtiana.
	Cyanea koolauensis	*Cyanea koolauensis*.
		Cyanea lanceolata.
		Cyanea purpurellifolia.
		Cyanea st.-johnii.
		Cyanea truncata.
		Cyrtandra dentata.
		Cyrtandra gracilis.
		Cyrtandra kaulantha.
		Cyrtandra polyantha.
		Cyrtandra sessilis.
		Cyrtandra subumbellata.
		Cyrtandra viridiflora.
		Cyrtandra waiolani.
		Gardenia mannii.
		Hesperomannia arborescens.
		Isodendrion longifolium.
		Labordia cyrtandrae.
		Lobelia gaudichaudii ssp. *koolauensis*.
		Lobelia oahuensis.
		Melicope cornuta var. *cornuta*.
		Melicope hiiakae.
		Melicope lydgatei.
		Myrsine juddii.
		Phlegmariurus nutans.
		Phyllostegia hirsuta.
		Phyllostegia parviflora.
		Plantago princeps.
		Platanthera holochila.
		Psychotria hexandra var. *oahuensis*.
		Pteralyxia macrocarpa.
		Pteris lidgatei.
		Sanicula purpurea.
		Tetraplasandra gymnocarpa.
		Trematolobelia singularis.
		Viola oahuensis.
		Zanthoxylum oahuense.
Oahu—Lowland Wet—Unit 15		*Adenophorus periens*.
		Chamaesyce rockii.
		Cyanea acuminata.
		Cyanea calycina.

Unit name	Species occupied	Species unoccupied
	Cyanea crispa	*Cyanea crispa*.
		Cyanea grimesiana ssp. *grimesiana*.
		Cyanea humboldtiana.
		Cyanea koolauensis.
		Cyanea lanceolata.
		Cyanea purpurellifolia.
		Cyanea st.-johnii.
		Cyanea truncata.
		Cyrtandra dentata.
		Cyrtandra gracilis.
		Cyrtandra kaulantha.
		Cyrtandra polyantha.
		Cyrtandra sessilis.
		Cyrtandra subumbellata.
		Cyrtandra viridiflora.
		Cyrtandra waiolani.
		Gardenia mannii.
		Hesperomannia arborescens.
		Isodendrion longifolium.
		Labordia cyrtandrae.
		Lobelia gaudichaudii ssp. *koolauensis*.
		Lobelia oahuensis.
		Melicope cornuta var. *cornuta*.
		Melicope hiiakae.
		Melicope lydgatei.
		Myrsine juddii.
		Phlegmariurus nutans.
		Phyllostegia hirsuta.
		Phyllostegia parviflora.
		Plantago princeps.
		Platanthera holochila.
		Psychotria hexandra var. *oahuensis*.
		Pteralyxia macrocarpa.
		Pteris lidgatei.
		Sanicula purpurea.
		Tetraplasandra gymnocarpa.
		Trematolobelia singularis.
		Viola oahuensis.
		Zanthoxylum oahuense.
Oahu—Lowland Wet—Unit 16		*Adenophorus periens*.
		Chamaesyce rockii.
	Cyanea acuminata	*Cyanea acuminata*.
	Cyanea calycina	*Cyanea calycina*.
	Cyanea crispa	*Cyanea crispa*.
		Cyanea grimesiana ssp. *grimesiana*.
	Cyanea humboldtiana	*Cyanea humboldtiana*.
	Cyanea koolauensis	*Cyanea koolauensis*.
	Cyanea lanceolata	*Cyanea lanceolata*.
		Cyanea purpurellifolia.
	Cyanea st.-johnii	*Cyanea st.-johnii*.
		Cyanea truncata.
		Cyrtandra dentata.
	Cyrtandra gracilis	*Cyrtandra gracilis*.
		Cyrtandra kaulantha.
	Cyrtandra polyantha	*Cyrtandra polyantha*.
	Cyrtandra sessilis	*Cyrtandra sessilis*.
		Cyrtandra subumbellata.
		Cyrtandra viridiflora.
		Cyrtandra waiolani.
	Gardenia mannii	*Gardenia mannii*.
	Hesperomannia arborescens	*Hesperomannia arborescens*.
		Isodendrion longifolium.
		Labordia cyrtandrae.
		Lobelia gaudichaudii ssp. *koolauensis*.
		Lobelia oahuensis.
	Melicope cornuta var. *cornuta*	*Melicope cornuta* var. *cornuta*.
		Melicope hiiakae.
		Melicope lydgatei.
		Myrsine juddii.
		Phlegmariurus nutans.
		Phyllostegia hirsuta.
		Phyllostegia parviflora.
		Plantago princeps.
		Platanthera holochila.
		Psychotria hexandra var. *oahuensis*.
		Pteralyxia macrocarpa.
		Pteris lidgatei.
	Sanicula purpurea	*Sanicula purpurea*.
	Tetraplasandra gymnocarpa	*Tetraplasandra gymnocarpa*.
		Trematolobelia singularis.
		Viola oahuensis.
		Zanthoxylum oahuense.

Unit name	Species occupied	Species unoccupied
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Oahu—Dry Cliff—Unit 1		*Abutilon sandwicense*.
		Achyranthes splendens var. *rotundata*.
	Alectryon macrococcus	*Alectryon macrococcus*.
		Asplenium dielfalcatum.
		Bonamia menziesii.
	Cenchrus agrimonioides	*Cenchrus agrimonioides*.
	Chamaesyce herbstii	*Chamaesyce herbstii*.
		Chamaesyce kuwaleana.
	Cyanea grimesiana ssp. *obatae*	*Cyanea grimesiana* ssp. *obatae*.
	Cyrtandra dentata	*Cyrtandra dentata*.
		Diellia unisora.
		Dracaena forbesii.
		Dubautia herbstobatae.
		Eragrostis fosbergii.
		Flueggea neowawraea.
		Gouania meyenii.
		Gouania vitifolia.
		Isodendrion laurifolium.
		Isodendrion pyrifolium.
	Kadua degeneri	*Kadua degeneri*.
		Kadua parvula.
		Korthalsella degeneri.
		Lepidium arbuscula.
		Lipochaeta lobata var. *leptophylla*.
		Lobelia niihauensis.
		Melanthera tenuifolia.
		Melicope cornuta var. *decurrens*.
		Melicope makahae.
		Melicope saint-johnii.
		Neraudia angulata.
		Nototrichium humile.
		Peucedanum sandwicense.
		Phyllostegia kaalaensis.
	Plantago princeps	*Plantago princeps*.
		Pteralyxia macrocarpa.
		Sanicula mariversa.
		Schiedea hookeri.
	Schiedea obovata	*Schiedea obovata*.
		Schiedea trinervis.
		Silene lanceolata.
		Silene perlmanii.
		Spermolepis hawaiiensis.
		Tetramolopium filiforme.
		Tetramolopium lepidotum ssp. *lepidotum*.
	Viola chamissoniana ssp. *chamissoniana*..	
Oahu—Dry Cliff—Unit 2	*Abutilon sandwicense*	*Abutilon sandwicense*.
		Achyranthes splendens var. *rotundata*.
	Alectryon macrococcus	*Alectryon macrococcus*.
		Asplenium dielfalcatum.
		Bonamia menziesii.
		Cenchrus agrimonioides.
		Chamaesyce herbstii.
		Chamaesyce kuwaleana.
		Cyanea grimesiana ssp. *obatae*.
		Cyrtandra dentata.
		Diellia unisora.
	Dracaena forbesii	*Dracaena forbesii*.
	Dubautia herbstobatae	*Dubautia herbstobatae*.
		Eragrostis fosbergii.
		Flueggea neowawraea.
		Gouania meyenii.
	Gouania vitifolia	*Gouania vitifolia*.
		Isodendrion laurifolium.
		Isodendrion pyrifolium.
		Kadua degeneri.
	Kadua parvula	*Kadua parvula*.
		Korthalsella degeneri.
	Lepidium arbuscula	*Lepidium arbuscula*.
		Lipochaeta lobata var. *leptophylla*.
	Lobelia niihauensis	*Lobelia niihauensis*.
	Melanthera tenuifolia	*Melanthera tenuifolia*.
	Melicope cornuta var. *decurrens*	*Melicope cornuta* var. *decurrens*.
	Melicope makahae	*Melicope makahae*.
		Melicope saint-johnii.
		Neraudia angulata.
	Nototrichium humile	*Nototrichium humile*.
	Peucedanum sandwicense	*Peucedanum sandwicense*.
		Phyllostegia kaalaensis.
		Plantago princeps.
		Pteralyxia macrocarpa.
	Sanicula mariversa	*Sanicula mariversa*.

Unit name	Species occupied	Species unoccupied
	Schiedea hookeri	*Schiedea hookeri.*
		Schiedea obovata.
		Schiedea trinervis.
		Silene lanceolata.
		Silene perlmanii.
		Spermolepis hawaiiensis.
	Tetramolopium filiforme	*Tetramolopium filiforme.*
		Tetramolopium lepidotum ssp. *lepidotum.*
	Viola chamissoniana ssp. *chamissoniana*	*Viola chamissoniana* ssp. *chamissoniana.*
Oahu—Dry Cliff—Unit 3	*Abutilon sandwicense*	*Abutilon sandwicense.*
		Achyranthes splendens var. *rotundata.*
	Alectryon macrococcus	*Alectryon macrococcus.*
	Asplenium dielfalcatum	*Asplenium dielfalcatum.*
	Bonamia menziesii	*Bonamia menziesii.*
		Cenchrus agrimonioides.
		Chamaesyce herbstii.
		Chamaesyce kuwaleana.
		Cyanea grimesiana ssp. *obatae.*
		Cyrtandra dentata.
		Diellia unisora.
	Dracaena forbesii	*Dracaena forbesii.*
	Dubautia herbstobatae	*Dubautia herbstobatae.*
	Eragrostis fosbergii	*Eragrostis fosbergii.*
	Flueggea neowawraea	*Flueggea neowawraea.*
	Gouania meyenii	*Gouania meyenii.*
		Gouania vitifolia.
	Isodendrion laurifolium	*Isodendrion laurifolium.*
		Isodendrion pyrifolium.
		Kadua degeneri.
		Kadua parvula.
	Korthalsella degeneri	*Korthalsella degeneri.*
	Lepidium arbuscula	*Lepidium arbuscula.*
	Lipochaeta lobata var. *leptophylla*	*Lipochaeta lobata* var. *leptophylla.*
	Lobelia niihauensis	*Lobelia niihauensis.*
	Melanthera tenuifolia	*Melanthera tenuifolia.*
		Melicope cornuta var. *decurrens.*
	Melicope makahae	*Melicope makahae.*
		Melicope saint-johnii.
	Neraudia angulata	*Neraudia angulata.*
	Nototrichium humile	*Nototrichium humile.*
	Peucedanum sandwicense	*Peucedanum sandwicense.*
	Phyllostegia kaalaensis	*Phyllostegia kaalaensis.*
		Plantago princeps.
	Pteralyxia macrocarpa	*Pteralyxia macrocarpa.*
		Sanicula mariversa.
	Schiedea hookeri	*Schiedea hookeri.*
		Schiedea obovata.
		Schiedea trinervis.
	Silene lanceolata	*Silene lanceolata.*
		Silene perlmanii.
		Spermolepis hawaiiensis.
	Tetramolopium filiforme	*Tetramolopium filiforme.*
		Tetramolopium lepidotum ssp. *lepidotum.*
	Viola chamissoniana ssp. *chamissoniana*	*Viola chamissoniana* ssp. *chamissoniana.*
Oahu—Dry Cliff—Unit 4		*Abutilon sandwicense.*
		Achyranthes splendens var. *rotundata.*
	Alectryon macrococcus	*Alectryon macrococcus.*
		Asplenium dielfalcatum.
		Bonamia menziesii.
		Cenchrus agrimonioides.
		Chamaesyce herbstii.
	Chamaesyce kuwaleana	*Chamaesyce kuwaleana.*
		Cyanea grimesiana ssp. *obatae.*
		Cyrtandra dentata.
		Diellia unisora.
		Dracaena forbesii.
		Dubautia herbstobatae.
		Eragrostis fosbergii.
		Flueggea neowawraea.
		Gouania meyenii.
		Gouania vitifolia.
		Isodendrion laurifolium.
		Isodendrion pyrifolium.
		Kadua degeneri.
		Kadua parvula.
		Korthalsella degeneri.
		Lepidium arbuscula.
		Lipochaeta lobata var. *leptophylla.*
		Lobelia niihauensis.
		Melanthera tenuifolia.

Unit name	Species occupied	Species unoccupied
		Melicope cornuta var. *decurrens*.
		Melicope makahae.
		Melicope saint-johnii.
		Neraudia angulata.
		Nototrichium humile.
		Peucedanum sandwicense.
		Phyllostegia kaalaensis.
		Plantago princeps.
		Pteralyxia macrocarpa.
		Sanicula mariversa.
		Schiedea hookeri.
		Schiedea obovata.
		Schiedea trinervis.
		Silene lanceolata.
		Silene perlmanii.
	Spermolepis hawaiiensis	*Spermolepis hawaiiensis*.
		Tetramolopium filiforme.
		Tetramolopium lepidotum ssp. *lepidotum*.
		Viola chamissoniana ssp. *chamissoniana*.
Oahu—Dry Cliff—Unit 6		*Abutilon sandwicense*.
		Achyranthes splendens var. *rotundata*.
		Alectryon macrococcus.
		Asplenium dielfalcatum.
		Bonamia menziesii.
	Cenchrus agrimonioides	*Cenchrus agrimonioides*.
		Chamaesyce herbstii.
		Chamaesyce kuwaleana.
		Cyanea grimesiana ssp. *obatae*.
		Cyrtandra dentata.
	Diellia unisora	*Diellia unisora*.
	Dracaena forbesii	*Dracaena forbesii*.
		Dubautia herbstobatae.
		Eragrostis fosbergii.
	Flueggea neowawraea	*Flueggea neowawraea*.
		Gouania meyenii.
		Gouania vitifolia.
		Isodendrion laurifolium.
		Isodendrion pyrifolium.
		Kadua degeneri.
		Kadua parvula.
		Korthalsella degeneri.
	Lepidium arbuscula	*Lepidium arbuscula*.
		Lipochaeta lobata var. *leptophylla*.
	Lobelia niihauensis	*Lobelia niihauensis*.
		Melanthera tenuifolia.
		Melicope cornuta var. *decurrens*.
		Melicope makahae.
	Melicope saint-johnii	*Melicope saint-johnii*.
	Neraudia angulata	*Neraudia angulata*.
		Nototrichium humile.
		Peucedanum sandwicense.
		Phyllostegia kaalaensis.
	Plantago princeps	*Plantago princeps*.
		Pteralyxia macrocarpa.
		Sanicula mariversa.
		Schiedea hookeri.
		Schiedea obovata.
		Schiedea trinervis.
		Silene lanceolata.
	Silene perlmanii	*Silene perlmanii*.
		Spermolepis hawaiiensis.
		Tetramolopium filiforme.
	Tetramolopium lepidotum ssp. *lepidotum*	*Tetramolopium lepidotum* ssp. *lepidotum*.
		Viola chamissoniana ssp. *chamissoniana*.
Oahu—Dry Cliff—Unit 7a		*Abutilon sandwicense*.
		Achyranthes splendens var. *rotundata*.
		Alectryon macrococcus.
		Asplenium dielfalcatum.
		Bonamia menziesii.
		Cenchrus agrimonioides.
		Chamaesyce herbstii.
		Chamaesyce kuwaleana.
		Cyanea grimesiana ssp. *obatae*.
		Cyrtandra dentata.
		Diellia unisora.
	Dracaena forbesii	*Dracaena forbesii*.
		Dubautia herbstobatae.
		Eragrostis fosbergii.
	Flueggea neowawraea	*Flueggea neowawraea*.
		Gouania meyenii.
		Gouania vitifolia.

Unit name	Species occupied	Species unoccupied
		Isodendrion laurifolium.
		Isodendrion pyrifolium.
		Kadua degeneri.
	Kadua parvula	*Kadua parvula*.
		Korthalsella degeneri.
		Lepidium arbuscula.
		Lipochaeta lobata var. *leptophylla*.
		Lobelia niihauensis.
		Melanthera tenuifolia.
	Melicope cornuta var. *decurrens*	*Melicope cornuta* var. *decurrens*.
		Melicope makahae.
	Melicope saint-johnii	*Melicope saint-johnii*.
		Neraudia angulata.
		Nototrichium humile.
		Peucedanum sandwicense.
		Phyllostegia kaalaensis.
	Plantago princeps	*Plantago princeps*.
		Pteralyxia macrocarpa.
		Sanicula mariversa.
		Schiedea hookeri.
		Schiedea obovata.
		Schiedea trinervis.
		Silene lanceolata.
	Silene perlmanii	*Silene perlmanii*.
		Spermolepis hawaiiensis.
		Tetramolopium filiforme.
		Tetramolopium lepidotum ssp. *lepidotum*.
	Viola chamissoniana ssp. *chamissoniana*	*Viola chamissoniana* ssp. *chamissoniana*.
Oahu—Dry Cliff—Unit 7b		*Abutilon sandwicense*.
		Achyranthes splendens var. *rotundata*.
		Alectryon macrococcus.
		Asplenium dielfalcatum.
		Bonamia menziesii.
		Cenchrus agrimonioides.
		Chamaesyce herbstii.
		Chamaesyce kuwaleana.
		Cyanea grimesiana ssp. *obatae*.
		Cyrtandra dentata.
		Diellia unisora.
		Dracaena forbesii.
		Dubautia herbstobatae.
		Eragrostis fosbergii.
		Flueggea neowawraea.
		Gouania meyenii.
		Gouania vitifolia.
		Isodendrion laurifolium.
		Isodendrion pyrifolium.
		Kadua degeneri.
		Kadua parvula.
		Korthalsella degeneri.
		Lepidium arbuscula.
		Lipochaeta lobata var. *leptophylla*.
		Lobelia niihauensis.
		Melanthera tenuifolia.
		Melicope cornuta var. *decurrens*.
		Melicope makahae.
		Melicope saint-johnii.
		Neraudia angulata.
		Nototrichium humile.
		Peucedanum sandwicense.
		Phyllostegia kaalaensis.
		Plantago princeps.
		Pteralyxia macrocarpa.
		Sanicula mariversa.
		Schiedea hookeri.
		Schiedea obovata.
		Schiedea trinervis.
		Silene lanceolata.
		Silene perlmanii.
		Spermolepis hawaiiensis.
		Tetramolopium filiforme.
		Tetramolopium lepidotum ssp. *lepidotum*.
		Viola chamissoniana ssp. *chamissoniana*.
Oahu—Dry Cliff—Unit 8	*Abutilon sandwicense*	*Abutilon sandwicense*.
		Achyranthes splendens var. *rotundata*.
		Alectryon macrococcus.
		Asplenium dielfalcatum.
	Bonamia menziesii	*Bonamia menziesii*.
		Cenchrus agrimonioides.
		Chamaesyce herbstii.
		Chamaesyce kuwaleana.
		Cyanea grimesiana ssp. *obatae*.

Unit name	Species occupied	Species unoccupied
		Cyrtandra dentata.
		Diellia unisora.
	Dracaena forbesii	*Dracaena forbesii.*
		Dubautia herbstobatae.
		Eragrostis fosbergii.
	Flueggea neowawraea	*Flueggea neowawraea.*
		Gouania meyenii.
		Gouania vitifolia.
		Isodendrion laurifolium.
		Isodendrion pyrifolium.
		Kadua degeneri.
		Kadua parvula.
		Korthalsella degeneri.
		Lepidium arbuscula.
		Lipochaeta lobata var. *leptophylla*
	Lobelia niihauensis	*Lobelia niihauensis.*
		Melanthera tenuifolia.
		Melicope cornuta var. *decurrens.*
		Melicope makahae.
		Melicope saint-johnii.
	Neraudia angulata	*Neraudia angulata.*
	Nototrichium humile	*Nototrichium humile.*
		Peucedanum sandwicense.
		Phyllostegia kaalaensis.
		Plantago princeps.
		Pteralyxia macrocarpa.
		Sanicula mariversa.
		Schiedea hookeri.
		Schiedea obovata.
		Schiedea trinervis.
		Silene lanceolata.
		Silene perlmanii.
		Spermolepis hawaiiensis.
		Tetramolopium filiforme.
		Tetramolopium lepidotum ssp. *lepidotum.*
		Viola chamissoniana ssp. *chamissoniana.*
* *	* * *	* *
Oahu—Wet Cliff—Unit 6		*Adenophorus periens.*
		Chamaesyce deppeana.
		Chamaesyce rockii.
		Cyanea acuminata.
		Cyanea calycina.
	Cyanea crispa	*Cyanea crispa.*
		Cyanea humboldtiana.
		Cyanea purpurellifolia.
		Cyanea st.-johnii.
		Cyanea truncata.
		Cyrtandra kaulantha.
		Cyrtandra sessilis.
		Cyrtandra subumbellata.
		Cyrtandra viridiflora.
		Labordia cyrtandrae.
		Lobelia oahuensis.
		Lysimachia filifolia.
	Phlegmariurus nutans	*Phlegmariurus nutans.*
		Phyllostegia hirsuta.
		Phyllostegia parviflora.
		Plantago princeps.
		Psychotria hexandra var. *oahuensis.*
	Pteralyxia macrocarpa	*Pteralyxia macrocarpa.*
		Sanicula purpurea.
	Schiedea kaalae	*Schiedea kaalae.*
		Tetraplasandra gymnocarpa.
		Trematolobelia singularis.
		Viola oahuensis.
Oahu—Wet Cliff—Unit 7		*Adenophorus periens.*
		Chamaesyce deppeana.
		Chamaesyce rockii.
		Cyanea acuminata.
		Cyanea calycina.
	Cyanea crispa	*Cyanea crispa.*
		Cyanea humboldtiana.
		Cyanea purpurellifolia.
		Cyanea st.-johnii.
		Cyanea truncata.
		Cyrtandra kaulantha.
		Cyrtandra sessilis.
		Cyrtandra subumbellata.
		Cyrtandra viridiflora.
		Labordia cyrtandrae.
		Lobelia oahuensis.

Unit name	Species occupied	Species unoccupied
		Lysimachia filifolia.
		Phlegmariurus nutans.
		Phyllostegia hirsuta.
		Phyllostegia parviflora.
		Plantago princeps.
	Psychotria hexandra var. *oahuensis*	*Psychotria hexandra* var. *oahuensis.*
		Pteralyxia macrocarpa.
		Sanicula purpurea.
	Schiedea kaalae	*Schiedea kaalae.*
		Tetraplasandra gymnocarpa.
		Trematolobelia singularis.
		Viola oahuensis.
Oahu—Wet Cliff—Unit 8		*Adenophorus periens.*
		Chamaesyce deppeana.
		Chamaesyce rockii.
	Cyanea acuminata	*Cyanea acuminata.*
	Cyanea calycina	*Cyanea calycina.*
		Cyanea crispa.
	Cyanea humboldtiana	*Cyanea humboldtiana.*
	Cyanea purpurellifolia	*Cyanea purpurellifolia.*
	Cyanea st.-johnii	*Cyanea st.-johnii.*
		Cyanea truncata.
	Cyrtandra kaulantha	*Cyrtandra kaulantha.*
	Cyrtandra sessilis	*Cyrtandra sessilis.*
	Cyrtandra subumbellata	*Cyrtandra subumbellata.*
	Cyrtandra viridiflora	*Cyrtandra viridiflora.*
	Labordia cyrtandrae	*Labordia cyrtandrae.*
	Lobelia oahuensis	*Lobelia oahuensis.*
	Lysimachia filifolia	*Lysimachia filifolia.*
	Phlegmariurus nutans	*Phlegmariurus nutans.*
	Phyllostegia hirsuta	*Phyllostegia hirsuta.*
	Phyllostegia parviflora	*Phyllostegia parviflora.*
	Plantago princeps	*Plantago princeps.*
		Psychotria hexandra var. *oahuensis.*
	Pteralyxia macrocarpa	*Pteralyxia macrocarpa.*
	Sanicula purpurea	*Sanicula purpurea.*
		Schiedea kaalae.
	Tetraplasandra gymnocarpa	*Tetraplasandra gymnocarpa.*
	Trematolobelia singularis	*Trematolobelia singularis.*
	Viola oahuensis	*Viola oahuensis.*

(k) * * *

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(26) * * *

(ii) *Note:* The reference to ''Hawaii 7—*Pleomele hawaiiensis*—a'' on the map is equivalent to ''Hawaii 7—*Dracaena konaensis*—a''. Map 26 follows:

* * * * *

(51) * * *

(ii) *Note:* The reference to ''Hawaii 10—*Pleomele hawaiiensis*—b'' on the map is equivalent to ''Hawaii 10—*Dracaena konaensis*—b''. Map 48 follows:

* * * * *

(69) * * *

(ii) *Note:* The reference to ''Hawaii 18—*Pleomele hawaiiensis*—c'' on the map is equivalent to ''Hawaii 18—*Dracaena konaensis*—c''. Map 69 follows:

* * * * *

(74) * * *

(ii) *Note:* The reference to ''Hawaii 23—*Pleomele hawaiiensis*—d'' on the map is equivalent to ''Hawaii 23—*Dracaena konaensis*—d''. Map 74 follows:

* * * * *

(115) * * *

Unit name	Species occupied	Species unoccupied
* *	* * *	* *
Hawaii 7—*Dracaena konaensis*—a	*Dracaena konaensis*	*Dracaena konaensis.*
* *	* * *	* *
Hawaii 10—*Dracaena konaensis*—b	*Dracaena konaensis*	*Dracaena konaensis.*
* *	* * *	* *
Hawaii 17—*Asplenium dielerectum*—a	*Asplenium dielerectum*	*Asplenium dielerectum.*
* *	* * *	* *
Hawaii 18—*Asplenium dielerectum*—b	*Asplenium dielerectum*	*Asplenium dielerectum.*
* *	* * *	* *
Hawaii 18—*Dracaena konaensis*—c	*Dracaena konaensis*	*Dracaena konaensis.*
* *	* * *	* *
Hawaii 23—*Dracaena konaensis*—d	*Dracaena konaensis*	*Dracaena konaensis.*
* *	* * *	* *

* * * * *

(l) * * *

(1) * * *

* * * * *

Family Liliaceae: Dracaena Konaensis (Hala Pepe)

Hawaii 7—*Dracaena konaensis*—a, Hawaii 10—*Dracaena konaensis*—b, Hawaii 18—*Dracaena konaensis*—c, and Hawaii 23—*Dracaena konaensis*—d, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Dracaena konaensis* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by: * * *

* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

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Part III

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice and request for public comment and hearing.

SUMMARY: The United States Sentencing Commission is considering promulgating amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. This notice also sets forth several issues for comment, some of which are set forth together with the proposed amendments, and one of which (regarding retroactive application of proposed amendments) is set forth in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES:

Written Public Comment. Written public comment regarding the proposed amendments and issues for comment set forth in this notice, including public comment regarding retroactive application of any of the proposed amendments, should be received by the Commission not later than March 14, 2023. Any public comment received after the close of the comment period may not be considered.

Public Hearing. The Commission may hold a public hearing regarding the proposed amendments and issues for comment set forth in this notice. Further information regarding any public hearing that may be scheduled, including requirements for testifying and providing written testimony, as well as the date, time, location, and scope of the hearing, will be provided by the Commission on its website at *www.ussc.gov.*

ADDRESSES: There are two methods for submitting public comment.

Electronic Submission of Comments. Comments may be submitted electronically via the Commission's Public Comment Submission Portal at *https://comment.ussc.gov.* Follow the online instructions for submitting comments.

Submission of Comments by Mail. Comments may be submitted by mail to the following address: United States Sentencing Commission, One Columbus Circle NE, Suite 2–500, Washington, DC 200002–8002, Attention: Public Affairs—Proposed Amendments.

FOR FURTHER INFORMATION CONTACT: Jennifer Dukes, Senior Public Affairs Specialist, (202) 502–4597.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

Publication of a proposed amendment requires the affirmative vote of at least three voting members of the Commission and is deemed to be a request for public comment on the proposed amendment. *See* USSC Rules of Practice and Procedure 2.2, 4.4. In contrast, the affirmative vote of at least four voting members is required to promulgate an amendment and submit it to Congress. *See id.* 2.2; 28 U.S.C. 994(p).

The proposed amendments in this notice are presented in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline, policy statement, or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part in comment and suggestions regarding alternative policy choices; for example, a proposed enhancement of [2][4][6] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

In summary, the proposed amendments and issues for comment set forth in this notice are as follows:

(1) A proposed amendment to § 1B1.13 (Reduction in Term of Imprisonment Under 18 U.S.C. 3582(c)(1)(A) (Policy Statement)) to implement the First Step Act of 2018 (Pub. L. 115–391) and revise the list of circumstances that should be considered extraordinary and compelling reasons for sentence reductions under 18 U.S.C. 3582(c)(1)(A), and related issues for comment;

(2) A two-part proposed amendment to implement the First Step Act of 2018 (Pub. L. 115–391) including (A) (i) amendments to § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases) to reflect the broader class of defendants who are eligible for safety valve relief under the First Step Act and to provide additional conforming changes; (ii) amendments to § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)) to make conforming changes; (iii) two options for amending §§ 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) and 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy) in light of the proposed revisions to § 5C1.2; and (iv) related issues for comment; and (B) amendments to § 2D1.1 to make the guideline's base offense levels consistent with the First Step Act's changes to the type of prior offenses that trigger enhanced mandatory minimum penalties;

(3) A multi-part proposed amendment to § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) to implement the Bipartisan Safer Communities Act (Pub. L. 117–159) and make other changes that may be warranted to appropriately address firearms offenses, including (A) amendments to Appendix A (Statutory Index) and two options for amending § 2K2.1 to address (i) the new offenses established by the Bipartisan Safer Communities Act and to increase penalties for offenses involving straw purchases and firearms trafficking as required by the directive contained in the Act; (ii) the part of the directive in the Bipartisan Safer Communities Act that requires the Commission to ''consider, in particular, an appropriate amendment to reflect the intent of Congress that straw purchasers without significant criminal histories receive sentences that are sufficient to deter participation in such activities and reflect the defendant's role and culpability, and any coercion, domestic violence survivor history, or other mitigating factors''; (iii) the part of the directive in the Bipartisan Safer Communities Act that requires the Commission to ''review and amend its guidelines and policy statements to reflect the intent of Congress that a person convicted of an offense under

section 932 or 933 of title 18, United States Code, who is affiliated with a gang, cartel, organized crime ring, or other such enterprise should be subject to higher penalties than an otherwise unaffiliated individual''; and (iv) related issues for comment; (B) amendments to § 2K2.1 in response to concerns expressed by some commenters that the guideline does not adequately address firearms that are not marked by a serial number (*i.e.,* ''ghost guns''), and a related issue for comment; and (C) a series of issues for comment on possible further revisions to § 2K2.1 that may be warranted to appropriately address firearms offenses;

(4) A two-part proposed amendment addressing certain circuit conflicts involving § 3E1.1 (Acceptance of Responsibility) and § 4B1.2 (Definitions of Terms Used in Section 4B1.1), including (A) amendments to § 3E1.1 to address circuit conflicts regarding the permissible bases for withholding a reduction under § 3E1.1(b), and a related issue for comment; and (B) two options for amending § 4B1.2 to address a circuit conflict concerning whether the definition of ''controlled substance offense'' in § 4B1.2(b) only covers offenses involving substances controlled by federal law, and a related issue for comment;

(5) A multi-part proposed amendment in response to recently enacted legislation, including (A) amendments to Appendix A (Statutory Index) and the Commentary to § 2N2.1 (Violations of Statutes and Regulations Dealing with Any Food, Drug, Biological Product, Device, Cosmetic, Agricultural Product, or Consumer Product) in response to the FDA Reauthorization Act of 2017 (Pub. L. 115–52), and to the Commentary to § 2N1.1 (Tampering or Attempting to Tamper Involving Risk of Death or Bodily Injury) to make a technical correction, and a related issue for comment; (B) amendments to Appendix A, § 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor), and § 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor), as well as bracketing the possibility of amending the Commentary to §§ 4B1.5 (Repeat and Dangerous Sex Offender Against Minors) and 5D1.2 (Term of Supervised Release), in response to the Allow States and Victims to Fight Online Sex Trafficking Act of 2017 (Pub. L. 115–164), and related issues for comment; (C) amendments to Appendix A and § 2A5.2 (Interference with Flight Crew Member or Flight Attendant; Interference with Dispatch, Navigation, Operation, or Maintenance of Mass Transportation Vehicle), as well as the Commentary to §§ 2A2.4 (Obstructing or Impeding Officers) and 2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)), in response to the FAA Reauthorization Act of 2018 (Pub. L. 115–254), and a related issue for comment; (D) amendments to Appendix A and the Commentary to §§ 2B1.1 (Theft, Property Destruction, and Fraud) and 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery) in response to the SUPPORT for Patients and Communities Act (Pub. L. 115–271), and a related issue for comment; (E) amendments to Appendix A and the Commentary to § 2X5.2 in response to the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018 (Pub. L. 115–299), and a related issue for comment; (F) amendments to Appendix A and the Commentary to § 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information) in response to the Foundations for Evidence-Based Policymaking Act of 2018 (Pub. L. 115–435), and a related issue for comment; (G) amendments to Appendix A and the Commentary to § 2X5.2 in response to the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92), and a related issue for comment; (H) amendments to Appendix A and the Commentary to § 2B1.1 in response to the Representative Payee Fraud Prevention Act of 2019 (Pub. L. 116–126), and a related issue for comment; (I) amendments to Appendix A and the Commentary to § 2B1.1 in response to the Stop Student Debt Relief Scams Act of 2019 (Pub. L. 116–251), and a related issue for comment; (J) amendments to Appendix A in response to the Protecting Lawful Streaming Act of 2020, part of the Consolidation Appropriation Act, 2021 (Pub. L. 116–260), and related issues for comment; and (K) amendments to Appendix A and the Commentary to § 2S1.3 (Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports; Bulk Cash Smuggling; Establishing or Maintaining Prohibited Accounts) in response to the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283), and a related issue for comment;

(6) A multi-part proposed amendment relating to § 4B1.2 (Definitions of Terms Used in Section 4B1.1), including (A) (i) amendments § 4B1.2 to eliminate the categorical approach from the guidelines by defining ''crime of violence'' and ''controlled substance offense'' based upon a list of guidelines, rather than offenses or elements of an offense; (ii) conforming changes to the guidelines that use the terms ''crime of violence'' and ''controlled substance offense'' and define these terms by making specific reference to § 4B1.2; and (iii) related issues for comment; (B) amendments to § 4B1.2 and the Commentary to § 2L1.2 (Unlawfully Entering or Remaining in the United States) to address the concern that certain robbery offenses, such as Hobbs Act robbery, no longer constitute a ''crime of violence'' under § 4B1.2, as amended in 2016, because these offenses do not meet either the generic definition of ''robbery'' or the new guidelines definition of ''extortion,'' and related issues for comment; (C) two options for amending § 4B1.2 to address two circuit conflicts regarding the commentary provision stating that the terms ''crime of violence'' and ''controlled substance offense'' include the offenses of aiding and abetting, conspiring to commit, and attempting to commit a ''crime of violence'' and a ''controlled substance offense,'' and related issues for comment; and (D) revisions to the definition of ''controlled substance offense'' in § 4B1.2(b) to include offenses involving an offer to sell a controlled substance and offenses described in 46 U.S.C. 70503(a) and 70506(b), and a related issue for comment;

(7) A multi-part proposed amendment relating to criminal history, including (A) three options for amending the *Guidelines Manual* to address the impact of ''status points'' under subsection (d) of section 4A1.1 (Criminal History Category), and related issues for comment; (B) (i) two options for establishing a new Chapter Four guideline, at § 4C1.1 (Adjustment for Certain Zero-Point Offenders), that would provide an offense level decrease for offenders with zero criminal history points who meet certain criteria; (ii) amendments to the Commentary to § 5C1.1 (Imposition of a Term of Imprisonment) to address the alternatives to incarceration available to offenders with zero criminal history points who receive an adjustment under the proposed § 4C1.1, and conforming changes to § 4A1.3 (Departures Based on

Inadequacy of Criminal History Category (Policy Statement)) and Chapter One, Part A, Subpart 1(4)(d) (Probation and Split Sentences); and (iii) related issues for comment; (C) amendments to the Commentary to § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)) to include sentences resulting from possession of marihuana offenses as an example of when a downward departure from the defendant's criminal history may be warranted, and related issues for comment;

(8) A proposed amendment to § 1B1.3 (Relevant Conduct (Factors that Determine the Guideline Range)) and § 6A1.3 (Resolution of Disputed Factors (Policy Statement)) to generally limit the use of acquitted conduct for purposes of determining the guideline range, except when such conduct was admitted by the defendant during a guilty plea colloquy or was found by the trier of fact beyond a reasonable doubt to establish, in whole or in part, the instant offense of conviction, and related issues for comment;

(9) A two-part proposed amendment to certain guidelines applicable to sexual abuse offenses, including (A) amendments to Appendix A (Statutory Index), § 2A3.3 (Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts), and the Commentary to § 2H1.1 (Offenses Involving Individual Rights) in response to the Violence Against Women Act Reauthorization Act of 2022, which was part of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103), and related issues for comment; and (B) amendments to § 2A3.3 to address concerns regarding the increasing number of cases involving sexual abuse committed by law enforcement or correctional personnel against victims in their custody, care, or supervision, and related issues for comment;

(10) Issues for comment regarding a potential study of federal alternative-to-incarceration court programs and possible amendments to the *Guidelines Manual* to address such programs;

(11) A proposed amendment to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) to address offenses involving ''fake pills'' (*i.e.,* illicitly manufactured pills represented or marketed as legitimate pharmaceutical pills) containing fentanyl or fentanyl analogue, and a related issue for comment;

(12) A two-part proposed amendment addressing miscellaneous guideline issues, including (A) amendments to § 3D1.2 (Grouping of Closely Related Counts) to address the interaction between § 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor) and § 3D1.2(d); and (B) amendments to the Commentary to § 5F1.7 (Shock Incarceration Program (Policy Statement)) to reflect the fact that the Bureau of Prisons no longer operates a shock incarceration program; and

(13) A multi-part proposed amendment to make technical and other non-substantive changes to the *Guidelines Manual,* including (A) technical changes to provide updated references to certain sections in the United States Code that were redesignated in legislation; (B) technical changes to reflect the editorial reclassification of certain sections in the United States Code; (C) technical changes throughout the Commentary to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) to, among other things, reorganize in alphabetical order the controlled substances contained in the tables therein to make them more user-friendly; (D) technical changes to the commentary of several guidelines to provide references to the specific applicable provisions of 18 U.S.C. 876; (E) technical changes to the commentary of several guidelines in Chapter Eight (Sentencing of Organizations); and (F) clerical changes to correct typographical errors in several guidelines, policy statements, and commentary.

In addition, the Commission requests public comment regarding whether, pursuant to 18 U.S.C. 3582(c)(2) and 28 U.S.C. 994(u), any proposed amendment published in this notice should be included in subsection (d) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants. The Commission lists in § 1B1.10(d) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2). The Background Commentary to § 1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(d). To the extent practicable, public comment should address each of these factors.

The text of the proposed amendments and related issues for comment are set forth below. Additional information pertaining to the proposed amendments and issues for comment described in this notice may be accessed through the Commission's website at *www.ussc.gov.*

Authority: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure 2.2, 4.3, 4.4.

Carlton W. Reeves,

Chair.

Proposed Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary

1. First Step Act—Reduction in Term of Imprisonment Under 18 U.S.C. 3582(c)(1)(A)

Synopsis of Proposed Amendment: This proposed amendment responds to the First Step Act of 2018, Public Law 115–391 (Dec. 21, 2018) (''First Step Act'' or ''Act''), which contains numerous provisions related to sentencing, prison programming, recidivism reduction efforts, and reentry procedures. Specifically, the sentencing reform provisions of the Act (1) amended the sentencing modification procedures set forth in 18 U.S.C. 3582(c)(1)(A) to allow a defendant to file a motion seeking a reduction in the defendant's term of imprisonment under certain circumstances; (2) reduced certain enhanced penalties imposed pursuant to 21 U.S.C. 851 for some repeat offenders and changed the prior offenses that qualify for such enhanced penalties; (3) broadened the eligibility criteria of the ''safety valve'' provision at 18 U.S.C. 3553(f); (4) limited the ''stacking'' of certain mandatory minimum penalties imposed under 18 U.S.C. 924(c) for multiple offenses that involve using, carrying, possessing, brandishing, or discharging a firearm in furtherance of a crime of violence or drug trafficking offense; and (5) allowed for retroactive application of the Fair Sentencing Act of 2010. Revisions to the *Guidelines Manual* may be appropriate to implement the Act's changes to 18 U.S.C. 3582(c)(1)(A).

The Sentencing Reform Act of 1984 (''SRA'') established a system of determinate sentencing, prohibiting a court from modifying a term of imprisonment once it had been imposed

except in certain instances specified in section 3582(c) of title 18, United States Code. One of those instances is set forth in 18 U.S.C. 3582(c)(1)(A), which authorizes a court to reduce the term of imprisonment of a defendant, after considering the factors in 18 U.S.C. 3553(a) to the extent they are applicable, if ''extraordinary and compelling reasons'' warrant such a reduction or the defendant is at least 70 years of age and meets certain other criteria. Such a reduction must be consistent with applicable policy statements issued by the Sentencing Commission. *See* 18 U.S.C. 3582(c)(1).

Prior to the First Step Act, a court was authorized to grant a reduction in a defendant's term of imprisonment under section 3582(c)(1)(A) only ''upon motion of the Director of the Bureau of Prisons.'' Section 603(b) of the First Step Act amended 18 U.S.C. 3582(c)(1)(A) to allow a defendant to file a motion seeking a sentence reduction after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons (''BOP'') to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier.

Section 3582(c)(1)(A) does not define the phrase ''extraordinary and compelling reasons.'' Instead, the SRA directs that ''[t]he Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples.'' 28 U.S.C. 994(t). Section 994(t) also directs that ''[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.'' *Id.* The SRA provides the Commission with the authority to set the policy regarding what reasons should qualify as ''extraordinary and compelling reasons'' for a sentence reduction under section 3582(c)(1)(A) and the courts with the authority to find that the ''extraordinary and compelling reasons warrant such a reduction . . . and that such reduction is consistent with applicable policy statements issued by the Sentencing Commission.'' *See* 28 U.S.C. 994(a)(2)(C), 994(t), & 995(b); 18 U.S.C. 3582(c)(1)(A).

The Commission implemented the section 994(t) directive by promulgating the policy statement at § 1B1.13 (Reduction in Term of Imprisonment Under 18 U.S.C. 3582(c)(1)(A) (Policy Statement)). *See* U.S. Sent'g Comm'n, *Guidelines Manual,* § 1B1.13 (Nov. 2021). Currently, § 1B1.13 provides only for motions filed by the Director of the BOP and does not account for motions filed by a defendant under the amended statute. The policy statement describes the circumstances that constitute ''extraordinary and compelling reasons'' in the Commentary to § 1B1.13. Application Note 1(A) through (C) provides for three categories of extraordinary and compelling reasons, *i.e.,* ''Medical Condition of the Defendant,'' ''Age of the Defendant,'' and ''Family Circumstances.'' *See* USSG § 1B1.13, comment. (n.1(A)–(C)). Application Note 1(D) provides that the Director of the BOP may determine whether there exists in a defendant's case ''other reasons'' that are extraordinary and compelling ''other than, or in combination with,'' the reasons described in Application Note 1(A) through (C). USSG § 1B1.13, comment. (n.1(D)).

The proposed amendment would implement the First Step Act's relevant provisions by amending § 1B1.13 and its accompanying commentary. Specifically, the proposed amendment would revise the policy statement to reflect that 18 U.S.C. 3582(c)(1)(A), as amended by the First Step Act, authorizes a defendant to a file a motion seeking a sentence reduction.

The proposed amendment would also revise the list of ''extraordinary and compelling reasons'' in § 1B1.13 in several ways.

First, the proposed amendment would move the list of extraordinary and compelling reasons from the Commentary to the guideline itself as a new subsection (b). The new subsection (b) would set forth the same three categories of extraordinary and compelling reasons currently found in Application Note 1(A) through (C) (with the revisions described below), add two new categories, and revise the ''Other Reasons'' category currently found in Application Note 1(D). New subsection (b) would also provide that extraordinary and compelling reasons exist under any of the circumstances, or a combination thereof, described in such categories.

Second, the proposed amendment would add two new subcategories to the ''Medical Condition of the Defendant'' category at new subsection (b)(1). The first new subcategory is for a defendant suffering from a medical condition that requires long-term or specialized medical care, without which the defendant is at risk of serious deterioration in health or death, that is not being provided in a timely or adequate manner. The other new subcategory is for a defendant who presents the following circumstances: (1) the defendant is housed at a correctional facility affected or at risk of being affected by an ongoing outbreak of infectious disease or an ongoing public health emergency declared by the appropriate governmental authority; (2) the defendant is at increased risk of suffering severe medical complications or death as a result of exposure to the ongoing outbreak of infectious disease or ongoing public health emergency; and (3) such risk cannot be mitigated in a timely or adequate manner.

Third, the proposed amendment would modify the ''Family Circumstances'' category at new subsection (b)(3) in three ways. First, the proposed amendment would revise the current subcategory relating to the death or incapacitation of the caregiver of a defendant's minor child by making it also applicable to a defendant's child who is 18 years of age or older and incapable of self-care because of a mental or physical disability or a medical condition. Second, the proposed amendment would add a new subcategory to the ''Family Circumstances'' category for cases where a defendant's parent is incapacitated and the defendant would be the only available caregiver for the parent. Third, the proposed amendment brackets the possibility of adding a more general subcategory applicable if the defendant presents circumstances similar to those listed in the other subcategories of ''Family Circumstances'' involving any other immediate family member or an individual whose relationship with the defendant is similar in kind to that of an immediate family member.

Fourth, the proposed amendment brackets the possibility of adding two new categories: (1) Victim of Assault (''The defendant was a victim of sexual assault or physical abuse resulting in serious bodily injury committed by a correctional officer or other employee or contractor of the Bureau of Prisons while in custody.''); and (2) Changes in Law (''The defendant is serving a sentence that is inequitable in light of changes in the law.'').

Fifth, the proposed amendment would revise the provision currently found in Application Note 1(D) of § 1B1.13. Three options are provided. All three options would redesignate this category as ''Other Circumstances'' and expand the scope of the category to apply to all motions filed under 18 U.S.C. 3582(c)(1)(A), regardless of whether such motion is filed by the Director of the BOP or the defendant. Option 1 would provide that this

category of extraordinary and compelling reasons applies in cases where a defendant presents any other circumstance or a combination of circumstances *similar in nature and consequence* to any of the circumstances described in paragraphs (1) through [(3)][(4)][(5)] of § 1B1.13. Option 2 would provide that that this category applies if, as a result of changes in the defendant's circumstances [or intervening events that occurred after the defendant's sentence was imposed], it would be inequitable to continue the defendant's imprisonment or require the defendant to serve the full length of the sentence. Option 3 would track the language in current Application Note 1(D) of § 1B1.13 and apply if the defendant presents an extraordinary and compelling reason other than, or in combination with, the circumstances described in paragraphs (1) through [(3)][(4)][(5)].

Finally, the proposed amendment would move current Application Note 3 (stating that, pursuant to 28 U.S.C. 994(t), rehabilitation of a defendant is not, by itself, an extraordinary and compelling reason for purposes of § 1B1.13) into the guideline as a new subsection (c). In addition, as conforming changes, the proposed amendment would delete application notes 2 (concerning the foreseeability of extraordinary and compelling reasons), 4 (concerning a motion by the Director of the Bureau of Prisons), and 5 (concerning application of subdivision 3), and make a minor technical change to the Background commentary.

Issues for comment are also provided.

Proposed Amendment

Section 1B1.13 is amended—

by inserting at the beginning the following new heading: ''(a) *In General.*—'';

by striking ''Bureau of Prisons under'' and inserting ''Bureau of Prisons or the defendant pursuant to'';

and inserting at the end the following:

''(b) *Extraordinary and Compelling Reasons.*—Extraordinary and compelling reasons exist under any of the following circumstances or a combination thereof:

(1) *Medical Circumstances of the Defendant.*—

(A) The defendant is suffering from a terminal illness (*i.e.,* a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (*i.e.,* a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(B) The defendant is—

(i) suffering from a serious physical or medical condition,

(ii) suffering from a serious functional or cognitive impairment, or

(iii) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(C) The defendant is suffering from a medical condition that requires long-term or specialized medical care, without which the defendant is at risk of serious deterioration in health or death, that is not being provided in a timely or adequate manner.

(D) The defendant presents the following circumstances—

(i) the defendant is housed at a correctional facility affected or at risk of being affected by (I) an ongoing outbreak of infectious disease, or (II) an ongoing public health emergency declared by the appropriate federal, state, or local authority;

(ii) the defendant is at increased risk of suffering severe medical complications or death as a result of exposure to the ongoing outbreak of infectious disease or the ongoing public health emergency described in clause (i); and

(iii) such risk cannot be mitigated in a timely or adequate manner.

(2) *Age of the Defendant.*—The defendant (A) is at least 65 years old; (B) is experiencing a serious deterioration in physical or mental health because of the aging process; and (C) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(3) *Family Circumstances of the Defendant.*—

(A) The death or incapacitation of the caregiver of the defendant's minor child or the defendant's child who is 18 years of age or older and incapable of self-care because of a mental or physical disability or a medical condition.

(B) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(C) The incapacitation of the defendant's parent when the defendant would be the only available caregiver for the parent.

[(D) The defendant presents circumstances similar to those listed in paragraphs (3)(A) through (3)(C) involving any other immediate family member or an individual whose relationship with the defendant is similar in kind to that of an immediate family member.]

[(4) *Victim of Assault.*—The defendant was a victim of sexual assault or physical abuse resulting in serious bodily injury committed by a correctional officer or other employee or contractor of the Bureau of Prisons while in custody.]

[(5) *Changes in Law.*—The defendant is serving a sentence that is inequitable in light of changes in the law.]

[*Option 1:*

(6) *Other Circumstances.*—The defendant presents any other circumstance or a combination of circumstances similar in nature and consequence to any of the circumstances described in paragraphs (1) through [(3)][(4)][(5)].]

[*Option 2:*

(6) *Other Circumstances.*—As a result of changes in the defendant's circumstances [or intervening events that occurred after the defendant's sentence was imposed], it would be inequitable to continue the defendant's imprisonment or require the defendant to serve the full length of the sentence.]

[*Option 3:*

(6) *Other Circumstances.*—The defendant presents an extraordinary and compelling reason other than, or in combination with, the circumstances described in paragraphs (1) through [(3)][(4)][(5)].]

(c) *Rehabilitation of the Defendant.*—Pursuant to 28 U.S.C. 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of this policy statement.''.

The Commentary to § 1B1.13 captioned ''Application Notes'' is amended by striking it as follows:

''*Application Notes:*

1. *Extraordinary and Compelling Reasons.*—Provided the defendant meets the requirements of subdivision (2), extraordinary and compelling reasons exist under any of the circumstances set forth below:

(A) *Medical Condition of the Defendant.*—

(i) The defendant is suffering from a terminal illness (*i.e.,* a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (*i.e.,* a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(ii) The defendant is—

(I) suffering from a serious physical or medical condition,

(II) suffering from a serious functional or cognitive impairment, or

(III) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(B) *Age of the Defendant.*—The defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(C) *Family Circumstances.*—

(i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.

(ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) *Other Reasons.*—As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

2. *Foreseeability of Extraordinary and Compelling Reasons.*—For purposes of this policy statement, an extraordinary and compelling reason need not have been unforeseen at the time of sentencing in order to warrant a reduction in the term of imprisonment. Therefore, the fact that an extraordinary and compelling reason reasonably could have been known or anticipated by the sentencing court does not preclude consideration for a reduction under this policy statement.

3. *Rehabilitation of the Defendant.*—Pursuant to 28 U.S.C. 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of this policy statement.

4. *Motion by the Director of the Bureau of Prisons.*—A reduction under this policy statement may be granted only upon motion by the Director of the Bureau of Prisons pursuant to 18 U.S.C. 3582(c)(1)(A). The Commission encourages the Director of the Bureau of Prisons to file such a motion if the defendant meets any of the circumstances set forth in Application Note 1. The court is in a unique position to determine whether the circumstances warrant a reduction (and, if so, the amount of reduction), after considering the factors set forth in 18 U.S.C. 3553(a) and the criteria set forth in this policy statement, such as the defendant's medical condition, the defendant's family circumstances, and whether the defendant is a danger to the safety of any other person or to the community.

This policy statement shall not be construed to confer upon the defendant any right not otherwise recognized in law.

5. *Application of Subdivision (3).*—Any reduction made pursuant to a motion by the Director of the Bureau of Prisons for the reasons set forth in subdivisions (1) and (2) is consistent with this policy statement.''.

The Commentary to § 1B1.13 captioned ''Background'' is amended by striking ''the Commission is authorized'' and inserting ''the Commission is required''.

Issues for Comment

1. The proposed amendment would revise the list of ''extraordinary and compelling reasons'' in § 1B1.13 (Reduction in Term of Imprisonment Under 18 U.S.C. 3582(c)(1)(A) (Policy Statement)) in several ways. The Commission invites comment on whether the proposed amendment—in particular proposed subsections (b)(5) and (6)—exceeds the Commission's authority under 28 U.S.C. 994(a) and (t), or any other provision of federal law.

2. The proposed amendment would make changes to § 1B1.13 (Reduction in Term of Imprisonment Under 18 U.S.C. 3582(c)(1)(A) (Policy Statement)) and its corresponding commentary to implement the First Step Act of 2018, Public Law 115–391 (Dec. 21, 2018). The Commission seeks general comment on the proposed changes and whether the Commission should make any different or additional changes to implement the Act.

3. The proposed amendment would revise the categories of circumstances in which ''extraordinary and compelling reasons'' exist under the Commission's policy statement at § 1B1.13. The Commission adopted the policy statement at § 1B1.13 to implement the directive in 28 U.S.C. 994(t). As noted above, the directive requires the Commission to ''describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples.'' The Commission also has the authority to promulgate general policy statements regarding the application of the guidelines or other aspects of sentencing that in the view of the Commission would further the purposes of sentencing (18 U.S.C. 3553(a)(2)), including the appropriate use of the sentence modification provisions set forth in 18 U.S.C. 3582(c). *See* 28 U.S.C. 994(a)(2)(C).

The Commission seeks comment on whether the proposed categories of circumstances are appropriate and provide clear guidance to the courts and the Bureau of Prisons. Should the Commission further define and expand the categories? Should the Commission provide additional or different criteria or examples of circumstances that constitute ''extraordinary and compelling reasons''? If so, what specific criteria or examples should the Commission provide? Should the Commission consider an altogether different approach for describing ''what should be considered extraordinary and compelling reasons for sentence reduction''?

4. The proposed amendment brackets the possibility of adding a new category of ''extraordinary and compelling reasons'' to § 1B1.13 relating to defendants who are victims of sexual assault or physical abuse resulting in serious bodily injury committed by a correctional officer or other employee or contractor of the Bureau of Prisons while in custody. The Commission seeks comment on whether this provision should be expanded to include defendants who have been victims of sexual assault or physical abuse resulting in serious bodily injury committed by another inmate.

5. Section 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) sets forth the applicable policy statement for determining in what circumstances and to what extent a reduction in a term of imprisonment as a result of an amended guideline range may be granted. In *Dillon* v. *United States,* 560 U.S. 817 (2010), the Supreme Court held that proceedings under 18 U.S.C. 3582(c)(2) are not governed by *United States* v. *Booker,* 543 U.S. 220 (2005), and that § 1B1.10 remains binding on courts in such proceedings.

The Commission seeks comment on whether the proposed amendment—in particular proposed subsections (b)(5) and (6)—is in tension with the Commission's determinations regarding retroactivity of guideline amendments under § 1B1.10. If so, how should the Commission resolve this tension? Should the Commission clarify the interaction between § 1B1.10 and § 1B1.13? If so, how?

2. First Step Act—Drug Offenses

Synopsis of Proposed Amendment: This proposed amendment responds to the First Step Act of 2018, Public Law 115–391 (Dec. 21, 2018) (''First Step

Act'' or ''Act''), which contains numerous provisions related to sentencing, prison programming, recidivism reduction efforts, and reentry procedures. Although Commission action is not necessary to implement most of the First Step Act, revisions to the *Guidelines Manual* may be appropriate to implement the Act's changes to the eligibility criteria of the ''safety valve'' provision at 18 U.S.C. 3553(f), and the recidivist penalties for drug offenders at 21 U.S.C. 841(b) and 960(b). The proposed amendment contains two parts (Parts A and B). The Commission is considering whether to promulgate either or both of these parts, as they are not mutually exclusive.

(A) Safety Valve

Section 3553(f) of title 18, United States Code, allows a court to impose a sentence without regard to any statutory minimum penalty if it finds that a defendant meets certain criteria. As originally enacted, the safety valve applied only to offenses under 21 U.S.C. 841, 844, 846, 960, and 963 and to defendants who, among other things, had not more than one criminal history point, as determined under the guidelines. When it first enacted the safety valve, Congress directed the Commission to promulgate or amend guidelines and policy statements to ''carry out the purposes of [section 3553(f)].'' *See* Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, 80001(b). The Commission implemented the directive by incorporating the statutory text of section 3553(f) into the guidelines at § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases). Two other guidelines provisions, subsection (b)(18) of § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) and subsection (b)(6) of § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), currently provide a 2-level reduction in a defendant's offense level if the defendant meets the criteria in paragraphs (1) through (5) of § 5C1.2(a).

Section 402 of the First Step Act expanded the safety valve provision at 18 U.S.C. 3553(f) in two ways. First, the Act extended the applicability of the safety valve to maritime offenses under 46 U.S.C. 70503 and 70506. Second, the Act amended section 3553(f)(1) to broaden the eligibility criteria of the safety valve to include defendants who do not have: (1) ''more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines''; (2) a ''prior 3-point offense, as determined under the sentencing guidelines''; and (3) a ''prior 2-point violent offense, as determined under the sentencing guidelines.'' The Act defines ''violent offense'' as a ''crime of violence,'' as defined in 18 U.S.C. 16, that is punishable by imprisonment. In addition, the First Step Act incorporated into section 3553(f) a provision instructing that ''[i]nformation disclosed by a defendant under this subsection may not be used to enhance the sentence of the defendant unless the information relates to a violent offense.''

Following the enactment of the First Step Act, circuit courts have disagreed about how the word ''and'' connecting subsections (A) through (C) in section 3553(f)(1) operates. The Fifth, Sixth, Seventh, and Eighth Circuits have held that section 3553(f)(1) should be read to exclude a defendant who meets any single disqualifying condition listed in subsections (A) through (C). *See United States* v. *Palomares,* 52 F.4th 640, 642 (5th Cir. 2022) (''To be eligible for safety valve relief, a defendant must show that she does not have more than 4 criminal history points, does not have a 3-point offense, *and* does not have a 2-point violent offense.''); *United States* v. *Haynes,* 55 F.4th 1075 (6th Cir. 2022) (same); *United States* v. *Pace,* 48 F.4th 741, 756 (7th Cir. 2022) (''[A] defendant who meets any one of subsections (A), (B), or (C) does not qualify for safety-valve relief.''); *United States* v. *Pulsifer,* 39 F.4th 1018, 1022 (8th Cir. 2022) (''A court will find that § 3553(f)(1) is satisfied only when the defendant (A) does not have more than four criminal history points, (B) does not have a prior three-point offense, and (C) does not have a prior two-point violent offense.''). Specifically, the Eighth Circuit concluded that the word ''and'' is conjunctive in a ''distributive'' sense rather than in a ''joint'' sense. Thus, the phrase ''does not have'' is distributed across all three subsections (*i.e.,* should be read as repeated before each of the three conditions) such that a defendant is ineligible for safety valve relief if the defendant meets any one of the three conditions. *Pulsifer,* 39 F.4th at 1022 (''The distributive reading therefore gives meaning to each subsection in § 3553(f)(1), and we conclude that it is the better reading of the statute.''); *see also Palomares,* 52 F.4th at 642 (''We agree with the Eighth Circuit that Congress's use of an em-dash following 'does not have' is best interpreted to 'distribute' that phrase to each following subsection.''); *Haynes,* 55 F.4th at 1080 (''We agree with the Eighth Circuit that, of the interpretations on offer here, '[o]nly the distributive interpretation avoids surplusage.' '').

The Ninth and Eleventh Circuits, in contrast, have held that the ''and'' connecting subparagraphs (A), (B), and (C) of section 3553(f)(1) is ''conjunctive'' and joins together the enumerated characteristics in those provisions. *United States* v. *Lopez,* 998 F.3d 431 (9th Cir. 2021); *United States* v. *Garcon,* 54 F.4th 1274 (11th Cir. 2022) (en banc). Accordingly, a defendant ''must have (A) more than four criminal-history points, (B) a prior three-point offense, *and* (C) a prior two-point violent offense, cumulatively,'' to be disqualified from safety valve relief under section 3553(f). *Lopez,* 998 F.3d at 433. Unlike the Fifth, Sixth, and Eighth Circuits, the Ninth and Eleventh Circuits interpret the word ''and'' to be conjunctive in a ''joint,'' rather than ''distributive,'' sense.

Using fiscal year 2021 data, Commission analysis estimated that of 17,520 drug trafficking offenders, 11,866 offenders meet the non-criminal history requirements of the safety valve (18 U.S.C. 3553(f)(2)–(5)). Of those 11,866 offenders, 5,768 offenders have no more than one criminal history point and would be eligible under the unamended pre-First Step Act criminal history requirement. Under a disjunctive interpretation of the expanded criminal history provision, 1,987 offenders would become eligible. The remaining 4,111 offenders would be ineligible. In comparison, under the Ninth Circuit's conjunctive interpretation of the expanded criminal history provision, 5,778 offenders would become eligible. The remaining 320 offenders would be ineligible.

Part A of the proposed amendment would implement the provisions of the First Step Act expanding the applicability of the safety valve provision by amending § 5C1.2 and its corresponding commentary. Specifically, it would revise § 5C1.2(a) to reflect the broader class of defendants who are eligible for safety valve relief under the Act. Part A of the proposed amendment would also bracket a possible revision to the minimum offense level that § 5C1.2(b) requires for certain offenders. Revision of this provision, which implements a directive to the Commission in section 80001(b) of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–222 (Sept. 13, 1994), may be appropriate given the expanded class of defendants who would qualify for safety

valve relief under the proposed revisions to § 5C1.2(a).

In addition, Part A of the proposed amendment would make changes to the Commentary to § 5C1.2. First, it would revise Application Note 1 by deleting the current language and adding the statutory definition for the term ''violent offense.'' Second, Part A of the proposed amendment brackets the possibility of adding a new application note stating that ''[i]n determining whether the defendant meets the criteria in subsection (a)(1), refer to § 4A1.1 (Criminal History Category) and § 4A1.2 (Definitions and Instructions for Computing Criminal History), read together, before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category).'' Third, Part A of the proposed amendment would also revise Application Note 7, to implement the new statutory provision stating that information disclosed by a defendant pursuant to 18 U.S.C. 3553(f) may not be used to enhance the defendant's sentence unless the information relates to a violent offense. Finally, it would make additional technical changes to the rest of the Commentary by renumbering and inserting headings at the beginning of certain notes.

Part A of the proposed amendment would also make conforming changes to § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)), which makes a specific reference to the number of criminal history points allowed by § 5C1.2(a)(1).

Finally, Part A of the proposed amendment would also make changes to § 2D1.1 and § 2D1.11, as the 2-level reductions in both guidelines are tethered to the eligibility criteria of paragraphs (1)–(5) of § 5C1.2(a). It provides two options for amending § 2D1.1(b)(18) and § 2D1.11(b)(6).

Option 1 would not make any substantive changes to § 2D1.1(b)(18) and § 2D1.11(b)(6), allowing their 2-level reductions to automatically apply to any defendant who meets the revised criteria of § 5C1.2. Because § 5C1.2(a)(1) would closely track the language in 18 U.S.C. 3553(f)(1), as amended by the First Step Act, the ''and'' used to set forth the criminal history criteria in § 5C1.2 might be read by some courts as *disjunctive* (*e.g.,* the courts in the Fifth, Sixth, Seventh, and Eighth Circuits) and by other courts as *conjunctive* (*e.g.,* the courts in the Ninth and Eleventh Circuits). Option 1 would not resolve the circuit conflict for purposes of § 2D1.1(b)(18) and § 2D1.11(b)(6).

Option 2 would amend § 2D1.1(b)(18) and § 2D1.11(b)(6) to provide that their 2-level reductions apply to all defendants who meet the criteria in § 5C1.2(a)(2)–(5). It would also incorporate into those provisions the same criminal history criteria from revised § 5C1.2(a)(1) but set forth the criteria *disjunctively,* consistent with the approach of the Fifth, Sixth, Seventh, and Eighth Circuits. As a result, a defendant would not be eligible for the 2-level reduction in § 2D1.1(b)(18) or § 2D1.11(b)(6) if the defendant presents *any* of the disqualifying conditions relating to criminal history.

Both options also would make changes to the Commentary to §§ 2D1.1 and 2D1.11 that correspond to the applicable provisions of the revised Commentary to § 5C1.2.

Part A of the proposed amendment also includes issues for comment.

(B) Recidivist Penalties for Drug Offenders

The most common drug offenses that carry mandatory minimum penalties are set forth in 21 U.S.C. 841 and 960. Under both provisions, the mandatory minimum penalties are tied to the quantity and type of controlled substance involved in an offense. Enhanced mandatory minimum penalties are set forth in 21 U.S.C. 841(b) and 960(b) for defendants whose instant offense resulted in death or serious bodily injury, *or* who have prior convictions for certain specified offenses. Greater enhanced mandatory minimum penalties are provided for those defendants whose instant offense resulted in death or serious bodily injury *and* who have a qualifying prior conviction.

Prior to the First Step Act, all of the recidivist penalty provisions within sections 841(b) and 960(b) provided for an enhanced mandatory minimum penalty if a defendant had one or more convictions for a prior ''felony drug offense,'' which is defined in 21 U.S.C. 802(44) as ''an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances.'' Section 401 of the Act both narrowed and expanded the type of prior offenses that trigger enhanced mandatory minimum penalties under 21 U.S.C. 841(b)(1)(A), 841(b)(1)(B), 960(b)(1), and 960(b)(2). The Act narrowed the triggering prior offenses for these statutory provisions by replacing the term ''felony drug offense'' with ''serious drug felony.'' The term ''serious drug felony'' is defined in 21 U.S.C. 802(57) as ''an offense described in [18 U.S.C. 924(e)(2)] for which—(A) the offender served a term of imprisonment of more than 12 months; and (B) the offender's release from any term of imprisonment was within 15 years of the commencement of the instant offense.'' The Act also expanded the class of triggering offenses for the same statutory provisions by adding ''serious violent felony.'' The term ''serious violent felony'' is defined in 21 U.S.C. 802(58) as ''(A) an offense described in [18 U.S.C. 3559(c)(2)] for which the offender served a term of imprisonment of more than 12 months; and (B) any offense that would be a felony violation of [18 U.S.C. 113], if the offense were committed in the special maritime and territorial jurisdiction of the United States, for which the offender served a term of imprisonment of more than 12 months.'' The First Step Act did not amend 21 U.S.C. 841(b)(1)(C), 841(b)(1)(E), 960(b)(3), or 960(b)(5), which still provide for enhanced mandatory minimum penalties if a defendant was convicted of a prior ''felony drug offense.''

Part B of the proposed amendment would revise subsection (a) of § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) to make the guideline's base offense levels consistent with the First Step Act's changes to the type of prior offenses that trigger enhanced mandatory minimum penalties. Specifically, the proposed amendment would revise subsections (a)(1) and (a)(3) to replace the term ''similar offense'' used in these guideline provisions with the appropriate terms set forth in the relevant statutory provisions, as amended by the First Step Act.

First, Part B of the proposed amendment would amend § 2D1.1(a)(1) and split it into two subparagraphs. Subparagraph (A) would provide for a base offense level of 43 for a defendant convicted under 21 U.S.C. 841(b)(1)(A) or (b)(1)(B), or 21 U.S.C. 960(b)(1) or (b)(2), where death or serious bodily injury resulted from the use of the substance and the defendant committed the offense after one or more prior convictions for a ''serious drug felony or serious violent felony.'' Subparagraph (B) would provide for a base offense level of 43 for a defendant convicted under 21 U.S.C. 841(b)(1)(C) or 21 U.S.C. 960(b)(3) where death or serious bodily injury resulted from the use of the substance and the defendant committed the offense after one or more prior convictions for a ''felony drug offense.''

Second, Part B of the proposed amendment would amend § 2D1.1(a)(3), which provides for a base offense level of 30 for a defendant convicted under 21 U.S.C. 841(b)(1)(E) or 21 U.S.C. 960(b)(5) where death or serious bodily injury resulted from the use of the substance and the defendant committed the offense after one or more prior convictions for a ''similar offense.'' Specifically, it would replace the term ''similar offense'' with ''felony drug offense,'' as provided in the relevant statutory provisions.

(A) Safety Valve

Proposed Amendment

Section 5C1.2(a) is amended—

by inserting after ''§ 963,'' the following: ''or 46 U.S.C. 70503 or § 70506,'';

by striking ''set forth below'' and inserting ''as follows'';

by striking paragraph (1) as follows:

''(1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category);'';

and by inserting the following new paragraph (1):

''(1) the defendant does not have—

(A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines;

(B) a prior 3-point offense, as determined under the sentencing guidelines; and

(C) a prior 2-point violent offense, as determined under the sentencing guidelines;''.

[Section 5C1.2(b) is amended by striking ''the offense level applicable from Chapters Two (Offense Conduct) and Three (Adjustments) shall not be less than 17'' and inserting ''the applicable guideline range shall not be less than 24 to 30 months of imprisonment''.]

The Commentary to § 5C1.2 captioned ''Application Notes'' is amended—

by striking Notes 1, 2, and 3 as follows:

''1. 'More than 1 criminal history point, as determined under the sentencing guidelines,' as used in subsection (a)(1), means more than one criminal history point as determined under § 4A1.1 (Criminal History Category) before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category).

2. 'Dangerous weapon' and 'firearm,' as used in subsection (a)(2), and 'serious bodily injury,' as used in subsection (a)(3), are defined in the Commentary to § 1B1.1 (Application Instructions).

3. 'Offense,' as used in subsection (a)(2)–(4), and 'offense or offenses that were part of the same course of conduct or of a common scheme or plan,' as used in subsection (a)(5), mean the offense of conviction and all relevant conduct.'';

and inserting the following new Note 1 [and Note 2]:

''1. *Definitions.*—

(A) The term 'violent offense' means a 'crime of violence,' as defined in 18 U.S.C. 16, that is punishable by imprisonment.

(B) 'Dangerous weapon' and 'firearm,' as used in subsection (a)(2), and 'serious bodily injury,' as used in subsection (a)(3), are defined in the Commentary to § 1B1.1 (Application Instructions).

(C) 'Offense,' as used in subsection (a)(2)–(4), and 'offense or offenses that were part of the same course of conduct or of a common scheme or plan,' as used in subsection (a)(5), mean the offense of conviction and all relevant conduct.

[2. *Application of subsection (a)(1).*—In determining whether the defendant meets the criteria in subsection (a)(1), refer to § 4A1.1 (Criminal History Category) and § 4A1.2 (Definitions and Instructions for Computing Criminal History), read together, before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category).]'';

by redesignating Note 4 as Note 3;

in Note 3 (as so redesignated) by inserting at the beginning the following new heading: ''*Application of subsection (a)(2).*—'';

by striking Notes 5, 6, and 7 as follows:

''5. 'Organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines,' as used in subsection (a)(4), means a defendant who receives an adjustment for an aggravating role under § 3B1.1 (Aggravating Role).

6. 'Engaged in a continuing criminal enterprise,' as used in subsection (a)(4), is defined in 21 U.S.C. 848(c). As a practical matter, it should not be necessary to apply this prong of subsection (a)(4) because (i) this section does not apply to a conviction under 21 U.S.C. 848, and (ii) any defendant who 'engaged in a continuing criminal enterprise' but is convicted of an offense to which this section applies will be an 'organizer, leader, manager, or supervisor of others in the offense.'

7. Information disclosed by the defendant with respect to subsection (a)(5) may be considered in determining the applicable guideline range, except where the use of such information is restricted under the provisions of § 1B1.8 (Use of Certain Information). That is, subsection (a)(5) does not provide an independent basis for restricting the use of information disclosed by the defendant.'';

by inserting the following new Notes 4 and 5:

''4. *Application of Subsection (a)(4).*—

(A) *'Organizer, leader, manager, or supervisor of others in the offense'.*—The first prong of subsection (a)(4) requires that the defendant was not subject to an adjustment for an aggravating role under § 3B1.1 (Aggravating Role).

(B) *'Engaged in a continuing criminal enterprise'.*—'Engaged in a continuing criminal enterprise,' as used in subsection (a)(4), is defined in 21 U.S.C. 848(c). As a practical matter, it should not be necessary to apply this prong of subsection (a)(4) because (i) this section does not apply to a conviction under 21 U.S.C. 848, and (ii) any defendant who 'engaged in a continuing criminal enterprise' but is convicted of an offense to which this section applies will be an 'organizer, leader, manager, or supervisor of others in the offense.'

5. *Use of Information Disclosed under Subsection (a).*—Information disclosed by a defendant under subsection (a) may not be used to enhance the sentence of the defendant unless the information relates to a violent offense, as defined in Application Note 1(A).'';

by redesignating Notes 8 and 9 as Notes 6 and 7, respectively;

in Note 6 (as so redesignated) by inserting at the beginning the following new heading: ''*Government's Opportunity to Make Recommendation.*—'';

and in Note 7 (as so redesignated) by inserting at the beginning the following new heading: ''*Exemption from Otherwise Applicable Statutory Minimum Sentences.*—''.

The Commentary to § 5C1.2 captioned ''Background'' is amended by inserting after ''Violent Crime Control and Law Enforcement Act of 1994'' the following: ''and subsequently amended''.

Section 4A1.3(b)(3)(B) is amended—

in the heading by striking ''*to Category I*'';

by striking ''whose criminal history category is Category I after receipt of'' and inserting ''who receives'';

by striking ''criterion'' and inserting ''criminal history requirement'';

and by striking ''if, before receipt of the downward departure, the defendant had more than one criminal history point under § 4A1.1 (Criminal History Category)'' and inserting ''if the defendant did not otherwise meet such

requirement before receipt of the downward departure''.

[Option 1:

Section 2D1.1(b)(18) is amended by striking ''subdivisions'' and inserting ''paragraphs''.

[The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 21 by striking ''a minimum offense level of level 17'' and inserting ''that the applicable guideline range shall not be less than 24 to 30 months of imprisonment''.]

Section 2D1.11(b)(6) is amended by striking ''subdivisions'' and inserting ''paragraphs''.

[The Commentary to § 2D1.11 captioned ''Application Notes'' is amended in Note 7 by striking ''a minimum offense level of level 17'' and inserting ''an applicable guideline range of not less than 24 to 30 months of imprisonment''.]]

[Option 2:

Section 2D1.1(b)(18) is amended by striking the following:

''If the defendant meets the criteria set forth in subdivisions (1)–(5) of subsection (a) of § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), decrease by 2 levels.'',

and inserting the following:

''If the defendant—

(A) meets the criteria set forth in paragraphs (2)–(5) of subsection (a) of § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases); and

(B) does not have any of the following:

(i) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense;

(ii) a prior 3-point offense; or

(iii) a prior 2-point violent offense;

as determined under § 4A1.1 (Criminal History Category) and § 4A1.2 (Definitions and Instructions for Computing Criminal History), read together, before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category);

decrease by 2 levels.''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 21 by striking the following:

''*Applicability of Subsection (b)(18).*—The applicability of subsection (b)(18) shall be determined without regard to whether the defendant was convicted of an offense that subjects the defendant to a mandatory minimum term of imprisonment. Section § 5C1.2(b), which provides a minimum offense level of level 17, is not pertinent to the determination of whether subsection (b)(18) applies.'',

and inserting the following:

''*Application of Subsection (b)(18).*—

(A) *General Applicability.*—The applicability of subsection (b)(18) shall be determined without regard to whether the defendant was convicted of an offense that subjects the defendant to a mandatory minimum term of imprisonment. Section § 5C1.2(b), which provides [a minimum offense level of level 17][that the applicable guideline range shall not be less than 24 to 30 months of imprisonment], is not pertinent to the determination of whether subsection (b)(18) applies.

(B) *Definition of Violent Offense.*—The term 'violent offense' means a 'crime of violence,' as defined in 18 U.S.C. 16, that is punishable by imprisonment.''.

Section 2D1.11(b)(6) is amended by striking the following:

''If the defendant meets the criteria set forth in subdivisions (1)–(5) of subsection (a) of § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), decrease by 2 levels.'',

and inserting the following:

''If the defendant—

(A) meets the criteria set forth in paragraphs (2)–(5) of subsection (a) of § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases); and

(B) does not have any of the following:

(i) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense;

(ii) a prior 3-point offense; or

(iii) a prior 2-point violent offense;

as determined under § 4A1.1 (Criminal History Category) and § 4A1.2 (Definitions and Instructions for Computing Criminal History), read together, before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category);

decrease by 2 levels.''.

The Commentary to § 2D1.11 captioned ''Application Notes'' is amended in Note 7 by striking the following:

''*Applicability of Subsection (b)(6).*—The applicability of subsection (b)(6) shall be determined without regard to the offense of conviction. If subsection (b)(6) applies, § 5C1.2(b) does not apply. *See* § 5C1.2(b)(2)(requiring a minimum offense level of level 17 if the 'statutorily required minimum sentence is at least five years').'',

and inserting the following:

''*Application of Subsection (b)(6).*—

(A) *General Applicability.*—The applicability of subsection (b)(6) shall be determined without regard to the offense of conviction. If subsection (b)(6) applies, § 5C1.2(b) does not apply. *See* § 5C1.2(b)(2) (requiring [a minimum offense level of level 17][an applicable guideline range of not less than 24 to 30 months of imprisonment] if the 'statutorily required minimum sentence is at least five years').

(B) *Definition of Violent Offense.*—The term 'violent offense' means a 'crime of violence,' as defined in 18 U.S.C. 16, that is punishable by imprisonment.''.]

Issues for Comment

1. As described above, Part A of the proposed amendment would make changes to § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases) and its corresponding commentary to implement the First Step Act of 2018, Public Law 115–391 (Dec. 21, 2018). The Commission seeks general comment on whether the Commission should make any different or additional changes to implement the Act.

2. Section 3553(f)(1) of title 18, United States Code, sets forth the criminal history criteria for the safety valve in subparagraphs (A) through (C). Each subparagraph sets forth the specific criminal history condition followed by the phrase ''as determined under the sentencing guidelines.'' Circuit courts have reached different conclusions about what constitutes a ''1-point,'' ''2-point,'' or ''3-point'' offense, and also seem to disagree on whether such interpretation arises from the statute itself or from proper guideline operation. *Compare, e.g., United States* v. *Garcon,* 54 F.4th 1274, 1280–84 (11th Cir. 2022) (en banc) (concluding that criminal history events are considered differently for purposes of subsections 3553(f)(1)(B) and (C) than subsection (A), and articulating that interpretation as primarily stemming from the statute), *with United States* v. *Haynes,* 55 F.4th 1075, 1080 (6th Cir. 2022) (''[Section] 3553(f)(1) refers only to 'prior 3-point' and 'prior 2-point violent' offenses 'as determined under the sentencing guidelines'—which means *all* the Guidelines, including § 4A1.2(e).''). The Commission seeks comment on whether it should provide guidance on what constitutes a ''1-point,'' ''2-point,'' or ''3-point'' offense, ''as determined under the sentencing guidelines,'' for purposes of § 5C1.2.

3. Part A of the proposed amendment provides two options for amending subsection (b)(18) of § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) and subsection

(b)(6) of § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy) in light of the proposed revisions to § 5C1.2(a), which reflect the changes to 18 U.S.C. 3553(f) enacted by the First Step Act.

Option 1 would leave the text of § 2D1.1(b)(18) and § 2D1.11(b)(6) unchanged, so that their offense-level reductions would apply to all defendants who meet the criteria in revised § 5C1.2(a)(1)–(5). As discussed above, a circuit conflict has arisen as to whether the ''and'' connecting the subparagraphs that set forth the criminal history criteria in 18 U.S.C. 3553(f)(1) operates *disjunctively* or *conjunctively.*

Option 2 of the proposed amendment would amend § 2D1.1(b)(18) and § 2D1.11(b)(6) to provide that their 2-level reductions would apply to all defendants who meet the criteria in § 5C1.2(a)(2)–(5). It would also incorporate into those provisions the same criminal history criteria from revised § 5C1.2(a)(1) but set forth the criteria *disjunctively,* so that the reductions would be available only to defendants who do not present any of the listed disqualifying conditions.

The Commission seeks comment on each of these options. Which option, if any, is appropriate? In the alternative, should the Commission incorporate into § 2D1.1(b)(18) and § 2D1.11(b)(6) the same criminal history criteria from revised § 5C1.2(a)(1) but set forth the criteria *conjunctively,* so that defendants must present all of the listed disqualifying conditions to be ineligible for their reductions? Should the Commission consider an altogether different approach? If so, what approach should the Commission provide and why?

(B) Recidivist Penalties for Drug Offenders

Proposed Amendment

Section 2D1.1(a)(1) is amended by striking the following:

''43, if the defendant is convicted under 21 U.S.C. 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant com-mitted the offense after one or more prior convictions for a similar offense; or'',

and inserting the following:

''43, if—

(A) the defendant is convicted under 21 U.S.C. 841(b)(1)(A) or (b)(1)(B), or 21 U.S.C. 960(b)(1) or (b)(2), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a serious drug felony or serious violent felony; or

(B) the defendant is convicted under 21 U.S.C. 841(b)(1)(C) or 21 U.S.C. 960(b)(3) and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a felony drug offense; or''.

Section 2D1.1(a)(3) is amended by striking ''similar offense'' and inserting ''felony drug offense''.

The Commentary to § 2D1.1 caption ''Application Notes'' is amended—

by striking Note 2 as follows:

''2. *'Plant'.*—For purposes of the guidelines, a 'plant' is an organism having leaves and a readily observable root formation (*e.g.,* a marihuana cutting having roots, a rootball, or root hairs is a marihuana plant).'';

by redesignating Note 1 as Note 2;

and by inserting at the beginning the following new Note 1:

''1. *Definitions.*—

For purposes of the guidelines, a 'plant' is an organism having leaves and a readily observable root formation (*e.g.,* a marihuana cutting having roots, a rootball, or root hairs is a marihuana plant).

For purposes of subsection (a), 'serious drug felony,' 'serious violent felony,' and 'felony drug offense' have the meaning given those terms in 21 U.S.C. 802.''.

3. Firearms Offenses

Synopsis of Proposed Amendment: This proposed amendment is a result of the Commission's consideration of possible amendments to § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) to (A) implement the Bipartisan Safer Communities Act (Pub. L. 117–159); and (B) make any other changes that may be warranted to appropriately address firearms offenses. *See* U.S. Sent'g Comm'n, ''Notice of Final Priorities,'' 87 FR 67756 (Nov. 9, 2022). The proposed amendment contains three parts (Parts A through C). The Commission is considering whether to promulgate any or all these parts, as they are not mutually exclusive.

Part A of the proposed amendment would amend § 2K2.1 to respond to the Bipartisan Safer Communities Act. Two options are presented. Issues for comment are also provided.

Part B of the proposed amendment addresses concerns expressed by some commenters about firearms that are not marked by a serial number (*i.e.,* ''ghost guns''). An issue for comment is also provided.

Part C of the proposed amendment provides issues for comment on possible further revisions to § 2K2.1.

(A) Bipartisan Safer Communities Act

Synopsis of Proposed Amendment: The Bipartisan Safer Communities Act (the ''Act''), among other things, created two new firearms offenses, amended definitions, increased penalties for certain firearms offenses, and contained a directive to the Commission relating to straw purchases and trafficking of firearms offenses.

Specifically, the Act created two new offenses at 18 U.S.C. 932 and 933. Section 932 prohibits knowingly purchasing, or conspiring to purchase, any firearm on behalf of, or at the request or demand of, another person with knowledge or reasonable cause to believe that such other person: (1) meets at least one of the criteria set forth in 18 U.S.C. 922(d); (2) intends to use, carry, possess, sell, or otherwise dispose of the firearm in furtherance of a felony, a Federal crime of terrorism, or a drug trafficking crime; or (3) intends to sell or otherwise dispose of the firearm to a person who meets either of the previous criteria. *See* 18 U.S.C. 932(b). Section 933 prohibits: (1) shipping, transporting, transferring, causing to be transported, or otherwise disposing of, any firearm to another person with knowledge or reasonable cause to believe that the use, carrying, or possession of a firearm by the recipient would constitute a felony; (2) receiving from another person any firearm with knowledge or reasonable cause to believe that such receipt would constitute a felony; or (3) attempt or conspiracy to commit either of the acts described before. *See* 18 U.S.C. 933(a).

Both new offenses carry a statutory maximum term of imprisonment of 15 years. The statutory maximum term of imprisonment for offenses under section 932 increases to 25 years if the offense was committed with knowledge or reasonable cause to believe that any firearm involved will be used to commit a felony, a Federal crime of terrorism, or a drug trafficking crime. *See* 18 U.S.C. 932(c)(2).

In addition, the Act increased the statutory maximum term of imprisonment for the offenses under 18 U.S.C. 922(d), 922(g), 924(h), and 924(k) from ten to 15 years. The Act also made changes to the elements of some of these offenses. First, the Act expanded the scope of section 922(d) by adding two

additional categories of persons to whom it is unlawful to sell or otherwise dispose of any firearm or ammunition: (1) persons who intend to sell or otherwise dispose of the firearm or ammunition in furtherance of a felony, a Federal crime of terrorism, or a drug trafficking offense; and (2) persons who intend to sell or otherwise dispose of the firearm or ammunition to a person to whom sale or disposition is prohibited under the other categories in section 922(d). *See* 18 U.S.C. 922(d)(10)–(11).

Second, the Act amended section 924(h). Prior to the Act, section 924(h) prohibited knowingly transferring a firearm with knowledge that such firearm will be used to commit a crime of violence or drug trafficking crime. As amended by the Act, section 924(h) prohibits knowingly receiving or transferring a firearm or ammunition, or attempting or conspiring to do so, with knowledge or reasonable cause to believe that such firearm or ammunition will be used to commit a felony, a Federal crime of terrorism, a drug trafficking crime, or a crime under the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), the Export Control Reform Act of 2018 (50 U.S.C. 4801 *et seq.*), the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), or the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901 *et seq.*). *See* 18 U.S.C. 924(h).

Third, the Act also amended section 924(k). Prior to the Act, section 924(k) prohibited smuggling or knowingly bringing into the United States a firearm, or attempting to do so, with intent to engage in or to promote conduct that: (1) is punishable under the Controlled Substances Act (21 U.S.C. 801 *et seq.*), the Controlled Substances Import and Export Act (21 U.S.C. 951 *et seq.*), or chapter 705 of title 46, United States Code; (2) violates any law of a State relating to any controlled substance; or (3) constitutes a crime of violence. Section 924(k), as amended by the Act, prohibits smuggling or knowingly bringing into or out of the United States a firearm or ammunition, or attempting or conspiring to do so, with intent to engage in or to promote conduct that: (1) is punishable under the Controlled Substances Import and Export Act (21 U.S.C. 951 *et seq.*), or chapter 705 of title 46, United States Code; or (2) constitutes a felony, a Federal crime of terrorism, or a drug trafficking crime. *See* 18 U.S.C. 924(k).

The Act also expanded the definition of ''misdemeanor crime of domestic violence'' at 18 U.S.C. 921(a)(33) to include offenses against a person in ''a current or recent former dating relationship.'' *See* 18 U.S.C. 921(a)(33)(A). In addition, the Act added a new provision to section 921(a)(33) indicating that a person is not disqualified from shipping, transporting, possessing, receiving, or purchasing a firearm under chapter 44 of title 18, United States Code, by reason of a conviction for a misdemeanor crime of domestic violence against an individual in a dating relationship if certain criteria are met. *See* 18 U.S.C. 921(a)(33)(C).

Finally, the Act includes a directive requiring the Commission, pursuant to its authority under 28 U.S.C. 994, to review and amend its guidelines and policy statements to ensure that persons convicted of an offense under section 932 or 933 of title 18, United States Code, and other offenses applicable to the straw purchases and trafficking of firearms are subject to increased penalties in comparison to those currently provided by the guidelines and policy statements for such straw purchasing and trafficking of firearms offenses. In its review, the Commission shall consider, in particular, an appropriate amendment to reflect the intent of Congress that straw purchasers without significant criminal histories receive sentences that are sufficient to deter participation in such activities and reflect the defendant's role and culpability, and any coercion, domestic violence survivor history, or other mitigating factors. The Commission shall also review and amend its guidelines and policy statements to reflect the intent of Congress that a person convicted of an offense under section 932 or 933 of title 18, United States Code, who is affiliated with a gang, cartel, organized crime ring, or other such enterprise should be subject to higher penalties than an otherwise unaffiliated individual.

Public Law 117–159, 12004(a)(5) (2022).

New Offenses and Increased Penalties for Straw Purchasing and Firearms Trafficking Offenses

Part A of the proposed amendment implements part of the directive of the Bipartisan Safer Communities Act by addressing the new offenses at 18 U.S.C. 932 and 933 and increasing penalties for other offenses applicable to straw purchases and trafficking of firearms. First, Part A of the proposed amendment would amend Appendix A (Statutory Index) to reference the new offenses at 18 U.S.C. 932 and 933 to § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition). Offenses involving firearms trafficking and straw purchases are generally referenced to this guideline.

Second, Part A of the proposed amendment would amend § 2K2.1 to address the new offenses and increase penalties for offenses applicable to straw purchases and trafficking of firearms, as required by the directive. Two options are presented.

Option 1 addresses the new offenses at 18 U.S.C. 932 and 933 and increases penalties for offenses applicable to straw purchases and trafficking of firearms. It would accomplish this by adding references to the new offenses in § 2K2.1(a) and revising the firearms trafficking enhancement at § 2K2.1(b)(5) to apply to straw purchase and other trafficking offenses.

Specifically, Option 1 would add references to 18 U.S.C. 932 and 933 in subsections (a)(4)(B)(ii)(II) and (a)(6)(B). In addition, Option 1 would revise the 4-level enhancement for firearms trafficking at § 2K2.1(b)(5) to make it a tiered-enhancement applicable to defendants who transferred or intended to transfer firearms or ammunition to certain individuals, which would provide the requisite increase for a defendant convicted of violating 18 U.S.C. 922(d), 932, or 933(a)(1), as well as other offenses, including violations of 18 U.S.C. 922(a)(6) or 924(a)(1)(A) committed with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person. The revised enhancement would also apply to defendants convicted under 18 U.S.C. 933(a)(2) or (a)(3). Specifically, a [1][2]-level enhancement would apply if the defendant was convicted under 18 U.S.C. 933(a)(2) or (a)(3). A [1][2]-level increase would apply if the defendant (i) transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, a firearm or any ammunition knowing or having reason to believe that such conduct would result in the receipt of the firearm or ammunition by an individual who (I) was a prohibited person; or (II) intended to use or dispose of the firearm or ammunition unlawfully; or (ii) attempted or conspired to commit the conduct described in clause (i). A [5][6]-level enhancement would apply if the defendant (i) transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, two or more firearms knowing or having reason to believe that such conduct would result in the receipt

of the firearms by an individual who (I) had a prior conviction for a crime of violence, controlled substance offense, or misdemeanor crime of domestic violence; (II) was under a criminal justice sentence; or (III) intended to use or dispose of the firearms unlawfully; or (ii) attempted or conspired to commit the conduct described in clause (i).

In addition, Option 1 would amend Application Note 13 to conform its content with the revised version of § 2K2.1(b)(5). It would also include a new provision in response to the changes that the Act made to section 921(a)(33). Specifically, the new provision states that new subsection (b)(5)(C) shall not apply based upon the receipt or intended receipt of the firearms by an individual with a prior conviction for a misdemeanor crime of domestic violence against a person in a dating relationship if, at the time of the instant offense, such individual [had no prior conviction for a crime of violence or controlled substance offense and had not more than one conviction of a misdemeanor crime of domestic violence against a person in a dating relationship, but 5 years had elapsed from the later of the judgment of conviction or the completion of the individual's custodial or supervisory sentence for such an offense and the individual had not subsequently been convicted of another such offense; a misdemeanor under federal, state, tribal, or local law which has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; or any other offense covered 18 U.S.C. 922(g)][met the criteria set forth in the proviso of 18 U.S.C. 921(a)(33)(C)]. In addition, Option 1 would amend the departure provision in Application Note 13 to provide that if the defendant transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, substantially more than 25 firearms [or an unusually large amount of ammunition], an upward departure may be warranted.

Option 2 would restructure the base offense level provisions at § 2K2.1(a) by providing references to specific statutes with statutory maximum terms of imprisonment of 15 years or more. Option 2 identifies the ''other offenses applicable'' to trafficking and straw purchasing as those for which Congress increased penalties in the Act. As mentioned, the Act increased the maximum term of imprisonment from ten to 15 years for four offenses: 18 U.S.C. 922(d) (transferring a firearm or ammunition to a prohibited person); 922(g) (possession, receipt, or transfer of a firearm or ammunition by a prohibited person); 924(h) (transferring a firearm or ammunition to commit a felony); and 924(k) (smuggling a firearm or ammunition to commit a felony). The 15-year statutory maximum for these four offenses is the same as the new section 932 (without aggravating circumstances) and section 933 offenses. Three of the offenses with the amended statutory penalties (sections 922(g), 922(d), and 924(h)) share core elements with the new straw purchase (section 932) and trafficking (section 933) statutes: the transfer of a firearm to a felon or knowing it would be used to commit a felony; and the receipt of a firearm by a felon or knowing it would be used to commit a felony. The third (section 924(k)) similarly concerns itself with the intent to engage in or promote a further felony (after smuggling a firearm or ammunition into or out of the United States). Because the penalties and elements of these four offenses are similar to those of the new offenses, and they were modified by the same Act, Option 2 applies the increase to defendants convicted of those four offenses in addition to defendants convicted under 18 U.S.C. 932 and 933.

First, Option 2 would increase by [1][2] levels the base offense levels at subsections (a)(1) through (a)(3). Second, Option 2 would add a new provision at subsection (a)(4) that sets forth a base offense level of [21][22] if (A) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense; or (B) (i) the defendant is convicted under 18 U.S.C. 922(d), 922(g), 924(h), 924(k), 932, or 933; and (ii) the offense involved a (I) semiautomatic firearm that is capable of accepting a large capacity magazine; or (II) firearm that is described in 26 U.S.C. 5845(a). Third, Option 2 would delete current subsection (a)(4)(A) and make conforming changes to current subsection (a)(4)(B). Fourth, Option 2 would add a new provision at § 2K2.1(a)(7) that would set forth a new base offense level of [15][16] if the defendant was convicted under 18 U.S.C. 922(d), 922(g), 924(h), 924(k), 932, or 933. Fifth, Option 2 would delete current subsection (a)(6)(B). Sixth, Option 2 would amend the provision that follows § 2K2.1(b)(4) containing a cumulative impact ''cap,'' to increase such limit from level 29 to level [30][31]. Finally, Option 2 would add a new [1][2]-level reduction at § 2K1.1(b)(9) applicable if (A) the base offense level is determined under new subsection (a)(7); (B) none of the enhancements in subsection (b) apply; and (C) the offense of conviction established only the possession or receipt of firearms or ammunition.

Option 2 would also amend current Application Note 13(B) in response to the changes that the Act made to section 921(a)(33). The note currently provides that ''misdemeanor crime of violence'' has the meaning given that term in 18 U.S.C. 921(a)(33)(A). Option 2 would amend Application Note 13(B) to expressly provide that an individual shall not be considered an ''individual whose possession or receipt of the firearm would be unlawful'' [if, at the time of the instant offense, the individual was not otherwise covered by such definition and has not more than one conviction of a misdemeanor crime of domestic violence against a person in a dating relationship, but 5 years had elapsed from the later of the judgment of conviction or the completion of the individual's custodial or supervisory sentence for such an offense and the individual had not subsequently been convicted of: another such offense; a misdemeanor under federal, state, tribal, or local law which has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; or any other offense covered by the definition of ''individual whose possession or receipt of the firearm would be unlawful''][based upon a conviction of a misdemeanor crime of domestic violence against a person in a dating relationship, if the individual met the criteria set forth in the proviso of 18 U.S.C. 921(a)(33)(C) at the time of the instant offense].

''Straw Purchasers'' With Mitigating Factors

Part A of the proposed amendment also addresses the part of the directive that requires the Commission to ''consider, in particular, an appropriate amendment to reflect the intent of Congress that straw purchasers without significant criminal histories receive sentences that are sufficient to deter participation in such activities and reflect the defendant's role and culpability, and any coercion, domestic violence survivor history, or other mitigating factors.'' *See* Public Law 117–159, § 12004(a)(5) (2022).

In response to the directive, Options 1 and 2 of Part A of the proposed amendment would add a new [1][2]-level reduction based on certain mitigating factors.

Option 1 would set forth the new [1][2]-level reduction at subsection (b)(9). The reduction would be applicable if the defendant (A) [receives

an enhancement under subsection (b)(5)][is convicted under (i) 18 U.S.C. 922(d), 932, or 933; or (ii) 18 U.S.C. 922(a)(6) or 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person]; (B) does not have more than 1 criminal history point, as determined under § 4A1.1 (Criminal History Category) and § 4A1.2 (Definitions and Instructions for Computing Criminal History), read together, before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category); and (C) (i) was motivated by an intimate or familial relationship or by threats or fear to commit the offense; [or][and] (ii) received little or no compensation from the offense; [or][and] (iii) had minimal knowledge [of the scope and structure of the enterprise][that the firearm would be used or possessed in connection with further criminal activity].

Option 2 would set forth the new [1][2]-level reduction at subsection (b)(10). The reduction would be applicable if subsection (b)(9) does not apply and the defendant (A) is convicted under 18 U.S.C. 922(d), 924(h), 924(k), 932, or 933; (B) does not have more than 1 criminal history point, as determined under § 4A1.1 (Criminal History Category) and § 4A1.2 (Definitions and Instructions for Computing Criminal History), read together, before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category); and (C) (i) was motivated by an intimate or familial relationship or by threats or fear to commit the offense; [or][and] (ii) received little or no compensation from the offense; [or][and] (iii) had minimal knowledge [of the scope and structure of the enterprise][that the firearm would be used or possessed in connection with further criminal activity].

In relation to this part of the directive, both options in Part A of the proposed amendment bracket the deletion of the departure provision at Application Note 15 of § 2K2.1.

Enhancement for Defendants With Criminal Affiliations

Finally, Part A of the proposed amendment addresses the part of the directive that requires the Commission to ''review and amend its guidelines and policy statements to reflect the intent of Congress that a person convicted of an offense under section 932 or 933 of title 18, United States Code, who is affiliated with a gang, cartel, organized crime ring, or other such enterprise should be subject to higher penalties than an otherwise unaffiliated individual.'' *See* Public Law 117–159, § 12004(a)(5) (2022). Options 1 and 2 of Part A of the proposed amendment would provide a new [2][3][4]-level enhancement in response to this part of the directive.

Option 1 would set forth the new [2][3][4]-level enhancement at subsection (b)(8). The enhancement would be applicable if the defendant (A) [receives an enhancement under subsection (b)(5)][is convicted under (i) 18 U.S.C. 922(d), 932, or 933; or (ii) 18 U.S.C. 922(a)(6) or 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person]; (B) participated, at the time of the offense, in a group, club, organization, or association of five or more persons that had as one of its primary purposes the commission of criminal offenses, with knowledge that its members engage in or have engaged in criminal activity; and (C) committed the offense with the intent to promote or further the felonious activities of, or with the intent to maintain or increase his or her position in, such group, club, organization, or association.

Option 2 would set forth the new [2][3][4]-level enhancement at subsection (b)(8). The enhancement would be applicable if the defendant (A) is convicted under (i) 18 U.S.C. 922(d), 932, or 933; or (ii) 18 U.S.C. 922(a)(6) or 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person; (B) participated, at the time of the offense, in a group, club, organization, or association of five or more persons that had as one of its primary purposes the commission of criminal offenses, with knowledge that its members engage in or have engaged in criminal activity; and (C) committed the offense with the intent to promote or further the felonious activities of, or with the intent to maintain or increase his or her position in, such group, club, organization, or association.

Issues for Comment

Part A of the proposed amendment also provides issues for comment.

Proposed Amendment

Appendix A (Statutory Index) is amended by inserting before the line referenced to 18 U.S.C. 956 the following new line references:

''18 U.S.C. 932 2K2.1
18 U.S.C. 933 2K2.1''.

[Option 1 (Revised SOC Enhancement for Straw Purchase and Trafficking Offenses):

Section 2K2.1(a)(4)(B) is amended by inserting after ''18 U.S.C. 922(d)'' the following: '', § 932, or § 933''.

Section 2K2.1(a)(6)(B) is amended by inserting after ''18 U.S.C. 922(d)'' the following: '', § 932, or § 933''.

Section 2K2.1(b) is amended—

in paragraph (5) by striking ''If the defendant engaged in the trafficking of firearms, increase by 4 levels.'' and inserting the following:

''(Apply the Greatest) If the defendant—

(A) was convicted under 18 U.S.C. 933(a)(2) or (a)(3), increase by [1][2] levels;

(B) (i) transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, a firearm or any ammunition knowing or having reason to believe that such conduct would result in the receipt of the firearm or ammunition by an individual who (I) was a prohibited person; or (II) intended to use or dispose of the firearm or ammunition unlawfully; or (ii) attempted or conspired to commit the conduct described in clause (i), increase by [1][2] levels; or

(C) (i) transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, two or more firearms knowing or having reason to believe that such conduct would result in the receipt of the firearms by an individual who (I) had a prior conviction for a crime of violence, controlled substance offense, or misdemeanor crime of domestic violence; (II) was under a criminal justice sentence; or (III) intended to use or dispose of the firearms unlawfully; or (ii) attempted or conspired to commit the conduct described in clause (i), increase by [5][6] levels.'';

and by inserting at the end the following new paragraphs (8) and (9):

''(8) If the defendant—

(A) [receives an enhancement under subsection (b)(5)][is convicted under (i) 18 U.S.C. 922(d), 932, or 933; or (ii) 18 U.S.C. 922(a)(6) or 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person];

(B) participated, at the time of the offense, in a group, club, organization, or association of five or more persons that had as one of its primary purposes the commission of criminal offenses, with knowledge that its members engage

in or have engaged in criminal activity; and

(C) committed the offense with the intent to promote or further the felonious activities of, or with the intent to maintain or increase his or her position in, such group, club, organization, or association;

increase by [2][3][4] levels.

(9) If the defendant—

(A) [receives an enhancement under subsection (b)(5)][is convicted under (i) 18 U.S.C. 922(d), 932, or 933; or (ii) 18 U.S.C. 922(a)(6) or 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person];

(B) does not have more than 1 criminal history point, as determined under § 4A1.1 (Criminal History Category) and § 4A1.2 (Definitions and Instructions for Computing Criminal History), read together, before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category); and

(C) (i) was motivated by an intimate or familial relationship or by threats or fear to commit the offense; [or][and] (ii) received little or no compensation from the offense; [or][and] (iii) had minimal knowledge [of the scope and structure of the enterprise][that the firearm would be used or possessed in connection with further criminal activity];

decrease by [1][2] levels.''.

The Commentary to § 2K2.1 captioned ''Statutory Provisions'' is amended by inserting after ''(k)–(o),'' the following: ''932, 933,''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended—

in Note 3 by striking ''subsections (a)(4)(B) and (a)(6)'' and inserting ''subsections (a)(4)(B), (a)(6), (b)(5), [(b)(8), and (b)(9)]'';

in Note 10 by striking ''subsection (a)(1) and (a)(2)'' and inserting ''subsections (a)(1) and (a)(2)'';

in Note 13—

by striking paragraph (A) as follows:

''(A) *In General.*—Subsection (b)(5) applies, regardless of whether anything of value was exchanged, if the defendant—

(i) transported, transferred, or otherwise disposed of two or more firearms to another individual, or received two or more firearms with the intent to transport, transfer, or otherwise dispose of firearms to another individual; and

(ii) knew or had reason to believe that such conduct would result in the transport, transfer, or disposal of a firearm to an individual—

(I) whose possession or receipt of the firearm would be unlawful; or

(II) who intended to use or dispose of the firearm unlawfully.'';

by redesignating paragraph (B) as paragraph (A);

in paragraph (A) (as so redesignated) by striking the first paragraph as follows:

'' 'Individual whose possession or receipt of the firearm would be unlawful' means an individual who (i) has a prior conviction for a crime of violence, a controlled substance offense, or a misdemeanor crime of domestic violence; or (ii) at the time of the offense was under a criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status. 'Crime of violence' and 'controlled substance offense' have the meaning given those terms in § 4B1.2 (Definitions of Terms Used in Section 4B1.1). 'Misdemeanor crime of domestic violence' has the meaning given that term in 18 U.S.C. 921(a)(33)(A).'',

and inserting the following:

'' 'Crime of violence' and 'controlled substance offense' have the meaning given those terms in § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

'Misdemeanor crime of domestic violence' has the meaning given that term in 18 U.S.C. 921(a)(33)(A).

The term 'criminal justice sentence' includes probation, parole, supervised release, imprisonment, work release, or escape status.'';

by inserting the following new paragraph (B):

''(B) *Application of Subsection (b)(5)(C).*—Subsection (b)(5)(C) shall not apply based upon the receipt or intended receipt of the firearms by an individual with a prior conviction for a misdemeanor crime of domestic violence against a person in a dating relationship if, at the time of the instant offense, such individual [had no prior conviction for a crime of violence or controlled substance offense and had not more than one conviction of a misdemeanor crime of domestic violence against a person in a dating relationship, but 5 years had elapsed from the later of the judgment of conviction or the completion of the individual's custodial or supervisory sentence for such an offense and the individual had not subsequently been convicted of another such offense; a misdemeanor under federal, state, tribal, or local law which has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; or any other offense covered in 18 U.S.C. 922(g)][met the criteria set forth in the proviso of 18 U.S.C. 921(a)(33)(C)].'';

and in paragraph (C) by striking ''If the defendant trafficked substantially more than 25 firearms, an upward departure may be warranted'' and inserting ''If the defendant transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, substantially more than 25 firearms [or an unusually large amount of ammunition], an upward departure may be warranted''[;]

[and by striking Note 15 as follows:

''15. *Certain Convictions Under 18 U.S.C. 922(a)(6), 922(d), and 924(a)(1)(A).*—In a case in which the defendant is convicted under 18 U.S.C. 922(a)(6), 922(d), or 924(a)(1)(A), a downward departure may be warranted if (A) none of the enhancements in subsection (b) apply, (B) the defendant was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense, and (C) the defendant received no monetary compensation from the offense.'']

[*Option 2 (Increase Penalties for Offenses with Statutory Maximum of 15 years or more):*

Section 2K2.1(a) is amended—

in paragraph (1) by striking ''26,'' and inserting ''[26][27][28],'';

in paragraph (2) by striking ''24,'' and inserting ''[24][25][26],'';

in paragraph (3) by striking ''22,'' and inserting ''[22][23][24],'';

by striking paragraph (4) as follows:

''(4) 20, if—

(A) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense; or

(B) the (i) offense involved a (I) semiautomatic firearm that is capable of accepting a large capacity magazine; or (II) firearm that is described in 26 U.S.C. 5845(a); and (ii) defendant (I) was a prohibited person at the time the defendant committed the instant offense; (II) is convicted under 18 U.S.C. 922(d); or (III) is convicted under 18 U.S.C. 922(a)(6) or 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person;'';

by redesignating paragraphs (5), (6), (7), and (8) as paragraphs (6), (8), (9), and (10), respectively;

by inserting the following new paragraphs (4) and (5):

''(4) [21][22], if—

(A) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense; or

(B) (i) the defendant is convicted under 18 U.S.C. 922(d), 922(g), 924(h),

924(k), 932, or 933; and (ii) the offense involved a (I) semiautomatic firearm that is capable of accepting a large capacity magazine; or (II) firearm that is described in 26 U.S.C. 5845(a);

(5) 20, if the (A) offense involved a (i) semiautomatic firearm that is capable of accepting a large capacity magazine; or (ii) firearm that is described in 26 U.S.C. 5845(a); and (B) defendant (i) was a prohibited person at the time the defendant committed the instant offense; or (ii) is convicted under 18 U.S.C. 922(a)(6) or 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person;'';

by inserting the following new paragraph (7):

''(7) [15][16], if the defendant is convicted under 18 U.S.C. 922(d), 922(g), 924(h), 924(k), 932, or 933;'';

and in paragraph (8) (as so redesignated) by striking ''(B) is convicted under 18 U.S.C. 922(d); or (C)'' and inserting ''or (B)''.

Section 2K2.1(b) is amended—

in paragraph (2) by striking ''(a)(4), or (a)(5)'' and inserting ''(a)(4), (a)(5), or (a)(6)'';

in the paragraph after paragraph (4) by striking ''level 29'' and inserting ''level [29][30][31]'';

and by adding at the end the following new paragraphs (8), (9), and (10):

''(8) If the defendant—

(A) is convicted under (i) 18 U.S.C. 922(d), 932, or 933; or (ii) 18 U.S.C. 922(a)(6) or 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person;

(B) participated, at the time of the offense, in a group, club, organization, or association of five or more persons that had as one of its primary purposes the commission of criminal offenses, with knowledge that its members engage in or have engaged in criminal activity; and

(C) committed the offense with the intent to promote or further the felonious activities of, or with the intent to maintain or increase his or her position in, such group, club, organization, or association;

increase by [2][3][4] levels.

(9) If (A) the base offense level is determined under subsection (a)(7); (B) none of the enhancements in subsection (b) apply; and (C) the offense of conviction established only the possession or receipt of firearms or ammunition, decrease by [1 level][2 levels].

(10) If subsection (b)(9) does not apply and the defendant—

(A) is convicted under 18 U.S.C. 922(d), 924(h), 924(k), 932, or 933;

(B) does not have more than 1 criminal history point, as determined under § 4A1.1 (Criminal History Category) and § 4A1.2 (Definitions and Instructions for Computing Criminal History), read together, before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category); and

(C) (i) was motivated by an intimate or familial relationship or by threats or fear to commit the offense; [or][and] (ii) received little or no compensation from the offense; [or][and] (iii) had minimal knowledge [of the scope and structure of the enterprise][that the firearm would be used or possessed in connection with further criminal activity];

decrease by [1][2] levels.''.

The Commentary to § 2K2.1 captioned ''Statutory Provisions'' is amended by inserting after ''(k)–(o),'' the following: ''932, 933,''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended—

in Note 2 by striking ''and (a)(4)'' and inserting ''(a)(4), and (a)(5)'';

in Note 3 by striking ''(a)(4)(B) and (a)(6)'' and inserting ''(a)(5), (a)(8), and (b)(8)'';

in Note 4 by striking ''Subsection (a)(7)'' both places such term appears and inserting ''Subsection (a)(9)'';

in Note 6 by striking ''subsections (a)(1)–(a)(5)'' and inserting ''subsections (a)(1)–(a)(6)'';

in Note 7 by striking ''(a)(4)(B), or (a)(5)'' and inserting ''(a)(4)(B), (a)(5), or (a)(6)'';

in Note 8(A)—

in the heading by striking ''Subsection (a)(7)'' and inserting ''Subsection (a)(9)'';

and by striking ''under subsection (a)(7)'' both places such phrase appears and inserting ''under subsection (a)(9)'';

in Note 9 by striking ''prohibited person'' both places such term appears and inserting ''person described in 18 U.S.C. 922(g) or 922(n)'';

in Note 10 by striking ''subsection (a)(1), (a)(2), (a)(3), (a)(4)(A), (a)(4)(B), or (a)(6)'' and inserting ''subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), or (a)(8)'';

in Note 13(B) by inserting after ''18 U.S.C. 921(a)(33)(A).'' the following: ''However, an individual shall not be considered an 'individual whose possession or receipt of the firearm would be unlawful' [if, at the time of the instant offense, the individual was not otherwise covered by such definition and had not more than one conviction of a misdemeanor crime of domestic violence against a person in a dating relationship, but 5 years had elapsed from the later of the judgment of conviction or the completion of the individual's custodial or supervisory sentence for such an offense and the individual had not subsequently been convicted of: another such offense; a misdemeanor under federal, state, tribal, or local law which has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; or any other offense covered by the definition of 'individual whose possession or receipt of the firearm would be unlawful.'] [based upon a conviction of a misdemeanor crime of domestic violence against a person in a dating relationship, if the individual met the criteria set forth in the proviso of 18 U.S.C. 921(a)(33)(C) at the time of the instant offense.]''[;]

[and by striking Note 15 as follows:

''15. *Certain Convictions Under 18 U.S.C. 922(a)(6), 922(d), and 924(a)(1)(A).*—In a case in which the defendant is convicted under 18 U.S.C. 922(a)(6), 922(d), or 924(a)(1)(A), a downward departure may be warranted if (A) none of the enhancements in subsection (b) apply, (B) the defendant was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense, and (C) the defendant received no monetary compensation from the offense.'']].

Issues for Comment

1. The directive in the Bipartisan Safer Communities Act requires the Commission to ensure that defendants convicted of the new offenses at 18 U.S.C. 932 and 933 and other offenses applicable to the straw purchases and trafficking of firearms are subject to increased penalties in comparison to those currently provided by the guidelines for such straw purchasing and trafficking of firearms offenses. The two options presented in Part A of the proposed amendment would amend § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) to increase penalties in response to the Act. The Commission seeks comment on whether either of the options presented in Part A of the proposed amendment would provide appropriate penalties for cases involving straw purchases and trafficking of firearms. Should the Commission adopt either of these options or neither? Are there particular changes to the penalty levels in either of these options that should be made?

In addition, the Commission seeks comment on whether additional changes should be made to § 2K2.1 in response to the part of the directive that

requires the Commission to increase penalties for offenses involving straw purchases and trafficking of firearms. If so, what additional changes would be appropriate?

2. As described above, the Bipartisan Safer Communities Act also amended the definition of ''misdemeanor crime of domestic violence'' at 18 U.S.C. 921(a)(33) to include misdemeanor offenses against a person in ''a current or recent former dating relationship.'' The Act also added a new provision at section 921(a)(33)(C) stating as follows:

A person shall not be considered to have been convicted of a misdemeanor crime of domestic violence against an individual in a dating relationship for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had firearm rights restored unless the expungement, pardon, or restoration of rights expressly provides that the person may not ship, transport, possess, or receive firearms: *Provided,* That, in the case of a person who has not more than 1 conviction of a misdemeanor crime of domestic violence against an individual in a dating relationship, and is not otherwise prohibited under this chapter, the person shall not be disqualified from shipping, transport, possession, receipt, or purchase of a firearm under this chapter if 5 years have elapsed from the later of the judgment of conviction or the completion of the person's custodial or supervisory sentence, if any, and the person has not subsequently been convicted of another such offense, a misdemeanor under Federal, State, Tribal, or local law which has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, or any other offense that would disqualify the person under [18 U.S.C. §] 922(g). The national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act (34 U.S.C. 40901) shall be updated to reflect the status of the person. Restoration under this subparagraph is not available for a current or former spouse, parent, or guardian of the victim, a person with whom the victim shares a child in common, a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or a person similarly situated to a spouse, parent, or guardian of the victim.

In light of this new provision, a person with a conviction for a misdemeanor crime of domestic violence against an individual in a dating relationship is not disqualified from shipping, transporting, possessing, receiving, or purchasing a firearm under chapter 44 of title 18, United States Code, if the criteria described above are met. Are the changes to the Commentary to § 2K2.1 set forth in Options 1 and 2 adequate to address this new provision? If not, how should the Commission address it?

3. In response to the directive in the Bipartisan Safer Communities Act, Part A of the proposed amendment includes an Option 1 that would amend § 2K2.1 to, among other things, revise the firearms trafficking enhancement at § 2K2.1(b)(5) to apply to straw purchases and trafficking offenses. The revised enhancement would result in higher penalties for straw purchasers and firearms traffickers. The Commission seeks comment on whether having higher penalties for straw purchasers than prohibited persons raises proportionality concerns the Commission should address. If so, how should the Commission address those concerns?

4. Part A of the proposed amendment includes an Option 2 that would revise § 2K2.1(a) in several ways. Among other things, it would keep current § 2K2.1(a)(4)(B) with a base offense level of 20 applicable if the (A) offense involved a (i) semiautomatic firearm that is capable of accepting a large capacity magazine; or (ii) firearm that is described in 26 U.S.C. 5845(a); and (B) defendant (i) was a prohibited person at the time the defendant committed the instant offense; or (ii) is convicted under 18 U.S.C. 922(a)(6) or 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person. In addition, Option 2 would delete current § 2K2.1(a)(6)(B) but keep the base offense level of 14 applicable to any defendant who (A) was a prohibited person at the time the defendant committed the instant offense; or (B) is convicted under 18 U.S.C. 922(a)(6) or 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person. The Commission seeks comment on whether it should change the current base offense levels of 14 and 20 applicable to the defendants described above. If so, what offense level would be appropriate to any such defendant, and why?

5. Options 1 and 2 of Part A of the proposed amendment would add to § 2K2.1 a new [1][2]-level reduction based on certain mitigating factors. Option 1 provides that the reduction applies if the defendant [received an enhancement under the new subsection (b)(5) proposed in Option 1][was convicted under (i) 18 U.S.C. 922(d), 932, or 933; or (ii) 18 U.S.C. 922(a)(6) or 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person] and meets other certain criteria. Option 2 provides that the reduction applies if subsection (b)(9) does not apply and the defendant is convicted under 18 U.S.C. 922(d), 924(h), 924(k), 932, or 933, and meets the same other criteria provided in Option 1. The Commission seeks comment on whether this new adjustment should apply more broadly. Instead of providing a [1][2]-level reduction, should the Commission provide a departure provision applicable to defendants who meet the criteria?

The Commission also seeks comment on whether the criteria provided in Options 1 and 2 for this new reduction are appropriate. Should any criterion be deleted or changed? Should the Commission provide additional or different criteria?

The Commission further seeks comment on the criminal history requirement provided in Options 1 and 2. Is the proposed requirement appropriate to respond to Congress's intent to address ''straw purchasers without significant criminal histories''? Should the Commission instead use a different criminal history requirement than the one proposed in Options 1 and 2?

6. Application Note 15 of § 2K2.1 contains a downward departure provision for cases in which the defendant is convicted under 18 U.S.C. 922(a)(6), 922(d), or 924(a)(1)(A) and meets certain criteria, similar to some of the criteria included in the new proposed reduction provided in Option 1 at subsection (b)(9) and in Option 2 at subsection (b)(10). Hence, both options bracket the possibility of deleting the current departure provision. If the Commission were to promulgate any of the options in Part A of the proposed amendment, either as an adjustment or a downward departure provision, should the Commission delete the current departure provision at Application Note 15? If not, how should the new reduction interact with the current departure provision? Should the current departure provision be modified in any way?

7. In response to the directive contained in the Bipartisan Safer Communities Act, Options 1 and 2 of Part A of the proposed amendment would provide a new [2][3][4]-level

enhancement in § 2K2.1 based on the criminal affiliations of the defendant. Option 1 provides that the new enhancement would be applicable if the defendant [received an enhancement under the new subsection (b)(5) proposed in Option 1][was convicted under (i) 18 U.S.C. 922(d), 932, or 933; or (ii) 18 U.S.C. 922(a)(6) or 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person] and meets other criteria. Option 2 provides that the new enhancement would be applicable if the defendant is convicted under (i) 18 U.S.C. 922(d), 932, or 933; or (ii) 18 U.S.C. 922(a)(6) or 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person; and meets the same other criteria provided in Option 1. The Commission seeks comment on whether the new enhancement should apply more broadly. Should the Commission provide additional or different criteria for purposes of applying this enhancement? In addition, how should this new enhancement interact with the existing enhancements at § 2K2.1? Should the new enhancement be cumulative with other enhancements, or should it interact with other enhancements in some other way (*e.g.,* by establishing a ''cap'' on its cumulative impact with other enhancements)? Should the Commission instead provide an altogether different approach to respond to this part of the congressional directive?

(B) Firearms Not Marked With Serial Number (''Ghost Guns'')

Synopsis of Proposed Amendment: Subsection (b)(4) of § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) provides an alternative enhancement for a firearm that was stolen or that has an altered or obliterated serial number. Specifically, subsection (b)(4)(A) provides for a 2-level increase where a firearm is stolen, while subsection (b)(4)(B) provides for a 4-level increase where a firearm has an altered or obliterated serial number. The Commentary to § 2K2.1 provides that the enhancement applies regardless of whether the defendant knew or had reason to believe that the firearm was stolen or had an altered or obliterated serial number. USSG § 2K2.1, comment. (n.8(B)).

The enhancement at § 2K2.1 currently does not apply to ''ghost guns.'' ''Ghost guns'' is the term commonly used to refer to firearms that are not marked by a serial number by which they can be identified and traced, and that are typically made by an unlicensed individual from purchased components (such as standalone parts or weapon parts kits) or homemade components. Because of their lack of identifying markings, it is difficult to trace ghost guns and determine where and who manufactured them, and to whom they were sold or otherwise disposed. The Commission has heard from commenters that the very purpose of ''ghost guns'' is to avoid the tracking and tracing systems associated with a firearm's serial number and that they increasingly are associated with violent crime. Commenters have also indicated that § 2K2.1 does not adequately address ''ghost guns,'' as the enhancement at § 2K2.1(b)(4)(B) only covers firearms that were marked with a serial number when manufactured but where such identifier was later altered or obliterated.

Part B of the proposed amendment would respond to these concerns by revising § 2K2.1(b)(4)(B) to provide that the 4-level enhancement applies if any firearm had an altered or obliterated serial number or was not otherwise marked with a serial number [(other than an antique firearm, as defined in 18 U.S.C. 921(a)(16))].

An issue for comment is provided.

Proposed Amendment

Section 2K2.1(b)(4)(B) is amended by striking ''had an altered or obliterated serial number'' and inserting ''(i) had an altered or obliterated serial number; or (ii) was not otherwise marked with a serial number [(other than an antique firearm, as defined in 18 U.S.C. 921(a)(16))]''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended—

in Note 8(A)—

in the first paragraph by striking ''However, if the offense involved a firearm with an altered or obliterated serial number, apply subsection (b)(4)(B)'' and inserting ''However, if the offense involved a firearm with an altered or obliterated serial number, or that was not otherwise marked with a serial number [(other than an antique firearm, as defined in 18 U.S.C. 921(a)(16))], apply subsection (b)(4)(B)(i) or (ii)'';

and by striking the second paragraph as follows:

''Similarly, if the offense to which § 2K2.1 applies is 18 U.S.C. 922(k) or 26 U.S.C. 5861(g) or (h) (offenses involving an altered or obliterated serial number) and the base offense level is determined under subsection (a)(7), do not apply the enhancement in subsection (b)(4)(B). This is because the base offense level takes into account that the firearm had an altered or obliterated serial number. However, it the offense involved a stolen firearm or stolen ammunition, apply subsection (b)(4)(A).'',

and inserting the following:

''Similarly, if the offense to which § 2K2.1 applies is 18 U.S.C. 922(k) or 26 U.S.C. 5861(g) or (h) (offenses involving an altered or obliterated serial number) and the base offense level is determined under subsection (a)(7), do not apply the enhancement in subsection (b)(4)(B)(i). This is because the base offense level takes into account that the firearm had an altered or obliterated serial number. However, it the offense involved a stolen firearm or stolen ammunition, or a firearm that was not otherwise marked with a serial number [(other than an antique firearm, as defined in 18 U.S.C. 921(a)(16))], apply subsection (b)(4)(A) or (B)(ii).'';

and in Note 8(B) by striking ''Subsection (b)(4) applies regardless of whether the defendant knew or had reason to believe that the firearm was stolen or had an altered or obliterated serial number'' and inserting ''Subsection (b)(4) applies regardless of whether the defendant knew or had reason to believe that the firearm was stolen, had an altered or obliterated serial number, or was not otherwise marked with a serial number [(other than an antique firearm, as defined in 18 U.S.C. 921(a)(16))]''.

Issue for Comment

1. Part B of the proposed amendment would expand the scope of subsection (b)(4) of § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) to address firearms that are not marked with a serial number [(other than an antique firearm, as defined in 18 U.S.C. 921(a)(16))], in addition to firearms that were stolen or had an altered or obliterated serial number. The Commission seeks comment on whether it should further revise the enhancement at § 2K2.1(b)(4). For example, should the Commission insert into § 2K2.1(b)(4) a mental state (*mens rea*) requirement that the defendant knew, or had reason to believe, that the firearm was stolen, had an altered or obliterated serial number, or was not otherwise marked with a serial number (other than an antique

firearm, as defined in 18 U.S.C. 921(a)(16))?

(C) Issues for Comment on Further Revisions to § 2K2.1

1. Parts A of the proposed amendment would amend § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) to respond to the Bipartisan Safer Communities Act. Part B of the proposed amendment would amend § 2K2.1 to address concerns expressed by some commenters about firearms that are not marked by a serial number (*i.e.,* ''ghost guns''). The Commission seeks comment on whether it should further revise § 2K2.1 to appropriately address firearms offenses.

2. Offenses under 18 U.S.C. 922(u) are referenced to § 2K2.1. Section 922(u) prohibits stealing or unlawfully taking or carrying away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce. The Department of Justice has expressed concerns that all offenses under 18 U.S.C. 922(u), which covers conduct of varying severity (including simple theft, burglary, and robbery), are treated the same in § 2K2.1. According to the Department of Justice, burglaries and robberies of federal firearms licensees are particularly dangerous crimes that often involve multiple weapons. Currently, § 2K2.1 provides at subsection (b)(4)(A) a 2-level enhancement if any firearm was stolen. Application Note 8(A) of § 2K2.1 provides that this 2-level enhancement should not apply if the base offense level is set at level 12 under § 2K2.1(a)(7) (*e.g.,* a defendant convicted under 18 U.S.C. 922(u)) because the base offense level takes into account that the firearm or ammunition was stolen. The Commission seeks comment on whether it should amend § 2K2.1 to specifically address offenses where the offense involved the burglary or robbery of a federal firearms licensee. For example, should the Commission add an enhancement to § 2K2.1 that would be applicable if the offense involved the burglary or robbery of a federal firearms licensee? If so, what level of enhancement should the Commission set forth for such conduct? How should this enhancement interact with the stolen firearms enhancement at § 2K2.1(b)(4)(A)? Should the Commission provide that both enhancements are to be applied cumulatively or in the alternative?

3. The base offense levels at § 2K2.1(a) include as factors that form the basis for their application certain recidivism requirements, such as whether the defendant committed the instant offense subsequent to sustaining one or more felony convictions of either a crime of violence or controlled substance offense. The Commission seeks comment on whether it should add other types of prior convictions as the basis for applying base offense levels or specific offense characteristics, and what base offense level or offense level increase should the Commission provide for any such prior conviction. For example, should the Commission provide for increased penalties if the defendant committed the instant offense subsequent to sustaining a conviction or multiple convictions for a misdemeanor crime of domestic violence or an offense that involved a firearm? If so, should the Commission treat prior convictions for a misdemeanor crime of domestic violence or an offense that involved a firearm the same as prior convictions for a crime of violence or a controlled substance offense and provide the same level of enhancement? If not, what base offense level or offense level increase should the Commission set forth for prior convictions for a misdemeanor crime of domestic violence or an offense that involved a firearm?

4. The general definition of ''firearm'' in § 2K2.1 at Application Note 1 is drawn from 18 U.S.C. 921(a)(3). However, § 2K2.1 applies a higher base offense level to offenses involving firearms described in 26 U.S.C. 5845(a). Although section 5845(a) generally defines a more limited class of firearms than section 921(a)(3), there are a limited number of devices—such as those ''designed and intended solely and exclusively . . . for use in converting a weapon into a machinegun'' which are ''firearms'' under section 5845(a) but not section 921(a)(3). Thus, such devices are ''firearms'' for purposes of the increased base offenses levels in § 2K2.1(a)(1), (a)(3), (a)(4)(B)(i)(II), and (a)(5), but not for purposes of specific offense characteristics referring to ''firearms,'' such as § 2K2.1(b)(1). The Commission seeks comment on whether it should amend the definition of ''firearms'' in Application Note 1 of § 2K2.1 to include devices which are ''firearms'' under section 5845(a) but not section 921(a)(3).

5. The Commission seeks general comment on whether it should amend § 2K2.1 to increase penalties for defendants who transfer a firearm to a minor. If so, how?

4. Circuit Conflicts

Synopsis of Proposed Amendment: This proposed amendment addresses certain circuit conflicts involving § 3E1.1 (Acceptance of Responsibility) and § 4B1.2 (Definitions of Terms Used in Section 4B1.1). *See* U.S. Sent'g Comm'n, ''Notice of Final Priorities,'' 87 FR 67756 (Nov. 9, 2022) (identifying resolution of circuit conflicts as a priority, including the circuit conflicts concerning (A) whether the government may withhold a motion pursuant to § 3E1.1(b) because a defendant moved to suppress evidence; and (B) whether an offense must involve a substance controlled by the Controlled Substances Act (21 U.S.C. 801 *et seq.*) to qualify as a ''controlled substance offense'' under § 4B1.2(b)). The proposed amendment contains two parts (Part A and Part B). The Commission is considering whether to promulgate either or both of these parts, as they are not mutually exclusive.

Part A of the proposed amendment would amend § 3E1.1 and its accompanying commentary to address circuit conflicts regarding the permissible bases for withholding a reduction under § 3E1.1(b). It would set forth a definition of the term ''preparing for trial'' that provides more clarity on what actions typically constitute preparing for trial for the purposes of § 3E1.1(b). An issue for comment is also provided.

Part B of the proposed amendment would amend § 4B1.2 by adding a definition of the term ''controlled substance'' to address a circuit conflict concerning whether the definition of ''controlled substance offense'' in § 4B1.2(b) only covers offenses involving substances controlled by federal law. Two options are presented. An issue for comment is also included.

(A) Circuit Conflicts Concerning § 3E1.1(b)

Synopsis of Proposed Amendment: Subsection (a) of § 3E1.1 (Acceptance of Responsibility) provides for a 2-level reduction for a defendant who clearly demonstrates acceptance of responsibility for the offense. *See* USSG § 3E1.1(a). Subsection (b) of § 3E1.1 sets forth the circumstances under which a defendant is eligible for an additional 1-level reduction by providing:

If the defendant qualifies for a decrease under subsection (a), the offense level determined prior to the operation of subsection (a) is level 16 or greater, and upon motion of the government stating that the defendant has assisted authorities in the investigation or prosecution of his own

misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, decrease the offense level by 1 additional level. USSG § 3E1.1(b).

Section 401(g) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (''PROTECT Act''), among other things, directly amended § 3E1.1(b) to include the language requiring a government motion and consideration of government resources. *See* Public Law 108–21, 401(g)(1), 117 Stat. 650 (2003). The PROTECT Act also added the following sentence to Application Note 6 of the Commentary to § 3E1.1: ''Because the Government is in the best position to determine whether the defendant has assisted authorities in a manner that avoids preparing for trial, an adjustment under subsection (b) may only be granted upon a formal motion by the Government at the time of sentencing.'' *Id.* § 401(g)(2).

In 2013, the Commission promulgated Amendment 775 to address two circuit conflicts over the § 3E1.1(b) motion requirement. *See* USSG App. C, amend. 775 (effective Nov. 1, 2013). Among other things, the amendment added the following sentence to Application Note 6: ''The government should not withhold such a motion based on interests not identified in § 3E1.1, such as whether the defendant agrees to waive his or her right to appeal.'' *Id.*

Two circuit conflicts have arisen relating to § 3E1.1(b). The first conflict concerns whether a § 3E1.1(b) reduction may be withheld or denied because a defendant moved to suppress evidence. Justice Sotomayor, joined by Justice Gorsuch, recently ''emphasize[d] the need for clarification from the Commission'' on this ''important and longstanding split.'' *Longoria* v. *United States,* 141 S. Ct. 978, 979 (2021) (statement of Sotomayor, J., with whom Gorsuch, J. joins, respecting the denial of certiorari). The second conflict concerns whether the government may withhold a § 3E1.1(b) motion where the defendant has raised sentencing challenges.

These conflicts largely turn on how much discretion the government has to withhold a motion under § 3E1.1(b). Some circuits use the analytical framework from *Wade* v. *United States,* 504 U.S. 181, 185–86 (1992), applicable to substantial assistance motions under § 5K1.1 (Substantial Assistance to Authorities) (Policy Statement) and 18 U.S.C. 3553(e)—that the government's discretion is broad, but refusal to file a motion cannot be based on ''an unconstitutional motive'' or a reason ''not rationally related to any legitimate Government end.'' Other circuits specify that withholding is permissible if based on an interest identified in § 3E1.1. Courts also have grappled with whether the government's discretion is limited to situations involving trial preparation, and whether suppression motions or sentencing disputes are enough like trial preparation to withhold a motion.

In relation to the first circuit conflict, the Third, Fifth, and Sixth Circuits have permitted the government to withhold a § 3E1.1(b) motion based on a suppression motion. *See, e.g., United States* v. *Longoria,* 958 F.3d 372, 376–78 (5th Cir. 2020) (Amendment 775 did not clearly overrule its caselaw ''allowing the government to withhold the third point when it must litigate a suppression motion''; suppression hearing was largely the ''substantive equivalent of a full trial'' (quoting *United States* v. *Gonzales,* 19 F.3d 982, 984 (5th Cir. 1994))), *cert. denied,* 141 S. Ct. 978 (2021); *United States* v. *Collins,* 683 F.3d 697, 707 (6th Cir. 2012) (suppression motion required the government ''to undertake trial-like preparations''; ''Avoiding litigation on a motion to suppress is rationally related to the legitimate government interest in the efficient allocation of its resources. Accordingly . . . the government's decision to withhold the § 3E1.1(b) motion was not arbitrary or unconstitutionally motivated.''); *United States* v. *Drennon,* 516 F.3d 160, 161, 163 (3d Cir. 2008) (suppression hearing involved ''the large majority of the work to prepare for trial''; motion withheld due to ''concern for the efficient allocation of the government's litigating resources,'' not an unconstitutional motive).

The First, Second, Ninth, Tenth, and D.C. Circuits have held that a reduction may not be denied based on a suppression motion. *See, e.g., United States* v. *Vargas,* 961 F.3d 566, 582–84 (2d Cir. 2020) (district court erred in denying government's § 3E1.1(b) motion because of suppression hearing; any ''experienced criminal lawyer knows that preparing for a jury trial involves more work than preparing for a suppression hearing''); *United States* v. *Price,* 409 F.3d 436, 443–44 (D.C. Cir. 2005) (district court erred in denying additional reduction based on suppression motion; while government had to prepare for a suppression hearing, ''it never had to prepare for trial''); *United States* v. *Marquez,* 337 F.3d 1203, 1212 (10th Cir. 2003) (''district court may not rely on the fact that the defendant filed a motion to suppress requiring a 'lengthy suppression hearing' to justify a denial of the third level reduction''; even where issues substantially overlap, ''preparation for a motion to suppress would not require the preparation of voir dire questions, opening statements, closing arguments, and proposed jury instructions, to name just a few examples''); *United States* v. *Marroquin,* 136 F.3d 220, 225 (1st Cir. 1998) (''[g]uidelines do not force a defendant to forgo the filing of routine pre-trial motions as the price of receiving a one-step decrease''); *United States* v. *Kimple,* 27 F.3d 1409, 1415 (9th Cir. 1994) (district court erred in denying the additional reduction where ''resources were expended not in conducting trial preparation, but in considering pretrial motions [including suppression motion] necessary to protect [the defendant's] rights'').

With respect to the second circuit conflict, the First, Third, Seventh, and Eighth Circuits have held that the government may withhold a § 3E1.1(b) motion where the defendant has raised sentencing challenges. *See, e.g., United States* v. *Adair,* 38 F.4th 341, 361 (3d Cir. 2022) (government properly withheld motion where defendant ''caused [the government] to have to prepare for a two-day sentencing hearing''; government did not act with an unconstitutional motive); *United States* v. *Jordan,* 877 F.3d 391, 395 (8th Cir. 2017) (defendant's denial of conduct relevant to sentencing did not ''permit[ ] the government and the court to allocate their resources efficiently'' (citation omitted)); *United States* v. *Sainz-Preciado,* 566 F.3d 708, 716 (7th Cir. 2009) (government had ''good reason'' to withhold motion where it had to prepare ''testimony and other evidence to prove the full scope of [defendant's] criminal conduct at the sentencing hearing''); *United States* v. *Beatty,* 538 F.3d 8, 16–17 (1st Cir. 2008) (within the government's broad discretion to withhold motion where government reasonably determined that the defendant frivolously contested issues related to sentencing). The Second and Fifth Circuits have held that the government may not withhold a motion on this basis. *See, e.g., United States* v. *Castillo,* 779 F.3d 318, 324–26 (5th Cir. 2015) (''we disagree that the government may withhold a § 3E1.1(b) motion simply because it has had to use its resources to litigate a sentencing issue''; however, dispute must be in good faith); *United States* v. *Lee,* 653 F.3d 170, 174 (2d Cir. 2011) (''As long as the defendant disputes the accuracy of a factual assertion in the PSR in good

faith, the government abuses its authority by refusing to move for a third-point reduction because the defendant has invoked his right to a *Fatico* hearing.'').

Part A of the proposed amendment would amend § 3E1.1(b) to provide a definition of the term ''preparing for trial.'' It would also delete the following sentence in Application Note 6 of the Commentary to § 3E1.1: ''The government should not withhold such a motion based on interests not identified in § 3E1.1, such as whether the defendant agrees to waive his or her right to appeal.''

An issue for comment is provided.

Proposed Amendment

Section 3E1.1(b) is amended by inserting after ''1 additional level.'' the following:

''For the purposes of this guideline, the term 'preparing for trial' means substantive preparations taken to present the government's case against the defendant to a jury (or judge, in the case of a bench trial) at trial. 'Preparing for trial' is ordinarily indicated by actions taken close to trial, such as drafting in limine motions, proposed voir dire questions and jury instructions, and witness and exhibit lists. Preparation for early pretrial proceedings (such as litigation related to a charging document, early discovery motions, and early suppression motions) ordinarily are not considered 'preparing for trial' under this subsection. Post-conviction matters (such as sentencing objections, appeal waivers, and related issues) are not considered 'preparing for trial.' ''.

The Commentary to § 3E1.1 captioned ''Application Notes'' is amended in Note 6 by striking ''The government should not withhold such a motion based on interests not identified in § 3E1.1, such as whether the defendant agrees to waive his or her right to appeal.''.

Issue for Comment

1. Part A of the proposed amendment would amend § 3E1.1 (Acceptance of Responsibility) to address the circuit conflicts described in the synopsis above. The proposed amendment would amend subsection (b) of § 3E1.1 to provide a definition for the term ''preparing for trial.'' The Commission seeks comment on whether the proposed definition of ''preparing for trial'' is appropriate for purposes of § 3E1.1(b). If not, what definition should the Commission provide?

In the alternative, should the Commission address the circuit conflicts in a manner other than the one provided in Part A of the proposed amendment? For example, should the Commission address the breadth of the government's discretion to withhold a § 3E1.1(b) motion, either by incorporating the framework outlined in *Wade* v. *United States,* 504 U.S. 181, 185–86 (1992) (*i.e.,* an ''unconstitutional motive'' or a reason ''not rationally related to any legitimate Government end'') (*see, e.g., United States* v. *Adair,* 38 F.4th 341, 361 (3d Cir. 2022)), or by specifying a different standard?

(B) Circuit Conflicts Concerning § 4B1.2(b)

Synopsis of Proposed Amendment: Subsection (b) of § 4B1.2 (Definitions of Terms Used in Section 4B1.1) defines a ''controlled substance offense'' as ''an offense under federal or state law . . . that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.'' USSG § 4B1.2(b). The definition in § 4B1.2(b) principally applies to the career offender guideline at § 4B1.1 (Career Offender). However, several other guidelines incorporate this definition by reference, often providing for higher base offense levels if the defendant committed the instant offense after sustaining a conviction for a ''controlled substance offense.'' *See* USSG §§ 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), 4B1.4 (Armed Career Criminal), 5K2.17 (Semiautomatic Firearms Capable of Accepting Large Capacity Magazine (Policy Statement)), and 7B1.1 (Classification of Violations (Policy Statement)).

The circuits are split regarding whether the definition of a ''controlled substance offense'' in § 4B1.2(b) only covers offenses involving substances controlled by the federal Controlled Substances Act (''CSA'') (21 U.S.C. 801 *et seq.*), or whether the definition also applies to offenses involving substances controlled by applicable state law. This circuit conflict prompted Justice Sotomayor, joined by Justice Barrett, to call for the Commission to ''address this division to ensure fair and uniform application of the [g]uidelines.'' *Guerrant* v. *United States,* 142 S. Ct. 640, 640–41 (2022) (statement of Sotomayor, J., with whom Barrett, J. joins, respecting the denial of certiorari).

The Second and Ninth Circuits have held that a ''controlled substance offense'' only includes offenses involving substances controlled by federal law (the CSA), not offenses involving substances that a state's schedule lists as a controlled substance, but the CSA does not. *See United States* v. *Bautista,* 989 F.3d 698, 705 (9th Cir. 2021) (conviction under Arizona statute criminalizing hemp as well as marijuana is not a ''controlled substance offense'' because hemp is not listed in the CSA); *United States* v. *Townsend,* 897 F.3d 66, 74 (2d Cir. 2018) (conviction under New York statute prohibiting the sale of Human Chorionic Gonadotropin (''HCG'') is not a ''controlled substance offense'' because HCG is not controlled under the CSA).

By contrast, the Fourth, Seventh, Eighth, and Tenth Circuits have held that a state conviction involving a controlled substance that is not identified in the CSA can qualify as a ''controlled substance offense'' under the guidelines. *See United States* v. *Jones,* 15 F.4th 1288, 1295 (10th Cir. 2021) (definition of ''controlled substance offense'' includes ''state-law controlled substance offenses, involving substances not found on the CSA''), *cert. denied,* 143 S. Ct. 268 (2022); *United States* v. *Henderson,* 11 F.4th 713, 718 (8th Cir. 2021) (''There is no requirement that the particular substance underlying the state offense is also controlled under a distinct federal law.''), *cert. denied,* 142 S. Ct. 1696 (2022); *United States* v. *Ward,* 972 F.3d 364, 374 (4th Cir. 2020) (''the Commission has specified that we look to *either* the federal or state law of conviction to define whether an offense will qualify [as a controlled substance offense].''), *cert denied,* 141 S. Ct. 2864 (2021); *United States* v. *Ruth,* 966 F.3d 642, 654 (7th Cir. 2020) (''The career-offender guideline defines the term controlled substance offense broadly, and the definition is most plainly read to 'include state-law offenses[.]' '' (citation quotation omitted)), *cert. denied,* 141 S. Ct. 1239 (2021).

Part B of the proposed amendment would amend § 4B1.2(b) to include a definition for ''controlled substance'' to address the circuit conflict. Two options are provided.

Option 1 would set forth a definition of ''controlled substance'' that adopts the approach of the Second and Ninth Circuits. It would limit the definition of the term to substances that are specifically included in the CSA.

Option 2 would set forth a definition of ''controlled substance'' that adopts

the approach of the Fourth, Seventh, Eighth, and Tenth Circuits. It would provide that the term ''controlled substance'' refers to substances either included in the CSA or otherwise controlled under applicable state law.

An issue for comment is also provided.

Proposed Amendment

Section 4B1.2(b) is amended by adding at the end the following new paragraph:

[*Option 1 (Controlled Substances under Federal Law):*

'' 'Controlled substance' refers to a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of the Controlled Substances Act (21 U.S.C. 801 *et seq.*).''.]

[*Option 2 (Controlled Substances under Federal or State Law):*

'' 'Controlled substance' refers to a drug or other substance, or immediate precursor, either included in schedule I, II, III, IV, or V of the Controlled Substances Act (21 U.S.C. 801 *et seq.*) or otherwise controlled under applicable state law.''.]

Issue for Comment

1. Part B of the proposed amendment would amend subsection (b) of § 4B1.2 (Definitions of Terms Used in Section 4B1.1) to set forth a definition of ''controlled substance.'' Two options are provided for such definition.

The Commentary to § 2L1.2 (Unlawfully Entering or Remaining in the United States) contains a definition for the term ''drug trafficking offense'' that closely tracks the definition of ''controlled substance offense'' in § 4B1.2(b). *See* USSG § 2L1.2, comment. (n.2). If the Commission were to amend § 4B1.2(b) to include a definition of ''controlled substance,'' should the Commission also amend Application Note 2 to § 2L1.2 to include the same definition of ''controlled substance'' for purposes of the ''drug trafficking offense'' definition?

5. Crime Legislation

Synopsis of Proposed Amendment: This proposed amendment responds to recently enacted legislation. *See* U.S. Sent'g Comm'n, ''Notice of Final Priorities,'' 87 FR 67756 (Nov. 9, 2022) (identifying as a priority ''[i]mplementation of any legislation warranting Commission action'').

The proposed amendment contains eleven parts (Parts A through K). The Commission is considering whether to promulgate any or all these parts, as they are not mutually exclusive.

Part A responds to the FDA Reauthorization Act of 2017, Public Law 115–52 (2017), by amending Appendix A (Statutory Index) and the Commentary to § 2N2.1 (Violations of Statutes and Regulations Dealing with Any Food, Drug, Biological Product, Device, Cosmetic, Agricultural Product, or Consumer Product). It also makes a technical correction to the Commentary to § 2N1.1 (Tampering or Attempting to Tamper Involving Risk of Death or Bodily Injury). An issue for comment is also provided.

Part B responds to the Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Public Law 115–164 (2018), by amending Appendix A, § 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor), and § 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor). In addition, Part B brackets the possibility of amending the Commentary to §§ 4B1.5 (Repeat and Dangerous Sex Offender Against Minors) and 5D1.2 (Term of Supervised Release) to exclude offenses under 18 U.S.C. 2421A from the definitions of ''covered sex offense'' and ''sex offense.'' Issues for comment are also provided.

Part C responds to the FAA Reauthorization Act of 2018, Public Law 115–254 (2018), by amending Appendix A and § 2A5.2 (Interference with Flight Crew Member or Flight Attendant; Interference with Dispatch, Navigation, Operation, or Maintenance of Mass Transportation Vehicle), as well as the Commentary to §§ 2A2.4 (Obstructing or Impeding Officers) and 2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)). An issue for comment is also provided.

Part D responds to the SUPPORT for Patients and Communities Act, Public Law 115–271 (2018), by amending Appendix A and the Commentary to §§ 2B1.1 (Theft, Property Destruction, and Fraud) and 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery). An issue for comment is also provided.

Part E responds to the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Public Law 115–299 (2018), by amending Appendix A and the Commentary to § 2X5.2. An issue for comment is also provided.

Part F responds to the Foundations for Evidence-Based Policymaking Act of 2018, Public Law 115–435 (2019), by amending Appendix A and the Commentary to § 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information). An issue for comment is also provided.

Part G responds to the National Defense Authorization Act for Fiscal Year 2020, Public Law 116–92 (2019), by amending Appendix A and the Commentary to § 2X5.2. An issue for comment is also provided.

Part H responds to the Representative Payee Fraud Prevention Act of 2019, Public Law 116–126 (2020), by amending Appendix A and the Commentary to § 2B1.1. An issue for comment is also provided.

Part I responds to the Stop Student Debt Relief Scams Act of 2019, Public Law 116–251 (2020), by amending Appendix A and the Commentary to § 2B1.1. An issue for comment is also provided.

Part J responds to the Protecting Lawful Streaming Act of 2020, part of the Consolidation Appropriation Act, 2021, Public Law 116–260 (2020), by amending Appendix A. Issues for comment are also provided.

Part K responds to the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283 (2021), by amending Appendix A and the Commentary to § 2S1.3 (Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports; Bulk Cash Smuggling; Establishing or Maintaining Prohibited Accounts). An issue for comment is also provided.

(A) FDA Reauthorization Act of 2017

Synopsis of Proposed Amendment: Part A of the proposed amendment responds to the FDA Reauthorization Act of 2017, Public Law 115–52 (2017).

That act amended 21 U.S.C. 333 (Penalties [for certain violations of the Federal Food, Drug, and Cosmetic Act]) to add a new criminal offense for the manufacture or distribution of a counterfeit drug. The new offense states that

any person who violates [21 U.S.C. 331(i)(3)] by knowingly making, selling, or dispensing, or holding for sale or dispensing, a counterfeit drug shall be imprisoned for not more than 10 years or fined in accordance with title 18, [United States Code,] or both.

21 U.S.C. 333(b)(8). Section 331(i)(3) prohibits any action which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.

Currently, subsections (b)(1) through (b)(6) of 21 U.S.C. 333 are referenced in Appendix A (Statutory Index) to § 2N2.1 (Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product). Subsection (b)(7) is referenced to § 2N1.1 (Tampering or Attempting to Tamper Involving Risk of Death or Bodily Injury). New subsection (b)(8) is not referenced to any guideline.

Part A of the proposed amendment would amend Appendix A to reference 21 U.S.C. 333(b)(8) to § 2N2.1. Part A would also amend the Commentary to § 2N2.1 to reflect that subsection (b)(8), as well as subsections (b)(1) through (b)(6), of 21 U.S.C. 333 are all referenced to § 2N2.1. Finally, Part A also makes a technical change to the Commentary to § 2N1.1, adding 21 U.S.C. 333(b)(7) to the list of statutory provisions referenced to that guideline.

An issue for comment is also provided.

Proposed Amendment

Appendix A (Statutory Index) is amended by inserting before the line referenced to 21 U.S.C. 458 the following new line reference:

''21 U.S.C. 333(b)(8) 2N2.1''.

The Commentary to § 2N2.1 captioned ''Statutory Provisions'' is amended by striking ''333(a)(1), (a)(2), (b)'' and inserting ''333(a)(1), (a)(2), (b)(1)–(6), (b)(8)''.

The Commentary to § 2N1.1 captioned ''Statutory Provisions'' is amended by striking ''18 U.S.C. 1365(a), (e)'' and inserting ''18 U.S.C. 1365(a), (e); 21 U.S.C. 333(b)(7). For additional statutory provision(s), *see* Appendix A (Statutory Index)''.

Issue for Comment

1. In response to the FDA Reauthorization Act of 2017, Public Law 115–52 (2017), Part A of the proposed amendment would reference 21 U.S.C. 333(b)(8) to § 2N2.1 (Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, Agricultural Product, or Consumer Product). The Commission seeks comment on whether any additional changes to the guidelines are required to account for section 333(b)(8)'s offense conduct. Specifically, should the Commission amend § 2N2.1 to provide a higher or lower base offense level if 21 U.S.C. 333(b)(8) is the offense of conviction? If so, what should that base offense level be and why? Should the Commission add a specific offense characteristic to § 2N2.1 in response to section 333(b)(8)? If so, what should that specific offense characteristic provide and why?

(B) Allow States and Victims To Fight Online Sex Trafficking Act of 2017

Synopsis of Proposed Amendment: Part B of the proposed amendment responds to the Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Public Law 115–164 (2018).

That act created two new criminal offenses codified at 18 U.S.C. 2421A (Promotion or facilitation of prostitution and reckless disregard of sex trafficking). The first new offense, codified at 18 U.S.C. 2421A(a), provides that

[w]hoever, using a facility or means of interstate or foreign commerce or in or affecting interstate or foreign commerce, owns, manages, or operates an interactive computer service . . . , or conspires or attempts to do so, with the intent to promote or facilitate the prostitution of another person shall be fined under this title, imprisoned for not more than 10 years, or both.

The second new offense, codified at 18 U.S.C. 2421A(b), is an aggravated form of the first. It provides an enhanced statutory maximum penalty of 25 years for anyone who commits the first offense and either ''(1) promotes or facilitates the prostitution of 5 or more persons'' or ''(2) acts in reckless disregard of the fact that such conduct contributed to sex trafficking, in violation of [18 U.S.C.] 1591(a).'' Section 1591(a) criminalizes sex trafficking of a minor or sex trafficking of anyone by force, threats of force, fraud, or coercion.

Part B of the proposed amendment would amend Appendix A (Statutory Index) to reference 18 U.S.C. 2421A to § 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor) and § 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor). Offenses involving the promotion or facilitation of commercial sex acts are generally referenced to these guidelines.

If the offense did not involve a minor, § 2G1.1 would be the applicable guideline. For a defendant convicted under 18 U.S.C. 2421A, subsection (a)(2) would apply, and the defendant's base offense level would be level 14. Part B of the proposed amendment would amend § 2G1.1(b)(1) so that the four-level increase in the defendant's offense level provided by that specific offense characteristic would also apply if subsection (a)(2) applies and [the offense of conviction is][the offense involved conduct described in] 18 U.S.C. 2421A(b)(2). Section 2421A(b)(2) is the version of the new aggravated offense under which the defendant has acted in reckless disregard of the fact that their conduct contributed to sex trafficking in violation of 18 U.S.C. 1591(a).

If the offense involved a minor, § 2G1.3 would be the applicable guideline. For a defendant convicted under 18 U.S.C. 2421A, subsection (a)(4) would apply, and the defendant's base offense level would be level 24. Part B of the proposed amendment would amend § 2G1.3(b)(4) to renumber the existing specific offense characteristic as § 2G1.3(b)(4)(A) and to add a new § 2G1.3(b)(4)(B), which provides for a [4]-level increase in the defendant's offense level if (i) subsection (a)(4) applies; and (ii) [the offense of conviction is][the offense involved conduct described in] 18 U.S.C. 2421A(b)(2). Only the greater of § 2G1.3(b)(4)(A) or § 2G1.3(b)(4)(B) would apply.

Part B of the proposed amendment also would amend the Commentary to § 2G1.3 to add a new application note instructing that if 18 U.S.C. 2421A(a) or § 2421A(b)(1) is the offense of conviction, the specific offense characteristic at § 2G1.3(b)(3)(B) does not apply. That special offense characteristic provides for a two-level increase in the defendant's offense level if the offense involved the use of a computer or an interactive computer service to entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with a minor.

Part B of the proposed amendment would make conforming changes to §§ 2G1.1 and 2G1.3 and their accompanying commentary.

Finally, 18 U.S.C. 2421A is codified in chapter 117 (Transportation for Illegal Sexual Activity and Related Crimes) of title 18 of the United States Code, which contains statutes that generally prohibit conduct intended to promote or facilitate prostitution. Various guidelines refer to chapter 117 overall, including § 4B1.5 (Repeat and Dangerous Sex Offender Against Minors) and § 5D1.2 (Term of Supervised Release). Specifically, § 4B1.5 provides for increases in the defendant's offense level if the offense of conviction is a ''covered sex crime.'' The Commentary to § 4B1.5 states that a ''covered sex crime'' generally includes offenses under chapter 117 but excludes from coverage the offenses of ''transmitting information about a minor

or filing a factual statement about an alien individual.'' Section 5D1.2 includes a policy statement recommending that the court impose the statutory maximum term of supervised release if the instant offense of conviction is a ''sex offense.'' The Commentary to § 5D1.2 defines ''sex offense'' to mean, among other things, an offense, perpetrated against a minor, under chapter 117, ''not including transmitting information about a minor or filing a factual statement about an alien individual.'' Part B of the proposed amendment brackets the possibility of amending the Commentary to §§ 4B1.5 and 5D1.2 to exclude offenses under 18 U.S.C. 2421A from the definitions of ''covered sex offense'' and ''sex offense.''

Issues for comment are also provided.

Proposed Amendment

Appendix A (Statutory Index) is amended by inserting before the line referenced to 18 U.S.C. 2422 the following new line reference:

''18 U.S.C. 2421A 2G1.1, 2G1.3''.

Section 2G1.1(b)(1)(B) is amended by striking ''the offense involved fraud or coercion'' and inserting ''(i) the offense involved fraud or coercion, or (ii) [the offense of conviction is][the offense involved conduct described in] 18 U.S.C. 2421(A)(b)(2)''.

The Commentary to § 2G1.1 captioned ''Statutory Provisions'' is amended by striking ''2422(a) (only if the offense involved a victim other than a minor)'' and inserting ''2421A (only if the offense involved a victim other than a minor), 2422(a) (only if the offense involved a victim other than a minor). For additional statutory provision(s), *see* Appendix A (Statutory Index)''.

Section 2G1.3(b) is amended in paragraph (4) by striking ''If (A) the offense involved the commission of a sex act or sexual contact; or (B) subsection (a)(3) or (a)(4) applies and the offense involved a commercial sex act, increase by 2 levels.'', and inserting the following:

''(Apply the greater):

(A) If (i) the offense involved the commission of a sex act or sexual contact; or (ii) subsection (a)(3) or (a)(4) applies and the offense involved a commercial sex act, increase by 2 levels.

(B) If (i) subsection (a)(4) applies; and (ii) [the offense of conviction is][the offense involved conduct described in] 18 U.S.C. 2421A(b)(2), increase by [4] levels.''.

The Commentary to § 2G1.3 captioned ''Statutory Provisions'' is amended by striking ''2422 (only if the offense involved a minor), 2423, 2425'' and inserting ''2421A (only if the offense involved a minor), 2422 (only if the offense involved a minor), 2423, 2425. For additional statutory provision(s), *see* Appendix A (Statutory Index)''.

The Commentary to § 2G1.3 captioned ''Application Notes'' is amended in Note 4 by striking the following:

''*Application of Subsection (b)(3)(A).*—Subsection (b)(3)(A) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(3)(A) would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the minor from an airline's internet site.'',

and inserting the following:

''*Application of Subsection (b)(3).*—

(A) *Application of Subsection (b)(3)(A).*—Subsection (b)(3)(A) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(3)(A) would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the minor from an airline's internet site.

(B) *Application of Subsection (b)(3)(B).*—If the offense of conviction is 18 U.S.C. 2421A(a) or § 2421A(b)(1), do not apply subsection (b)(3)(B).''.

[The Commentary to § 4B1.5 captioned ''Application Notes'' is amended in Note 2 by striking ''chapter 117 of such title, not including transmitting information about a minor or filing a factual statement about an alien individual'' and inserting ''chapter 117 of such title, not including transmitting information about a minor, filing a factual statement about an alien individual, or an offense under 18 U.S.C. 2421A''.]

[The Commentary to § 5D1.2 captioned ''Application Notes'' is amended in Note 1, in the paragraph that begins '' 'Sex offense' means'', by striking ''chapter 117 of such title, not including transmitting information about a minor or filing a factual statement about an alien individual'' and inserting ''chapter 117 of such title, not including transmitting information about a minor, filing a factual statement about an alien individual, or an offense under 18 U.S.C. 2421A''.]

Issues for Comment

1. In response to the Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Public Law 115–164 (2018), Part B of the proposed amendment would reference 18 U.S.C. 2421A to § 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor) and § 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor), and would make various revisions to those guidelines to account for the new statute's offense conduct. The Commission seeks comment on whether the proposed revisions are appropriate and on whether the Commission should make other changes to the guidelines to account for section 2421A's offense conduct.

In particular, Part B of the proposed amendment would rely on the specific offense characteristics and special instructions in §§ 2G1.1 and 2G1.3 to produce the appropriate offense levels for the aggravated offense at 18 U.S.C. 2421A(b). Should the Commission account for the aggravated offense in a different way, for example, by providing a higher base offense level if a defendant is convicted of that offense? If so, should the Commission use one of the base offense levels currently provided for convictions under other offenses, such as level 28, provided by § 2G1.3 for a conviction under 18 U.S.C. 2422(b) or 2423(a), or level 34, provided by §§ 2G1.1 and 2G1.3 for a conviction under 18 U.S.C. 1591(b)(1)?

2. The new offenses codified at 18 U.S.C. 2421A are included in chapter 117 (Transportation for Illegal Sexual Activity and Related Crimes) of title 18 of the United States Code, which contains statutes that generally prohibit conduct intended to promote or facilitate prostitution. As indicated in the synopsis, §§ 4B1.5 and 5D1.2 provide definitions for the terms ''covered sex crime'' and ''sex offense,'' respectively, that generally include offenses in chapter 117 of title 18, with notable exceptions. The chapter 117 offenses that the Commission excluded from the definitions of ''covered sex crime'' and ''sex offense'' do not criminalize conduct involving the direct sexual exploitation of a minor by the defendant, but rather are primarily concerned with the transmission or filing of information about individuals.

Part B of the proposed amendment brackets the possibility of amending the Commentary to §§ 4B1.5 and 5D1.2 to

exclude offenses under 18 U.S.C. 2421A from the definitions of ''covered sex offense'' and ''sex offense.'' Section 2421A offenses generally involve the posting or sharing (*i.e.,* transmission) of information about an individual, which may not necessarily involve the direct exploitation of a minor victim by the defendant. The Commission seeks comment on whether excluding offenses under 18 U.S.C. 2421A from the definitions of ''covered sex crime'' and ''sex offense'' for purposes of §§ 4B1.5 and 5D1.2 is appropriate due to the nature of such offenses. Should the Commission, instead, include the aggravated form of the offense under 18 U.S.C. 2421A(b) in the definitions of ''covered sex crime'' and ''sex offense''?

(C) FAA Reauthorization Act of 2018

Synopsis of Proposed Amendment: Part C of the proposed amendment responds to the FAA Reauthorization Act of 2018, Public Law 115–254 (2018). That act created two new criminal offenses concerning the operation of unmanned aircraft, commonly known as ''drones,'' and added a new provision to an existing criminal statute that also concerns drones.

The first new criminal offense, codified at 18 U.S.C. 39B (Unsafe operation of unmanned aircraft), prohibits the unsafe operation of drones. Specifically, section 39B(a)(1) prohibits any person from operating an unmanned aircraft and knowingly interfering with the operation of an aircraft carrying one or more persons in a manner that poses an imminent safety hazard to the aircraft's occupants. Section 39B(a)(2) prohibits any person from operating an unmanned aircraft and recklessly interfering with the operation of an aircraft carrying one or more persons in a manner that poses an imminent safety hazard to the aircraft's occupants. Section 39B(b) prohibits any person from knowingly operating an unmanned aircraft near an airport runway without authorization. A violation of any of these prohibitions is punishable by a fine, not more than one year in prison, or both. A violation of subsection (a)(2) that causes serious bodily injury or death is punishable by a fine, not more than 10 years of imprisonment, or both. A violation of subsection (a)(1) or subsection (b) that causes serious bodily injury or death is punishable by a fine, imprisonment for any term of years or for life, or both.

The second new criminal offense, codified at 18 U.S.C. 40A (Operation of unauthorized unmanned aircraft over wildfires), generally prohibits any individual from operating an unmanned aircraft and knowingly or recklessly interfering with a wildfire suppression or with law enforcement or emergency response efforts related to a wildfire suppression. A violation of this offense is punishable by a fine, imprisonment for not more than two years, or both.

The act also adds a new subsection (a)(5) to 18 U.S.C. 1752 (Restricted building or grounds). The new subsection prohibits anyone from knowingly and willfully operating an unmanned aircraft system with the intent to knowingly and willfully direct or otherwise cause the system to enter or operate within or above a restricted building or grounds. A violation of section 1752 is punishable by a fine, imprisonment for not more than one year, or both. If the violator used or carried a deadly or dangerous weapon or firearm or if the offense results in significant bodily injury, the maximum term of imprisonment increases to ten years.

Part C of the proposed amendment would amend Appendix A (Statutory Index) to reference 18 U.S.C. 39B to § 2A5.2 (Interference with Flight Crew Member or Flight Attendant; Interference with Dispatch, Navigation, Operation, or Maintenance of Mass Transportation Vehicle) and § 2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)). Accordingly, courts would use § 2A5.2 for felony violations of section 39B and § 2X5.2 for misdemeanor violations. Part C would also make conforming changes to § 2A5.2 and its commentary and to the Commentary to § 2X5.2. Part C of the proposed amendment would also amend the title of § 2A5.2 to add ''Unsafe Operation of Unmanned Aircraft.''

In addition, Part C of the proposed amendment would amend Appendix A to reference 18 U.S.C. 40A to § 2A2.4 (Obstructing or Impeding Officers). It would also make conforming changes to the Commentary to § 2A2.4.

Section 1752 is currently referenced in Appendix A to § 2A2.4 and § 2B2.3 (Trespass). Accordingly, courts would use those guidelines for violations of 18 U.S.C. 1752(a)(5). Part C of the proposed amendment would make no changes to the guidelines to account for that provision.

An issue for comment is also provided.

Proposed Amendment

Appendix A (Statutory Index) is amended by inserting before the line referenced to 18 U.S.C. 43 the following new line references:

''18 U.S.C. 39B 2A5.2, 2X5.2
18 U.S.C. 40A 2A2.4''.

Section 2A5.2 is amended in the heading by striking ''Vehicle'' and inserting ''Vehicle; Unsafe Operation of Unmanned Aircraft''.

The Commentary to § 2A5.2 captioned ''Statutory Provisions'' is amended by striking ''18 U.S.C. 1992(a)(1)'' and inserting ''18 U.S.C. 39B, 1992(a)(1)''.

The Commentary to § 2X5.2 captioned ''Statutory Provisions'' is amended by striking ''18 U.S.C. 1365(f), 1801; 34 U.S.C. 12593; 49 U.S.C. 31310.'' and inserting ''18 U.S.C. 39B, 1365(f), 1801; 34 U.S.C. 12593; 49 U.S.C. 31310. For additional statutory provision(s), *see* Appendix A (Statutory Index).''.

The Commentary to § 2A2.4 captioned ''Statutory Provisions'' is amended by striking ''18 U.S.C. 111'' and inserting ''18 U.S.C. 40A, 111''.

Issue for Comment

1. In response to the FAA Reauthorization Act of 2018, Public Law 115–254 (2018), Part C of the proposed amendment would reference 18 U.S.C. 39B to § 2A5.2 (Interference with Flight Crew Member or Flight Attendant; Interference with Dispatch, Navigation, Operation, or Maintenance of Mass Transportation Vehicle) and § 2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)). Part C of the proposed amendment would also reference 18 U.S.C. 40A to § 2A2.4 (Obstructing or Impeding Officers). The Commission seeks comment on whether these proposed references are appropriate and whether any additional changes to the guidelines are required to account for the new criminal offenses created by the FAA Reauthorization Act.

(D) SUPPORT for Patients and Communities Act

Synopsis of Proposed Amendment: Part D of the proposed amendment responds to the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (''the SUPPORT for Patients and Communities Act''), Public Law 115–271 (2018).

This Act includes the Eliminating Kickbacks in Recovery Act of 2018, which added a new offense at 18 U.S.C. 220 (Illegal remunerations for referrals to recovery homes, clinical treatment facilities, and laboratories). Section 220(a) prohibits, with respect to services covered by a ''health care benefit program,'' knowing or willfully: (1) soliciting or receiving any remuneration (including kickbacks, bribes, or rebates), in cash or in kind, for referring a patient or patronage to a recovery home, clinical treatment facility, or laboratory; and (2) paying or offering any

remuneration (including kickbacks, bribes, or rebates), in cash or in kind, for inducing a referral of a patient to or in exchange for a patient using the services of a recovery home, clinical treatment facility, or laboratory. The new offense has a statutory maximum term of imprisonment of ten years.

A ''health care benefit program,'' for purposes of section 220, includes public and private plans and contracts affecting commerce. *See* 18 U.S.C. 220(e)(3) (referring to the definition of such term at 18 U.S.C. 24(b)). Section 220 also sets forth exemptions to the offense relating to certain discounts, payments, and waivers. *See* 18 U.S.C. 220(b).

Part D of the proposed amendment would amend Appendix A (Statutory Index) to reference 18 U.S.C. 220 to §§ 2B1.1 (Theft, Property Destruction, and Fraud) and 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery). The conduct prohibited in 18 U.S.C. 220 is similar to the conduct prohibited in 42 U.S.C. 1320a–7b(b) (Criminal penalties for acts involving Federal health care programs). Currently, section 1320a–7b offenses are referenced in Appendix A to both §§ 2B1.1 and 2B4.1.

Part D of the proposed amendment would also amend the commentaries to §§ 2B1.1 and 2B4.1 to reflect that 18 U.S.C. 220 is referenced to these guidelines.

An issue for comment is also provided.

Proposed Amendment

Appendix A (Statutory Index) is amended by inserting before the line referenced to 18 U.S.C. 224 the following new line reference:

''18 U.S.C. 220 2B1.1, 2B4.1''.

The Commentary to § 2B1.1 captioned ''Statutory Provisions'' is amended by striking ''18 U.S.C. 38'' and inserting ''18 U.S.C. 38, 220''.

The Commentary to § 2B4.1 captioned ''Statutory Provisions'' is amended by striking ''18 U.S.C. 215'' and inserting ''18 U.S.C. 215, 220''.

Issue for Comment

1. In response to the SUPPORT for Patients and Communities Act, Part D of the proposed amendment would reference 18 U.S.C. 220 to §§ 2B1.1 (Theft, Property Destruction, and Fraud) and 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery). The Commission seeks comment on whether these proposed references are appropriate and whether any additional changes to the guidelines are required to account for section 220's offense conduct. Specifically, should the Commission amend § 2B1.1 or § 2B4.1 to provide a higher or lower base offense level if 18 U.S.C. 220 is the offense of conviction? If so, what should that base offense level be and why? Should the Commission add a specific offense characteristic to any of these guidelines in response to section 220? If so, what should that specific offense characteristic provide and why?

(E) Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018

Synopsis of Proposed Amendment: Part E of the proposed amendment responds to the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Public Law 115–299 (2018).

Among other things, the Act amended 18 U.S.C. 2259 (Mandatory restitution), with respect to victims of child pornography, by adding a new subsection (d). This new subsection permits any victim of child pornography trafficking to receive ''defined monetary assistance'' from the Child Pornography Victims Reserve when a defendant is convicted of trafficking in child pornography. It also sets forth rules for determining the amount of ''defined monetary assistance'' a victim may receive and certain limitations relating to the effect of restitution and on eligibility. In addition, new subsection (d)(4)(A) states that that any attorney representing a victim seeking ''defined monetary assistance'' may not charge, receive, or collect (nor may the court approve) the payment of fees and costs that in the aggregate exceeds 15 percent of any payment made under new subsection (d) in general. It also provides that an attorney who violates subsection (d)(4)(A) may be subject to a statutory maximum term of imprisonment of not more than one year. *See* 18 U.S.C. 2259(d)(4)(B).

Part E of the proposed amendment would amend Appendix A (Statutory Index) to reference 18 U.S.C. 2259(d)(4) to § 2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)). It would also amend the Commentary to § 2X5.2 to reflect that 18 U.S.C. 2259(d)(4) is referenced to the guideline.

An issue for comment is also provided.

Proposed Amendment

Appendix A (Statutory Index) is amended by inserting before the line referenced to 18 U.S.C. 2260(a) the following new line reference:

''18 U.S.C. 2259(d)(4) 2X5.2''.

The Commentary to § 2X5.2 captioned ''Statutory Provisions'' is amended by striking ''18 U.S.C. 1365(f), 1801; 34 U.S.C. 12593; 49 U.S.C. 31310.'' and inserting ''18 U.S.C. 1365(f), 1801, 2259(d)(4); 34 U.S.C. 12593; 49 U.S.C. 31310. For additional statutory provision(s), *see* Appendix A (Statutory Index).''.

Issue for Comment

1. In response to the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Part E of the proposed amendment would amend Appendix A (Statutory Index) to reference 18 U.S.C. 2259(d)(4) to § 2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)). The Commission seeks comment on whether this proposed reference is appropriate and whether any additional changes to the guidelines are required to account for the new offense conduct at 18 U.S.C. 2259(d)(4).

(F) Foundations for Evidence-Based Policymaking Act of 2018

Synopsis of Proposed Amendment: Part F of the proposed amendment responds to the Foundations for Evidence-Based Policymaking Act of 2018, Public Law 115–435 (2019).

This Act includes the Confidential Information Protection and Statistical Efficiency Act of 2018, which added a new offense at 44 U.S.C. 3572 (Confidential information protection). Section 3572 prohibits the unauthorized disclosure of information collected by an agency under a pledge of confidentiality and for exclusively statistical purposes, or the use of such information for other than statistical purposes. Any willful unauthorized disclosure of such information by an officer, employee, or agent of an agency acquiring information for exclusively statistical purposes is punishable by a statutory maximum term of imprisonment of five years. *See* 44 U.S.C. 3572(f).

Part F of the proposed amendment would amend Appendix A (Statutory Index) to reference 44 U.S.C. 3572 to § 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information). Similar confidential information disclosure offenses, such as 18 U.S.C. 1039 and 26 U.S.C. 7213(a), are referenced to this guideline. Part F of the proposed amendment would also amend the Commentary to § 2H3.1 to reflect that 44 U.S.C. 3572 is referenced to the guideline.

An issue for comment is also provided.

Proposed Amendment

Appendix A (Statutory Index) is amended by inserting before the line referenced to 45 U.S.C. 359(a) the following new line reference:

''44 U.S.C. 3572 2H3.1''.

The Commentary to § 2H3.1 captioned ''Statutory Provisions'' is amended by striking ''47 U.S.C. 605'' and inserting ''44 U.S.C. 3572; 47 U.S.C. 605''.

Issue for Comment

1. In response to the Foundations for Evidence-Based Policymaking Act of 2018, Part F of the proposed amendment would reference 44 U.S.C. 3572 to § 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information). The Commission seeks comment on whether this proposed reference is appropriate and whether any additional changes to the guidelines are required to account for section 3572's offense conduct. Specifically, should the Commission amend § 2H3.1 to provide a higher or lower base offense level if 44 U.S.C. 3572 is the offense of conviction? If so, what should that base offense level be and why? Should the Commission add a specific offense characteristic to § 2H3.1 in response to section 3572? If so, what should that specific offense characteristic provide and why?

(G) National Defense Authorization Act for Fiscal Year 2020

Synopsis of Proposed Amendment: Part G of the proposed amendment responds to the National Defense Authorization Act for Fiscal Year 2020, Public Law 116–92 (2019).

The Act added a new statute at 10 U.S.C. 2733a regarding medical malpractice claims by members of the uniformed services. The new statute authorizes the Secretary of Defense to allow, settle, and pay a claim against the United States for personal injury or death that occurred during the service of a member of the uniformed services and that was caused by the medical malpractice of a health care provider of the Department of Defense, if certain requirements are met. Under section 2733a(c)(2), the Department of Defense is not liable for the payment of attorney fees for a claim under the new statute. However, section 2733(g)(1) prohibits any attorney from charging, demanding, receiving, or collecting fees in excess of 20 percent of any claim paid pursuant to the new statute. Any attorney who charges, demands, receives, or collects a fee in excess of 20 percent faces a statutory maximum term of imprisonment of not more than one year. *See* 10 U.S.C. 2733a(g)(2).

Part G of the proposed amendment would amend Appendix A (Statutory Index) to reference 10 U.S.C. 2733a(g)(2) to § 2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)). It would also amend the Commentary to § 2X5.2 to reflect that 10 U.S.C. 2733a(g)(2) is referenced to the guideline.

An issue for comment is also provided.

Proposed Amendment

Appendix A (Statutory Index) is amended by inserting before the line referenced to 12 U.S.C. 631 the following new line reference:

''10 U.S.C. 2733a(g)(2) 2X5.2''.

The Commentary to § 2X5.2 captioned ''Statutory Provisions'' is amended by striking ''18 U.S.C. 1365(f), 1801; 34 U.S.C. 12593; 49 U.S.C. 31310.'' and inserting ''10 U.S.C. 2733a(g)(2); 18 U.S.C. 1365(f), 1801; 34 U.S.C. 12593; 49 U.S.C. 31310. For additional statutory provision(s), *see* Appendix A (Statutory Index).''.

Issue for Comment

1. In response to the National Defense Authorization Act for Fiscal Year 2020, Part G of the proposed amendment would amend Appendix A (Statutory Index) to reference 10 U.S.C. 2733a(g)(2) to § 2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)). The Commission seeks comment on whether this proposed reference is appropriate and whether any additional changes to the guidelines are required to account for the new offense conduct at 10 U.S.C. 2733a(g)(2).

(H) Representative Payee Fraud Prevention Act of 2019

Synopsis of Proposed Amendment: Part H of the proposed amendment responds to the Representative Payee Fraud Prevention Act of 2019, Public Law 116–126 (2020).

The Act amended certain sections in chapters 83 (Retirement) and 84 (Federal Employees' Retirement System) of title 5 (Government Organization and Employees), United States, Code, relating to the Civil Services Retirement System (''CSRS'') and the Federal Employees Retirement System (''FERS''). Under both retirement programs, annuities that are due to a minor or an individual mentally incompetent or under other legal disability may be made to the guardian or other fiduciary of such individual. *See* 5 U.S.C. 8345(e), 8466(c).

The Act added two identical new offenses at 5 U.S.C. 8345a and 8466a, regarding embezzlement or conversion of payments due to a minor or an individual mentally incompetent or under other legal disability under CSRS and FERS. Both offenses apply to a ''representative payee.'' The Act added similar provisions to both chapters 83 and 84 of title 5 defining the term as ''a person (including an organization) designated under [section 8345(e)(1) or section 8466(c)(1)] to receive payments on behalf of a minor or an individual mentally incompetent or under other legal disability.'' 5 U.S.C. 8331(33), 8401(39).

The new offense at 5 U.S.C. 8345a prohibits a representative payee from embezzling or in any manner converting all or any part of the amounts received from payments under the CSRS retirement program for a use other than for the use and benefit of the minor or individual on whose behalf the payments were received. The new offense at 5 U.S.C. 8466a prohibits a representative payee from engaging in the same conduct prohibited under section 8345a for purposes of payments received under the FERS retirement program. Offenses under both sections 8345a and 8466a are punishable by a statutory maximum term of imprisonment of five years.

Part H of the proposed amendment would amend Appendix A (Statutory Index) to reference 5 U.S.C. 8345a and 8466a to § 2B1.1 (Theft, Property Destruction, and Fraud). Similar financial fraud and embezzlement offenses relating to social security, veterans' benefits, and welfare benefit and pension plans (such as 18 U.S.C. 664, 38 U.S.C. 6102, and 42 U.S.C. 408(a)(5), 1011(a)(4) and 1383a(a)(4)) are referenced to § 2B1.1. Part H of the proposed amendment would also amend the Commentary to § 2B1.1 to reflect that 5 U.S.C. 8345a and 8466a are referenced to the guideline.

An issue for comment is also provided.

Proposed Amendment

Appendix A (Statutory Index) is amended by inserting before the line referenced to 7 U.S.C. 6 the following new line references:

''5 U.S.C. 8345a 2B1.1
5 U.S.C. 8466a 2B1.1''.

The Commentary to § 2B1.1 captioned ''Statutory Provisions'' is amended by striking ''7 U.S.C. 6, 6b, 6c, 6h, 6o, 13, 23'' and inserting ''5 U.S.C. 8345a, 8466a; 7 U.S.C. 6, 6b, 6c, 6h, 6o, 13, 23''.

Issue for Comment

1. In response to the Representative Payee Fraud Prevention Act of 2019,

Part H of the proposed amendment would reference 5 U.S.C. 8345a and 8466a to § 2B1.1 (Theft, Property Destruction, and Fraud). The Commission seeks comment on whether these proposed references are appropriate and whether any additional changes to the guidelines are required to account for the offense conduct covered by sections 8345a and 8466a. Specifically, should the Commission amend § 2B1.1 to provide a higher or lower base offense level if 5 U.S.C. 8345a or § 8466a is the offense of conviction? If so, what should that base offense level be for each of these sections and why? Should the Commission add a specific offense characteristic to § 2B1.1 in response to 5 U.S.C. 8345a or § 8466a? If so, what should that specific offense characteristic provide and why?

(I) Stop Student Debt Relief Scams Act of 2019

Synopsis of Proposed Amendment: Part I of the proposed amendment responds to the Stop Student Debt Relief Scams Act of 2019, Public Law 116–251 (2020).

The Act created a new offense at 20 U.S.C. 1097(e). Current subsections (a) through (d) of section 1097 provide criminal penalties for crimes relating to student assistance programs, including embezzlement, theft, fraud, forgery, and making unlawful payments to a lender to acquire a loan. New subsection (e) of section 1097 prohibits knowingly using an access device (as defined in 18 U.S.C. 1029(e)(1)) issued to another person or obtained by fraud or false statement to access information technology systems of the Department of Education for purposes of obtaining commercial advantage or private financial gain, or in furtherance of any criminal or tortious act. The statutory maximum term of imprisonment for the offense is five years.

Part I of the proposed amendment would amend Appendix A (Statutory Index) to reference 20 U.S.C. 1097(e) to § 2B1.1 (Theft, Property Destruction, and Fraud). Section 1097(a), (b), and (d) offenses (theft, embezzlement, and fraud) are currently referenced to § 2B1.1, while section 1097(c) offenses (unlawful payments to acquire a loan) are referenced to § 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery). Part I of the proposed amendment would also amend the Commentary to § 2B1.1 to reflect that 20 U.S.C. 1097(a), (b), (d), and (e) are referenced to the guideline.

An issue for comment is also provided.

Proposed Amendment

Appendix A (Statutory Index) is amended by inserting before the line referenced to 21 U.S.C. 101 the following new line reference:

''20 U.S.C. 1097(e) 2B1.1''.

The Commentary to § 2B1.1 captioned ''Statutory Provisions'' is amended by striking ''19 U.S.C. 2401f'' and inserting ''19 U.S.C. 2401f; 20 U.S.C. 1097(a), (b), (d), (e)''.

Issue for Comment

1. In response to the Stop Student Debt Relief Scams Act of 2019, Part I of the proposed amendment would reference 20 U.S.C. 1097(e) to § 2B1.1 (Theft, Property Destruction, and Fraud). The Commission seeks comment on whether the proposed reference is appropriate and whether any additional changes to the guidelines are required to account for section 1097(e) offenses. Specifically, should the Commission amend § 2B1.1 to provide a higher or lower base offense level if 20 U.S.C. 1097(e) is the offense of conviction? If so, what should that base offense level be and why? Should the Commission add a specific offense characteristic to § 2B1.1 in response to 20 U.S.C. 1097(e)? If so, what should that specific offense characteristic provide and why?

(J) Protecting Lawful Streaming Act of 2020

Synopsis of Proposed Amendment: Part J responds to title II of Division Q of the Consolidated Appropriations Act, 2021, referred to as the Protecting Lawful Streaming Act of 2020, Public Law 116–260 (2020).

The Act created a new commercial streaming piracy offense at 18 U.S.C. 2319C (Illicit digital transmission services). Section 2319C(b) makes it unlawful to willfully, and for purposes of commercial advantage or private financial gain, offer or provide to the public a digital transmission service that (1) is primarily designed or provided for the purpose of publicly performing works protected under copyright law by means of a digital transmission without the authority of the copyright owner or the law; (2) has no commercially significant purpose or use other than to publicly perform works protected under copyright law by means of a digital transmission without the authority of the copyright owner or the law; or (3) is intentionally marketed to promote its use in publicly performing works protected under copyright law by means of a digital transmission without the authority of the copyright owner or the law. Section 2319C(a) provides definitions for some of the terms used in the statute.

A violation of section 2319C has a statutory maximum term of imprisonment of three years. 18 U.S.C. 2319C(c)(1). However, the maximum penalty increases to five years if (1) the offense was committed in connection with one or more works being prepared for commercial public performance; and (2) the offender knew or should have known that the work was being prepared for commercial public performance. *Id.* § 2319C(c)(2). A ten-year maximum penalty applies if the offense is a second or subsequent offense under 18 U.S.C. 2319C or § 2319(a). *Id.* § 2319C(c)(3).

Part J of the proposed amendment would amend Appendix A (Statutory Index) to reference 18 U.S.C. 2319C to § 2B5.3 (Criminal Infringement of Copyright or Trademark). Similar offenses, such as 17 U.S.C. 506 (prohibiting infringing a copyright of a work being prepared for commercial distribution) and 18 U.S.C. 2319A and 2319B (prohibiting the unauthorized recording and trafficking of live musical performances for commercial advantage or private financial gain, and the unauthorized recording of motion pictures in movie theaters), are referenced to § 2B5.3.

Issues for comment are also provided.

Proposed Amendment

Appendix A (Statutory Index) is amended by inserting before the line referenced to 18 U.S.C. 2320 the following new line reference:

''18 U.S.C. 2319C 2B5.3''.

Issues for Comment

1. In response to the Protecting Lawful Streaming Act of 2020, Part J of the proposed amendment would reference 18 U.S.C. 2319C to § 2B5.3 (Criminal Infringement of Copyright or Trademark). The Commission seeks comment on whether the proposed reference is appropriate and whether any additional changes to the guidelines are required to account for section 2319C offenses. Specifically, should the Commission amend § 2B5.3 to provide a higher or lower base offense level if 18 U.S.C. 2319C is the offense of conviction? If so, what should that base offense level be and why? Should the Commission add a specific offense characteristic to § 2B5.3 in response to 18 U.S.C. 2319C? If so, what should that specific offense characteristic provide and why?

The new statute at 18 U.S.C. 2319C provides enhanced penalties if (1) the offense was committed in connection with one or more works being prepared

for commercial public performance, and the offender knew or should have known that the work was being prepared for commercial public performance; or (2) if the offense is a second or subsequent offense under 18 U.S.C. 2319C or § 2319(a). Should the Commission amend § 2B5.3 to address these enhanced penalties? If so, how should the Commission address them and why?

2. Currently, § 2B5.3 includes a specific offense characteristic at subsection (b)(2) providing a 2-level enhancement ''[i]f the offense involved the display, performance, publication, reproduction, or distribution of a work being prepared for commercial distribution.'' The new offense at 18 U.S.C. 2319C mainly addresses the streaming (*i.e.,* offering or providing ''to the public a digital transmission service'') of works ''being prepared for commercial public performance.'' The Commission seeks comment on whether current § 2B5.3(b)(2) adequately accounts for section 2319C's offense conduct. If not, what revisions to § 2B5.3(b)(2) would be appropriate to account for this conduct? Should the Commission instead revise § 2B5.3 in general provide one or more specific offense characteristics or departure provisions to better account for this conduct? If so, what should the Commission provide?

(K) William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021

Synopsis of Proposed Amendment: Part K of the proposed amendment responds to the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283 (2021). The Act created several new offenses at 31 U.S.C. 5335 and 5336.

The Act included two regulatory offenses in a new section 5335 of title 31, United States Code. Section 5335(b) prohibits knowingly concealing, falsifying, or misrepresenting (or attempting to do so) from or to a financial institution, a material fact concerning the ownership or control of assets involved in a monetary transaction if (1) the person or entity who owns or controls the assets is a senior foreign political figure, or any immediate family member or close associate of a senior foreign political figure; and (2) the aggregate value of the assets involved in one or more monetary transactions is not less than $1,000,000. Section 5335(c) prohibits knowingly concealing, falsifying, or misrepresenting (or attempting to do so) from or to a financial institution, a material fact concerning the source of funds in a monetary transaction that (1) involves an entity found to be a primary money laundering concern under 31 U.S.C. 5318A or applicable regulations; and (2) violates the prohibitions or conditions prescribed under 31 U.S.C. 5318A(b)(5) or applicable regulations. Both new offenses cover conspiracies to commit the prohibited conduct and have a statutory maximum term of imprisonment of ten years. *See* 31 U.S.C. 5335(d).

The Act also added a new section 5336 to title 31, United States Code, concerning reporting requirements of beneficial ownership of certain entities. Specifically, section 5336(b) requires certain United States and foreign corporations, limited liability companies, and similar entities, to file annual reports with the Department of the Treasury's Financial Crimes Enforcement Network (''FinCEN''). The annual reports must identify an entity's beneficial owners (*i.e.,* those exercising substantial control or who own or control no less than 25% of the ownership interests), including names, dates of birth, street address, and unique identification numbers (such as passport numbers, driver's license numbers, or FinCEN identifiers). Section 5336(c) provides certain conditions under which FinCEN may disclose the beneficial ownership information to certain requesting agencies, including federal agencies, state, local and tribal law enforcement agencies, federal agencies on behalf of law enforcement, or a prosecutor or judge of a foreign country.

Section 5336 includes three new offenses relating to the provisions described above. First, section 5336(h)(1) prohibits (1) willfully providing, or attempting to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN; or (2) willfully failing to report complete or updated beneficial ownership information to FinCEN. The statutory maximum term of imprisonment for this offense is two years. Second, section 5336(c)(4) prohibits any employee or officer of a requesting agency from violating the protocols established by the regulations promulgated by the Secretary of the Treasury under section 5336, including unauthorized disclosure or use of the beneficial ownership information obtained from FinCEN. Third, section 5336(h)(2) prohibits the knowing disclosure or knowing use, without authorization, of beneficial ownership information obtained through a report submitted to FinCEN or a disclosure made by FinCEN. Both sections 5336(c)(4) and 5336(h)(2) offenses face a statutory maximum term of imprisonment of five years, with an enhanced penalty of up to ten years if the offense was committed while violating another law or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period.

Part K of the proposed amendment would amend Appendix A (Statutory Index) to reference 31 U.S.C. 5335 and 5336 to § 2S1.3 (Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports; Bulk Cash Smuggling; Establishing or Maintaining Prohibited Accounts). Similar offenses, such as offenses under 31 U.S.C. 5313 and 5318(g)(2), are referenced to § 2S1.3. Part K of the proposed amendment would also amend the Commentary to § 2S1.3 to reflect that 31 U.S.C. 5335 and 5336 are referenced to the guideline.

An issue for comment is also provided.

Proposed Amendment

Appendix A (Statutory Index) is amended by inserting before the line referenced to 31 U.S.C. 5363 the following new line references:

''31 U.S.C. 5335 2S1.3
31 U.S.C. 5336 2S1.3''.

The Commentary to § 2S1.3 captioned ''Statutory Provisions'' is amended by striking ''5332'' and inserting ''5332, 5335, 5336''.

Issue for Comment

1. In response to the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Part K of the proposed amendment would reference 31 U.S.C. 5335 and 5336 to § 2S1.3 (Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports; Bulk Cash Smuggling; Establishing or Maintaining Prohibited Accounts). The Commission seeks comment on whether these proposed references are appropriate and whether any additional changes to the guidelines are required to account for sections 5335 and 5336 offenses. Specifically, should the Commission amend § 2S1.3 to provide a higher or lower base offense level if 31 U.S.C. 5335 or § 5336 is the offense of conviction? If so, what should that base offense level be for each of these

sections and why? Should the Commission add a specific offense characteristic to § 2S1.3 in response to 31 U.S.C. 5335 and 5336? If so, what should that specific offense characteristic provide and why?

The new statute provides an enhanced penalty for offenses under 31 U.S.C. 5336(c)(4) and 5336(h)(2) offenses if the offense was committed while violating another law or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period. Should the Commission amend § 2S1.3 to address this enhanced penalty? If so, how should the Commission address it and why?

6. Career Offender

Synopsis of Proposed Amendment: This proposed amendment is a result of the Commission's multiyear work on § 4B1.2 (Definitions of Terms Used in Section 4B1.1), including possible amendments to (A) provide an alternative approach to the ''categorical approach'' in determining whether an offense is a ''crime of violence'' or a ''controlled substance offense''; and (B) address various application issues, including the meaning of ''robbery'' and ''extortion,'' and the treatment of inchoate offenses and offenses involving an offer to sell a controlled substance. *See* U.S. Sent'g Comm'n, ''Notice of Final Priorities,'' 87 FR 67756 (Nov. 9, 2022). The proposed amendment contains four parts (Parts A through D). The Commission is considering whether to promulgate any or all of these parts, as they are not mutually exclusive.

Part A of the proposed amendment would amend § 4B1.2 to address recurrent criticism of the categorical approach and modified categorical approach, which courts have applied in the context of § 4B1.1 (Career Offender). It eliminates the categorical approach from the guidelines by defining ''crime of violence'' and ''controlled substance offense'' based upon a list of guidelines, rather than offenses or elements of an offense. Part A would also make conforming changes to the guidelines that use the terms ''crime of violence'' and ''controlled substance offense'' and define these terms by making specific reference to § 4B1.2. Issues for comment are also provided.

Part B of the proposed amendment would address the concern that certain robbery offenses, such as Hobbs Act robbery, no longer constitute a ''crime of violence'' under § 4B1.2, as amended in 2016. It would amend § 4B1.2 to add a definition of ''robbery'' that mirrors the Hobbs Act robbery definition at 18 U.S.C. 1951(b)(1). Part B of the proposed amendment also brackets a provision defining the phrase ''actual or threatened force,'' for purposes of the new ''robbery'' definition, as ''force sufficient to overcome a victim's resistance,'' informed by the Supreme Court's holding in *Stokeling* v. *United States,* 139 S. Ct. 544, 550 (2019). Finally, Part B of the proposed amendment would make conforming changes to the definition of ''crime of violence'' in the Commentary to § 2L1.2 (Unlawfully Entering or Remaining in the United States), which includes robbery as an enumerated offense. Issues for comment are also provided.

Part C of the proposed amendment would amend § 4B1.2 to address two circuit conflicts regarding the commentary provision stating that the terms ''crime of violence'' and ''controlled substance offense'' include the offenses of aiding and abetting, conspiring to commit, and attempting to commit a ''crime of violence'' and a ''controlled substance offense.'' Two options are presented. Issues for comment are also provided.

Part D of the proposed amendment would amend the definition of ''controlled substance offense'' in § 4B1.2(b) to include offenses involving an offer to sell a controlled substance and offenses described in 46 U.S.C. 70503(a) and § 70506(b). An issue for comment is also provided.

(A) Listed Guidelines Approach

Synopsis of Proposed Amendment: Part A of the proposed amendment addresses recurrent criticism of the categorical approach and modified categorical approach, which courts have applied in the context of § 4B1.1 (Career Offender). It eliminates the categorical approach from the guidelines by defining ''crime of violence'' and ''controlled substance offense'' based upon a list of guidelines, rather than offenses or elements of an offense.

The Categorical Approach as Developed by Supreme Court Jurisprudence

A number of statutes and guidelines provide enhanced penalties for defendants convicted of offenses that meet the definition of a particular category of crimes. Courts typically determine whether a conviction fits within the definition of a particular category of crimes through the application of the ''categorical approach'' and ''modified categorical approach,'' as set forth by Supreme Court jurisprudence. The categorical approach requires courts to look only to the statute of conviction, rather than the particular facts underlying the conviction, to determine whether the offense meets the definition of a particular category of crimes. In applying the modified categorical approach, courts are allowed to look to certain additional sources of information, now commonly referred to as the ''*Shepard* documents,'' to determine the elements of the offense of conviction. *See Taylor* v. *United States,* 495 U.S. 575 (1990) (holding that, under the ''categorical approach,'' courts must compare the elements of the offense as described in the statute of conviction to the elements of the applicable definition of a particular category of crimes to determine if such offense criminalizes the same or a narrower range of conduct than the definition captures in order to serve as a predicate offense); *Shepard* v. *United States,* 544 U.S. 13 (2005) (holding that courts may use a ''modified categorical approach'' in cases where the statute of conviction is ''overbroad,'' that is, the statute defines both conduct that fits within the applicable definition and conduct that does not). However, the Supreme Court later held that a court may only apply the modified categorical approach if the court first conducts a threshold inquiry to determine whether a statute of conviction is ''divisible.'' *See Descamps* v. *United States,* 570 U.S. 254 (2013); *Mathis* v. *United States*, 579 U.S. 500 (2016). Thus, under *Descamps* and *Mathis,* if a statute of conviction is ''indivisible'' and criminalizes a broader range of conduct than the applicable definition, the entire statute is categorically disqualified from serving as a predicate offense, even if a defendant was convicted under a part of the statute that falls within the definition.

Application of the Categorical Approach in the Guidelines

Even though Supreme Court jurisprudence on this subject pertains only to statutory provisions (*e.g.,* 18 U.S.C. 924(e)), courts have applied the categorical approach and the modified categorical approach to guideline provisions. For example, courts have used these approaches to determine if a conviction is a ''crime of violence'' or a ''controlled substance offense'' for purposes of applying the career offender guideline at § 4B1.1. Additionally, several other guidelines, such as § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), also rely upon the career offender guideline's definitions of ''crime of violence'' and ''controlled substance offense.'' Therefore, courts have also used the categorical approach for purposes of these guidelines.

Commission data indicates that of the 53,779 offenders sentenced in fiscal year 2021, 1,246 offenders (2.3%) were sentenced under the career offender guideline. An additional 3,239 offenders (6.0% of the offenders sentenced in fiscal year 2021) sentenced under § 2K2.1 were assigned to a base offense level that requires a prior conviction for a ''crime of violence'' or ''controlled substance offense.''

While representing a relatively small portion of the federal caseload each year, the categorical approach continues to result in substantial litigation. Since 1990, the Supreme Court has issued dozens of opinions that have shaped the categorical approach and modified categorical approach. The Commission identified over 3,300 written opinions over the past five years in which federal courts have invoked, discussed, or applied the categorical approach. More than half of those opinions focused on categorical approach issues raised in applying guideline provisions while the remainder dealt with statutory provisions (*e.g.,* 18 U.S.C. 924(c)).

General Criticism of the Categorical Approach as Developed by Supreme Court Jurisprudence

The Commission has received significant comment over the years regarding the complexity and limitations of the categorical approach, as developed by Supreme Court jurisprudence. Specifically, courts and stakeholders have criticized the requirement of a threshold inquiry of whether a statute of conviction is divisible or indivisible as resulting in an overly complex and time-consuming analysis that often leads to counterintuitive and arbitrary results. For example, dissenting justices in *Descamps* and *Mathis* expressed concern that the ''divisibility'' inquiry is confusing and ''will cause serious practical problems'' (*e.g., Descamps,* 570 U.S. at 284 (Alito, J., dissenting); *Mathis,* 579 U.S. at 523–33 (Breyer, J., joined by Ginsberg, J., dissenting)), and noted that ''lower court judges[,] who must regularly grapple with the modified categorical approach, struggle[ ] to understand *Descamps*'' (*Mathis,* 579 U.S. at 538 (Alito, J., dissenting)).

In the aftermath of *Descamps* and *Mathis,* commenters have stressed that the categorical approach has become increasingly difficult to apply, while simultaneously producing results less reflective of the types of conduct § 4B1.1 was intended to capture. *See, e.g.,* Public Comment on Proposed Amendments (Feb. 2019), *at https://www.ussc.gov/policymaking/public-comment/public-comment-february-19-2019.* Courts have further criticized the categorical approach as a ''legal fiction,'' in which an offense that a defendant commits violently is deemed to be a non-violent offense because other defendants at other times could have been convicted of violating the same statute without violence, often leading to ''odd'' and ''arbitrary'' results. *See, e.g., United States* v. *Davis*, 875 F.3d 592, 595 (11th Cir. 2017); *United States* v. *McCollum,* 885 F.3d 300, 309–14 (4th Cir. 2018) (Traxler, J., concurring); *id.* (Wilkinson, J., dissenting).

Proposed Approach for § 4B1.2

Part A of the proposed amendment eliminates the categorical approach from the guidelines by defining ''crime of violence'' and ''controlled substance offense'' based upon a list of guidelines, rather than offenses or elements of an offense. The list of Chapter Two guidelines included in the definition of ''crime of violence'' is informed by the guidelines that the Commission has identified as covering ''violent instant offenses'' for purposes of the study of recidivism of federal offenders. *See* Courtney R. Semisch, Cassandra Syckes & Landyn Rookard, U.S. Sent'g Comm'n, Recidivism of Federal Violent Offenders Released in 2010 (2022), *https://www.ussc.gov/research/research-reports/recidivism-federal-violent-offenders-released-2010.* The Chapter Two guidelines listed in the definition of ''controlled substance offense'' are the guidelines that cover the offenses expressly referenced in the career offender directive at 28 U.S.C. 994(h).

The focus of inquiry set forth in the proposed approach is whether the defendant was convicted of a federal offense for which the ''applicable Chapter Two guideline'' is listed in § 4B1.2 or a state offense for which the ''most appropriate'' offense guideline would have been one of the Chapter Two guidelines listed in § 4B1.2 had the defendant been sentenced under the guideline in federal court. The court would make this determination based on: (1) the elements, and any means of committing such an element, that formed the basis of the defendant's conviction, and (2) the offense conduct cited in the count of conviction, or a fact admitted or confirmed by the defendant, that establishes any such elements or means.

The proposed approach is intended to remove the complexity inherent in determining whether a statute of conviction is ''divisible'' or ''indivisible'' based on a threshold ''elements-means'' inquiry. Thus, the court would not be required to determine whether an indivisible statute criminalizes conduct that does not meet the applicable definition; rather, the court would be required to determine only whether the Chapter Two guideline that covers the type of conduct most similar to the offense charged in the count of which the defendant was convicted is listed in § 4B1.2. The proposed approach would also expand the use of additional sources of information by permitting courts to use the *Shepard* documents when necessary to make the career offender determination.

Conforming Changes to Other Guidelines

Finally, Part A of the proposed amendment would make conforming changes to the guidelines that use the terms ''crime of violence'' and ''controlled substance offense'' and define these terms by making specific reference to § 4B1.2. Accordingly, the proposed amendment would amend the Commentary to § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), § 2S1.1 (Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity), § 4A1.2 (Definitions and Instructions for Computing Criminal History), § 4B1.4 (Armed Career Criminal), and § 7B1.1 (Classification of Violations (Policy Statement)).

Issues for comment are also provided.

Proposed Amendment

Section 4B1.2(a) is amended by striking the following:

''The term 'crime of violence' means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

(1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or

(2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or explosive material as defined in 18 U.S.C. 841(c).'',

and inserting the following:

''*Crime of Violence.*—

(1) *In General.*—The term 'crime of violence' means any of the following offenses:

(A) Any offense under federal law, punishable by imprisonment for a term exceeding one year—

(i) for which the applicable Chapter Two guideline (as determined under the provisions of § 1B1.2 (Applicable Guidelines)); or

(ii) to which § 2X1.1 (Attempt, Solicitation, or Conspiracy) or § 2X2.1 (Aiding and Abetting) applies and the appropriate guideline for the offense the defendant aided or abetted, or conspired, solicited, or attempted to commit;

is one of the guidelines listed in paragraph (2).

(B) Any offense under state law (or the offense of aiding or abetting, or conspiring, soliciting, or attempting to commit any such offense), punishable by imprisonment for a term exceeding one year, for which the most appropriate guideline would have been one of the Chapter Two guidelines listed in paragraph (2) had the defendant been sentenced under the guidelines in federal court (as determined under subsection (c)).

(2) *Guidelines Listed.*—For purposes of the 'crime of violence' definition, use the following Chapter Two guidelines:

• *Homicide.*—§§ 2A1.1 (First Degree Murder), 2A1.2 (Second Degree Murder), 2A1.3 (Voluntary Manslaughter), 2A1.5 (Conspiracy or Solicitation to Commit Murder);

• *Assault.*—§§ 2A2.1 (Attempted Murder), 2A2.2 (Aggravated Assault), 2A2.4 (Obstructing or Impeding Officers);

• *Criminal Sexual Abuse.*—§§ 2A3.1 (Sexual Abuse), 2A3.3 (Sexual Abuse of a Ward), 2A3.4 (Abusive Sexual Contact);

• *Kidnapping, Abduction, and Unlawful Restraint.*—§ 2A4.1 (Kidnapping, Abduction, Unlawful Restraint);

• *Air Piracy and Offenses Against Mass Transportation Systems.*—§§ 2A5.1 (Aircraft Piracy), 2A5.2 (Interference with Flight or Cabin Crew, or Mass Transportation);

• *Threatening or Harassing Communications, Hoaxes, Stalking, and Domestic Violence.*—§§ 2A6.1 (Threatening or Harassing Communications, Hoaxes, or False Liens) (only if the offense involve a threat to injure a person or property), 2A6.2 (Stalking or Domestic Violence);

• *Robbery and Extortion.*—§§ 2B3.1 (Robbery), 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage);

• *Racketeering.*—§§ 2E1.1 (Unlawful Conduct Relating to Racketeering), 2E1.2 (Travel or Transportation Aiding Racketeering), 2E1.3 (Violent Crimes Aiding Racketeering), 2E1.4 (Using Certain Facilities to Commit Murder-For-Hire);

• *Promoting a Commercial Sex Act or Prohibited Sexual Conduct with Minors.*—§ 2G1.3 (Promoting Commercial Sex Acts or Prohibited Sexual Conduct with Minors; Using Certain Facilities to Transport Information about Minors);

• *Sexual Exploitation of Minors.*—§§ 2G2.1 (Sexual Exploitation of Minors; Production of Child Pornography), 2G2.3 (Selling or Buying Children for Pornography Production), 2G2.6 (Child Exploitation Enterprises);

• *Peonage and Slavery.*—§ 2H4.1 (Peonage, Slavery, Child Soldiers);

• *Explosives and Arson.*—§§ 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials), 2K1.4 (Arson);

• *Firearms.*—§§ 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition) (only if the offense involved possession of a firearm that is described in 26 U.S.C. 5845(a)), 2K2.4 (Using Certain Firearms, Ammunition, or Explosives During or in Relation to Certain Crimes);

• *Material Support to Terrorists.*—§ 2M5.3 (Providing Material Support to Certain Terrorists or for Terrorist Purposes);

• *Nuclear, Biological, and Chemical Weapons and Materials.*—§ 2M6.1 (Unlawful Activity Involving Nuclear, Biological, or Chemical Weapons or Materials, or Other Weapons of Mass Destruction);

• *Use of Minors in Crimes of Violence.*—§ 2X6.1 (Using Minors in Crimes of Violence).

(3) *Exclusion.*—For purposes of this guideline, a conviction under federal or state law based upon a finding of recklessness or negligence is not a 'crime of violence.' ''.

Section 4B1.2(b) is amended by striking the following:

''The term 'controlled substance offense' means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.'',

and inserting the following:

Controlled Substance Offense.—

(1) *In General.*—The term 'controlled substance offense' means any of the following offenses:

(A) Any offense under federal law, punishable by imprisonment for a term exceeding one year—

(i) for which the applicable Chapter Two guideline (as determined under the provisions of § 1B1.2 (Applicable Guidelines)); or

(ii) to which § 2X1.1 (Attempt, Solicitation, or Conspiracy) or § 2X2.1 (Aiding and Abetting) applies and the appropriate guideline for the offense the defendant aided or abetted, or conspired, solicited, or attempted to commit;

is one of the guidelines listed in paragraph (2).

(B) Any offense under state law (or the offense of aiding or abetting, or conspiring, soliciting, or attempting to commit any such offense), punishable by imprisonment for a term exceeding one year, for which the most appropriate guideline would have been one of the Chapter Two guidelines listed in paragraph (2) had the defendant been sentenced under the guidelines in federal court (as determined under subsection (c)).

(C) Any offense described in chapter 705 of title 46, United States Code.

(2) *Guidelines Listed.*—For purposes of the 'controlled substance offense' definition, use the following Chapter Two guidelines:

• §§ 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking); 2D1.9 (Placing or Maintaining Dangerous Devices on Federal Property to Protect Unlawful Production of Drugs); 2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possessing Listed Chemicals)[;]

[• §§ 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Certain Individuals); 2D1.6 (Use of Communication Facility in Committing Drug Offense), if the appropriate guideline for the underlying offense is also listed in this paragraph; 2D1.8 (Renting or Managing Drug Establishments); 2D1.10 (Life Endangerment While Manufacturing Drugs); 2D1.12 (Unlawful Possession, Manufacture, Distribution, Transportation, Exportation, or Importation of Prohibited Items)].

(3) *Exclusion.*—For purposes of this guideline, a conviction under federal or state law based upon a finding of recklessness or negligence is not a 'controlled substance offense.' ''.

Section 4B1.2 is amended—

by redesignating subsection (c) as subsection (d);

by adding the following new subsection (c):

''(c) *Determination of Whether a State Offense Is a 'Crime of Violence' or a 'Controlled Substance Offense'.*—For purposes of determining whether a state offense is a 'crime of violence' or a 'controlled substance offense' under

subsection (a)(1)(B) or (b)(1)(B), the 'most appropriate guideline' is the Chapter Two guideline that covers the type of conduct most similar to the offense charged in the count of which the defendant was convicted. The court shall make this determination based on: (1) the elements, and any means of committing such an element, that formed the basis of the defendant's conviction, and (2) the offense conduct cited in the count of conviction, or a fact admitted or confirmed by the defendant, that establishes any such elements or means.'';

and in subsection (d) (as so redesignated) by inserting at the beginning the following new heading ''*Two Prior Felony Convictions.*—''.

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended—

in Note 1 by striking the following:

''*Definitions.*—For purposes of this guideline—

'Crime of violence' and 'controlled substance offense, include the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.

'Forcible sex offense' includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (A) an offense described in 18 U.S.C. 2241(c) or (B) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

'Extortion' is obtaining something of value from another by the wrongful use of (A) force, (B) fear of physical injury, or (C) threat of physical injury.

Unlawfully possessing a listed chemical with intent to manufacture a controlled substance (21 U.S.C. 841(c)(1)) is a 'controlled substance offense.'

Unlawfully possessing a prohibited flask or equipment with intent to manufacture a controlled substance (21 U.S.C. 843(a)(6)) is a 'controlled substance offense.'

Maintaining any place for the purpose of facilitating a drug offense (21 U.S.C. 856) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense facilitated) was a 'controlled substance offense.'

Using a communications facility in committing, causing, or facilitating a drug offense (21 U.S.C. 843(b)) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense committed, caused, or facilitated) was a 'controlled substance offense.'

A violation of 18 U.S.C. 924(c) or § 929(a) is a 'crime of violence' or a 'controlled substance offense' if the offense of conviction established that the underlying offense was a 'crime of violence' or a 'controlled substance offense'. (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

'Prior felony conviction' means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen or older is an adult conviction. A conviction for an offense committed prior to age eighteen is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (*e.g.,* a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).'',

and inserting the following:

'' *'Prior Felony Conviction' Defined.*—'Prior felony conviction,' for purposes of this guideline, means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen or older is an adult conviction. A conviction for an offense committed prior to age eighteen is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (*e.g.,* a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).'';

in Note 2 by striking the following:

''*Offense of Conviction as Focus of Inquiry.*—Section 4B1.1 (Career Offender) expressly provides that the instant and prior offenses must be crimes of violence or controlled substance offenses of which the defendant was convicted. Therefore, in determining whether an offense is a crime of violence or controlled substance for the purposes of § 4B1.1 (Career Offender), the offense of conviction (*i.e.,* the conduct of which the defendant was convicted) is the focus of inquiry.'',

and inserting the following:

''*Determination of Whether a State Offense Is a 'Crime of Violence' or a 'Controlled Substance Offense.'*—In determining whether a state offense is a 'crime of violence' or a 'controlled substance offense' under subsection (a)(1)(B) or (b)(1)(B), the court may only consider the statute of conviction and the following sources of information:

(A) The judgment of conviction.

(B) The charging document.

(C) The jury instructions.

(D) The judge's formal rulings of law or findings of fact.

(E) The plea agreement or transcript of colloquy between judge and defendant in which the factual basis of the guilty plea was confirmed by the defendant.

(F) Any explicit factual finding by the trial judge to which the defendant assented.

(G) Any comparable judicial record of the sources described in paragraphs (A) through (F).

The fact that the statute of conviction describes conduct that is broader than, or encompasses types of conduct in addition to, the type of conduct covered by any of the Chapter Two guidelines listed in subsection (a)(2) or (b)(2) is not determinative.'';

in Note 3 by striking ''The provisions of § 4A1.2 (Definitions and Instructions for Computing Criminal History) are applicable to the counting of convictions under § 4B1.1.'' and inserting the following:

''The provisions of § 4A1.2 (Definitions and Instructions for Computing Criminal History) are applicable to the counting of convictions under § 4B1.1. Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2(a)(2).'';

and by striking Note 4 as follows:

''*Upward Departure for Burglary Involving Violence.*—There may be cases in which a burglary involves violence, but does not qualify as a 'crime of violence' as defined in § 4B1.2(a) and, as a result, the defendant does not receive a higher offense level or higher Criminal History Category that would have applied if the burglary qualified as a 'crime of violence.' In such a case, an upward departure may be appropriate.''.

The Commentary to § 4B1.2 is amended by adding at the end the following:

''*Background:* Section 4B1.2 defines the terms 'crime of violence,' 'controlled substance offense,' and 'two prior felony convictions' for purposes of § 4B1.1 (Career Offender). Prior to [2023], to determine if an offense met the definition of 'crime of violence' or 'controlled substance offense' in § 4B1.2, courts typically used the categorical approach and the modified categorical approach, as set forth in Supreme Court jurisprudence. *See, e.g., Taylor* v. *United States,* 495 U.S. 575 (1990); *Shepard* v. *United States,* 544 U.S. 13 (2005); *Descamps* v. *United States,* 570 U.S. 254 (2013); *Mathis* v. *United States,* 579 U.S. 500 (2016). These Supreme Court cases, however, involved statutory provisions (*e.g.,* 18 U.S.C. 924(e)) rather than guideline provisions.

In [2023], the Commission amended § 4B1.2 to set forth an approach for determining whether an offense is a 'crime of violence' or a 'controlled substance offense' that does not require the application of the categorical approach and modified categorical approach established by Supreme Court jurisprudence. *See* USSG App. C, Amendment [ ] (effective [Date]). The definitions of 'crime of violence' and 'controlled substance offense,' rather than describing offenses or elements of an offense, are based upon a list of guidelines. The focus of inquiry is whether the defendant was convicted of a federal offense for which the applicable Chapter Two guideline is one of the listed guidelines, or a state offense for which the 'most appropriate' Chapter Two guideline would have been one of the listed guidelines had the defendant been sentenced in federal court under the guidelines. The approach set forth by this guideline requires the court to consider not only the statute of conviction, but also the offense conduct cited in the count of conviction, or a fact admitted or confirmed by the defendant, that establishes any of the elements, and any means of committing such an element, that formed the basis of the defendant's conviction. The court is also permitted to use certain additional sources of information, as appropriate, while conducting this inquiry.''.

The Commentary to § 2K1.3 captioned ''Application Notes'' is amended in Note 2—

in the paragraph that begins '' 'Controlled substance offense' has the meaning'' by striking ''has the meaning given that term in § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2 (Definitions of Terms Used in Section 4B1.1)'' and inserting ''means a 'controlled substance offense' as defined and determined in accordance with § 4B1.2 (Definitions of Terms Used in Section 4B1.1)'';

and in the paragraph that begins '' 'Crime of violence' has the meaning'' by striking ''has the meaning given that term in § 4B1.2(a) and Application Note 1 of the Commentary to § 4B1.2'' and inserting ''means a 'crime of violence' as defined and determined in accordance with § 4B1.2 (Definitions of Terms Used in Section 4B1.1)''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended—

in Note 1—

in the paragraph that begins '' 'Controlled substance offense' has the meaning'' by striking ''has the meaning given that term in § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2 (Definitions of Terms Used in Section 4B1.1)'' and inserting ''means a 'controlled substance offense' as defined and determined in accordance with § 4B1.2 (Definitions of Terms Used in Section 4B1.1)'';

and in the paragraph that begins '' 'Crime of violence' has the meaning'' by striking ''has the meaning given that term in § 4B1.2(a) and Application Note 1 of the Commentary to § 4B1.2'' and inserting ''means a 'crime of violence' as defined and determined in accordance with § 4B1.2 (Definitions of Terms Used in Section 4B1.1)'';

and in Note 13(B) by striking ''have the meaning given those terms in § 4B1.2 (Definitions of Terms Used in Section 4B1.1)'' and inserting ''mean a 'crime of violence' and a 'controlled substance offense' as defined and determined in accordance with § 4B1.2 (Definitions of Terms Used in Section 4B1.1)''.

The Commentary to § 2S1.1 captioned ''Application Notes'' is amended in Note 1, in the paragraph that begins '' 'Crime of violence' has the meaning'' by striking ''has the meaning given that term in subsection (a)(1) of § 4B1.2 (Definitions of Terms Used in Section 4B1.1)'' and inserting ''means a 'crime of violence' as defined and determined in accordance with § 4B1.2 (Definitions of Terms Used in Section 4B1.1)''.

The Commentary to § 4A1.1 captioned ''Application Notes'' is amended in Note 5 by striking ''has the meaning given that term in § 4B1.2(a)'' and inserting ''means a 'crime of violence' as defined and determined in accordance with § 4B1.2 (Definitions of Terms Used in Section 4B1.1)''.

Section 4A1.2(p) is amended by striking ''the definition of 'crime of violence' is that set forth in § 4B1.2(a)'' and inserting '' 'crime of violence' means a 'crime of violence' as defined and determined in accordance with § 4B1.2 (Definitions of Terms Used in Section 4B1.1)''.

Section 4B1.4 is amended—

in subsection (b)(3)(A) by striking ''in connection with either a crime of violence, as defined in § 4B1.2(a), or a controlled substance offense, as defined in § 4B1.2(b)'' and inserting ''in connection with either a crime of violence or a controlled substance offense, as defined and determined in accordance with § 4B1.2 (Definitions of Terms Used in Section 4B1.1)'';

and in subsection (c)(2) by striking ''in connection with either a crime of violence, as defined in § 4B1.2(a), or a controlled substance offense, as defined in § 4B1.2(b)'' and inserting ''in connection with either a crime of violence or a controlled substance offense, as defined and determined in accordance with § 4B1.2 (Definitions of Terms Used in Section 4B1.1)''.

The Commentary to § 5K2.17 captioned ''Application Note'' is amended in Note 1 by striking ''are defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1)'' and inserting ''mean a 'crime of violence' and a 'controlled substance offense' as defined and determined in accordance with § 4B1.2 (Definitions of Terms Used in Section 4B1.1)''.

The Commentary to § 7B1.1 captioned ''Application Notes'' is amended—

in Note 2 by striking ''is defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1). *See* § 4B1.2(a) and Application Note 1 of the Commentary to § 4B1.2'' and inserting ''means a 'crime of violence' as defined and determined in accordance with § 4B1.2 (Definitions of Terms Used in Section 4B1.1)'';

and in Note 3 by striking ''is defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1). *See* § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2'' and inserting ''means a 'controlled substance offense' as defined and determined in accordance with § 4B1.2 (Definitions of Terms Used in Section 4B1.1)''.

Issues for Comment

1. Part A of the proposed amendment would allow courts to look to the documents expressly approved in *Taylor* v. *United States,* 495 U.S. 575 (1990), and *Shepard* v. *United States,* 544 U.S. 13 (2005), in determining whether a conviction is a ''crime of violence'' or a ''controlled substance offense.''

The Commission seeks comment on whether additional or different guidance

should be provided. For example, should the Commission provide a specific set of factors to assess the reliability of a source of information, such as whether the document came out of the adversarial process, was accepted by both parties, or was made by an impartial third party? Should the Commission list specific sources or types of sources that courts may consider, in addition to the sources expressly approved in *Taylor* and *Shepard* (*i.e.,* the *Shepard* documents)? Are there any documents or types of information that should be expressly excluded?

2. The Commentary to § 2L1.2 (Unlawfully Entering or Remaining in the United States) contains definitions for the terms ''crime of violence'' and ''drug trafficking offense'' that closely track the definitions of ''crime of violence'' and ''controlled substance offense,'' respectively, in § 4B1.2(b). *See* USSG § 2L1.2, comment. (n.2).

If the Commission were to promulgate Part A of the proposed amendment, should the Commission also amend the Commentary to § 2L1.2 to mirror the proposed approach for § 4B1.2?

(B) Meaning of ''Robbery''

Synopsis of Proposed Amendment: In 2016, the Commission amended § 4B1.2 (Definitions of Terms Used in Section 4B1.1) to, among other things, delete the ''residual clause'' and revise the ''enumerated offenses clause'' by moving enumerated offenses that were previously listed in the commentary to the guideline itself. *See* USSG, App. C, Amendment 798 (effective Aug. 1, 2016). The ''enumerated offenses clause'' identifies specific offenses that qualify as crimes of violence. Although the guideline relies on existing case law for purposes of defining most enumerated offenses, the amendment added to the Commentary to § 4B1.2 definitions for two of the enumerated offenses: ''forcible sex offense'' and ''extortion.''

''Extortion'' is defined as ''obtaining something of value from another by the wrongful use of (A) force, (B) fear of physical injury, or (C) threat of physical injury.'' USSG § 4B1.2, comment. (n.1). Under case law existing at the time of the amendment, courts generally defined extortion as ''obtaining something of value from another with his consent induced by the wrongful use of force, fear, or threats,'' based on the Supreme Court's holding in *United States* v. *Nardello,* 393 U.S. 286, 290 (1969) (defining ''extortion'' for purposes of 18 U.S.C. 1952). However, consistent with the Commission's goal of focusing the career offender and related enhancements on the most dangerous offenders, the amendment narrowed the generic definition of extortion by limiting it to offenses having an element of force or an element of fear or threats ''of physical injury,'' as opposed to non-violent threats such as injury to reputation.

The Department of Justice has expressed concern that courts have held that certain robbery offenses, such as Hobbs Act robbery, no longer constitute a ''crime of violence'' under the guideline, as amended in 2016, because the statute of conviction does not fit either the generic definition of ''robbery'' or the new guideline definition of ''extortion.'' *See, e.g.,* Annual Letter from the Department of Justice to the Commission (Aug. 10, 2018), at *https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20180810/DOJ.pdf.* The Hobbs Act defines the term ''robbery'' as ''the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person *or property . . . .* '' 18 U.S.C. 1951(b)(1) (emphasis added). Following the 2016 amendment, every circuit court addressing the issue has concluded that Hobbs Act robbery does not fall within § 4B1.2's narrow definition of ''crime of violence.'' *See United States* v. *Chappelle,* 41 F.4th 102 (2d Cir. 2022); *United States* v. *Scott*, 14 F.4th 190 (3d Cir. 2021); *United States* v. *Prigan*, 8 F.4th 1115 (9th Cir. 2021); *United States* v. *Green*, 996 F.3d 176 (4th Cir. 2021); *Bridges* v. *United States,* 991 F.3d 793 (7th Cir. 2021); *United States* v. *Eason,* 953 F.3d 1184 (11th Cir. 2020); *United States* v. *Camp,* 903 F.3d 594 (6th Cir. 2018); *United States* v. *Edling,* 895 F.3d 1153 (9th Cir. 2018); *United States* v. *O'Connor,* 874 F.3d 1147 (10th Cir. 2017). At least two circuits—the Ninth and Tenth Circuits—have found ambiguity as to whether the guideline definition of extortion includes injury to property, and (under the rule of lenity) both circuits have interpreted the new definition as excluding prior convictions where the statute encompasses injury to property offenses, such as Hobbs Act robbery. See, *e.g., United States* v. *O'Connor,* 874 F.3d 1147 (10th Cir. 2017) (Hobbs Act robbery); *United States* v. *Edling,* 895 F.3d 1153 (9th Cir. 2018) (Nevada robbery).

Part B of the proposed amendment would amend § 4B1.2 to address this issue. First, it would move the definitions of enumerated offenses (*i.e.,* ''forcible sex offense'' and ''extortion'') and ''prior felony conviction'' from the Commentary to § 4B1.2 to a new subsection (d) in the guideline itself. Second, Part B of the proposed amendment would add to new subsection (d) a definition of ''robbery'' that mirrors the ''robbery'' definition at 18 U.S.C. 1951(b)(1). Specifically, it would provide that ''robbery'' is ''the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.'' Finally, Part B of the proposed amendment brackets the possibility of defining the phrase ''actual or threatened use of force,'' for purposes of the ''robbery'' definition, as ''force that is sufficient to overcome a victim's resistance.'' This definition is informed by the Supreme Court's holding in *Stokeling* v. *United States,* 139 S. Ct. 544 (2019).

In addition, Part B of the proposed amendment sets forth conforming changes to the definition of ''crime of violence'' in the Commentary to § 2L1.2 (Unlawfully Entering or Remaining in the United States), which includes robbery as an enumerated offense.

Issues for comment are also provided.

Proposed Amendment

Section 4B1.2(a) is amended by inserting at the beginning the following new heading ''*Crime of Violence.*—''.

Section 4B1.2(b) is amended by inserting at the beginning the following new heading ''*Controlled Substance Offense.*—''.

Section 4B1.2(c) is amended by inserting at the beginning the following new heading ''*Two Prior Felony Convictions.*—''.

Section 4B1.2 is amended by adding at the end the following new subsection (d):

''(d) *Additional Definitions.*—

(1) *Forcible Sex Offense.*—'Forcible sex offense' includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (A) an offense described in 18 U.S.C. 2241(c) or (B) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(2) *Extortion.*—'Extortion' is obtaining something of value from another by the wrongful use of (A) force, (B) fear of physical injury, or (C) threat of physical injury.

(3) *Robbery.*—'Robbery' is the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. [The phrase 'actual or threatened force' refers to force that is sufficient to overcome a victim's resistance.]

(4) *Prior Felony Conviction.*— 'Prior felony conviction' means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen or older is an adult conviction. A conviction for an offense committed prior to age eighteen is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (*e.g.,* a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).''.

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended in Note 1—

in the heading by striking ''*Definitions.*—'' and inserting ''*Further Considerations Regarding 'Crimes of Violence' and 'Controlled Substance Offenses'.*—'';

by striking the following two paragraphs:

'' 'Forcible sex offense' includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (A) an offense described in 18 U.S.C. 2241(c) or (B) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

'Extortion' is obtaining something of value from another by the wrongful use of (A) force, (B) fear of physical injury, or (C) threat of physical injury.'';

and by striking the last paragraph as follows:

'' 'Prior felony conviction' means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen or older is an adult conviction. A conviction for an offense committed prior to age eighteen is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (*e.g.,* a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).''.

The Commentary to § 2L1.2 captioned ''Application Notes'' is amended in Note 2, in the paragraph that begins '' 'Crime of violence' means'' by inserting after ''territorial jurisdiction of the United States.'' the following:

'' 'Robbery' is the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. [The phrase 'actual or threatened force' refers to force that is sufficient to overcome a victim's resistance.]''.

Issues for Comment

1. Part B of the proposed amendment would provide a definition of ''robbery'' for purposes of § 4B1.2 (Definitions of Terms Used in Section 4B1.1) and § 2L1.2 (Unlawfully Entering or Remaining in the United States) that mirrors the Hobbs Act definition of ''robbery'' at 18 U.S.C. 1951(b)(1). The Commission seeks comment on whether the proposed definition of ''robbery'' is appropriate. Are there robbery offenses that are covered by the proposed definition but should not be? Are there robbery offenses that are not covered by the proposed definition but should be?

2. Part B of the proposed amendment brackets the possibility of defining the phrase ''actual or threatened force,'' for purposes of the proposed ''robbery'' definition, as ''force that is sufficient to overcome a victim's resistance,'' which is consistent with the Supreme Court's holding in *Stokeling* v. *United States,* 139 S. Ct. 544, 550 (2019). The Commission seeks comment regarding whether the definition of ''actual or threatened force'' is necessary after the *Stokeling* decision. If so, is the proposed definition of the phrase appropriate? Are there robbery offenses that would be covered by defining ''actual or threatened force'' in such a way but should not be? Are there robbery offenses that would not be covered but should be?

(C) Inchoate Offenses

Synopsis of Proposed Amendment: The career offender guideline includes convictions for inchoate offenses and offenses arising from accomplice liability, such as aiding and abetting, conspiring to commit, and attempting to commit a ''crime of violence'' and a ''controlled substance offense.'' *See* USSG § 4B1.2, comment. (n.1). In the original 1987 *Guidelines Manual,* these offenses were included only in the definition of ''controlled substance offense.'' *See* USSG § 4B1.2, comment. (n.2) (effective Nov. 1, 1987). In 1989, the Commission amended the guideline to provide that both definitions—''crime of violence'' and ''controlled substance offense''—include the offenses of aiding and abetting, conspiracy, and attempt to commit such crimes. *See* USSG App. C, Amendment 268 (effective Nov. 1, 1989). Two circuit conflicts have now arisen relating to the definitions of ''crime of violence'' and ''controlled substance offense'' in § 4B1.2 (Definitions of Terms Used in Section 4B1.1) and their inclusion of inchoate offenses.

The first circuit conflict concerns whether the definition of controlled substance offense in § 4B1.2(b) includes the inchoate offenses listed in Application Note 1 to § 4B1.2. Although courts had previously held that § 4B1.2's definitions include inchoate offenses based on the Commentary to § 4B1.2 and the Supreme Court's decision in *Stinson* v. *United States,* 508 U.S. 36 (1993), four circuits have now held that § 4B1.2(b)'s definition of a ''controlled substance offense'' does not include inchoate offenses because such offenses are not expressly included in the guideline text, while five have continued with their long-standing holding that such offenses are included.

The Third, Fourth, Sixth, and D.C. Circuits have held that inchoate offenses are not included in the definition of a ''controlled substance offense'' because the commentary is inconsistent with the text of the guideline and, thus, does not control. These courts have concluded that that the Commission exceeded its authority under *Stinson* when it

attempted to incorporate inchoate offenses to § 4B1.2(b)'s definition through the commentary, because the commentary can only interpret or explain the guideline, it cannot expand its scope by adding qualifying offenses. *See United States* v. *Winstead,* 890 F.3d 1082, 1090–92 (D.C. Cir. 2018) (Where the guideline ''present[ed] a very detailed 'definition' of controlled substance offense that clearly excludes inchoate offenses,'' the Commentary's inclusion of such offenses had ''no grounding in the guidelines themselves.''); *United States* v. *Havis,* 927 F.3d 382, 386 (6th Cir. 2019) (en banc) (''To make attempt crimes a part of § 4B1.2(b), the Commission did not interpret a term in the guideline itself—no term in § 4B1.2(b) would bear that construction. Rather, the Commission used Application Note 1 to add an offense not listed in the guideline.''); *United States* v. *Nasir,* 982 F.3d 144, 156–60 (3d Cir. 2020) (en banc), vacated and remanded on other grounds, 142 S. Ct. 56, 211 L.Ed.2d 1 (2021), aff'd on remand, 17 F.4th 459, 467–72 (3d Cir. 2021) (en banc); *United States* v. *Campbell,* 22 F.4th 438, 444–47 (4th Cir. 2022).

The First, Second, Seventh, Eighth, Ninth, and Eleventh Circuits continue to hold that inchoate offenses like attempt and conspiracy qualify as controlled substance offenses, reasoning that the commentary is consistent with the text of § 4B1.2(b) because it does not include any offense that is explicitly excluded by the text of the guideline. *See United States* v. *Smith,* 989 F.3d 575, 583–85 (7th Cir. 2021) (citing *United States* v. *Adams,* 934 F.3d 720, 727–29 (7th Cir. 2019) (''conclud[ing] that § 4B1.2's Application Note 1 is authoritative and that 'controlled substance offense' includes inchoate offenses'' (citation omitted)), cert. denied, 142 S.Ct. 488 (2021); accord *United States* v. *Lewis,* 963 F.3d 16, 21–23 (1st Cir. 2020); *United States* v. *Richardson,* 958 F.3d 151, 154–55 (2d Cir. 2020) (citing *United States* v. *Tabb,* 949 F.3d 81, 87–89 (2d Cir. 2020)); *United States* v. *Garcia,* 946 F.3d 413, 417 (8th Cir. 2019); *United States* v. *Crum,* 934 F.3d 963, 966 (9th Cir. 2019); *United States* v. *Lange,* 862 F.3d 1290, 1295 (11th Cir. 2017). See also *United States* v. *Goodin,* 835 F. App'x 771, 782 n.1 (5th Cir. 2021) (unpublished) (noting that circuit precedent provides that Application Note 1 in the career offender guideline is binding).

The second circuit conflict concerns whether certain conspiracy offenses qualify as crimes of violence or controlled substance offenses. Some courts have employed a two-step analysis in determining whether a prior conviction for conspiracy to commit a crime of violence or controlled substance offense is itself a crime of violence or controlled substance offense, by first comparing the substantive offense to its generic definition and then separately comparing the inchoate offense to its generic definition. *See, e.g., United States* v. *McCollum,* 885 F.3d 300, 303 (4th Cir. 2018) (Employing a two-step categorical approach and concluding that conspiracy to commit murder in aid of racketeering is not categorically a crime of violence because generic conspiracy requires an overt act while the conspiracy at issue does not). In doing so, these courts have held that because the generic definition of conspiracy requires proof of an overt act, certain conspiracy offenses that do not contain an ''overt act'' element are categorically excluded as crimes of violence or controlled substance offenses, even though the substantive crime is a crime of violence or a controlled substance offense. *See, e.g., United States* v. *Norman,* 935 F.3d 232, 237–39 (4th Cir. 2019) (finding that prior federal convictions for conspiracy to distribute and possess with intent to distribute crack cocaine under 21 U.S.C. 846 do not qualify as controlled substance offenses, even though there is no dispute that the underlying drug trafficking crimes qualify as controlled substance offenses); *United States* v. *Martinez-Cruz,* 836 F.3d 1305, 1314 (10th Cir. 2016) (holding that there is ''no evidence [of the intent of the Sentencing Commission] regarding whether a conspiracy conviction requires an overt act—except for the plain language of the guideline, which uses a generic, undefined term, ripe for the categorical approach.'')

In contrast, the First and Second Circuits have declined to follow this reasoning, holding instead that ''[t]he text and structure of Application Note 1 demonstrate that it was intended to include Section 846 narcotics conspiracy. Application Note 1 clarifies that 'controlled substance offenses' include 'the offense[ ] of . . . conspiring . . . to commit such offenses,' language that on its face encompasses federal narcotics conspiracy.'' *United States* v. *Tabb,* 949 F.3d 81, 88 (2d Cir. 2020), *cert. denied,* 141 S. Ct. 2793 (2021) (''To us, it is patently evident that Application Note 1 was intended to and does encompass Section 846 narcotics conspiracy.''); *see also United States* v. *Lewis,* 963 F.3d 16, 26–27 (1st Cir. 2020).

Part C of the proposed amendment would address these circuit conflicts by amending § 4B1.2 and its commentary. First, it would move the inchoate offenses provision from the Commentary to § 4B1.2 to the guideline itself as a new subsection (c). Second, Part C of the proposed amendment would revise the provision to provide that the terms ''crime of violence'' and ''controlled substance offense'' include aiding and abetting, attempting to commit, or conspiring to commit any such offense, or any other inchoate offense or offense arising from accomplice liability involving a ''crime of violence'' or a ''controlled substance offense.''

Third, Part C of the proposed amendment addresses the circuit conflict regarding whether certain conspiracy offenses qualify as crimes of violence or controlled substance offenses. Two options are provided.

Option 1 would address the conspiracy issue in a comprehensive manner that would be applicable to all other inchoate offenses and offenses arising from accomplice liability. It would eliminate the need for the two-step analysis discussed above by adding the following to new subsection (c): ''To determine whether any offense described above qualifies as a 'crime of violence' or 'controlled substance offense,' the court shall only determine whether the underlying substantive offense is a 'crime of violence' or a 'controlled substance offense,' and shall not consider the elements of the inchoate offense or offense arising from accomplice liability.''

Option 2 would take a narrower approach, addressing only conspiracy offenses without addressing whether a court must perform the two-step analysis described above with regard to other inchoate offenses. Option 2 would instead add a provision to new subsection (c) that brackets two alternatives addressing conspiracy to commit a ''crime of violence'' or a ''controlled substance offense.'' The first bracketed alternative provides that an offense of conspiring to commit a ''crime of violence'' or a ''controlled substance offense'' qualifies as a ''crime of violence'' or a ''controlled substance offense,'' regardless of whether an overt act must be proved as an element of the conspiracy offense. The second bracketed alternative provides that an offense of conspiring to commit a ''crime of violence'' or a ''controlled substance offense'' qualifies as a ''crime of violence'' or a ''controlled substance offense,'' only if an overt act must be proved as an element of the conspiracy offense.

Issues for comment are also provided.

Proposed Amendment

Section 4B1.2 is amended by redesignating subsection (c) as subsection (d), and by adding the following new subsection (c):

[*Option 1 (includes changes to the commentary):*

(c) The terms 'crime of violence' and 'controlled substance offense' include the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense, or any other inchoate offense or offense arising from accomplice liability involving a 'crime of violence' or a 'controlled substance offense.' To determine whether any offense described above qualifies as a 'crime of violence' or 'controlled substance offense,' the court shall only determine whether the underlying substantive offense is a 'crime of violence' or a 'controlled substance offense,' and shall not consider the elements of the inchoate offense or offense arising from accomplice liability.''.]

[*Option 2 (includes changes to the commentary):*

(c) The terms 'crime of violence' and 'controlled substance offense' include the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense, or any other inchoate offense or offense arising from accomplice liability involving a 'crime of violence' or a 'controlled substance offense.' [An offense of conspiring to commit a 'crime of violence' or a 'controlled substance offense' qualifies as a 'crime of violence' or a 'controlled substance offense,' regardless of whether an overt act must be proved as an element of the conspiracy offense][However, an offense of conspiring to commit a 'crime of violence' or a 'controlled substance offense' qualifies as a 'crime of violence' or a 'controlled substance offense,' only if an overt act must be proved as an element of the conspiracy offense].''.]

[*Options 1 and 2 (continued):*

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended in Note 1 by striking the following paragraph:

'' 'Crime of violence' and 'controlled substance offense' include the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.''.]

Issues for Comment

1. In determining whether an inchoate offense is a ''crime of violence'' or a ''controlled substance offense,'' some courts have employed a two-step analysis. First, courts compare the substantive offense to its generic definition to determine whether it is a ''crime of violence'' or a ''controlled substance offense.'' Then, these courts make a second and separate analysis comparing the inchoate offense involving that substantive offense to the generic definition of the specific inchoate offense. Option 1 of Part C of the proposed amendment would amend § 4B1.2 (Definitions of Terms Used in Section 4B1.1) to clarify that the offenses of aiding and abetting, attempting to commit, [soliciting to commit,] or conspiring to commit a ''crime of violence'' or a ''controlled substance offense,'' or any other inchoate offense or offense arising from accomplice liability involving a ''crime of violence'' or a ''controlled substance offense'' are a ''crime of violence'' or a ''controlled substance offense'' if the substantive offense is a ''crime of violence'' or a ''controlled substance offense.''

The Commission seeks comment on whether the guidelines should be amended to make this clarification by eliminating the two-step analysis some courts use in determining whether an inchoate offense is a ''crime of violence'' or a ''controlled substance offense.'' Should the guidelines adopt a different approach?

2. The Commission also seeks comment more broadly on how the guidelines definitions of ''crime of violence'' and ''controlled substance offense'' should address aiding and abetting, attempting to commit, soliciting to commit, or conspiring to commit a ''crime of violence'' or a ''controlled substance offense,'' or any other inchoate offense or offense arising from accomplice liability involving a ''crime of violence'' or a ''controlled substance offense.'' Specifically, should the Commission promulgate any of the options provided above? Should the Commission provide additional requirements or guidance to address these types of offenses? What additional requirements or guidance, if any, should the Commission provide? Should the Commission differentiate between ''crimes of violence'' and ''controlled substance offenses''? For example, should the guidelines require proof of an overt act for purposes of a conspiracy to commit a controlled substance offense, but not include such a requirement for conspiracy to commit a crime of violence?

Alternatively, should the Commission exclude inchoate offenses and offenses arising from accomplice liability altogether as predicate offenses for purposes of the ''crime of violence'' and ''controlled substance offenses'' definitions?

(D) Definition of ''Controlled Substance Offense''

Synopsis of Proposed Amendment: Subsection (b) of § 4B1.2 (Definitions of Terms Used in Section 4B1.1) defines a ''controlled substance offense'' as an offense that prohibits ''the manufacture, import, export, distribution, or dispensing of a controlled substance (or counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.'' USSG § 4B1.2(b).

The Department of Justice has raised a concern that courts have held that state drug statutes that include an offense involving an ''offer to sell'' a controlled substance do not qualify as a ''controlled substance offense'' under § 4B1.2(b) because such statutes encompass conduct that is broader than § 4B1.2(b)'s definition of a ''controlled substance offense.'' *See, e.g.,* Annual Letter from the Department of Justice to the Commission (Aug. 10, 2018), at *https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20180810/DOJ.pdf.* The Commission previously addressed a similar issue regarding the definition of a ''drug trafficking offense'' in the illegal reentry guideline at § 2L1.2 (Unlawfully Entering or Remaining in the United States). In 2008, the Commission amended the Commentary to § 2L1.2 to clarify that an offer to sell a controlled substance is a ''drug trafficking offense'' for purposes of that guideline, by adding ''offer to sell'' to the conduct listed in the definition of ''drug trafficking offense.'' *See* USSG App. C, Amendment 722 (effective Nov. 1, 2008). In 2016, the Commission comprehensively revised § 2L1.2. Among the changes made, the Commission amended the definition of ''crime of violence'' in the Commentary to § 2L1.2 to conform it to the definition in § 4B1.2, but the Commission did not make changes to the ''drug trafficking offense'' definition in the Commentary to § 2L1.2.

In addition, a separate issue has arisen as a result of statutory changes to chapter 705 of title 46 (''Maritime Drug Law Enforcement Act''). The career offender directive at 28 U.S.C. 994(h) directed the Commission to assure that ''the guidelines specify a term of imprisonment at or near the maximum term authorized'' for offenders who are 18 years or older and have been convicted of a felony that is, and also have previously been convicted of two or more felonies that are, a ''crime of violence'' or ''an offense described in section 401 of the Controlled Substances

Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and *chapter 705 of title 46*.'' 28 U.S.C. 994(h) (emphasis added). Until 2016, the only substantive criminal offense included in ''chapter 705 of title 46'' was codified in section 70503(a) and read as follows:

An individual may not knowingly or intentionally manufacture or distribute, or possess with intent to manufacture or distribute, a controlled substance on board—

(1) a vessel of the United States or a vessel subject to the jurisdiction of the United States; or

(2) any vessel if the individual is a citizen of the United States or a resident alien of the United States.

46 U.S.C. 70503(a) (2012). Section 70506(b) provided that a person attempting or conspiring to violate section 70503 was subject to the same penalties as provided for violating section 70503.

In 2016, Congress enacted the Coast Guard Authorization Act of 2015, Public Law 114–120 (2016), amending, among other things, Chapter 705 of Title 46. Specifically, Congress revised section 70503(a) as follows:

While on board a covered vessel, an individual may not knowingly or intentionally—

(1) manufacture or distribute, or possess with intent to manufacture or distribute, a controlled substance;

(2) destroy (including jettisoning any item or scuttling, burning, or hastily cleaning a vessel), or attempt or conspire to destroy, property that is subject to forfeiture under section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(a)); or

(3) conceal, or attempt or conspire to conceal, more than $100,000 in currency or other monetary instruments on the person of such individual or in any conveyance, article of luggage, merchandise, or other container, or compartment of or aboard the covered vessel if that vessel is outfitted for smuggling.

46 U.S.C. 70503(a). Section 70506(b) remained unchanged. The Act added two new offenses to section 70503(a), in subparagraphs (2) and (3). Following this statutory change, these two new offenses may not be covered by the current definition of ''controlled substance offense'' in § 4B1.2.

Part D of the proposed amendment would amend the definition of ''controlled substance offense'' in § 4B1.2(b) to address these issues. First, it would amend the definition to include offenses involving an offer to sell a controlled substance, which would align it with the current definition of ''drug trafficking offense'' in the Commentary to § 2L1.2. Second, it would revise the ''controlled substance offense'' definition to also include ''an offense described in 46 U.S.C. 70503(a) or 70506(b).''

An issue for comment is also provided.

Proposed Amendment

Section 4B1.2(b) is amended by striking the following:

''The term 'controlled substance offense' means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.'',

and inserting the following:

''The term 'controlled substance offense' means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

(1) prohibits the manufacture, import, export, distribution, or dispensing of, or offer to sell a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense; or

(2) is an offense described in 46 U.S.C. 70503(a) or 70506(b).''.

Issue for Comment

1. Part D of the proposed amendment would amend the definition of ''controlled substance offense'' in subsection (b) of § 4B1.2 (Definitions of Terms Used in Section 4B1.1) to include offenses involving an offer to sell a controlled substance. The Commission seeks comment on the extent to which such offenses should be included as ''controlled substance offenses'' for purposes of the career offender guideline. Are there other drug offenses that are not included under this definition, but should be?

If the Commission were to amend the definition of ''controlled substance offense'' in § 4B1.2(b) to include other drug offenses, in addition to offenses involving an offer to sell a controlled substance, should the Commission revise the definition of ''controlled substance offense'' at § 2L1.2 (Unlawfully Entering or Remaining in the United States) to conform it to the revised definition set forth in § 4B1.2(b)?

7. Criminal History

Synopsis of Proposed Amendment: The proposed amendment contains three parts (Parts A through C). The Commission is considering whether to promulgate any or all of these parts, as they are not mutually exclusive. Parts A through C of the proposed amendment all address the Commission's priority on criminal history. *See* U.S. Sent'g Comm'n, ''Notice of Final Priorities,'' 87 FR 67756 (Nov. 9, 2022) (''In light of Commission studies, consideration of possible amendments to the *Guidelines Manual* relating to criminal history to address (A) the impact of 'status' points under subsection (d) of section 4A1.1 (Criminal History Category); (B) the treatment of defendants with zero criminal history points; and (C) the impact of simple possession of marihuana offenses.''). Part B of the proposed amendment also addresses the Commission's priority on 28 U.S.C. 994(j). *Id.* (''Consideration of possible amendments to the *Guidelines Manual* addressing 28 U.S.C. 994(j).'').

A defendant's criminal history score is calculated pursuant to Chapter Four, Part A (Criminal History). To calculate a criminal history score, courts are instructed to assign one, two, or three points to qualifying prior sentences under subsections (a) through (c) of § 4A1.1 (Criminal History Category). One point is also added under § 4A1.1(e) for any prior sentence resulting from a crime of violence that was not otherwise already assigned points. Finally, two criminal history points are added under § 4A1.1(d) if the defendant committed the instant offense ''while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.'' USSG § 4A1.1(e). A ''criminal justice sentence'' refers to a ''sentence countable under § 4A1.2 (Definitions and Instructions for Computing Criminal History) having a custodial or supervisory component, although active supervision is not required.'' USSG § 4A1.1, comment. (n.4).

(A) Status Points Under § 4A1.1

''Status points'' are relatively common in cases with at least one criminal history point, having been applied in 37.5 percent of cases with criminal history points over the last five fiscal years. Of the offenders who received ''status points'', 61.5 percent had a higher CHC as a result of the status points. Like other provisions in Chapter Four, ''status points'' are included in the

calculation of a defendant's criminal history as a reflection of several statutory purposes of sentencing. As described in the Introductory Commentary to Chapter Four, accounting for a defendant's criminal history in the guidelines, including status points, addresses the need for the sentence ''(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; [and] (C) to protect the public from further crimes of the defendant.'' 18 U.S.C. 3553(a)(2)(A)–(C). A series of recent Commission publications has focused on just one of these purposes of sentencing—specific deterrence—through detailed analyses regarding the recidivism rates of federal offenders. *See, e.g.,* U.S. Sent'g Comm'n, Recidivism of Offenders Released in 2010 (2021), *available at https://www.ussc.gov/research/research-reports/recidivism-federal-offenders-released-2010.* These reports again concluded that a defendant's criminal history calculation under the guidelines is strongly associated with the likelihood of future recidivism by the defendant. In a related publication, the Commission also found, however, that status points add little to the overall predictive value associated with the criminal history score. U.S. Sent'g Comm'n, Revisiting Status Points (2022), *available at https://www.ussc.gov/research/research-reports/revisiting-status-points.*

Part A of the proposed amendment addresses the impact of ''status points'' under the guidelines. Three options are provided.

Option 1 would add a downward departure provision in Application Note 4 of the Commentary to § 4A1.1 for cases in which ''status points'' are applied.

Option 2 would reduce the impact of ''status points'' overall, by decreasing the criminal history points added under § 4A1.1(d) from two points to one point. It would also add a departure provision in Application Note 4 of the Commentary to § 4A1.1 that could result in either an upward departure or a downward departure, depending on the circumstances.

Option 3 would eliminate the ''status points'' provided in § 4A1.1(d). It would also make conforming changes to § 2P1.1 (Escape, Instigating or Assisting Escape) and § 4A1.2 to reflect the removal of ''status points'' from the *Guidelines Manual.* In addition, Option 3 would amend the Commentary to § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)) to provide an example of an instance in which an upward departure from the defendant's criminal history may be warranted.

Issues for comment are also provided.

(B) Zero Point Offenders

The Sentencing Table in Chapter Five, Part A of the *Guidelines Manual* comprises two components: offense level and criminal history category. Criminal history forms the horizontal axis of the table and is divided into six categories, from I (lowest) to VI (highest). Chapter Four, Part A of the *Guidelines Manual* provides instructions on how to calculate a defendant's criminal history category by assigning points for certain prior convictions. Criminal History Category I includes offenders with zero criminal history points and those with one criminal history point. Accordingly, the following types of offenders are classified under the same category: (1) offenders with no prior convictions; (2) offenders who have prior convictions that are not counted because they were not within the time limits set forth in subsection (d) and (e) of § 4A1.2 (Definitions and Instructions for Computing Criminal History); (3) offenders who have prior convictions that are not used in computing the criminal history category for reasons other than their ''staleness'' (*e.g.,* sentences resulting from foreign or tribal court convictions, minor misdemeanor convictions, or infractions); and (4) offenders with a prior conviction that received only one criminal history point. In fiscal year 2021, there were approximately 17,500 offenders who received zero criminal history points, of whom approximately 13,200 had no prior convictions.

Chapter Five also address what types of sentences a court may impose (*e.g.,* probation or imprisonment), according to the location of the defendant's applicable sentencing range in one of the four Zones (A–D) of the Sentencing Table. Specifically, § 5C1.1 (Imposition of a Term of Imprisonment) provides that defendants in Zones A and B may receive, in the court's discretion, a probationary sentence or a sentence of incarceration; defendants in Zone C may receive a ''split'' sentence of incarceration followed by community confinement or a sentence of incarceration only at the court's discretion; and defendants in Zone D may only receive a sentence of imprisonment absent a downward departure or variance from that zone. The Commentary to § 5C1.1 contains an application note that provides that ''[i]f the defendant is a nonviolent first offender and the applicable guideline range is in Zone A or B of the Sentencing Table, the court should consider imposing a sentence other than a sentence of imprisonment.'' USSG § 5C1.1, comment. (n.4).

Recidivism data analyzed by the Commission suggest that offenders with zero criminal history points (''zero-point'' offenders) have considerably lower recidivism rates than other offenders, including lower recidivism rates than the offenders in Criminal History Category I with one criminal history point. *See* U.S. Sent'g Comm'n, Recidivism of Federal Offenders Released in 2010 (2021), *available at https://www.ussc.gov/research/research-reports/recidivism-federal-offenders-released-2010.* Among other findings, the report concluded that ''zero-point'' offenders were less likely to be rearrested than ''one point'' offenders (26.8% compared to 42.3%), the largest variation of any comparison of offenders within the same Criminal History Category. In addition, 28 U.S.C. 994(j) directs that alternatives to incarceration are generally appropriate for first offenders not convicted of a violent or otherwise serious offense.

Part B of the proposed amendment sets forth a new Chapter Four guideline, at § 4C1.1 (Adjustment for Certain Zero-Point Offenders). New § 4C1.1 would provide a decrease of [1 level][2 levels] from the offense level determined under Chapters Two and Three for zero-point offenders who meet certain criteria. It provides two options for establishing the criteria.

Option 1 would make the adjustment applicable to zero-point offenders with no prior convictions. It would provide a [1][2]-level decrease if the defendant meets all of the following criteria: (1) the defendant did not receive any criminal history points from Chapter Four, Part A, and had no prior convictions or other comparable judicial dispositions of any kind; (2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense; (3) the offense did not result in death or serious bodily injury; (4) the defendant's acts or omissions did not result in substantial financial hardship to [one or more victims][five or more victims][25 or more victims]; (5) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under § 3B1.1 (Aggravating Role), and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. 848; and (6) [the defendant is not determined to be a

repeat and dangerous sex offender against minors under § 4B1.5 (Repeat and Dangerous Sex Offender Against Minors)][the instant offense of conviction is not a covered sex crime]. Under Option 1, approximately 10,500 offenders sentenced in fiscal year 2021 would have been eligible under § 4C1.1 depending on the exclusionary criteria.

Option 2 would make the adjustment applicable to all offenders who had no countable convictions (*i.e.,* offenders who received zero criminal history points based upon the criminal history rules in Chapter Four). It would provide a [1 level][2 levels] decrease if the defendant meets all of the following criteria: (1) the defendant did not receive any criminal history points from Chapter Four, Part A; (2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense; (3) the offense did not result in death or serious bodily injury; (4) the defendant's acts or omissions did not result in substantial financial hardship to [one or more victims][five or more victims][25 or more victims]; (5) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under § 3B1.1 (Aggravating Role), and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. 848; and (6) [the defendant is not determined to be a repeat and dangerous sex offender against minors under § 4B1.5 (Repeat and Dangerous Sex Offender Against Minors)][the instant offense of conviction is not a covered sex crime]. Option 2 also provides for an upward departure that would be applicable if the adjustment under new § 4C1.1 substantially underrepresents the seriousness of the defendant's criminal history. Under Option 2, approximately 13,500 offenders sentenced in fiscal year 2021 would have been eligible under § 4C1.1 depending on the exclusionary criteria.

Both options include a subsection (c) that provides definitions and additional considerations for purposes of applying the guideline.

Part B of the proposed amendment would also amend the Commentary to § 5C1.1 (Imposition of a Term of Imprisonment) as part of the Commission's implementation of 28 U.S.C. 994(j). Section 994(j) directed the Commission to ensure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense. Part B of the proposed amendment would address the alternatives to incarceration available to ''zero-point'' offenders by revising the application note in § 5C1.1 that addresses ''nonviolent first offenders'' to focus on ''zero-point'' offenders. Two new provisions would be added. New Application Note 4(A) would provide that if the defendant received an adjustment under new § 4C1.1 and the defendant's applicable guideline range is in Zone A or B of the Sentencing Table, a sentence other than a sentence of imprisonment, in accordance with subsection (b) or (c)(3), is generally appropriate. New Application Note 4(B) would provide that if the defendant received an adjustment under new § 4C1.1, the defendant's applicable guideline range is in Zone C or D of the Sentencing Table, and the defendant's instant offense of conviction is not an otherwise serious offense, a departure to a sentence other than a sentence of imprisonment [may be appropriate][is generally appropriate]. Of the approximately 10,500 offenders who received zero criminal history points and had no prior convictions in fiscal year 2021 who would be eligible under § 4C1.1 under Option 1, about one-quarter were in Zones A and B, about ten percent were in Zone C, and over 60 percent were in Zone D. Of the approximately 13,500 offenders who received zero criminal history points in fiscal year 2021 who would be eligible under § 4C1.1 under Option 2, about 30 percent were in Zones A and B, ten percent were in Zone C, and about 60 percent were in Zone D.

In addition, Part B of the proposed amendment would amend subsection (b)(2)(A) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)) to provide that a departure below the lower limit of the applicable guideline range for Criminal History Category I is prohibited, ''unless otherwise specified.'' Part B of the proposed amendment would also amend Chapter One, Part A, Subpart 1(4)(d) (Probation and Split Sentences) to provide an explanatory note addressing amendments to the *Guidelines Manual* related to the implementation of 28 U.S.C. 994(j), first offenders, and ''zero-point'' offenders.

Finally, Part B of the proposed amendment provides issues for comment.

(C) Impact of Simple Possession of Marihuana Offenses

While marihuana remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA), subjecting offenders to up to one year in prison (and up to two or three years in prison for repeat offenders), many states and territories have reduced or eliminated the penalties for possessing small quantities of marihuana for personal use. Twenty-one states and territories have removed legal prohibitions, including criminal and civil penalties, for the possession of small quantities for recreational use. An additional 14 states and territories have lowered the punishment for possession of small quantities for recreational use from criminal penalties (such as imprisonment) to solely civil penalties (such as a fine). At the end of fiscal year 2021, possession of marihuana remained illegal for all purposes only in 12 states and territories.

The Commission recently published a report on the impact of simple possession of marihuana offenses on sentencing. *See* U.S. Sent'g Comm'n, Weighing the Impact of Simple Possession of Marijuana: Trends and Sentencing in the Federal System (2023), *available at https://www.ussc.gov/research/research-reports/weighing-impact-simple-possession-marijuana.*

The key findings from the report include—

- In fiscal year 2021, 4,405 federal offenders (8.0%) received criminal history points under the federal sentencing guidelines for prior marihuana possession sentences. Most (79.3%) of the prior sentences were for less than 60 days in prison, including non-custodial sentences. Furthermore, ten percent (10.2%) of these 4,405 offenders had no other criminal history points.
- The criminal history points for prior marihuana possession sentences resulted in a higher Criminal History Category for 40 percent (40.1%) of the 4,405 offenders (1,765).

Part C of the proposed amendment would amend the Commentary to § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)) to include sentences resulting from possession of marihuana offenses as an example of when a downward departure from the defendant's criminal history may be warranted. Specifically, Part C of the proposed amendment would provide that a downward departure may be warranted if the defendant received criminal history points from a sentence for possession of marihuana for personal use, without an intent to sell or distribute it to another person.

Issues for comment are provided.

(A) Status Points Under § 4A1.1

Proposed Amendment

[*Option 1 (Departure Provision for Status Points):*

The Commentary to § 4A1.1 captioned ''Application Notes'' is amended in Note 4 by adding at the end the following new paragraph:

''There may be cases in which adding points under § 4A1.1(d) results in a Criminal History Category that substantially overrepresents the seriousness of the defendant's criminal history. In such a case, a downward departure may be warranted in accordance with § 4A1.3 (Departures Based on Inadequacy of Criminal History Category).''.]

[*Option 2 (Reducing Status Points):*

Section 4A1.1(d) is amended by striking ''2 points'' and inserting ''1 point''.

The Commentary to § 4A1.1 captioned ''Application Notes'' is amended in Note 4 by striking ''Two points are added'' and inserting ''One point is added'', and by adding at the end the following new paragraph:

''There may be cases in which adding a point under § 4A1.1(d) results in a Criminal History Category that substantially overrepresents or underrepresents the seriousness of the defendant's criminal history. In such a case, a departure may be warranted in accordance with § 4A1.3 (Departures Based on Inadequacy of Criminal History Category).''.

The Commentary to § 4A1.1 captioned ''Background'' is amended by striking ''Section 4A1.1(d) adds two points'' and inserting ''Section 4A1.1(d) adds one point''.]

[*Option 3 (Eliminating Status Points):*

Section 4A.1.1 is amended—

by striking subsection (d) as follows:

''(d) Add 2 points if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.'';

and by redesignating subsection (e) as subsection (d).

The Commentary to § 4A1.1 captioned ''Application Notes'' is amended—

by striking Note 4 as follows:

''4. *§ 4A1.1(d).* Two points are added if the defendant committed any part of the instant offense (*i.e.,* any relevant conduct) while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status. Failure to report for service of a sentence of imprisonment is to be treated as an escape from such sentence. *See* § 4A1.2(n). For the purposes of this subsection, a ''criminal justice sentence'' means a sentence countable under § 4A1.2 (Definitions and Instructions for Computing Criminal History) having a custodial or supervisory component, although active supervision is not required for this subsection to apply. For example, a term of unsupervised probation would be included; but a sentence to pay a fine, by itself, would not be included. A defendant who commits the instant offense while a violation warrant from a prior sentence is outstanding (*e.g.,* a probation, parole, or supervised release violation warrant) shall be deemed to be under a criminal justice sentence for the purposes of this provision if that sentence is otherwise countable, even if that sentence would have expired absent such warrant. *See* § 4A1.2(m).'';

by redesignating Note 5 as Note 4;

and in Note 4 (as so redesignated) by striking ''§ 4A1.1(e)'' each place such term appears and inserting ''§ 4A.1.1(d)'', and by striking ''§ 4A1.2(p)'' and inserting ''§ 4A1.2(n)''.

The Commentary to § 4A1.1 captioned ''Background'' is amended by striking the last paragraph as follows:

''Section 4A1.1(d) adds two points if the defendant was under a criminal justice sentence during any part of the instant offense.''.

The Commentary to § 2P1.1 captioned ''Application Notes'' is amended in Note 5 by striking ''and § 4A1.1(d) (custody status)''.

Section 4A1.2 is amended—

in subsection (a)(2) by striking ''§ 4A1.1(e)'' and inserting ''§ 4A1.1(d)'';

in subsection (l) by striking ''§ 4A1.1(a), (b), (c), (d), and (e)'' and inserting ''§ 4A1.1(a), (b), (c), and (d)'';

by striking subsections (m) and (n) as follows:

''(m) *Effect of a Violation Warrant*

For the purposes of § 4A1.1(d), a defendant who commits the instant offense while a violation warrant from a prior sentence is outstanding (*e.g.,* a probation, parole, or supervised release violation warrant) shall be deemed to be under a criminal justice sentence if that sentence is otherwise countable, even if that sentence would have expired absent such warrant.

(n) *Failure to Report for Service of Sentence of Imprisonment*

For the purposes of § 4A1.1(d), failure to report for service of a sentence of imprisonment shall be treated as an escape from such sentence.'';

by redesignation subsections (o) and (p) as subsections (m) and (n), respectively;

and in subsection (n) (as so redesignated) by striking ''§ 4A1.1(e)'' and inserting ''§ 4A1.1(d)''.

The Commentary to § 4A1.3 captioned ''Application Notes'' is amended in Note 2(A) by adding at the end the following new subparagraph:

''(v) The defendant committed the instant offense (*i.e.,* any relevant conduct to the instant offense under § 1B1.3 (Relevant Conduct)) while under any criminal justice sentence having a custodial or supervisory component (including probation, parole, supervised release, imprisonment, work release, or escape status).''.

Issues for Comment

1. Option 3 of Part A of the proposed amendment would eliminate the ''status points'' provided in subsection (d) of § 4A1.1 (Criminal History Category). Instead of eliminating ''status points'' altogether, should the Commission eliminate ''status points'' related to certain categories of prior offenses, but not others? For example, should ''status points'' continue to apply if the defendant was under a criminal justice sentence resulting from a violent prior offense? Should ''status points'' continue to apply if the defendant was recently placed under a criminal justice sentence involving a custodial or supervisory component?

2. Option 3 of Part A of the proposed amendment would amend the Commentary to § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)) to provide an example of an instance in which an upward departure from the defendant's criminal history may be warranted. Instead of a departure provision, should the Commission account in some other way for the ''custody status'' of the defendant during the commission of the instant offense? If so, how should the Commission account for such ''status''?

(B) Zero Point Offenders

Proposed Amendment

Chapter Four is amended by inserting at the end the following new Part C:

''PART C—ADJUSTMENT FOR CERTAIN ZERO-POINT OFFENDERS

§ 4C1.1. *Adjustment for Certain Zero-Point Offenders*

[*Option 1 (Zero-Point Offenders with No Prior Convictions):*

(a) *Adjustment.*—If the defendant meets all of the following criteria:

(1) the defendant did not receive any criminal history points from Chapter Four, Part A, and had no prior convictions or other comparable judicial dispositions of any kind;

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury;

(4) the defendant's acts or omissions did not result in substantial financial hardship to [one or more victims][five or more victims][25 or more victims];

(5) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under § 3B1.1 (Aggravating Role), and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. 848; and

(6) [the defendant is not determined to be a repeat and dangerous sex offender against minors under § 4B1.5 (Repeat and Dangerous Sex Offender Against Minors)][the instant offense of conviction is not a covered sex crime];

decrease the offense level determined under Chapters Two and Three by [1 level][2 levels].

(b) *Definitions And Additional Considerations.*—

(1) The phrase 'comparable judicial dispositions of any kind' includes diversionary or deferred dispositions resulting from a finding or admission of guilt or a plea of nolo contendere and juvenile adjudications.

(2) 'Dangerous weapon,' 'firearm,' 'offense,' and 'serious bodily injury' have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).

(3) Consistent with § 1B1.3 (Relevant Conduct), the term 'defendant' limits the accountability of the defendant to the defendant's own conduct and conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused.

(4) In determining whether the defendant's acts or omissions resulted in 'substantial financial hardship' to a victim, the court shall consider, among other things, the non-exhaustive list of factors provided in Application Note 4(F) of the Commentary to § 2B1.1 (Theft, Property Destruction, and Fraud).

[(5) ''Covered sex crime'' means (A) an offense, perpetrated against a minor, under (i) chapter 109A of title 18, United States Code; (ii) chapter 110 of title 18, not including trafficking in, receipt of, or possession of, child pornography, or a recordkeeping offense; (iii) chapter 117 of title 18, not including transmitting information about a minor or filing a factual statement about an alien individual; or (iv) 18 U.S.C. 1591; or (B) an attempt or a conspiracy to commit any offense described in subdivisions (A)(i) through (iv) of this definition.]''.]

[*Option 2 (Zero-Point Offenders with No Countable Convictions):*

(a) *Adjustment.*—If the defendant meets all of the following criteria:

(1) the defendant did not receive any criminal history points from Chapter Four, Part A;

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury;

(4) the defendant's acts or omissions did not result in substantial financial hardship to [one or more victims][five or more victims][25 or more victims];

(5) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under § 3B1.1 (Aggravating Role), and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. 848; and

(6) [the defendant is not determined to be a repeat and dangerous sex offender against minors under § 4B1.5 (Repeat and Dangerous Sex Offender Against Minors)][the instant offense of conviction is not a covered sex crime];

decrease the offense level determined under Chapters Two and Three by [1 level][2 levels].

(b) *Definitions And Additional Considerations.*—

(1) 'Dangerous weapon,' 'firearm,' 'offense,' and 'serious bodily injury' have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).

(2) Consistent with § 1B1.3 (Relevant Conduct), the term 'defendant' limits the accountability of the defendant to the defendant's own conduct and conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused.

(3) In determining whether the defendant's acts or omissions resulted in 'substantial financial hardship' to a victim, the court shall consider, among other things, the non-exhaustive list of factors provided in Application Note 4(F) of the Commentary to § 2B1.1 (Theft, Property Destruction, and Fraud).

[(4) 'Covered sex crime' means (A) an offense, perpetrated against a minor, under (i) chapter 109A of title 18, United States Code; (ii) chapter 110 of title 18, not including trafficking in, receipt of, or possession of, child pornography, or a recordkeeping offense; (iii) chapter 117 of title 18, not including transmitting information about a minor or filing a factual statement about an alien individual; or (iv) 18 U.S.C. 1591; or (B) an attempt or a conspiracy to commit any offense described in subdivisions (A)(i) through (iv) of this definition.]

Commentary

Application Notes:

1. *Upward Departure.*—An upward departure may be warranted if an adjustment under this guideline substantially underrepresents the seriousness of the defendant's criminal history. For example, an upward departure may be warranted if the defendant has a prior conviction or other comparable judicial disposition for an offense that involved violence or credible threats of violence.''.]

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended—

by inserting at the beginning of Note 1 the following new heading: ''*Application of Subsection (a).*—'';

by inserting at the beginning of Note 2 the following new heading: ''*Application of Subsection (b).*—'';

by inserting at the beginning of Note 3 the following new heading: ''*Application of Subsection (c).*—'';

in Note 4 by striking the following:

''If the defendant is a nonviolent first offender and the applicable guideline range is in Zone A or B of the Sentencing Table, the court should consider imposing a sentence other than a sentence of imprisonment, in accordance with subsection (b) or (c)(3). *See* 28 U.S.C. 994(j). For purposes of this application note, a 'nonviolent first offender' is a defendant who has no prior convictions or other comparable judicial dispositions of any kind and who did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense of conviction. The phrase ''comparable judicial dispositions of any kind'' includes diversionary or deferred dispositions resulting from a finding or admission of guilt or a plea of *nolo contendere* and juvenile adjudications.'',

and inserting the following:

''*Zero-Point Offenders.*—

(A) *Zero-Point Offenders in Zones A and B of the Sentencing Table.*—If the defendant received an adjustment under § 4C1.1 (Adjustment for Certain Zero-Point Offenders) and the defendant's applicable guideline range is in Zone A or B of the Sentencing Table, a sentence other than a sentence of imprisonment, in accordance with subsection (b) or (c)(3), is generally appropriate. *See* 28 U.S.C. 994(j).

(B) *Zero-Point Offenders in Zones C and D of the Sentencing Table.*—If the

defendant received an adjustment under § 4C1.1 (Adjustment for Certain Zero-Point Offenders), the defendant's applicable guideline range is in Zone C or D of the Sentencing Table, and the defendant's instant offense of conviction is not an otherwise serious offense, a departure to a sentence other than a sentence of imprisonment [may be appropriate][is generally appropriate]. *See* 28 U.S.C. 994(j).'';

by inserting at the beginning of Note 5 the following new heading: ''*Application of Subsection (d).*—'';

by inserting at the beginning of Note 6 the following new heading: ''*Application of Subsection (e).*—'';

by inserting at the beginning of Note 7 the following new heading: ''*Departures Based on Specific Treatment Purpose.*—'';

by inserting at the beginning of Note 8 the following new heading: ''*Use of Substitutes for Imprisonment.*—'';

by inserting at the beginning of Note 9 the following new heading: ''*Residential Treatment Program.*—'';

and by inserting at the beginning of Note 10 the following new heading: ''*Application of Subsection (f).*—''.

Section 4A1.3(b)(2)(A) is amended by striking ''A departure'' and inserting ''Unless otherwise specified, a departure''.

The Commentary to § 4A1.3 captioned ''Application Notes'' is amended in Note 3 by striking ''due to the fact that the lower limit of the guideline range for Criminal History Category I is set for a first offender with the lowest risk of recidivism'' and inserting ''unless otherwise specified''.

Chapter One, Part A is amended in Subpart 1(4)(d) (Probation and Split Sentences)—

by adding an asterisk after ''community confinement or home detention.'';

by adding a second asterisk after ''through departures.*'';

and by striking the following:

''**Note:* Although the Commission had not addressed ''single acts of aberrant behavior'' at the time the Introduction to the Guidelines Manual originally was written, it subsequently addressed the issue in Amendment 603, effective November 1, 2000. (See USSG App. C, amendment 603.)'',

and inserting the following:

''**Note:* The Commission expanded Zones B and C of the Sentencing Table in 2010 to provide a greater range of sentencing options to courts with respect to certain offenders. (*See* USSG App. C, amendment 738.) In 2018, the Commission added a new application note to the Commentary to § 5C1.1 (Imposition of a Term of Imprisonment), stating that if a defendant is a 'nonviolent first offender and the applicable guideline range is in Zone A or B of the Sentencing Table, the court should consider imposing a sentence other than a sentence of imprisonment.' (*See* USSG App. C, amendment 801.) In [2023], the Commission added a new Chapter Four guideline, at § 4C1.1 (Adjustment for Certain Zero-Point Offenders), providing a decrease of [1 level][2 levels] from the offense level determined under Chapters Two and Three for 'zero-point' offenders who meet certain criteria. In addition, the Commission further amended the Commentary to § 5C1.1 to address the alternatives to incarceration available to 'zero-point' offenders by revising the application note in § 5C1.1 that addressed 'nonviolent first offenders' to focus on 'zero-point' offenders. (*See* USSG App. C, amendment [____].)

** *Note:* Although the Commission had not addressed 'single acts of aberrant behavior' at the time the Introduction to the Guidelines Manual originally was written, it subsequently addressed the issue in Amendment 603, effective November 1, 2000. (*See* USSG App. C, amendment 603.)''.

Issues for Comment

1. Part B of the proposed amendment would set forth a new Chapter Four guideline, at § 4C1.1 (Adjustment for Certain Zero-Point Offenders), that provides a decrease of [1 level][2 levels] from the offense level determined under Chapters Two and Three if the defendant meets certain criteria. It provides two options: one option for zero-point offenders with no prior convictions and another option for zero-point offenders with no countable convictions. The Commission seeks comment on which option is preferable, or whether there is an alternative approach that the Commission should consider. For example, if the Commission decides to exclude offenders with prior convictions, should the Commission consider a third option that nevertheless makes the new adjustment available to offenders with prior convictions that were not counted under a specific provision of § 4A1.2 (Definitions and Instructions for Computing Criminal History)? If so, what type of prior convictions that did not receive criminal history points should not be excluded? For example, should the Commission allow the new adjustment to apply to offenders with prior convictions for misdemeanors and petty offenses that were not counted under § 4A1.2(c)? Should the Commission instead exclude offenders with certain prior convictions that were not otherwise counted under § 4A1.2? For example, should the Commission exclude offenders with prior convictions for sex offenses or violent offenses that were not counted for criminal history purposes?

If the Commission were to promulgate an option of § 4C1.1 that excludes offenders with prior convictions not countable under Chapter Four, Part A (Criminal History), are there any practical issues or challenges that such an approach would present due to the availability of records documenting such convictions? If so, what are these practical issues or challenges?

2. Part B of the proposed amendment provides that the [1 level][2 levels] decrease under the new guideline applies if the defendant meets all of the criteria set forth in the two options. Should the Commission incorporate additional or different exclusionary criteria into either of the options set forth in Part B of the proposed amendment? Should the Commission change or remove any of the exclusionary criteria set forth in either of the options thereby making the adjustment available to a broader group of defendants?

3. If the Commission were to promulgate one of the proposed options, what conforming changes, if any, should the Commission make to other provisions of the *Guidelines Manual*?

4. Part B of the proposed amendment would also amend the Commentary to § 5C1.1 (Imposition of a Term of Imprisonment) to address the alternatives to incarceration available to ''zero-point'' offenders. The Commission seeks comment on whether it should provide additional guidance about how to apply this new departure provision. If so, what additional guidance should the Commission provide? For example, should the Commission provide guidance on how courts should determine whether the instant offense of conviction is ''not an otherwise serious offense''?

(C) Impact of Simple Possession of Marihuana Offenses

Proposed Amendment

The Commentary to § 4A1.3 captioned ''Application Notes'' is amended in Note 3 by striking the following:

''*Downward Departures.*—A downward departure from the defendant's criminal history category may be warranted if, for example, the defendant had two minor misdemeanor convictions close to ten years prior to the instant offense and no other evidence of prior criminal behavior in the intervening period. A departure

below the lower limit of the applicable guideline range for Criminal History Category I is prohibited under subsection (b)(2)(A), due to the fact that the lower limit of the guideline range for Criminal History Category I is set for a first offender with the lowest risk of recidivism.'',

and inserting the following:

''*Downward Departures.*—

(A) *Examples.*—A downward departure from the defendant's criminal history category may be warranted based on any of the following circumstances:

(i) The defendant had two minor misdemeanor convictions close to ten years prior to the instant offense and no other evidence of prior criminal behavior in the intervening period.

(ii) The defendant received criminal history points from a sentence for possession of marihuana for personal use, without an intent to sell or distribute it to another person.

(B) *Downward Departures from Criminal History Category I.*—A departure below the lower limit of the applicable guideline range for Criminal History Category I is prohibited under subsection (b)(2)(A), due to the fact that the lower limit of the guideline range for Criminal History Category I is set for a first offender with the lowest risk of recidivism.''.

Issues for Comment

1. Part C of the proposed amendment provides for a possible downward departure if the defendant received criminal history points from a sentence for possession of marihuana for personal use, without an intent to sell or distribute it to another person. The Commission seeks comment on whether it should provide additional guidance for purposes of determining whether a downward departure is warranted in such cases. If so, what additional guidance should the Commission provide?

2. The Commission also seeks comment on whether there is an alternative approach it should consider for addressing sentences for possession of marihuana. For example, instead of a departure, should the Commission exclude such sentences from the criminal history score calculation if the offense is no longer subject to criminal penalties in the jurisdiction in which the defendant was convicted at the time of sentencing for the instant offense? Alternatively, should the Commission exclude all sentences for possession of marihuana offenses from the criminal history score calculation, regardless of whether such offenses are punishable by a term of imprisonment or subject to criminal penalties in the jurisdiction in which the defendant was convicted at the time of sentencing for the instant offense?

8. Acquitted Conduct

Synopsis of Proposed Amendment: This proposed amendment is a result of the Commission's consideration of possible amendments to the *Guidelines Manual* to prohibit the use of acquitted conduct in applying the guidelines. *See* U.S. Sent'g Comm'n, ''Notice of Final Priorities,'' 87 FR 67756 (Nov. 9, 2022).

Acquitted conduct is not expressly addressed in the *Guidelines Manual,* except for a reference in the parenthetical summary of the holding in *United States* v. *Watts,* 519 U.S. 148 (1997). *See* USSG § 6A1.3, Comment. However, consistent with the Supreme Court's holding in *Watts,* consideration of acquitted conduct is permitted under the guidelines through the operation of § 1B1.3 (Relevant Conduct (Factors that Determine the Guideline Range)), in conjunction with § 1B1.4 (Information to be Used in Imposing Sentence) and § 6A1.3 (Resolution of Disputed Factors (Policy Statement)).

Section 1B1.3 sets forth the principles and limits of sentencing accountability for purposes of determining a defendant's guideline range, a concept referred to as ''relevant conduct.'' Relevant conduct impacts nearly every aspect of guidelines application, including the determination of: base offense levels where more than one level is provided, specific offense characteristics, and any cross references in Chapter Two (Offense Conduct); any adjustments in Chapter Three (Adjustment); the criminal history calculations in Chapter Four, Part A (Criminal History); and departures and adjustments in Chapter Five (Determining the Sentence).

Specifically, § 1B1.3(a)(1) provides that relevant conduct comprises ''all acts and omissions . . . that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense.'' Relevant conduct includes, in subsection (a)(1)(A), ''all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant,'' and, in subsection (a)(1)(B), all acts and omissions of others ''in the case of a jointly undertaken criminal activity,'' that ''occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense.'' *See* USSG § 1B1.3(a)(1).

Relevant conduct also includes, for some offense types, ''all acts and omissions described in subdivisions (1)(A) and (1)(B) above that were part of the same course of conduct or common scheme or plan as the offense of conviction,'' ''all harm that resulted from the acts and omissions specified in subsections (a)(1) and (a)(2) above, and all harm that was the object of such acts and omissions,'' and ''any other information specified in the applicable guideline.'' *See* USSG § 1B1.3(a)(2)–(a)(4). The background commentary to § 1B1.3 explains that ''[c]onduct that is not formally charged or is not an element of the offense of conviction may enter into the determination of the applicable guideline sentencing range.''

The *Guidelines Manual* also includes Chapter Six, Part A (Sentencing Procedures) addressing sentencing procedures that are applicable in all cases. Specifically, § 6A1.3 provides for resolution of any reasonably disputed factors important to the sentencing determination. Consistent with 18 U.S.C. 3661, § 6A1.3(a) provides, in pertinent part, that ''[i]n resolving any dispute concerning a factor important to sentencing determination, the court may consider relevant information without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has sufficient indicia of reliability to support its probable accuracy.'' The Commentary to § 6A1.3 instructs that ''[i]n determining the relevant facts, sentencing judges are not restricted to information that would be admissible at trial'' and that ''[a]ny information may be considered'' so long as it has sufficient indicia of reliability to support its probable accuracy. The Commentary cites to 18 U.S.C. 3661 and Supreme Court case law upholding the sentencing court's unrestricted discretion in considering any information at sentencing, so long as it is proved by a preponderance of the evidence. Consistent with the Supreme Court case law, the Commentary also provides that ''[t]he Commission believes that use of a preponderance of the evidence standard is appropriate to meet due process requirements and policy concerns in resolving disputes regarding application of the guidelines to the facts of a case.''

In fiscal year 2021, nearly all offenders (56,324; 98.3%) were convicted through a guilty plea. The remaining 963 offenders (1.7% of all offenders) were convicted and sentenced after a trial, and of those offenders, 157 offenders (0.3% of all offenders) were acquitted of at least one offense.

The proposed amendment would amend § 1B1.3 to add a new subsection (c) providing that acquitted conduct shall not be considered relevant conduct for purposes of determining the guideline range unless the conduct was admitted by the defendant during a guilty plea colloquy or was found by the trier of fact beyond a reasonable doubt to establish, in whole or in part, the instant offense of conviction. The new provision would define ''acquitted conduct'' as conduct underlying a charge of which the defendant has been acquitted by the trier of fact or upon a motion of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure or an analogous motion under the applicable law of a state, local, or tribal jurisdiction.

The proposed amendment would also amend the Commentary to § 6A1.3 (Resolution of Disputed Factors (Policy Statement)) to make conforming revisions addressing the use of acquitted conduct for purposes of determining the guideline range.

Two issues for comment are also provided.

Proposed Amendment

Section 1B1.3 is amended by adding at the end the following new subsection (c):

''(c) *Acquitted Conduct.*—

(1) *Limitation.*—Acquitted conduct shall not be considered relevant conduct for purposes of determining the guideline range unless such conduct—

(A) was admitted by the defendant during a guilty plea colloquy; or

(B) was found by the trier of fact beyond a reasonable doubt;

to establish, in whole or in part, the instant offense of conviction.

(2) *Definition of Acquitted Conduct.*—For purposes of this guideline, 'acquitted conduct' means conduct (*i.e.,* any acts or omission) underlying a charge of which the defendant has been acquitted by the trier of fact or upon a motion of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure or an analogous motion under the applicable law of a state, local, or tribal jurisdiction.''.

The Commentary to § 6A1.3 is amended—

by striking ''*see also United States* v. *Watts,* 519 U.S. 148, 154 (1997) (holding that lower evidentiary standard at sentencing permits sentencing court's consideration of acquitted conduct); *Witte* v. *United States,* 515 U.S. 389, 399–401 (1995) (noting that sentencing courts have traditionally considered wide range of information without the procedural protections of a criminal trial, including information concerning criminal conduct that may be the subject of a subsequent prosecution);'' and inserting ''*Witte* v. *United States,* 515 U.S. 389, 397–401 (1995) (noting that sentencing courts have traditionally considered a wide range of information without the procedural protections of a criminal trial, including information concerning uncharged criminal conduct, in sentencing a defendant within the range authorized by statute);''

by striking ''Watts, 519 U.S. at 157'' and inserting ''Witte, 515 U.S. at 399–401''

and by inserting at the end of the paragraph that begins ''The Commission believes that use of a preponderance of the evidence standard'' the following: ''Acquitted conduct, however, generally shall not be considered relevant conduct for purposes of determining the guideline range. *See* subsection (c) of § 1B1.3 (Relevant Conduct). Acquitted conduct may be considered in determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted. *See* § 1B1.4 (Information to be Used in Imposing a Sentence (Selecting a Point Within the Guideline Range or Departing from the Guidelines)).''.

Issues for Comment

1. The proposed amendment is intended to generally prohibit the use of acquitted conduct for purposes of determining the guideline range, except when such conduct was admitted by the defendant during a guilty plea colloquy or was found by the trier of fact beyond a reasonable doubt to establish the instant offense of conviction. However, conduct underlying an acquitted charge may overlap with conduct found by the trier of fact beyond a reasonable doubt to establish the instant offense of conviction. Does this proposed amendment allow a court to consider such ''overlapping'' conduct for purposes of determining the guideline range? Should the Commission provide additional guidance to address this conduct?

2. The Commission seeks comment on whether the limitation on the use of acquitted conduct is too broad or too narrow. If so, how? For example, should the Commission account for acquittals for reasons such as jurisdiction, venue, or statute of limitations, that are otherwise unrelated to the substantive evidence?

9. Sexual Abuse Offenses

Synopsis of Proposed Amendment: The proposed amendment contains two parts (Part A and Part B). The Commission is considering whether to promulgate either or both of these parts, as they are not mutually exclusive. Part A of the proposed amendment responds to recently enacted legislation. *See* U.S. Sent'g Comm'n, ''Notice of Final Priorities,'' 87 FR 67756 (Nov. 9, 2022) (identifying as a priority ''[i]mplementation of any legislation warranting Commission action''). Part B of the proposed amendment is a result of the Commission's ''[c]onsideration of possible amendments to the *Guidelines Manual* to address sexual abuse or contact offenses against a victim in the custody, care, or supervision of, and committed by law enforcement or correctional personnel.'' *Id.*

(A) Violence Against Women Act Reauthorization Act of 2022

Part A of the proposed amendment responds to title XII of the Violence Against Women Act Reauthorization Act of 2022 (''the Act''). The Act is part of the Consolidated Appropriations Act, 2022, Public Law 117–103 (2022). It created two new offenses concerning sexual misconduct while committing civil rights offenses and sexual abuse of an individual in federal custody.

First, the Act created a new offense at 18 U.S.C. 250 (Penalties for civil rights offenses involving sexual misconduct). New section 250(a) prohibits any person from engaging in, or causing another to engage in, sexual misconduct while committing a civil rights offense under chapter 13 (Civil Rights) of part I (Crimes) of title 18, United States Code, or an offense under section 901 of the Fair Housing Act (42 U.S.C. 3631). The statute does not define ''sexual misconduct,'' but new section 250(b) delineates different maximum statutory terms of imprisonment for different degrees of sexual misconduct, ranging from two years to any term of years or life. The maximum penalties are: (1) any term of years or life if the offense involved aggravated sexual abuse, as defined in 18 U.S.C. 2241, or sexual abuse, as defined in 18 U.S.C. 2242, or any attempts to commit such conduct; (2) any term of years or life if the offense involved abusive sexual contact of a child who has not attained the age of 16, of the type prohibited by 18 U.S.C. 2244(a)(5); (3) 40 years if the offense involved a sexual act, as defined in 18 U.S.C. 2246, without the other person's permission and the sexual act does not amount to sexual abuse or aggravated sexual abuse; (4) 10 years if the offense involved abusive sexual contact of the type prohibited by 18 U.S.C. 2244(a)(1) or (b) (excluding abusive sexual contact through the clothing), with an enhanced maximum penalty of 30 years if such abusive sexual contact involved a child

under the age of 12; (5) 3 years if the offense involved abusive sexual contact of the type prohibited by 18 U.S.C. 2244(a)(2), with an enhanced maximum penalty of 20 years if such abusive sexual contact involved a child under the age of 12; (6) 2 years if the offense involved abusive sexual contact through the clothing of the type prohibited by 18 U.S.C. 2244(a)(3), (a)(4), or (b), with an enhanced maximum penalty of 10 years if such abusive sexual conduct through the clothing involved a child under the age of 12.

Second, the Act amended 18 U.S.C. 2243 and created a new offense at subsection (c). The new section 2243(c) prohibits an individual, while acting in their capacity as a federal law enforcement officer, from knowingly engaging in a sexual act with an individual who is under arrest, under supervision, in detention, or in federal custody. The statutory maximum term of imprisonment for the offense is 15 years, which is the same maximum penalty for offenses under sections 2243(a) (prohibiting knowingly engaging in a sexual act with a minor who had attained the age of twelve but not the age of sixteen and is at least four years younger than the person so engaging) and 2243(b) (prohibiting knowingly engaging in a sexual act with a ward in official detention (including in a federal prison or any prison, institution, or facility where people are held in custody by the direction of, or pursuant to a contract or agreement with, any federal department or agency) and under the custodial, supervisory, or disciplinary authority of the person so engaging).

The Act also included a provision defining ''federal law enforcement officer'' at 18 U.S.C. 2246(7) as having the meaning given the term in 18 U.S.C. 115 (*i.e.,* ''any officer, agent, or employee of the United States authorized by law or by a Government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of Federal criminal law.''). In addition, the Act amended 18 U.S.C. 2244 (Abusive sexual contact) to add a new penalty provision at subsection (a)(6) stating any person that knowingly engages in or causes sexual contact with or by another person, if doing so would violate new section 2243(c), would face a maximum statutory term of imprisonment of two years.

Part A of the proposed amendment would amend Appendix A (Statutory Index) to reference offenses under 18 U.S.C. 250 to § 2H1.1 (Offenses Involving Individual Rights), and offenses under 18 U.S.C. 2243(c) to § 2A3.3 (Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts). Part A of the proposed amendment would also amend the Commentary to §§ 2A3.3 and 2H1.1 to reflect that these statutes are referenced to these guidelines. In addition, it would amend the title of § 2A3.3 to add ''Criminal Sexual Abuse of an Individual in Federal Custody.''

Issues for comment are also provided.

(B) Sexual Abuse Offenses Committed by Law Enforcement and Correctional Personnel

Part B of the proposed amendment addresses concerns regarding the increasing number of cases involving sexual abuse committed by law enforcement or correctional personnel against victims in their custody, care, or supervision. In its annual letter to the Commission, the Department of Justice urged the Commission to consider amending the *Guidelines Manual* to better account for such sexual abuse offenses, including offenses under 18 U.S.C. 2243(b) and the offense conduct covered by the new statute at 18 U.S.C. 2243(c) (discussed in Part A of the proposed amendment). According to the Department of Justice, the provisions of the guideline applicable to such offenses, § 2A3.3 (Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts), do not sufficiently account for the severity of the conduct in such offenses, nor provide adequate penalties in accordance with the statutory maximum terms of imprisonment provided for these offenses.

Part B of the proposed amendment would amend § 2A3.3 in several ways to address these concerns. First, it would increase the base offense level of the guideline from 14 to [22]. Second, Part B of the proposed amendment would address the presence of aggravating factors in sexual abuse offenses, such as causing serious bodily injury and the use or threat of force, in the same way § 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts) currently does, by providing a cross reference to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) for cases where the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse (as defined in 18 U.S.C. 2241 or § 2242).

Issues for comment are also provided.

(A) Violence Against Women Act Reauthorization Act of 2022

Proposed Amendment

Appendix A (Statutory Index) is amended—

by inserting before the line referenced to 18 U.S.C. 281 the following new line reference:

''18 U.S.C. 250 2H1.1'';

and by inserting before the line referenced to 18 U.S.C. 2244 the following new line reference:

''18 U.S.C. 2243(c) 2A3.3''.

Section 2A3.3 is amended in the heading by inserting after ''Acts'' the following: ''; Criminal Sexual Abuse of an Individual in Federal Custody''.

The Commentary to § 2A3.3 captioned ''Statutory Provision'' is amended by inserting after ''§ 2243(b)'' the following: '', 2243(c)''.

The Commentary to § 2H1.1 captioned ''Statutory Provisions'' is amended by striking ''246, 247, 248, 249'' and inserting ''246–250''.

Issues for Comment

1. In response to the Violence Against Women Act Reauthorization Act of 2022, Part A of the proposed amendment would reference 18 U.S.C. 250 to § 2H1.1 (Offenses Involving Individual Rights). The Commission seeks comment on whether the proposed reference is appropriate and whether any additional changes to the guidelines are required to account for section 250's offense conduct. Specifically, should the Commission amend § 2H1.1 to provide a higher or lower base offense level if 18 U.S.C. 250 is the offense of conviction? If so, what should that base offense level be and why? Should the Commission add specific offense characteristics to § 2H1.1 in response to section 250? If so, what should any such specific offense characteristic provide and why?

The new statute at 18 U.S.C. 250 provides different maximum statutory terms of imprisonment, ranging from two years to any term of years or life, depending on the sexual misconduct involved in the offense. Should the Commission amend § 2H1.1 to address this range of penalties? If so, how should the Commission address these different penalties and why?

2. In response to the Violence Against Women Act Reauthorization Act of 2022, Part A of the proposed amendment would reference 18 U.S.C. 2243(c) to § 2A3.3 (Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts). The Commission seeks comment on whether the proposed reference is appropriate and whether

any additional changes to the guidelines are required to account for section 2243(c)'s offense conduct. Specifically, should the Commission amend § 2A3.3 to provide a higher or lower base offense level if 18 U.S.C. 2243(c) is the offense of conviction? If so, what should that base offense level be and why? Should the Commission add a specific offense characteristic to § 2A3.3 in response to section 2243(c)? If so, what should that specific offense characteristic provide and why?

(B) Sexual Abuse Offenses Committed by Law Enforcement and Correctional Personnel

Proposed Amendment

Section 2A3.3 is amended—

in subsection (a) by striking ''14'' and inserting ''[22]'';

and by inserting at the end the following new subsection (c):

''(c) Cross Reference

(1) If the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse (as defined in 18 U.S.C. 2241 or § 2242), apply § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse). If the victim had not attained the age of 12 years, § 2A3.1 shall apply, regardless of the 'consent' of the victim.''.

Issues for Comment

1. Part B of the proposed amendment would amend § 2A3.3 (Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts) to increase the base offense level of the guideline from 14 to [22]. The proposed base offense level of [22] for § 2A3.3 would result in proportionate penalties with offenses sentenced under § 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts), where, like § 2A3.3, the victim is incapable of granting consent. Specifically, § 2A3.2 provides a base offense level of 18 and a 4-level increase at § 2A3.2(b)(1) that applies in cases where the victim was in the custody, care, or supervisory control of the defendant. The Commission seeks comment on whether the proposed base offense level for § 2A3.3 is appropriate and, if not, what should the base offense level be and why. Are there distinctions between sexual offenses against minors and sexual offenses against wards that may warrant different base offense levels? If so, what are those distinctions and how should they be accounted for in § 2A3.3?

2. Part B of the proposed amendment would also amend § 2A3.3 to provide a cross reference to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) for cases where the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse (as defined in 18 U.S.C. 2241 or § 2242). This cross reference is the same as the one currently provided for in § 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts). The Commission seeks comment on whether adding a cross reference to § 2A3.1 in § 2A3.3 is appropriate to address the presence of aggravating factors in the offenses referenced to this guideline, such as causing serious bodily injury and the use or threat of force. If not, how should the Commission take into account such aggravating factors? For example, should the Commission add specific offense characteristics to address these aggravating factors?

10. Alternative–to–Incarceration Programs

In November 2022, the Commission identified as one of its policy priorities a ''[m]ultiyear study of court-sponsored diversion and alternatives-to-incarceration programs (*e.g.,* Pretrial Opportunity Program, Conviction And Sentence Alternatives (CASA) Program, Special Options Services (SOS) Program), including consideration of possible amendments to the *Guidelines Manual* that might be appropriate.'' U.S. Sent'g Comm'n, ''Notice of Final Priorities,'' 87 FR 67756 (Nov. 9, 2022). As part of its work on this priority, the Commission is publishing these issues for comment on alternative-to-incarceration programs to inform the Commission's consideration of this policy priority.

Issues for Comment

1. The Commission invites general comment on how it should approach any study related to this policy priority. What should be the scope, duration, and sources of information of such a study, and what specific questions should be addressed?

The Commission further seeks comment on any relevant developments in recent legal or social science literature on court-sponsored diversion and alternatives-to-incarceration programs.

2. The Commission invites general comment on whether the *Guidelines Manual* should be amended to address court-sponsored diversion and alternatives-to-incarceration programs. The Commission also seeks comment on whether it should consider amending the guidelines for such purposes during this amendment cycle, or whether it should first undertake further study of court-sponsored diversion and alternatives-to-incarceration programs. In either case, how should the Commission amend the *Guidelines Manual* to address court-sponsored diversion and alternatives-to-incarceration programs?

For example, should the Commission add to Chapter Five, Part K, Subpart 2 (Other Grounds for Departure) a new policy statement permitting a downward departure if the defendant successfully completed the necessary requirements of an alternative-to-incarceration court program? If so, what type of programs should be addressed by such departure provision? Should the Commission provide criteria for purposes of applying a departure provision related to alternative-to-incarceration court programs? If so, what criteria should the Commission use? For example, should such a downward departure only apply to defendants who successfully completed the necessary requirements of an alternative-to-incarceration court program? In the alternative, should the Commission allow the departure to apply also to defendants who productively participated in any such program without fulfilling all requirements because they were administratively discharged from the program due to reasons beyond the defendant's control (*e.g.,* health reasons, scheduling issues)?

11. Fake Pills

Synopsis of Proposed Amendment: This proposed amendment is a result of the Commission's consideration of miscellaneous guidelines application issues. *See* U.S. Sent'g Comm'n, ''Notice of Final Priorities,'' 87 FR 67756 (Nov. 9, 2022) (identifying as a priority ''[c]onsideration of other miscellaneous issues, including possible amendments to (A) section 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) to address offenses involving misrepresentation or marketing of a controlled substance as another substance . . . .'').

The proposed amendment responds to concerns expressed by the Drug Enforcement Administration (DEA) about the proliferation of ''fake pills'' (*i.e.,* illicitly manufactured pills represented or marketed as legitimate pharmaceutical pills) containing fentanyl or fentanyl analogue.

According to the DEA, these fake pills resemble legitimately manufactured pharmaceutical pills (such as OxyContin, Xanax, and Adderall) but can result in sudden death or poisoning

due to the unknown presence and quantities of dangerous substances, such as fentanyl and fentanyl analogues.

The DEA reported that it seized over 50.6 million fentanyl-laced, fake prescription pills in calendar year 2022. *See* Drug Enforcement Administration, Press Release: Drug Enforcement Administration Announces the Seizure of Over 379 million Deadly Doses of Fentanyl in 2022 (Dec. 20, 2022), *https://www.dea.gov/press-releases/2022/12/20/drug-enforcement-administration-announces-seizure-over-379-million-deadly.* DEA laboratory testing indicates that the number of fake pills laced with fentanyl have sharply increased in recent years and that six out of ten fentanyl-laced faked pills have been found to contain a potentially fatal dose of fentanyl. *See* Drug Enforcement Administration, Public Safety Alert: DEA Laboratory Testing Reveals that 6 out of 10 Fentanyl-Laced Fake Prescription Pills Now Contain a Potentially Lethal Dose of Fentanyl (2022), *https://www.dea.gov/alert/dea-laboratory-testing-reveals-6-out-10-fentanyl-laced-fake-prescription-pills-now-contain.*

According to the Centers for Disease Control and Prevention (CDC), overdose deaths from synthetic opioids containing fentanyl, including pills purporting to be legitimate pharmaceuticals, have sharply increased in recent years. *See* Christine L. Mattson et al., *Trends and Geographic Patterns in Drug and Synthetic Opioid Overdose Deaths—United States, 2013–2019,* 70 Morb Mortal Wkly Rep 6 (Feb. 12, 2021), *https://www.cdc.gov/mmwr/volumes/70/wr/mm7006a4.htm.*

In order to address this issue, the DEA recommended that the Commission review the 4-level enhancement for knowingly distributing or marketing as another substance a mixture or substance containing fentanyl or fentanyl analogue as a different substance at subsection (b)(13) of § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking). Specifically, the DEA suggested that the Commission consider changing the *mens rea* requirement to expand the application of the enhancement to offenders who may not have known fentanyl or fentanyl analogue was in the substance but distributed or marketed a substance without regard to whether such dangerous substances could have been present.

The proposed amendment would amend § 2D1.1(b)(13) to add a new subparagraph with an alternative 2-level enhancement for cases where the defendant represented or marketed as a legitimately manufactured drug another mixture or substance containing fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide) or a fentanyl analogue, with reason to believe that such mixture or substance was not the legitimately manufactured drug. The new provision would refer to 21 U.S.C. 321(g)(1) for purposes of defining the term ''drug.''

An issue for comment is provided.

Proposed Amendment

Section 2D1.1(b)(13) is amended—

by inserting after ''defendant'' the following: ''(A)'';

and by inserting after ''4 levels'' the following: ''; or (B) represented or marketed as a legitimately manufactured drug another mixture or substance containing fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide) or a fentanyl analogue, with reason to believe that such mixture or substance was not the legitimately manufactured drug, increase by [2] levels. For purposes of subsection (b)(13)(B), the term 'drug' has the meaning given that term in 21 U.S.C. 321(g)(1)''.

Issue for Comment

1. The proposed amendment would amend subsection (b)(13) of § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) to add an alternative 2-level enhancement applicable if the defendant represented or marketed as a legitimately manufactured drug another mixture or substance containing fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide) or a fentanyl analogue, with reason to believe that such mixture or substance was not the legitimately manufactured drug. The Commission seeks comment on whether the proposed alternative enhancement at § 2D1.1(b)(13)(B) is appropriate to address the concerns raised by the Drug Enforcement Administration. If not, is there an alternative approach that the Commission should consider? Should the Commission expand the scope of § 2D1.1(b)(13)(B) to include other synthetic opioids? If so, what other synthetic opioids should be included?

The Commission also seeks comment on whether the *mens rea* requirement proposed for § 2D1.1(b)(13)(B) is appropriate. Should the Commission provide a different *mens rea* requirement for the new provision? If so, what *mens rea* requirement should the Commission provide? Should the Commission instead make § 2D1.1(b)(13)(B) an offense-based enhancement as opposed to exclusively defendant-based?

12. Miscellaneous

Synopsis of Proposed Amendment: This proposed amendment is a result of the Commission's consideration of miscellaneous guidelines application issues. *See* U.S. Sent'g Comm'n, ''Notice of Final Priorities,'' 87 FR 67756 (Nov. 9, 2022) (identifying as a priority ''[c]onsideration of other miscellaneous issues, including possible amendments to . . . (B) section 3D1.2 (Grouping of Closely Related Counts) to address the interaction between section 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor) and section 3D1.2(d); and (C) section 5F1.7 (Shock Incarceration Program (Policy Statement)) to reflect that the Bureau of Prisons no longer operates a shock incarceration program.''). The proposed amendment contains two parts (Part A and Part B). The Commission is considering whether to promulgate either or both of these parts, as they are not mutually exclusive.

Part A responds to a guideline application issue concerning the interaction of § 2G1.3 and § 3D1.2 (Grouping of Closely Related Counts). Although subsection (d) of § 3D1.2 specifies that offenses covered by § 2G1.1 are not grouped under the subsection, it does not specify whether or not offenses covered by § 2G1.3 are so grouped. Part A would amend § 3D1.2(d) to provide that offenses covered by § 2G1.3, like offenses covered by § 2G1.1, are not grouped under subsection (d).

Part B revises the guidelines to address the fact that the Bureau of Prisons (''BOP'') no longer operates a shock incarceration program as described in § 5F1.7 (Shock Incarceration Program (Policy Statement)). Part B would amend the Commentary to § 5F1.7 to reflect the fact that BOP no longer operates the program.

(A) Grouping of Offenses Covered by § 2G1.3

Synopsis of Proposed Amendment: Part A of the proposed amendment revises § 3D1.2 (Grouping of Closely Related Counts) to provide that offenses covered by § 2G1.3 (Promoting a Commercial Sex Act or Prohibited

Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor) are not grouped under § 3D1.2(d).

Section 3D1.2 addresses the grouping of closely related counts for purposes of determining the offense level when a defendant has been convicted on multiple counts. Subsection (d) states that counts are grouped together ''[w]hen the offense level is determined largely on the basis of the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm, or if the offense behavior is ongoing or continuous in nature and the offense guideline is written to cover such behavior.'' Subsection (d) also contains lists of (1) guidelines for which the offenses covered by the guideline are to be grouped under the subsection and (2) guidelines for which the covered offenses are specifically excluded from grouping under the subsection.

Section 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor) is included in the list of guidelines for which the covered offenses are excluded from grouping under § 3D1.2(d). Section 2G1.3 is, however, not included on that list, even though several offenses that are referenced to § 2G1.3 when the offense involves a minor are referenced to § 2G1.1 when the offense involves an individual other than a minor. In addition, several offenses that were referenced to § 2G1.1 before § 2G1.3 was promulgated are now referenced to § 2G1.3. *See* USSG App. C, Amendment 664 (effective Nov. 1, 2004). Furthermore, Application Note 6 of the Commentary to § 2G1.3 states that multiple counts under § 2G1.3 are not to be grouped.

Section 2G1.3 is also not included on the list of guidelines for which the covered offenses are to be grouped under § 3D1.2(d). Because § 2G1.3 is included on neither list, § 3D.1(d) provides that ''grouping under [the] subsection may or may not be appropriate and a ''case-by-case determination must be made based upon the facts of the case and the applicable guideline (including specific offense characteristics and other adjustments) used to determine the offense level.''

Part A of the proposed amendment would amend § 3D1.2(d) to add § 2G1.3 to the list of guidelines for which the covered offenses are specifically excluded from grouping.

Proposed Amendment

Section 3D1.2(d) is amended by striking ''§§ 2G1.1, 2G2.1'' and inserting ''§§ 2G1.1, 2G1.3, 2G2.1''.

(B) Policy Statement on Shock Incarceration Programs

Synopsis of Proposed Amendment: Part B of the proposed amendment revises the guidelines to address the fact that the Bureau of Prisons (''BOP'') no longer operates a shock incarceration program as described in § 5F1.7 (Shock Incarceration Program (Policy Statement)) and the corresponding commentary.

Section 4046 of title 18, United States Code, authorizes BOP to place any person who has been sentenced to a term of imprisonment of more than 12 but not more than 30 months in a shock incarceration program if the person consents to that placement. Sections 3582(a) and 3621(b)(4) of title 18 authorize a court, in imposing sentence, to make a recommendation regarding the type of prison facility that would be appropriate for the defendant. In making such a recommendation, the court ''shall consider any pertinent policy statements issued by the Sentencing Commission.'' 18 U.S.C. 3582(a).

Section 5F1.7 provides that, pursuant to sections 3582(a) and 3621(b)(4), a sentencing court may recommend that a defendant who meets the criteria set forth in section 4046 participate in a shock incarceration program. The Commentary to § 5F1.7 describes the authority for BOP to operate a shock incarceration program and the procedures that the BOP established in 1990 regarding operation of such a program.

In 2008, BOP terminated its shock incarceration program and removed the rules governing its operation. Part B of the proposed amendment would amend the Commentary to § 5F1.7 to reflect those developments. It would also correct two typographical errors in the commentary.

Proposed Amendment

The Commentary to § 5F1.7 captioned ''Background'' is amended—

by striking ''six months'' and inserting ''6 months'';

by striking ''as the Bureau deems appropriate. 18 U.S.C. 4046.' '' and inserting ''as the Bureau deems appropriate.' 18 U.S.C. 4046.'';

and by striking the final paragraph as follows:

''The Bureau of Prisons has issued an operations memorandum (174–90 (5390), November 20, 1990) that outlines eligibility criteria and procedures for the implementation of this program (which the Bureau of Prisons has titled 'intensive confinement program'). Under these procedures, the Bureau will not place a defendant in an intensive confinement program unless the sentencing court has approved, either at the time of sentencing or upon consultation after the Bureau has determined that the defendant is otherwise eligible. In return for the successful completion of the 'intensive confinement' portion of the program, the defendant is eligible to serve the remainder of his term of imprisonment in a graduated release program comprised of community corrections center and home confinement phases.'',

and inserting the following:

''In 1990, the Bureau of Prisons issued an operations memorandum (174–90 (5390), November 20, 1990) that outlined eligibility criteria and procedures for the implementation of a shock incarceration program (which the Bureau of Prisons titled the 'intensive confinement program'). In 2008, however, the Bureau of Prisons terminated the program and removed the rules governing its operation. *See* 73 FR 39863 (July 11, 2008).''.

13. Technical

Synopsis of Proposed Amendment: This proposed amendment would make technical and other non-substantive changes to the *Guidelines Manual.*

Part A of the proposed amendment would make technical changes to provide updated references to certain sections in the United States Code that were redesignated in legislation. The Frank LoBiondo Coast Guard Authorization Act of 2018, Public Law 115–282 (Dec. 4, 2018) (hereinafter ''the Act''), among other things, established a new chapter 700 (Ports and Waterway Safety) in subtitle VII (Security and Drug Enforcement) of title 46 (Shipping) of the United States Code. Section 401 of the Act repealed the Ports and Waterways Safety Act of 1972, previously codified in 33 U.S.C. 1221–1232b, and restated its provisions with some revisions in the new chapter 700 of title 46, specifically at 46 U.S.C. 70001–70036. Appendix A (Statutory Index) includes references to Chapter Two guidelines for both former 33 U.S.C. 1227(b) and 1232(b). Specifically, former section 1227(b) is referenced to §§ 2J1.1 (Contempt) and 2J1.5 (Failure to Appear by Defendant), while former section 1232(b) is referenced to § 2A2.4

(Obstructing or Impeding Officers). Part A of the proposed amendment would amend Appendix A to delete the references to 33 U.S.C. 1227(b) and 1232(b) and replace them with updated references to 46 U.S.C. 70035(b) and 70036(b). The Act did not make substantive revisions to either of these provisions.

Part B of the proposed amendment would make technical changes to reflect the editorial reclassification of certain sections in the United States Code. Effective December 1, 2015, the Office of Law Revision Counsel eliminated the Appendix to title 50 of the United States Code and transferred the non-obsolete provisions to new chapters 49 to 57 of title 50 and to other titles of the United States Code. To reflect the new section numbers of the reclassified provisions, Part B of the proposed amendment would make changes to § 2M4.1 (Failure to Register and Evasion of Military Service), § 2M5.1 (Evasion of Export Controls; Financial Transactions with Countries Supporting International Terrorism), and Appendix A. Similarly, effective September 1, 2016, the Office of Law Revision Counsel also transferred certain provisions from Chapter 14 of title 25 to four new chapters in title 25 in order to improve the organization of the title. To reflect these changes, Part B of the proposed amendment would make further changes to Appendix A.

Part C of the proposed amendment would make certain technical changes to the Commentary to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy). First, Part C of the proposed amendment would amend the Drug Conversion Tables at Application Note 8(D) and the Typical Weight Per Unit Table at Application Note 9 to reorganize the controlled substances contained therein in alphabetical order to make the tables more user-friendly. It would also make minor changes to the controlled substance references to promote consistency in the use of capitalization, commas, parentheticals, and slash symbols throughout the Drug Conversion Tables. For example, the proposed amendment would change the reference to ''Phencyclidine (actual)/PCP (actual)'' to ''Phencyclidine (PCP) (actual).'' Second, Part C of the proposed amendment would make clerical changes throughout the Commentary to correct some typographical errors. Finally, Part C of the proposed amendment would amend the Background Commentary to add a specific reference to Amendment 808, which replaced the term ''marihuana equivalency'' with the new term ''converted drug weight'' and changed the title of the ''Drug Equivalency Tables'' to ''Drug Conversion Tables.'' *See* USSG App. C, amend. 808 (effective Nov. 1, 2018).

Part D of the proposed amendment would make technical changes to the Commentary to §§ 2A4.2 (Demanding or Receiving Ransom Money), 2A6.1 (Threatening or Harassing Communications; Hoaxes; False Liens), and 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage), and to Appendix A, to provide references to the specific applicable provisions of 18 U.S.C. 876.

Part E of the proposed amendment would make technical changes to the commentary of several guidelines in Chapter Eight (Sentencing of Organizations). First, the proposed amendment would replace the term ''prior criminal adjudication,'' as found and defined in Application Note 3(G) of § 8A1.2 (Application Instructions—Organizations), with ''criminal adjudication'' to better reflect how that term is used throughout Chapter Eight. In addition, the proposed amendment would make conforming changes to the Commentary to § 8C2.5 (Culpability Score) to account for the new term. Part E of the proposed amendment would also make changes to the Commentary to § 8C3.2 (Payment of the Fine—Organizations). Section 207 of the Mandatory Victims Restitution Act of 1996, Public Law 104–132 (Apr. 24, 1996), amended 18 U.S.C. 3572(d) to eliminate the requirement that if the court permits something other than the immediate payment of a fine or other monetary payment, the period for payment shall not exceed five years. Part E of the proposed amendment would revise Application Note 1 of § 8C3.2 to reflect the current language of 18 U.S.C. 3572(d) by providing that if the court permits other than immediate payment of a fine or other monetary payment, the period provided for payment shall be the shortest time in which full payment can reasonably be made.

Part F of the proposed amendment would make clerical changes to correct typographical errors in: § 1B1.1 (Application Instructions); § 1B1.3 (Relevant Conduct (Factors that Determine the Guideline Range)); § 1B1.4 (Information to be Used in Imposing Sentence (Selecting a Point Within the Guideline Range or Departing from the Guidelines)); § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)); § 2D2.3 (Operating or Directing the Operation of a Common Carrier Under the Influence of Alcohol or Drugs); § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production); § 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information); § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition); § 2M1.1 (Treason); § 2T1.1 (Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents); the Introductory Commentary to Chapter Two, Part T, Subpart 2 (Alcohol and Tobacco Taxes); the Introductory Commentary to Chapter Two, Part T, Subpart 3 (Customs Taxes); the Introductory Commentary to Chapter Three, Part A (Victim-Related Adjustments); § 3A1.1 (Hate Crime Motivation or Vulnerable Victim); the Introductory Commentary to Chapter Three, Part B (Role in the Offense); § 3C1.1 (Obstructing or Impeding the Administration of Justice); the Introductory Commentary to Chapter Three, Part D (Multiple Counts); § 3D1.1 (Procedure for Determining Offense Level on Multiple Counts); § 3D1.2 (Groups of Closely Related Counts); § 3D1.3 (Offense Level Applicable to Each Group of Closely Related Counts); § 3D1.4 (Determining the Combined Offense Level); § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)); § 4B1.1 (Career Offender); § 5C1.1 (Imposition of a Term of Imprisonment); § 5E1.1 (Restitution); § 5E1.3 (Special Assessments); § 5E1.4 (Forfeiture); the Introductory Commentary to Chapter Five, Part H (Specific Offender Characteristics); the Introductory Commentary to Chapter Six, Part A (Sentencing Procedures); Chapter Seven, Part A (Introduction to Chapter Seven); § 8B1.1 (Restitution—Organizations); § 8B2.1 (Effective Compliance and Ethics Program); § 8C3.3 (Reduction of Fine Based on Inability to Pay); and § 8E1.1 (Special Assessments—Organizations).

Part G of the proposed amendments would also make clerical changes to the Commentary to §§ 1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing (Policy Statement)) and 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged

Term of Imprisonment or Anticipated State Term of Imprisonment), to update the citation of Supreme Court cases. In addition, Part G of the proposed amendment would amend (1) the Commentary to § 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes) to add a missing reference to 18 U.S.C. 844(o); (2) the Commentary to § 2M6.1 (Unlawful Activity Involving Nuclear Material, Weapons, or Facilities, Biological Agents, Toxins, or Delivery Systems, Chemical Weapons, or Other Weapons Of Mass Destruction; Attempt or Conspiracy), to delete the definitions of two terms that are not currently used in the guideline; (3) the Commentary to §§ 2M5.3 (Providing Material Support or Resources to Designated Foreign Terrorist Organizations or Specially Designated Global Terrorists, or For a Terrorist Purpose) and 2T1.1 (Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents), to correct references to the Code of Federal Regulations; and (4) the Commentary to § 3A1.2 (Official Victim), to add missing content in Application Note 3.

Proposed Amendment

(A) Frank LoBiondo Coast Guard Authorization Act of 2018

Appendix A (Statutory Index) is amended—

by striking the following line references:

''33 U.S.C. 1227(b) 2J1.1, 2J1.5
33 U.S.C. 1232(b)(2) 2A2.4'';

and by inserting before the line referenced to 46 U.S.C. App. § 1707a(f)(2) the following new line references:

''46 U.S.C. 70035(b) 2J1.1, 2J1.5
46 U.S.C. 70036(b) 2A2.4''.

(B) Reclassification of Sections of United States Code

The Commentary to § 2M4.1 captioned ''Statutory Provisions'' is amended by striking ''50 U.S.C. App. § 462'' and inserting ''50 U.S.C. § 3811''.

The Commentary to § 2M5.1 captioned ''Statutory Provisions'' is amended by striking ''50 U.S.C. App. §§ 2401–2420'' and inserting ''50 U.S.C. §§ 4601–4623. For additional statutory provision(s), *see* Appendix A (Statutory Index)''.

The Commentary to § 2M5.1 captioned ''Application Notes'' is amended—

in Note 3 by striking ''50 U.S.C. App. § 2410'' and inserting ''50 U.S.C. § 4610'';

and in Note 4 by striking ''50 U.S.C. App. 2405'' and inserting ''50 U.S.C. § 4605''.

Appendix A (Statutory Index) is amended—

in the line referenced to 25 U.S.C. §§ 450d by striking ''§ 450d'' and inserting ''§ 5306'';

by striking the following line references:

''50 U.S.C. App. § 462 2M4.1
50 U.S.C. App. § 527(e) 2X5.2
50 U.S.C. App. § 2410 2M5.1'';

and inserting before the line referenced to 52 U.S.C. §§ 10307(c) the following new line references:

''50 U.S.C. § 3811 2M4.1
50 U.S.C. § 3937(e) 2X5.2
50 U.S.C. § 4610 2M5.1''.

(C) Technical Changes to Commentary to § 2D1.1

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended—

in Note 8(A) by striking ''the statute (21 U.S.C. § 841(b)(1)), as the primary basis'' and inserting ''the statute (21 U.S.C. § 841(b)(1)) as the primary basis'', and by striking ''fentanyl, LSD and marihuana'' and inserting ''fentanyl, LSD, and marihuana'';

in Note 8(D)—

under the heading relating to Schedule I or II Opiates, by striking the following:

''1 gm of Heroin = 1 kg
1 gm of Dextromoramide = 670 gm
1 gm of Dipipanone = 250 gm
1 gm of 1-Methyl-4-phenyl-4-propionoxypiperidine/MPPP = 700 gm
1 gm of 1-(2-Phenylethyl)-4-phenyl-4-acetyloxypiperidine/PEPAP = 700 gm
1 gm of Alphaprodine = 100 gm
1 gm of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide) = 2.5 kg
1 gm of a Fentanyl Analogue = 10 kg
1 gm of Hydromorphone/Dihydromorphinone = 2.5 kg
1 gm of Levorphanol = 2.5 kg
1 gm of Meperidine/Pethidine = 50 gm
1 gm of Methadone = 500 gm
1 gm of 6-Monoacetylmorphine = 1 kg
1 gm of Morphine = 500 gm
1 gm of Oxycodone (actual) = 6700 gm
1 gm of Oxymorphone = 5 kg
1 gm of Racemorphan = 800 gm
1 gm of Codeine = 80 gm
1 gm of Dextropropoxyphene/Propoxyphene-Bulk = 50 gm
1 gm of Ethylmorphine = 165 gm
1 gm of Hydrocodone (actual) = 6700 gm
1 gm of Mixed Alkaloids of Opium/Papaveretum = 250 gm
1 gm of Opium = 50 gm
1 gm of Levo-alpha-acetylmethadol (LAAM) = 3 kg'',

and inserting the following:

''1 gm of 1-(2-Phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP) = 700 gm
1 gm of 1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP) = 700 gm
1 gm of 6-Monoacetylmorphine = 1 kg
1 gm of Alphaprodine = 100 gm
1 gm of Codeine = 80 gm
1 gm of Dextromoramide = 670 gm
1 gm of Dextropropoxyphene/Propoxyphene-Bulk = 50 gm
1 gm of Dipipanone = 250 gm
1 gm of Ethylmorphine = 165 gm
1 gm of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide) = 2.5 kg
1 gm of a Fentanyl Analogue = 10 kg
1 gm of Heroin = 1 kg
1 gm of Hydrocodone (actual) = 6,700 gm
1 gm of Hydromorphone/Dihydromorphinone = 2.5 kg
1 gm of Levo-alpha-acetylmethadol (LAAM) = 3 kg
1 gm of Levorphanol = 2.5 kg
1 gm of Meperidine/Pethidine = 50 gm
1 gm of Methadone = 500 gm
1 gm of Mixed Alkaloids of Opium/Papaveretum = 250 gm
1 gm of Morphine = 500 gm
1 gm of Opium = 50 gm
1 gm of Oxycodone (actual) = 6,700 gm
1 gm of Oxymorphone = 5 kg
1 gm of Racemorphan = 800 gm'';

under the heading relating to Cocaine and Other Schedule I and II Stimulants (and their immediate precursors), by striking the following:

''1 gm of Cocaine = 200 gm
1 gm of N-Ethylamphetamine = 80 gm
1 gm of Fenethylline = 40 gm
1 gm of Amphetamine = 2 kg
1 gm of Amphetamine (Actual) = 20 kg
1 gm of Methamphetamine = 2 kg
1 gm of Methamphetamine (Actual) = 20 kg
1 gm of ''Ice'' = 20 kg
1 gm of Khat = .01 gm
1 gm of 4-Methylaminorex ('Euphoria') = 100 gm
1 gm of Methylphenidate (Ritalin) = 100 gm
1 gm of Phenmetrazine = 80 gm
1 gm Phenylacetone/P_2P (when possessed for the purpose of manufacturing methamphetamine) = 416 gm
1 gm Phenylacetone/P_2P (in any other case) = 75 gm
1 gm Cocaine Base ('Crack') = 3,571 gm
1 gm of Aminorex = 100 gm
1 gm of N-N-Dimethylamphetamine = 40 gm
1 gm of N-Benzylpiperazine = 100 gm'',

and inserting the following:

''1 gm of 4-Methylaminorex ('Euphoria') = 100 gm

1 gm of Aminorex = 100 gm
1 gm of Amphetamine = 2 kg
1 gm of Amphetamine (actual) = 20 kg
1 gm of Cocaine = 200 gm
1 gm of Cocaine Base ('Crack') = 3,571 gm
1 gm of Fenethylline = 40 gm
1 gm of 'Ice' = 20 kg
1 gm of Khat = .01 gm
1 gm of Methamphetamine = 2 kg
1 gm of Methamphetamine (actual) = 20 kg
1 gm of Methylphenidate (Ritalin) = 100 gm
1 gm of N-Benzylpiperazine = 100 gm
1 gm of N-Ethylamphetamine = 80 gm
1 gm of N-N-Dimethylamphetamine = 40 gm
1 gm of Phenmetrazine = 80 gm
1 gm of Phenylacetone (P_2P) (when possessed for the purpose of manufacturing methamphetamine) = 416 gm
1 gm of Phenylacetone (P_2P) (in any other case) = 75 gm'';

under the heading relating to Synthetic Cathinones (except Schedule III, IV, and V Substances), by striking ''a synthetic cathinone'' and inserting ''a Synthetic Cathinone'';

under the heading relating to LSD, PCP, and Other Schedule I and II Hallucinogens (and their immediate precursors), by striking the following:

''1 gm of Bufotenine = 70 gm
1 gm of D-Lysergic Acid Diethylamide/Lysergide/LSD = 100 kg
1 gm of Diethyltryptamine/DET = 80 gm
1 gm of Dimethyltryptamine/DM = 100 gm
1 gm of Mescaline = 10 gm
1 gm of Mushrooms containing Psilocin and/or Psilocybin (Dry) = 1 gm
1 gm of Mushrooms containing Psilocin and/or Psilocybin (Wet) = 0.1 gm
1 gm of Peyote (Dry) = 0.5 gm
1 gm of Peyote (Wet) = 0.05 gm
1 gm of Phencyclidine/PCP = 1 kg
1 gm of Phencyclidine (actual)/PCP (actual) = 10 kg
1 gm of Psilocin = 500 gm
1 gm of Psilocybin = 500 gm
1 gm of Pyrrolidine Analog of Phencyclidine/PHP = 1 kg
1 gm of Thiophene Analog of Phencyclidine/TCP = 1 kg
1 gm of 4-Bromo-2,5-Dimethoxyamphetamine/DOB = 2.5 kg
1 gm of 2,5-Dimethoxy-4-methylamphetamine/DOM = 1.67 kg
1 gm of 3,4-Methylenedioxyamphetamine/MDA = 500 gm
1 gm of 3,4-Methylenedioxymethamphetamine/MDMA = 500 gm
1 gm of 3,4-Methylenedioxy-N-ethylamphetamine/MDEA = 500 gm
1 gm of Paramethoxymethamphetamine/PMA = 500 gm
1 gm of 1-Piperidinocyclohexanecarbonitrile/PCC = 680 gm
1 gm of N-ethyl-1-phenylcyclohexylamine (PCE) = 1 kg'',

and inserting the following:

''1 gm of 1-Piperidinocyclohexanecarbonitrile (PCC) = 680 gm
1 gm of 4-Bromo-2,5-Dimethoxyamphetamine (DOB) = 2.5 kg
1 gm of 2,5-Dimethoxy-4-methylamphetamine (DOM) = 1.67 kg
1 gm of 3,4-Methylenedioxyamphetamine (MDA) = 500 gm
1 gm of 3,4-Methylenedioxymethamphetamine (MDMA) = 500 gm
1 gm of 3,4-Methylenedioxy-N-ethylamphetamine (MDEA) = 500 gm
1 gm of Bufotenine = 70 gm
1 gm of D-Lysergic Acid Diethylamide/Lysergide (LSD) = 100 kg
1 gm of Diethyltryptamine (DET) = 80 gm
1 gm of Dimethyltryptamine (DM) = 100 gm
1 gm of Mescaline = 10 gm
1 gm of Mushrooms containing Psilocin and/or Psilocybin (dry) = 1 gm
1 gm of Mushrooms containing Psilocin and/or Psilocybin (wet) = 0.1 gm
1 gm of N-ethyl-1-phenylcyclohexylamine (PCE) = 1 kg
1 gm of Paramethoxymethamphetamine (PMA) = 500 gm
1 gm of Peyote (dry) = 0.5 gm
1 gm of Peyote (wet) = 0.05 gm
1 gm of Phencyclidine (PCP) = 1 kg
1 gm of Phencyclidine (PCP) (actual) = 10 kg
1 gm of Psilocin = 500 gm
1 gm of Psilocybin = 500 gm
1 gm of Pyrrolidine Analog of Phencyclidine (PHP) = 1 kg
1 gm of Thiophene Analog of Phencyclidine (TCP) = 1 kg'';

under the heading relating to Schedule I Marihuana, by striking the following:

''1 gm of Marihuana/Cannabis, granulated, powdered, etc. = 1 gm
1 gm of Hashish Oil = 50 gm
1 gm of Cannabis Resin or Hashish = 5 gm
1 gm of Tetrahydrocannabinol, Organic = 167 gm
1 gm of Tetrahydrocannabinol, Synthetic = 167 gm'',

and inserting the following:

''1 gm of Cannabis Resin or Hashish = 5 gm
1 gm of Hashish Oil = 50 gm
1 gm of Marihuana/Cannabis (granulated, powdered, etc.) = 1 gm
1 gm of Tetrahydrocannabinol (organic) = 167 gm
1 gm of Tetrahydrocannabinol (synthetic) = 167 gm'';

under the heading relating to Synthetic Cannabinoids (except Schedule III, IV, and V Substances), by striking ''a synthetic cannabinoid'' and inserting ''a Synthetic Cannabinoid'', and by striking '' 'Synthetic cannabinoid,' for purposes of this guideline'' and inserting '' 'Synthetic Cannabinoid,' for purposes of this guideline'';

under the heading relating to Schedule I or II Depressants (except gamma-hydroxybutyric acid), by striking ''except gamma-hydroxybutyric acid'' both places such term appears and inserting ''except Gamma-hydroxybutyric Acid'';

under the heading relating to Gamma-hydroxybutyric Acid, by striking ''of gamma-hydroxybutyric acid'' and inserting ''of Gamma-hydroxybutyric Acid'';

under the heading relating to Schedule III Substances (except ketamine), by striking ''except ketamine'' in the heading and inserting ''except Ketamine'';

under the heading relating to Ketamine, by striking ''of ketamine'' and inserting ''of Ketamine'';

under the heading relating to Schedule IV (except flunitrazepam), by striking ''except flunitrazepam'' in the heading and inserting ''except Flunitrazepam'';

under the heading relating to List I Chemicals (relating to the manufacture of amphetamine or methamphetamine), by striking ''of amphetamine or methamphetamine'' in the heading and inserting ''of Amphetamine or Methamphetamine'';

under the heading relating to Date Rape Drugs (except flunitrazepam, GHB, or ketamine), by striking ''except flunitrazepam, GHB, or ketamine'' in the heading and inserting ''except Flunitrazepam, GHB, or Ketamine'', by striking ''of 1,4-butanediol'' and inserting ''of 1,4-Butanediol'', and by striking ''of gamma butyrolactone'' and inserting ''of Gamma Butyrolactone'';

in Note 9, under the heading relating to Hallucinogens, by striking the following:

''MDA 250 mg
MDMA 250 mg
Mescaline 500 mg
PCP* 5 mg
Peyote (dry) 12 gm
Peyote (wet) 120 gm

Psilocin* 10 mg
Psilocybe mushrooms (dry) 5 gm
Psilocybe mushrooms (wet) 50 gm
Psilocybin* 10 mg
2,5-Dimethoxy-4-methylamphetamine (STP, DOM)* 3 mg'',

and inserting the following:

''2,5-Dimethoxy-4-methylamphetamine (STP, DOM)* 3 mg
MDA 250 mg
MDMA 250 mg
Mescaline 500 mg
PCP* 5 mg
Peyote (dry) 12 gm
Peyote (wet) 120 gm
Psilocin* 10 mg
Psilocybe mushrooms (dry) 5 gm
Psilocybe mushrooms (wet) 50 gm
Psilocybin* 10 mg'';

and in Note 21, by striking ''Section § 5C1.2(b)'' and inserting ''Section 5C1.2(b)''.

The Commentary to § 2D1.1 captioned ''Background'' is amended by striking ''Public Law 103–237'' and inserting ''Public Law 104–237'', and by inserting after ''to change the title of the Drug Equivalency Tables to the 'Drug Conversion Tables.' '' the following: ''*See* USSG App. C, Amendment 808 (effective November 1, 2018).''.

(D) References to 18 U.S.C. 876

The Commentary to § 2A4.2 captioned ''Statutory Provisions'' is amended by striking ''§§ 876,'' and inserting ''§§ 876(a),''.

The Commentary to § 2A6.1 captioned ''Statutory Provisions'' is amended by striking ''876,'' and inserting ''876(c),''.

The Commentary to § 2B3.2 captioned ''Statutory Provisions'' is amended by striking ''§§ 875(b), 876,'' and inserting ''§§ 875(b), (d), 876(b), (d),''.

Appendix A (Statutory Index) is amended—

by striking the following line reference:

''18 U.S.C. 876 2A4.2,2A6.1, 2B3.2, 2B3.3''

and by inserting before the line referenced to 18 U.S.C. 877 the following new line references:

''18 U.S.C. 876(a) 2A4.2, 2B3.2
18 U.S.C. 876(b) 2B3.2
18 U.S.C. 876(c) 2A6.1
18 U.S.C. 876(d) 2B3.2, 2B3.3''.

(E) Technical Changes to Commentary in Chapter Eight

The Commentary to § 8A1.2 captioned ''Application Notes'' is amended in Note 3(G) by striking '' 'Prior criminal adjudication' '' and inserting '' 'Criminal Adjudication' ''.

The Commentary to § 8C2.5 captioned ''Application Notes'' is amended in Note 1 by striking '' 'prior criminal adjudication' '' and inserting '' 'criminal adjudication' ''.

The Commentary to § 8C3.2 captioned ''Application Note'' is amended in Note 1 by striking ''the period provided for payment shall in no event exceed five years'' and inserting ''the period provided for payment shall be the shortest time in which full payment can reasonably be made''.

(F) Clerical Changes to Correct Typographical Errors

The Commentary to § 1B1.1 captioned ''Application Notes'' is amended in Note 1(E) by striking ''(*e.g.* a defendant'' and inserting ''(*e.g.,* a defendant''.

The Commentary to § 1B1.3 captioned ''Background'' is amended by striking ''the guidelines in those Chapters'' and inserting ''the guidelines in those chapters''.

The Commentary to § 1B1.4 captioned ''Background'' is amended by striking ''in imposing sentence within that range'' and inserting ''in imposing a sentence within that range''.

The Commentary to § 1B1.10 captioned ''Background'' is amended by striking ''Title 18'' and inserting ''title 18''.

The Commentary to § 2D2.3 captioned ''Background'' is amended by striking ''Section 6482'' and inserting ''section 6482''.

Section 2G2.1(b)(6)(A) is amended by striking ''engage sexually explicit conduct'' and inserting ''engage in sexually explicit conduct''.

The Commentary to § 2H3.1 captioned ''Application Notes'' is amended in Note 5(B) by striking ''(*e.g.* physical harm'' and inserting ''(*e.g.,* physical harm''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended in Note 8(A) by striking ''However, it the offense involved a stolen firearm'' and inserting ''However, if the offense involved a stolen firearm''.

The Commentary to § 2M1.1 captioned ''Application Notes'' is amended by striking ''this Part'' and inserting ''this part''.

The Commentary to § 2T1.1 captioned ''Application Notes'' is amended in Note 7 by striking ''Subchapter C corporation'' and inserting ''subchapter C corporation''.

The Commentary to § 2T1.1 captioned ''Background'' is amended by striking ''the treasury'' and inserting ''the Treasury''.

Chapter Two, Part T, Subpart 2 is amended in the introductory commentary by striking ''Parts I–IV of Subchapter J of Chapter 51 of Subtitle E of Title 26'' and inserting ''parts I–IV of subchapter J of chapter 51 of subtitle E of title 26, United States Code''.

Chapter Two, Part T, Subpart 3 is amended in the introductory commentary by striking ''Subpart'' both places such term appears and inserting ''subpart''.

Chapter Three, Part A is amended in the introductory commentary by striking ''Part'' and inserting ''part''.

The Commentary to § 3A1.1 captioned ''Background'' is amended by striking ''Section 280003'' and inserting ''section 280003''.

Chapter Three, Part B is amended in the introductory commentary by striking ''Part'' and inserting ''part''.

The Commentary to § 3C1.1 captioned ''Application Notes'' is amended in Note 4(I) by striking ''Title 18'' and inserting ''title 18''.

Chapter Three, Part D is amended in the introductory commentary by striking ''Part'' each place such term appears and inserting ''part''.

The Commentary to § 3D1.1 captioned ''Application Notes'' is amended in Note 2 by striking ''Part'' both places such term appears and inserting ''part''.

The Commentary to § 3D1.1 captioned ''Background'' is amended by striking ''Chapter 3'' and inserting ''Chapter Three'', and by striking ''Chapter Four'' and inserting ''Chapter Four''.

The Commentary to § 3D1.2 captioned ''Background'' is amended by striking ''Part'' both places such term appears and inserting ''part''.

The Commentary to § 3D1.3 captioned ''Background'' is amended by striking ''Part'' and inserting ''part''.

The Commentary to § 3D1.4 captioned ''Background'' is amended by striking ''Part'' and inserting ''part''.

The Commentary to § 4A1.3 captioned ''Application Notes'' is amended in Note 2(C)(v) by striking ''this Chapter'' and inserting ''this chapter''.

The Commentary to § 4B1.1 captioned ''Background'' is amended by striking ''Title 28'' and inserting ''title 28''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in Note 1 by striking ''this Chapter'' and inserting ''this chapter''.

The Commentary to § 5E1.1 captioned ''Application Notes'' is amended in Note 1 by striking ''Chapter'' both places such term appears and inserting ''chapter''; by striking ''Title 18'' both places such term appears and inserting ''title 18''; and by striking ''Subchapter C'' and inserting ''subchapter C''.

The Commentary to § 5E1.1 captioned ''Background'' is amended by striking ''Title 18'' and inserting ''title 18''.

The Commentary to § 5E1.3 captioned ''Background'' is amended by striking ''Title 18'' and inserting ''title 18'', and

by striking ''The Victims'' and inserting ''the Victims''.

The Commentary to § 5E1.4 captioned ''Background'' is amended by striking ''Titles'' and inserting ''titles''.

Chapter Five, Part H is amended in the introductory commentary by striking ''Part'' each place such term appears and inserting ''part''.

Chapter Six, Part A is amended in the introductory commentary by striking ''Part'' and inserting ''part''.

Chapter Seven, Part A, Subpart 3(b) (Choice between Theories) is amended by striking ''Title 21'' and inserting ''title 21''.

The Commentary to § 8B1.1 captioned ''Background'' is amended by striking ''Title 18'' and inserting ''title 18''.

The Commentary to § 8B2.1 captioned ''Application Notes'' is amended in Note 1, in the paragraph that begins '' 'Governing authority' means'' by striking ''means the (A) the Board'' and inserting ''means (A) the Board''.

Section 8C3.3(a) is amended by striking ''its ability'' and inserting ''the ability of the organization''.

The Commentary to § 8E1.1 captioned ''Background'' is amended by striking ''Title 18'' and inserting ''title 18''.

(G) Additional Clerical Changes to Guideline Commentary

The Commentary to § 1B1.11 captioned ''Background'' is amended by striking ''133 S. Ct. 2072, 2078'' and inserting ''569 U.S. 530, 533''.

The Commentary to § 2K2.4 captioned ''Statutory Provisions'' is amended by striking ''§§ 844(h)'' and inserting ''§§ 844(h), (o)''.

The Commentary to § 2M5.3 captioned ''Application Notes'' is amended in Note 1, in the paragraph that begins '' 'Specially designated global terrorist' has'' by striking ''§ 594.513'' and inserting ''§ 594.310''.

The Commentary to § 2M6.1 captioned ''Application Notes'' is amended in Note 1—

by striking the following paragraph:

'' 'Restricted person' has the meaning given that term in 18 U.S.C. 175b(d)(2).'',

and by striking the following paragraph:

'' 'Vector' has the meaning given that term in 18 U.S.C. 178(4).''.

The Commentary to § 2T1.1 captioned ''Application Notes'' is amended in Note 6, in the paragraph that begins '' 'Gross income' has'' by striking ''§ 1.61'' and inserting ''§ 1.61–1''.

The Commentary to § 3A1.2 captioned ''Application Notes'' is amended in Note 3 by striking ''the victim was a government officer or employee, or a member of the immediate family thereof'' and inserting ''the victim was a government officer or employee, a former government officer or employee, or a member of the immediate family thereof''.

The Commentary to § 5G1.3 captioned ''Background'' is amended by striking ''132 S. Ct. 1463, 1468'' and inserting ''566 U.S. 231, 236'', and by striking ''132 S. Ct. at 1468'' and inserting ''566 U.S. at 236''.

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FEDERAL REGISTER

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Part IV

Department of the Treasury

Internal Revenue Service

26 CFR Part 54

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2590

Department of Health and Human Services

45 CFR Parts 147 and 156

Coverage of Certain Preventive Services Under the Affordable Care Act; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG 124930–21]

RIN 1545–BQ35

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AC13

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 147 and 156

[CMS–9903–P]

RIN 0938–AU94

Coverage of Certain Preventive Services Under the Affordable Care Act

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed rules would amend regulations regarding coverage of certain preventive services under the Patient Protection and Affordable Care Act, which requires non-grandfathered group health plans and non-grandfathered group or individual health insurance coverage to cover certain contraceptive services without cost sharing. Current regulations include exemptions and optional accommodations for entities and individuals with religious or moral objections to coverage of contraceptive services. These rules propose rescinding the moral exemption rule. These proposed rules also would establish a new individual contraceptive arrangement that individuals enrolled in plans or coverage sponsored, arranged, or provided by objecting entities may use to obtain contraceptive services at no cost directly from a provider or facility that furnishes contraceptive services. Contraceptive services would be available through the proposed individual contraceptive arrangement without any involvement on the part of an objecting entity. Under these proposed rules, a provider or facility that furnishes contraceptive services in accordance with the individual contraceptive arrangement for eligible individuals would be able to be reimbursed for its costs by entering into an arrangement with an issuer on a Federally-facilitated Exchange or State Exchange on the Federal platform, which in turn may seek a user fee adjustment.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by April 3, 2023.

ADDRESSES: In commenting, please refer to file code CMS–9903–P.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *https://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9903–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9903–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Jason Sandoval, Internal Revenue Service, Department of the Treasury, at (202) 317–5500; Beth Baum or Matthew Meidell, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; David Mlawsky, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (410) 786–6851; for matters related to financial support, Allison Yadsko, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (410) 786–1740.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor (DOL) concerning employment-based health coverage laws may call the Employee Benefits Security Administration (EBSA) Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the DOL's website (*www.dol.gov/ebsa*). In addition, information from the Department of Health and Human Services (HHS) on private health insurance coverage and coverage provided by non-Federal Governmental group health plans can be found on the Centers for Medicare & Medicaid Services (CMS) website (*www.cms.gov/cciio*), and information on health care reform can be found at *www.HealthCare.gov.*

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm another individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

A. Legislative, Regulatory and Judicial History

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) was enacted on March 30, 2010. These statutes are collectively known as the Affordable Care Act (ACA). The ACA reorganized, amended, and added to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. The ACA added section 715(a)(1) to the Employee Retirement Income Security Act of 1974 (ERISA) and section 9815(a)(1) to the Internal Revenue Code (Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. The sections of the PHS Act incorporated into ERISA and the Code are sections 2701 through 2728.

Section 2713 of the PHS Act, as added by the ACA and incorporated into ERISA and the Code, requires non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage to provide coverage of certain specified preventive services without cost sharing, including, under section 2713(a)(4) of the PHS Act, benefits for certain women's preventive health services as provided for in comprehensive guidelines supported by the Health Resources and Services Administration (HRSA).[1] [2] On August 1, 2011, HRSA adopted guidelines for women's preventive health services (2011 HRSA-Supported Guidelines) based on recommendations of the independent Institute of Medicine (IOM), now known as the National Academy of Medicine.[3] As relevant here, the 2011 HRSA-Supported Guidelines included sterilization procedures, patient education and counseling for women with reproductive capacity, and all Food and Drug Administration (FDA)-approved, cleared, or granted contraceptives, as prescribed by a health care provider (collectively, contraceptive services).[4] Except as discussed later in this section, non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage were required to provide coverage consistent with the 2011 HRSA-Supported Guidelines, without cost sharing, for plan years (or, in the individual market, policy years) beginning on or after August 1, 2012. As fully discussed in footnote 4 of this preamble, the 2011 HRSA-Supported Guidelines have been updated several times; plans and issuers are currently required to provide coverage without cost sharing consistent with the HRSA-Supported Guidelines as amended in 2019.

HHS, DOL, and the Department of the Treasury (collectively, the Departments) previously issued rules and guidance implementing section 2713 of the PHS Act, including guidance specific to coverage of contraceptive services.[5] The Departments also previously issued rules providing exemptions from the contraceptive coverage requirement for entities and individuals with moral or religious objections to contraceptive coverage, and accommodations through which objecting entities are not required to contract, arrange, pay, or provide a referral for contraceptive coverage while at the same time ensuring that participants, beneficiaries, and enrollees enrolled in coverage sponsored or arranged by an objecting entity could separately obtain contraceptive services at no cost. Specifically, the Departments have issued:

- Interim final rules on July 19, 2010, at 75 FR 41726 (July 2010 interim final rules), which implemented the preventive services requirements of section 2713 of the PHS Act;
- Interim final rules amending the July 2010 interim final rules on August 3, 2011, at 76 FR 46621 (August 2011 interim final rules), which provided HRSA with the authority to exempt group health plans established or maintained by certain religious employers (and group health insurance coverage provided in connection with those plans) from the requirement to cover contraceptive services consistent with the HRSA-Supported Guidelines;
- Final rules on February 15, 2012, at 77 FR 8725 (February 2012 final rules), which finalized the definition of ''religious employer'' in the August 2011 interim final rules without modification;
- An advanced notice of proposed rulemaking on March 21, 2012, at 77 FR 16501 (March 2012 ANPRM), soliciting comments on how to provide for coverage of recommended preventive services, including contraceptive services, without cost sharing, while

[1] In addition to the specified preventive services addressed in section 2713 of the PHS Act, section 3203 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), enacted on March 27, 2020, requires non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance to cover any qualifying coronavirus preventive service without cost sharing, pursuant to section 2713(a) of the PHS Act (including the regulations under 26 CFR 54.9815–2713, 29 CFR 2590.715–2713, and 45 CFR 147.130 (or any successor regulations)).

[2] The final regulations generally provide that plans and issuers must cover a preventive service pursuant to a new or changed recommendation starting with the first plan year (or, in the individual market, policy year) that begins on or after the date that is one year after the date on which the new recommendation is issued. 26 CFR 54.9815–2713(b)(1); 29 CFR 2590.715–2713(b)(1); 45 CFR 147.130(b)(1). Coverage of qualifying coronavirus preventive services must begin on an expedited timeline. Public Law 116–136, 3203, 134 Stat. 367 (2020); 26 CFR 54.9815–2713T(b)(3); 29 CFR 2590.715–2713(b)(3); 45 CFR 147.130(b)(3).

[3] The references to ''women'' in these proposed rules should be considered to include any individual potentially capable of becoming pregnant, including cisgender women, transgender men, and non-binary individuals. Plans and issuers are required to cover contraceptive services for all such individuals consistent with the requirements in 26 CFR 54.9815–2713, 29 CFR 2590.715–2713, and 45 CFR 147.130. See FAQs About Affordable Care Act Implementation (Part XXVI) (May 11, 2015), Q5, available at *https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-xxvi.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/aca_implementation_faqs26.pdf.*

[4] The references in this document to ''contraception,'' ''contraceptive,'' ''contraceptive coverage,'' or ''contraceptive services'' generally include all contraceptives, sterilization, and related patient education and counseling recommended by the HRSA-Supported Women's Preventive Services Guidelines, unless otherwise indicated. The Guidelines issued in 2011 referred to ''Contraceptive Methods and Counseling'' as ''[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity.'' The Guidelines, as amended in December 2016 refer, under the header ''Contraception,'' to: ''the full range of female-controlled U.S. Food and Drug Administration-approved contraceptive methods, effective family planning practices, and sterilization procedures,'' ''contraceptive counseling, initiation of contraceptive use, and follow-up care (*e.g.,* management, and evaluation as well as changes to and removal or discontinuation of the contraceptive method),'' and ''instruction in fertility awareness-based methods, including the lactation amenorrhea method.'' *See https://www.hrsa.gov/womens-guidelines-2016/index.html.* The Guidelines as amended in 2019 maintain the contraception guideline, and note, under the header ''Contraception'', the applicability of the Religious Exemptions and Accommodations for Coverage of Certain Preventive Services. *See https://www.hrsa.gov/womens-guidelines-2019.* The Guidelines as amended in December 2021, which are effective for plan years and policy years beginning on or after December 30, 2022, refer, under the header ''Contraception,'' to ''the full range of contraceptives and contraceptive care to prevent unintended pregnancies and improve birth outcomes.'' Unlike in previous versions of the Guidelines, the term ''methods'' no longer appears in that phrase, as the FDA does not and never has approved, granted, or cleared contraceptive methods, only contraceptive products. With the removal of the phrase ''female-controlled'', all condoms are included in the December 2021 guidelines, which include ''screening, education, counseling, and provision of contraceptives (including in the immediate postpartum period)'' including ''follow-up care (*e.g.,* management, evaluation and changes, including the removal, continuation, and discontinuation of contraceptives).'' The 2021 Guidelines include ''the full range of U.S. Food and Drug Administration (FDA)- approved, -granted, or -cleared contraceptives, effective family planning practices, and sterilization procedures be available as part of contraceptive care.'' The 2021 Guidelines do not include sterilization surgery for men. *See https://www.hrsa.gov/womens-guidelines/index.html.* The following sentence appears in the December 2016 Guidelines: ''Additionally, instruction in fertility awareness-based methods, including the lactation amenorrhea method, although less effective, should be provided for women desiring an alternative method.'' Although that specific sentence does not appear in the December 2021 Guidelines, HRSA maintains that other language in the December 2021 Guidelines establishes that such instruction is included in those Guidelines. Additionally, the U.S. District Court for the Eastern District of Texas has issued a temporary restraining order and preliminary injunction that the effective date of the deletion of that sentence from the December 2021 Guidelines is delayed until further order of the Court, and as a consequence the sentence remains in those Guidelines. The Court enjoined HRSA and all persons in active concert or participation with them from using or applying the December 2021 Guidelines to delete the above language, thereby maintaining that current language unless and until it is changed through a final rule issued after notice to the public and an opportunity to comment. *Tice-Harouff* v. *Johnson,* 6:22–cv–201–JDK (E.D. Tex. Aug. 12, 2022).

[5] *See* section II.B of the preamble for a description of the applicable guidance.

simultaneously ensuring that certain nonprofit organizations with religious objections to contraceptive coverage would not be required to contract, arrange, pay, or provide a referral for that coverage;

• Proposed rules on February 6, 2013, at 78 FR 8456 (February 2013 proposed rules), which proposed to simplify and clarify the definition of ''religious employer'' for purposes of the religious employer exemption, and proposed accommodations for group health plans established or maintained by certain nonprofit religious organizations with religious objections to contraceptive coverage (and group health insurance coverage provided in connection with those plans) and for insured student health plans arranged by certain nonprofit religious organizations that are institutions of higher education with religious objections to contraceptive coverage;

• Final rules on July 2, 2013, at 78 FR 39870 (July 2013 final rules), which simplified and clarified the definition of ''religious employer'' for purposes of the religious employer exemption, established an accommodation process for health coverage established or maintained or arranged by eligible organizations,[6] and established the process for participating issuers to seek a user fee adjustment under the applicable accommodations;

• Interim final rules on August 27, 2014, at 79 FR 51092 (August 2014 interim final rules), which amended the July 2013 final rules in light of the United States Supreme Court's interim order in connection with an application for an injunction in *Wheaton College* v. *Burwell*[7] (*Wheaton* interim order), and provided an alternative process that an eligible organization may use to provide notice of its religious objection to the coverage of contraceptive services;

• Proposed rules on August 27, 2014, at 79 FR 51118 (August 2014 proposed rules), which proposed potential changes to the definition of ''eligible organization'' for purposes of the accommodation process in light of the Supreme Court's decision in *Burwell* v. *Hobby Lobby Stores, Inc.;*[8]

• Final rules on July 14, 2015, at 80 FR 41317 (July 2015 final rules), which finalized the July 2010 interim final rules, the August 2014 interim final rules related to the process an eligible organization uses to provide notice of its religious objection to the coverage of contraceptive services, as well as the August 2014 proposed rules, which had proposed expanding the definition of ''eligible organization'' to allow closely held for-profit entities to access an accommodation with respect to the coverage of contraceptive services;

• A request for information on July 26, 2016, at 81 FR 47741 (July 2016 RFI), which requested public comments on alternative ways for objecting organizations to obtain an accommodation in light of the Supreme Court's decision in *Zubik* v. *Burwell;*[9]

• Frequently Asked Questions on January 9, 2017 (FAQs Part 36), which summarized alternative potential accommodations and stated that the Departments were not modifying the existing accommodations because the Departments continued to be of the view that the existing accommodations were consistent with the Religious Freedom Restoration Act (RFRA)[10] and that alternative accommodations were not feasible;[11]

• Interim final rules on October 13, 2017, at 82 FR 47792 (October 2017 Religious Exemption interim final rules), which expanded existing religious exemptions from the contraceptive coverage requirement to objecting entities and individuals and made the existing accommodation process optional;

• Interim final rules on October 13, 2017, at 82 FR 47838 (October 2017 Moral Exemption interim final rules), which created exemptions for entities and individuals that object to the contraceptive coverage requirement based on moral convictions, and provided objecting entities access to the optional accommodation process;

• Final rules on November 15, 2018, at 83 FR 57536 (November 2018 Religious Exemption final rules), which finalized the expanded religious exemptions and optional accommodation process in the October 2017 Religious Exemption interim final rules;

• Final rules on November 15, 2018, at 83 FR 57592 (November 2018 Moral Exemption final rules), which finalized the new moral exemptions and optional accommodation process in the October 2017 Moral Exemption interim final rules;

• Frequently Asked Questions on August 16, 2021 (FAQs Part 48), which announced the Departments would initiate rulemaking to amend the November 2018 Religious and Moral Exemption final rules in light of recent litigation;[12]

• Frequently Asked Questions on January 10, 2022 (FAQs Part 51), which acknowledged complaints received about compliance with the contraceptive coverage requirement and clarified currently applicable guidance;[13] and

• Frequently Asked Questions on July 28, 2022 (FAQs Part 54), which further clarified the contraceptive coverage requirement and currently applicable guidance.[14]

During the period in which the Departments issued these rules and guidance, organizations and individuals filed lawsuits challenging the contraceptive coverage requirement and regulations as being inconsistent with various legal protections, including RFRA. Plaintiffs included religious nonprofit organizations, for-profit businesses controlled by religious individuals, and others, including several non-religious organizations that opposed the required coverage of certain contraceptives on the basis of non-religious moral convictions. These lawsuits first led to the Supreme Court's ruling in *Burwell* v. *Hobby Lobby Stores, Inc.*[15] The Supreme Court ruled in *Hobby Lobby* that, under RFRA, the contraceptive coverage requirement could not be applied to closely held for-profit corporations because doing so imposed a substantial burden on the owners' exercise of religion and was not the least restrictive means of advancing

[6] That accommodation process, which was the only process by which certain employers could avoid the contraceptive coverage requirement under the July 2013 final rules, now forms the basis for what is instead an optional accommodation process under final rules published on November 15, 2018, at 83 FR 57536 (November 2018 Religious Exemption final rules).

[7] *Wheaton College* v. *Burwell,* 134 S. Ct. 2806, 573 U.S. 958, 189 L. Ed. 2d 856 (2014).

[8] *Burwell* v. *Hobby Lobby Stores, Inc.,* 134 S. Ct. 2751, 573 U.S. 682, 189 L. Ed. 2d 675 (2014).

[9] *Zubik* v. *Burwell,* 136 S. Ct. 1557 (2016).

[10] 42 U.S.C. 2000bb–1, *et seq.*

[11] FAQs About Affordable Care Act Implementation Part 36 (Jan. 17, 2017), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-36.pdf* and *https://www.cms.gov/cciio/resources/fact-sheets-and-faqs/downloads/aca-faqs-part36_1-9-17-final.pdf.*

[12] FAQs About Affordable Care Act Implementation Part 48 (Aug. 16, 2021), available at *https://www.cms.gov/files/document/faqs-part-48.pdf* and *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-48.pdf.*

[13] FAQs About Affordable Care Act Implementation Part 51, Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementations (Jan. 10, 2022), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-51.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-51.pdf.*

[14] FAQs About Affordable Care Act Implementation Part 54 (July 28, 2022), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-54.pdf* and *https://www.cms.gov/files/document/faqs-part-54.pdf.*

[15] *Burwell* v. *Hobby Lobby Stores, Inc,* 134 S. Ct. 2751 (2014).

a compelling governmental interest.[16] In response to *Hobby Lobby,* the July 2015 final rules allowed closely held for-profit companies to access the existing accommodation process.

Later, a second series of legal challenges were filed by religious nonprofit organizations that argued that the accommodation itself impermissibly burdened their religious beliefs. On May 16, 2016, the Supreme Court issued a per curiam decision in *Zubik* v. *Burwell,* vacating the judgments of the Courts of Appeals—most of which had ruled in the Departments' favor—and remanding the cases ''in light of the substantial clarification and refinement in the positions of the parties'' that had been supplied in supplemental briefs.[17] The Court anticipated that, on remand, the Courts of Appeals would ''allow the parties sufficient time to resolve any outstanding issues between them.'' [18] The Departments issued the July 2016 RFI to gather public comments in response to the *Zubik* decision.

FAQs Part 36 summarized the public comments and suggestions regarding the accommodation process. In *Zubik,* the Court suggested that the parties submit to the court information about whether cost-free contraceptive coverage could be provided to employees, through the objecting employers' health insurance issuers, without the employers having to provide any notice to the issuers or the Government.[19] Some comments received in response to the July 2016 RFI suggested that such an accommodation process would not be acceptable to some employers with religious objections, and some comments suggested that it would create significant administrative and operational challenges that would potentially undermine individuals' seamless access to full and equal health coverage, including contraceptive coverage. Commenters also noted that the process would not work for self-insured plans for which there is no issuer with a duty to provide coverage. The *Zubik* plaintiffs alternatively suggested creating contraceptive-only insurance policies in which women would affirmatively enroll. Comments received in response to the July 2016 RFI expressed, among other concerns, that these policies might not be authorized under State contract and insurance law.

Beginning in 2015, lawsuits challenging the contraceptive coverage requirement were also filed by non-religious organizations with moral objections to contraceptive coverage. In one case, *March for Life* v. *Burwell,* a nonprofit, non-religious organization and two of the organization's individual employees filed a complaint claiming that the contraceptive coverage requirement (1) violated the equal protection component of the Due Process Clause of the Fifth Amendment, (2) violated the individual employees' rights under RFRA, (3) violated the individuals' rights under the First Amendment's Free Exercise Clause, and (4) was arbitrary and capricious under the Administrative Procedure Act (APA).[20] Challenges by non-religious, nonprofit organizations led to conflicting opinions among Federal courts. On August 31, 2015, the District Court for the District of Columbia agreed with the *March for Life* plaintiffs on the organization's equal protection claim and the employees' RFRA claims, and while not ruling on the APA claim, issued a permanent injunction against the Departments.[21] That injunction remains in place. Conversely, in another case, the U.S. Court of Appeals for the Third Circuit (Third Circuit) on August 4, 2017 held that Real Alternatives—a non-religious section 501(c)(3) nonprofit organization and a moral objector—was not similarly situated to a religious organization and was therefore not entitled to an exemption.[22] The Third Circuit concluded that ''a secular antiabortion group mirrors a single-issue interest group and not a religious organization that takes advantage of the Exemption.'' [23] In refusing to extend the exemption to a secular nonprofit organization, the Third Circuit recognized the ''vast history of legislative protections that single out and safeguard religious freedom but not moral philosophy.'' [24]

In October 2017, the Departments issued the October 2017 Moral Exemption interim final rules and the October 2017 Religious Exemption interim final rules (together, the October 2017 interim final rules), each of which went into effect immediately upon release. Those rules expanded exemptions and accommodations to include employers that object to contraceptive coverage on nonreligious moral grounds, along with expanding the available religious exemptions. As stated in the October 2017 Moral Exemption interim final rules, with respect to the new exemption for non-religious nonprofit organizations, the Departments were aware of two small nonprofit organizations that had filed lawsuits raising non-religious moral objections to coverage of some contraceptives. HHS noted in the 2017 Moral Exemption interim final rules that both of those entities had fewer than five employees enrolled in health coverage, and both required all of their employees to agree with their opposition to the coverage as a condition of employment.[25] In the November 2018 Moral Exemption final rules, without data available to estimate the actual number of entities that would make use of the expanded exemption for for-profit entities without publicly traded ownership interests and that object to the contraceptive coverage requirement based on sincerely held moral convictions, the Departments estimated that fewer than 10 entities, if any, would do so.[26]

Numerous states filed lawsuits challenging the October 2017 interim final rules, contending that the October 2017 interim final rules were both procedurally invalid and arbitrary and capricious, and thus violated the APA. Pennsylvania and New Jersey sued in the Eastern District of Pennsylvania, while Massachusetts sued in the District of Massachusetts, and California, Delaware, Maryland, New York, and Virginia sued in the Northern District of California.[27] They all asked the courts to enjoin the interim final rules.

Two Federal district courts issued preliminary injunctions blocking the October 2017 interim final rules nationwide. The Northern District of California did so based on the states' likelihood of success on their procedural APA claim—that the interim final rules were invalid for failing to follow notice and comment rulemaking.[28] On appeal, the Ninth Circuit affirmed the district court decision though it limited the geographic scope of the injunction to the five states that were then plaintiffs in the case. The Eastern District of Pennsylvania enjoined the interim final rules nationwide, holding that plaintiffs were likely to succeed on their claims

[16] *Id.* at 2775–79.

[17] *Zubik* v. *Burwell,* 136 S. Ct. 1557, 1560 (2016).

[18] *Id.*

[19] 578 U.S. 901.

[20] *March for Life* v. *Burwell,* 128 F. Supp. 3d 116 (D.D.C. 2015).

[21] *Id.* at 134.

[22] *Real Alternatives* v. *Sec'y of HHS,* 150 F. Supp. 3d 419, *affirmed* 867 F. 3d 338 (3d Cir. 2017).

[23] *Id.* at 349.

[24] *Id.* at 350.

[25] 82 FR 47856–47857.

[26] 83 FR 57627.

[27] Nine other states later joined the California litigation: Connecticut, Hawaii, Illinois, Minnesota, North Carolina, Rhode Island, Vermont, Washington, and Oregon, along with the District of Columbia, and an additional three states (Colorado, Michigan, and Nevada) moved to intervene in June 2019.

[28] *California* v. *Azar,* 281 F. Supp. 3d 806 (N.D. Cal. 2017), *affirmed,* 911 F.3d 558 (9th Cir. 2018).

that the Departments did not follow proper procedures in issuing the interim final rules, and that the interim final rules contradict the statute.[29] While the preliminary injunctions were on appeal, the Departments issued the November 2018 Religious Exemption final rules and the November 2018 Moral Exemption final rules (together, the November 2018 final rules). The district courts in California and Pennsylvania both enjoined enforcement of the November 2018 final rules, and the courts of appeals upheld those injunctions.[30]

The November 2018 Religious Exemption final rules ultimately expanded existing exemptions for individuals and entities with religious objections to coverage of contraceptive services. All nonprofit and for-profit employers with sincerely held religious objections to contraceptive coverage became eligible for religious exemptions, as did private universities and colleges with religious objections with respect to student health insurance coverage. Those rules retained the existing accommodation process but made it optional.[31]

In January 2020, the Supreme Court granted petitions for writ of certiorari in the *Trump* v. *Pennsylvania* and *Little Sisters of the Poor Saints Peter and Paul Home* v. *Pennsylvania* cases and consolidated them, to review whether the Departments had the authority to promulgate rules exempting employers with religious or moral objections from the requirement to cover contraceptive services.[32] The Court held that the Departments have broad authority to identify and create both moral and religious exemptions and that the final rules were not procedurally invalid.[33] The Court indicated that it was proper for the Departments to take RFRA into account when considering religious exemptions, but the Court did not decide whether the rules violated the APA's arbitrary-and-capricious standard.[34] In litigation following the Supreme Court's decision, some plaintiffs continue to argue that the Departments did not sufficiently weigh the benefits of expanded employer exemptions against the harms of depriving more women of contraceptive coverage.[35]

Individuals also filed lawsuits claiming that the contraceptive coverage requirement forced them to choose between (1) purchasing health insurance that forces them to subsidize abortion or (2) forgoing health insurance. The District Court for the Northern District of Texas agreed with the plaintiffs in a class action lawsuit, *DeOtte* v. *Azar,* and issued a permanent injunction covering a class of individuals and a class of employers, which was ultimately vacated by the Fifth Circuit.[36]

The states continue to challenge the November 2018 final rules as arbitrary and capricious in three lawsuits. In *Massachusetts* v. *Dept. of Health & Human Services,* Massachusetts argued that the moral exemption is overbroad, and that the Departments failed to consider the reliance interests of women who stand to lose contraceptive coverage due to either of the exemptions.[37] The U.S. District Court for the District of Massachusetts ruled that the November 2018 final rules were neither arbitrary and capricious nor unconstitutional.[38] The *Massachusetts* litigation (now on appeal) is currently being held in abeyance, while *California* v. *Becerra* and *Pennsylvania* v. *Biden* are stayed.[39]

B. Basis for Rulemaking

Section 2713(a)(4) of the PHS Act, also known as the Women's Health Amendment, was enacted as part of the ACA to ensure that plans and health insurance issuers cover women's preventive health needs. Access to contraception is an essential component of women's health care in part because contraception is effective at reducing unintended pregnancy. Studies report that 99 percent of sexually-active women have used at least one method of contraception at some point during their lifetime,[40] regardless of religious affiliation.[41] The Centers for Disease Control and Prevention (CDC) found that 65.3 percent of American women aged 15 to 49 years were using contraception from 2017 to 2019.[42] The contraceptive coverage requirement has resulted in more women using contraception, especially long-acting reversible contraceptives (LARCs), such as intrauterine devices (IUDs) and implants.[43] Without health insurance or other health coverage, contraception can be prohibitively expensive,[44] and the cost may deter women from obtaining needed care.[45] Unintended pregnancies have negative health consequences for both women and children.[46] Poor and low-income women are most likely to have an unintended pregnancy[47] and are also more likely to be unable to afford contraception. Further, the U.S. Supreme Court's decision in *Dobbs* v. *Jackson Women's Health Organization,*[48] which allows for Federal and State laws that significantly limit access to abortion and thus removes one key option for women in making health care decisions, has placed a heightened importance on access to contraceptive services nationwide. Ensuring access to

[29] *See Pennsylvania* v. *Trump,* 281 F. Supp. 3d 553 (E.D. Pa. 2017), *affirmed,* 930 F.3d 543 (3d Cir. 2019).

[30] *See Pennsylvania* v. *Trump,* 351 F. Supp. 3d 791 (E.D. Pa. 2019), *affirmed,* 930 F.3d 543 (3d Cir. 2019); and *California* v. *Azar,* 351 F. Supp. 3d 1267 (N.D. Cal. 2019) (enjoining the final rules with respect to 14 plaintiff states and the District of Columbia); *affirmed,* 941 F.3d 410 (9th Cir. 2019).

[31] 83 FR 57536, 57537–38.

[32] *Little Sisters of the Poor Saints Peter & Paul Home* v. *Pennsylvania,* 140 S. Ct. 918 (2020).

[33] *Little Sisters of the Poor Saints Peter & Paul Home* v. *Pennsylvania,* 140 S. Ct. 2367, 2386 (2020).

[34] *Id.* at 2383–84.

[35] *See* appellees supplemental brief, *State of California* v. *Azar,* Nos. 19–15072, 19–15118, 19–15150 (9th Cir., Aug. 28, 2020). (''For example, the court will have to determine . . . whether defendants' justifications are implausible because the Exemption Rules are not tailored to address the purported problems that the Rules identify . . .'')

[36] *DeOtte* v. *Azar,* 393 F. Supp. 3d 490 (N.D. Tex. 2019), *DeOtte* v. *Nevada,* No. 19–10754 (5th Cir. Dec. 17, 2021).

[37] *See* Mem. & Order (Op.), *Massachusetts* v. *Dept. of Health & Human Services,* No. 17-cv-11930 (D. Mass. Jan. 15, 2021), ECF No. 139.

[38] *Id.*

[39] *See* Stay Order, *Massachusetts* v. *Dept. of Health & Human Services,* No. 21–1076 (1st Cir. Mar. 12, 2021); Joint Status Report, *California* v. *Becerra,* No. 4:17 cv 5783–HSG (N.D. Cal. Oct. 29, 2021); and Stay Order, *Pennsylvania* v. *Biden,* No. 2:17–cv–04540–WB (E.D. Pa. March 8, 2021).

[40] Daniels, K., Mosher, W., & Jones, J. (2013). Contraceptive Methods Women Have Ever Used: United States, 1982–2010. *National Health Statistics Reports,* 62: 1–15.

[41] Jones, R.K. (2020). People of all Religions Use Birth Control and Have Abortions. *Guttmacher Institute. https://www.guttmacher.org/print/article/2020/10/people-all-religions-use-birth-control-and-have-abortions.*

[42] National Center for Health Statistics, Current Contraceptive Status Among Women Aged 15–49: United States, 2017–2019. Daniels, K., & Abma, J.C. (2020) Current contraceptive status among women aged 15–49: United States, 2017–2019. NCHS Data Brief, no 388. Hyattsville, MD: National Center for Health Statistics. Available at *https://www.cdc.gov/nchs/products/databriefs/db388.htm.*

[43] Snyder, A. H., Weisman, C. S., Liu, G., Leslie, D., & Chuang, C. H. (2018). The Impact of the Affordable Care Act on Contraceptive Use and Costs among Privately Insured Women. *Women's health issues: official publication of the Jacobs Institute of Women's Health, 28*(3), 219–223. *https://doi.org/10.1016/j.whi.2018.01.005.*

[44] Becker, N.V. & Polsky, D. (2015). Women Saw Large Decrease in Out-Of-Pocket Spending for Contraceptives After ACA Mandate Removed Cost Sharing. *Health Affairs,* 34(7): 1204–1208. Available at *https://www.healthaffairs.org/doi/10.1377/hlthaff.2015.0127.*

[45] Sonfield, A. (2011). ''The Case for Insurance Coverage of Contraceptive Services and Supplies Without Cost-Sharing.'' *Guttmacher Policy Review,* 14(1): 7–15.

[46] ''Preventing Unplanned Pregnancy.'' *National Conference of State Legislatures* (2021). Available at: *https://www.ncsl.org/research/health/preventing-unplanned-pregnancy.aspx.*

[47] Guttmacher Institute (2019). ''Unintended Pregnancy in the United States.'' Available at *https://www.guttmacher.org/sites/default/files/factsheet/fb-unintended-pregnancy-us.pdf.*

[48] *Dobbs* v. *Jackson Women's Health Organization,* No. 19–1392, 597 U.S. __(2022).

contraception at no cost (other than the premium or contribution paid for health coverage [49]) is a national public health imperative, as it is a means to prevent unintended pregnancies and help provide better health and economic outcomes for women, so that they can exercise control over their reproductive health and family planning decisions, particularly in states with prohibitions or tight restrictions on abortion.

In previous rulemakings, the Departments established exemptions and accommodations for a variety of entities. Although the November 2018 final rules expanded religious exemptions, the Departments have concluded that these rulemakings did not give sufficient consideration to women's significant interests in access to contraceptive services. Requiring individuals with low incomes to pay out-of-pocket for contraceptive services creates a disproportionate financial burden and unnecessary barrier to care for those individuals who must spend a greater percentage of their income on contraceptive services.[50] The exemptions also ignore the government interest in promoting coverage for contraceptive services and assuring access to contraception. Furthermore, section 1 of Executive Order 13985, ''Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government'' (E.O. 13985), instructs the Federal Government to consider ways to affirmatively advance equity, civil rights, racial justice, and equal opportunity, with an emphasis on including historically marginalized communities and individuals. As noted previously, requiring individuals to pay out-of-pocket for contraceptive services will disproportionately burden low-wage workers. A considerable percentage of low-income women in the U.S. already rely on safety-net clinics for contraception services.[51] Low-income women also have the least access to contraception through employer-sponsored health insurance.[52] Given that non-white women are overrepresented among low-wage workers, exemptions for employers of low-wage workers from requiring coverage for contraceptive services could further disproportionately burden non-white women by limiting their access to contraceptive coverage and reproductive care through employer-sponsored coverage. This decrease in access to health care has also resulted in an increase in the prevalence of unplanned pregnancies for non-white and low-income individuals.[53] In addition, historically marginalized communities and individuals are disproportionately affected by racial biases in health care. Racial bias has led to more skepticism about the safety of women's health care and less knowledge about the efficacy of various forms of birth control for family planning among non-white women.[54]

The disparities in maternal health among women of different races can be addressed in part by removing financial barriers to accessing contraceptive services. Racial-ethnic disparities in access to reproductive health care, including contraceptive services, are widespread.[55] Improving access to contraceptive services is critical to narrowing disparities in reproductive health access and outcomes, as well as longer-term outcomes. Access to postpartum contraception is important to increase spacing between pregnancies, as short intervals between pregnancies can be associated with adverse health outcomes.[56] Access to contraceptive services without cost sharing increases knowledge about safe and effective forms of birth control planning and decreases financial constraints that prevent continuation of appropriate contraception use for women in marginalized communities. Additionally, access to contraceptive services has wide-ranging economic effects for women, from increased educational attainment to increases in labor force participation and lifetime earnings.[57]

In addition to addressing the policy objectives discussed previously, these proposed rules are consistent with meeting the objectives of several Executive Orders and a Presidential Memorandum issued by President Biden. On January 28, 2021, President Biden issued Executive Order 14009, ''Strengthening Medicaid and the Affordable Care Act'' (E.O. 14009).[58] Section 3 of E.O. 14009 directs HHS, and the heads of all other executive departments and agencies with authorities and responsibilities related to Medicaid and the ACA, to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions to determine whether they are inconsistent with policy priorities described in section 1 of E.O. 14009, to include protecting and strengthening the ACA and making high-quality health care accessible and affordable for all individuals.[59] The ACA is fundamentally ''designed to broaden access to healthcare and insurance coverage.'' [60] Further, the Women's Health Amendment was designed to expand access to the preventive care and screenings that

[49] For ease of reference, this preamble describes the proposed individual contraceptive arrangement as providing access to contraceptive services ''at no cost.'' However, individuals eligible for the individual contraceptive arrangement would typically have to pay a premium or contribution to enroll in the group health plan or health insurance coverage sponsored, arranged, or provided by an objecting entity.

[50] Although many women try and use multiple contraceptive methods for various reasons, nearly one in five women (18 percent) say they are not currently using their preferred method of birth control. The primary reason women say they are not using their preferred method of contraception is because they cannot afford it. *See* Frederiksen, B., Ranji, U., Salganikoff, A., & Long, M., (2021), Women's Sexual and Reproductive Health Services: Key Findings from the 2020 KFF Women's Health Survey. *https://www.kff.org/womens-health-policy/issue-brief/womens-sexual-and-reproductive-health-services-key-findings-from-the-2020-kff-womens-health-survey/.*

[51] Ranji, U., Salganicoff, A., Sobel, L., & Gomez, I. (2017). Financing family planning services for low-income women: The role of public programs. *The Henry J. Kaiser Family Foundation. https://www.kff.org/wp-content/uploads/2019/10/Issue-Brief-Financing-Family-Planning-Services-for-Low-income-Women-1.pdf*

[52] Sawhill, I. & Guyot, K. (2019). ''Preventing unplanned pregnancy: Lessons from the states.'' *Brookings. https://www.brookings.edu/research/preventing-unplanned-pregnancy-lessons-from-the-states/.*

[53] Finer, L. & Zolna, M. (2016). ''Declines in Unintended Pregnancy in the United States, 2008–2011.'' *N Engl J Med,* 374(9):843–52 and Behn, M., Pace, LE. et al.(2019). ''The Trump Administration's Final Regulations Limit Insurance Coverage of Contraception.'' *Women's Health Issues,* 29(2): 103–106.

[54] Payne, C., & Fanarjian, N. (2014). Seeking causes for race-related disparities in contraceptive use. *Virtual Mentor, 16*(10), 805–809. *https://doi.org/10.1001/virtualmentor.2014.16.10.jdsc1-1410.*

[55] Sutton, M. Y., Anachebe, N. F. & Skanes H. (2021). ''Racial and Ethnic Disparities in Reproductive Health Services and Outcomes, 2020.'' *Obstetrics and gynecology, 137*(2), 225–233. *https://doi.org/10.1097/AOG.0000000000004224.*

[56] *See* The White House. (2022). White House Blueprint for Addressing the Maternal Health Crisis. *https://www.whitehouse.gov/wp-content/uploads/2022/06/Maternal-Health-Blueprint.pdf. See* also Schummers, L., Hutcheon, J.A., Hernandez-Diaz, S., Williams, P.L., Hacker, M.R., VanderWeele, T.J., & Norman, W.V. (2018). Association of Short Interpregnancy Interval With Pregnancy Outcomes According to Maternal Age. *JAMA Internal Medicine, 178*(12), 1661–1670. *https://doi.org/10.1001/jamainternmed.2018.4696.*

[57] *See* Bernstein, Anna and Kelly M. Jones (2019). ''The Economic Effects of Contraceptive Access: A Review of the Evidence.'' Institute for Women's Policy Research. Available at *https://iwpr.org/wp-content/uploads/2020/07/B381_Contraception-Access_Final.pdf.*

[58] 86 FR 7793 (February 2, 2021).

[59] E.O. 14009 also revoked Executive Order 13765 of January 20, 2017 (Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal). The Departments adopted the moral exemption and accommodation in part to further this now revoked Executive Order by relieving a regulatory burden imposed on entities with moral convictions opposed to providing certain contraceptive coverage.

[60] *Religious Sisters of Mercy* v. *Azar,* 513 F. Supp. 3d 1113 (D.N.D. 2021).

women require.[61] HHS issued the HRSA-Supported Guidelines pursuant to the Women's Health Amendment that included contraceptives as a category of preventive services recommended for women. If finalized, these proposed rules would better align the preventive services regulations with the policy priorities described in section 1 of E.O. 14009 by expanding access to contraceptive services without cost sharing to individuals whose health plans currently do not or would not offer such coverage due to a religious or moral objection.

Also, on January 28, 2021, President Biden issued a Memorandum on ''Protecting Women's Health at Home and Abroad.'' [62] Section 1 of the Memorandum stated ''[w]omen should have access to the healthcare they need. For too many women today, both at home and abroad, that is not possible . . . The Federal Government must take action to ensure that women at home and around the world are able to access complete medical information, including with respect to their reproductive health.'' These proposed rules would, if finalized, help to support women's access to reproductive health care services at home.

On April 5, 2022, President Biden issued Executive Order 14070, ''Continuing to Strengthen Americans' Access to Affordable, Quality Health Coverage'' (E.O. 14070).[63] Section 2 of E.O. 14070 requires the heads of appropriate agencies to, in addition to taking the actions directed pursuant to E.O. 14009, take several other actions, including examine policies or practices that make it easier for all consumers to enroll in and retain coverage, understand their coverage options, and select appropriate coverage; that strengthen benefits and improve access to health care providers; that improve the comprehensiveness of coverage and protect consumers from low-quality coverage; that expand eligibility and lower costs for coverage in the ACA Exchanges, Medicaid, Medicare, and other programs; that help improve linkages between the health care system and other stakeholders to address health-related needs; and that help reduce the burden of medical debt on households. These proposed rules would further the goals of E.O. 14070.

On July 8, 2022, President Biden issued Executive Order 14076, ''Protecting Access to Reproductive Healthcare Services (E.O. 14076).'' [64] Section 3 of E.O. 14076 requires the Secretary of HHS to submit a report to the President identifying potential actions to ''protect and expand access to the full range of reproductive healthcare services, including actions to enhance family planning services such as access to emergency contraception'' and ''identifying ways to increase outreach and education about access to reproductive healthcare services, including by launching a public awareness initiative to provide timely and accurate information about such access, which shall include promoting awareness of and access to the full range of contraceptive services.'' These proposed rules would take critical steps to further the goals in E.O. 14076 by expanding access to the full range of contraceptive services for women enrolled in coverage established or maintained by an objecting entity, or in health insurance coverage offered or arranged by an objecting entity.

In addition to addressing the directives in the Executive Orders discussed above, these proposed rules also address the concerns about limiting access to contraception that have been raised by litigants. The Supreme Court remanded the *Little Sisters* cases to the U.S. Courts of Appeals for the Third and Ninth Circuits, respectively, to consider whether the November 2018 final rules adequately considered women's health and access to contraceptives or were arbitrary and capricious. Under the current exemptions, objectors are not required to inform participants, beneficiaries, or enrollees that the plan or coverage does not cover contraceptive services or invoke the optional accommodation, and no alternative mechanisms provide contraceptive coverage for affected women—leaving many women without coverage.[65] Given that the November 2018 final rules allow, but do not require, objecting entities to invoke the accommodation process, many women in plans subject to an exemption may be unable to access contraceptive services due to financial, logistical, or administrative barriers.

These proposed rules seek to ensure that women who are enrolled in either a group health plan established or maintained by an objecting entity, or in health insurance coverage offered or arranged by an objecting entity, including an employer, institution of higher education, or health insurance issuer, have access to cost-free contraceptive coverage, even when the objecting entity claims the regulatory exemption without voluntarily using the accommodation process. This proposed approach would further the government's interest in protecting women's health and their right to make reproductive decisions.

In light of these considerations, the Departments are issuing these proposed rules to further the government's interest in promoting coverage for contraceptive services for all women,[66] and in eliminating barriers to access, while respecting the religious objections of employers, health insurance issuers, and institutions of higher education to coverage of contraceptive services.

II. Overview of the Proposed Rules—Departments of HHS, Labor, and the Treasury

A. Introduction

As discussed in section I.B of this preamble, the Departments have engaged in several rounds of rulemaking and other initiatives that solicited public input in an effort to address the claims of those religious employers, institutions of higher education, and health insurance issuers that object to providing coverage for contraceptive services while also ensuring women's access to seamless coverage for contraceptive services. Previously, under the July 2015 final rules, many of the objecting entities that are now covered by the November 2018 Religious Exemption final rules could avoid the contraceptive coverage requirement only by invoking an accommodation. The accommodation was designed so that these entities were not required to contract, arrange, pay, or provide a referral for contraceptive coverage. At the same time, the accommodation was intended to generally ensure that women enrolled in a health plan established, maintained, or arranged by the eligible organization, similar to women enrolled in health plans maintained by other employers, received contraceptive coverage seamlessly—that is, through the same issuers or third party administrators that

[61] To implement the Women's Health Amendment, HRSA commissioned the independent Institute of Medicine, now known as the National Academy of Medicine, to conduct a scientific review and provide recommendations on specific preventive measures that meet women's health needs.

[62] 86 FR 33077.

[63] 87 FR 20689.

[64] 87 FR 42053.

[65] In the November 2018 final rules, the Departments estimated that between 70,500 and 126,400 women may have lost contraceptive coverage as a result of the November 2018 Religious Exemption final rules, and that approximately 15 women may have incurred contraceptive costs due to use of the November 2018 Moral Exemption final rules by for-profit entities.

[66] *See* Section VI.B.2. of this preamble, under the Benefits heading.

provided or administered the health coverage furnished by the eligible organization, and without financial, logistical, or administrative obstacles.

As explained in section I.A of this preamble, several employers challenged the contraceptive coverage accommodation under RFRA. These religious-objector employers alleged that the accommodation violated RFRA by making them complicit in the provision of contraceptive services and care. These employers also asserted that the public interest of ensuring women have access to contraceptive coverage can be accomplished in a way that complies with RFRA, that is, in a less restrictive way than the accommodation. Ultimately, the Departments issued the November 2018 final rules, which significantly expanded the types of entities eligible for a religious exemption, created an exemption for entities with a non-religious moral objection, and made the aforementioned accommodation optional.

As noted previously, a number of states challenged the November 2018 final rules in court, arguing that these rules are unlawfully arbitrary and capricious. In light of this litigation, and upon further consideration, the Departments have determined that the November 2018 final rules failed to adequately account for women's legal entitlement to access preventive care, critically including contraceptive services, without cost sharing as Congress intended; the impact on the number of unintended pregnancies; the costs to states and individuals of such pregnancies; and the government's interest in ensuring women have access to this coverage.

These proposed rules, if finalized, seek to resolve the long-running litigation with respect to religious objections to providing contraceptive coverage, by respecting the objecting entities' religious objections while also ensuring that women enrolled in plans or coverage sponsored, arranged, or provided by objecting entities have the opportunity to obtain contraceptive services at no cost. These rules propose to maintain the November 2018 final rules' religious exemption for entities with sincerely held religious objections to providing coverage for contraceptive services, under the preventive services guidelines pursuant to 26 CFR 54.9815–2713(a)(1)(iv), 29 CFR 2590.715–2713(a)(1)(iv), and 45 CFR 147.130(a)(1)(iv). Additionally, under these proposed rules, entities that sponsor insured or self-insured group health plans or arrange student health insurance coverage and that are exempt based on their religious objections would continue to be able to choose to invoke the optional accommodation set forth in the November 2018 Religious Exemption final rules at 26 CFR 54.9815–2713A, 29 CFR 2590.715–2713A, and 45 CFR 147.131 (as applicable). These proposed rules would confirm that this optional accommodation for exempt religious-objector entities is available to entities that are institutions of higher education.

While these proposed rules would maintain the religious exemption rule, they also would provide an independent pathway through which women enrolled in plans or coverage sponsored, arranged, or provided by objecting entities can access contraceptive services at no cost. With respect to participants and beneficiaries in insured or self-insured group health plans sponsored by an exempt entity, or enrollees in individual health insurance coverage (including student health insurance coverage) arranged or provided by an exempt entity, and that does not invoke the optional accommodation (if eligible), these proposed rules would create a pathway, independent from the employer, group health plan, plan sponsor, or issuer, through which individuals could obtain at no cost from a willing provider of contraceptive services [67] (that meets certain requirements), contraceptive services for which their plan or issuer would otherwise be required to provide coverage absent the religious exemption. These proposed rules refer to this pathway as the individual contraceptive arrangement. This individual contraceptive arrangement would be available to the participant, beneficiary, or enrollee without the plan sponsor or issuer having to take any action that would facilitate the coverage to which it objects. Simply put, the action is undertaken by the individual, for the individual. Through the individual contraceptive arrangement, a provider of contraceptive services, who provides these services at no cost to the women receiving them, would be able to seek reimbursement from an issuer with whom it has a signed agreement for the cost of providing contraceptive services to women covered under these plans. These proposed rules also would amend 45 CFR 156.50(d) so that a qualified health plan (QHP) issuer that has agreed to reimburse an eligible provider of contraceptive services that participates in the individual contraceptive arrangement would be eligible for an adjustment to the issuer's Federally-facilitated Exchange (FFE) or State Exchange on the Federal platform (SBE–FP) fee through the same mechanism for the user fee adjustment previously established in 45 CFR 156.50(d).

Finally, as discussed in section II.C.2 of this preamble, this proposed rule would eliminate the exemption and the availability of the optional accommodation for entities that object to contraceptive coverage based on non-religious moral beliefs. As more fully explained in that section, there have not been a large number of entities that have expressed a desire for an exemption based on a non-religious moral objection, the Departments are under no legal obligation to provide such an exemption, and RFRA would never apply to require such an exemption. Additionally, in light of the Supreme Court's decision in *Dobbs,* the Departments have concluded that it is all the more critical now to ensure women's access to reproductive health care and contraceptive services without cost sharing, and have determined that it is necessary to provide women enrolled in plans with respect to which the sponsor or issuer has non-religious moral objections to contraceptive coverage, with such coverage directly through their plan.

The Departments are of the view that these proposed rules would respect the religious objections to contraceptive coverage of employers, institutions of higher education, and health insurance issuers, by allowing them to continue to rely upon the religious exemptions, while also advancing the public interest of ensuring that women enrolled in such plans and coverage have access to contraceptives with no cost.

B. Coverage of Preventive Health Services (26 CFR 54.9815–2713, 29 CFR 2590.715–2713, and 45 CFR 147.130)

1. Background on Requirement To Cover Contraceptive Services

Pursuant to 26 CFR 54.9815–2713(a)(1)(iv), 29 CFR 2590.715–2713(a)(1)(iv), and 45 CFR 147.130(a)(1)(iv), a group health plan, or a health insurance issuer offering group or individual health insurance coverage, generally must provide coverage and must not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible) for, with respect to women, such additional preventive care and screenings not described in 26 CFR 54.9815–2713(a)(1)(i), 29 CFR 2590.715–2713(a)(1)(i), and 45 CFR 147.130(a)(1)(i), as provided for in

[67] These proposed rules refer to providers, consistent with the proposed definition of the term ''provider of contraceptive services,'' as including both health care providers and facilities. This definition is discussed later in this preamble.

comprehensive guidelines supported by HRSA for purposes of section 2713(a)(4) of the PHS Act. The currently applicable[68] HRSA-Supported Guidelines, as updated on December 17, 2019, include a guideline that adolescent and adult women have access to the full range of female-controlled FDA-approved contraceptive methods,[69] effective family planning practices, and sterilization procedures to prevent unintended pregnancy and improve birth outcomes.[70] The currently applicable HRSA-Supported Guidelines state that contraceptive care should include contraceptive counseling, initiation of contraceptive use, and follow-up care (for example, management and evaluation as well as changes to, and removal or discontinuation of, the contraceptive method), and that instruction in fertility awareness-based methods, including the lactation amenorrhea method, should be provided for women desiring an alternative method.

The Departments have clarified in guidance the obligation of a plan or issuer to provide coverage of contraceptive services in accordance with these HRSA-Supported Guidelines. On February 20, 2013, the Departments issued FAQs about Affordable Care Act Implementation Part XII (FAQs Part XII) stating that the HRSA-Supported Guidelines ensure women's access to the full range of FDA-approved contraceptive methods[71] including, but not limited to, barrier methods, hormonal methods, and implanted devices, as well as patient education and counseling, as prescribed by a health care provider.[72] The FAQs further clarified that plans and issuers may use reasonable medical management techniques to control costs and promote efficient delivery of care, such as covering a generic drug without cost sharing and imposing cost sharing for equivalent branded drugs. However, FAQs Part XII stated that, in these instances, a plan or issuer must accommodate any individual for whom a particular drug (generic or brand name) would be medically inappropriate, as determined by the individual's health care provider, by having a mechanism for waiving the otherwise applicable cost sharing for the brand or non-preferred brand version. The FAQs also clarified that contraceptive products that are generally available over-the-counter are required to be covered only if they are both FDA-approved, cleared, or granted and prescribed by a health care provider.[73]

On May 11, 2015, the Departments issued FAQs about Affordable Care Act Implementation Part XXVI (FAQs Part XXVI) clarifying that plans and issuers must cover, without cost sharing, at least one form of contraception in each category that is identified by the FDA in its Birth Control Guide.[74] The FAQs further clarified that, to the extent plans and issuers use reasonable medical management techniques within a specified category of contraception, plans and issuers must have an easily accessible, transparent, and sufficiently expedient exceptions process that is not unduly burdensome on the individual or provider (or other individual acting as a patient's authorized representative) to ensure coverage without cost sharing of any service or FDA-approved item within the specified category of contraception. FAQs Part XXVI stated that if an individual's attending provider recommends a particular service or FDA-approved item based on a determination of medical necessity with respect to that individual, the plan or issuer must cover that service or item without cost sharing. The FAQs made clear that a plan or issuer must defer to the determination of the attending provider. FAQs Part XXVI stated that medical necessity may include considerations such as severity of side effects, differences in permanence and reversibility of contraceptives, and ability to adhere to the appropriate use of the item or service, as determined by the attending provider. The FAQs also clarified that the exceptions process must provide for making a determination of the claim according to a timeframe and in a manner that takes into account the nature of the claim (for example, pre-service or post-service) and the medical exigencies involved for a claim involving urgent care. FAQs Part XXVI additionally clarified that a plan or issuer cannot limit sex-specific recommended preventive services based on an individual's sex assigned at birth, gender identity, or recorded gender.[75]

On April 20, 2016, the Departments issued FAQs about Affordable Care Act Implementation Part 31, Mental Health Parity Act Implementation, and Women's Health and Cancer Rights Act Implementation (FAQs Part 31) stating that if a plan or issuer utilizes reasonable medical management techniques within a specified method of contraception, the plan or issuer may develop and utilize a standard exception form and instructions as part of its steps to ensure that it provides an easily accessible, transparent, and sufficiently expedient exceptions process that is not unduly burdensome on the individual or a provider (or other individual acting as a patient's authorized representative).[76] The FAQs suggested that the Medicare Part D Coverage Determination Request Form may serve as a model for plans and

[68] As explained in FN 4, in December 2021, HRSA approved updates to the contraception guidelines that apply to plan years (in the individual market, policy years) starting on and after December 30, 2022. *See* changes at *https://www.hrsa.gov/womens-guidelines.*

[69] The Departments note that the FDA approves, clears, and grants contraceptive products and not methods.

[70] *See https://www.hrsa.gov/womens-guidelines-2019.*

[71] The FDA does not and never has approved, granted, or cleared contraceptive methods, only contraceptive products. *See* FN 4, *supra.*

[72] *See* Q14, available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-xii.pdf* and *www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs12.html. See also* FN 61.

[73] *Id.* at Q15.

[74] *See* Q2 and Q3, available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-xxvi.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/aca_implementation_faqs26.pdf.* In prior FAQs related to contraceptive coverage such as FAQs Part XXVI, the Departments referenced the FDA Birth Control Guide as the source for categories of contraceptives that must be covered without cost sharing. The Departments now cite the HRSA-Supported Guidelines for the list of contraceptive categories to better align with the language of the Affordable Care Act's preventive service coverage requirements. Despite the change in wording, there is no substantive difference and the requirements for plans and issuers remain the same. The range of identified categories of contraception in the currently applicable 2019 HRSA-Supported Guidelines include: (1) sterilization surgery for women; (2) surgical sterilization via implant for women; (3) implantable rods; (4) copper intrauterine devices; (5) intrauterine devices with progestin (all durations and doses); (6) the shot or injection; (7) oral contraceptives (combined pill); (8) oral contraceptives (progestin only); (9) oral contraceptives (extended or continuous use); (10) the contraceptive patch; (11) vaginal contraceptive rings; (12) diaphragms; (13) contraceptive sponges; (14) cervical caps; (15) female condoms; (16) spermicides; (17) emergency contraception (levonorgestrel); and (18) emergency contraception (ulipristal acetate), and additional methods as identified by the FDA. The 2021 HRSA-Supported Guidelines clarified that, in addition to the enumerated categories, the full range of contraceptives includes any additional contraceptives approved, granted, or cleared by the FDA. The 2021 HRSA-Supported Guidelines also expanded the recommendation to encompass contraceptives that are not female-controlled, such as male condoms (which must be covered with a prescription by plans and issuers for plan years (in the individual market, policy years) that begin on or after December 30, 2022). The 2021 HRSA-Supported Guidelines do not include male sterilization. *See https://www.hrsa.gov/womens-guidelines. See also* Preamble to Final Rules regarding coverage of certain preventive services at 78 FR 39870 (July 2, 2013).

[75] *Id.* at Q5.

[76] *See* Q2, available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-31.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-31_Final-4-20-16.pdf.*

issuers when developing a standard exception form.[77]

On January 10, 2022, the Departments issued FAQs about Affordable Care Act Implementation Part 51, Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation (FAQs Part 51) that reiterated previously issued guidance related to coverage of contraceptive services and provided examples of practices reported to the Departments that denied contraceptive coverage to participants, beneficiaries, and enrollees.[78] The FAQ also clarified that if an individual's attending provider determines that a particular service or FDA-approved, cleared, or granted contraceptive product is medically appropriate for such individual, a plan or issuer must cover that service or product without cost sharing, whether or not the service or product is in a category of contraception specifically identified in the current HRSA-Supported Guidelines.

On July 28, 2022, the Departments issued FAQs about Affordable Care Act Implementation Part 54 (FAQs Part 54) on additional aspects of contraceptive coverage, reiterating and clarifying the types of items and services required to be covered under PHS Act section 2713 and its implementing regulations. Specifically, these FAQs explained that plans and issuers are required to cover, without any cost sharing, items and services that are integral to the furnishing of a recommended preventive service, such as anesthesia necessary for a tubal ligation procedure or pregnancy tests needed before provision of certain forms of contraceptives, such as an intrauterine device (also known as an IUD), regardless of whether the item or service is billed separately.[79] FAQs Part 54 also addressed contraceptive products and services that are not included in a category of contraception described in the HRSA-Supported Guidelines, reiterating that plans and issuers must cover any contraceptive services and FDA-approved, cleared, or granted contraceptive products that an individual and their attending provider have determined to be medically appropriate for the individual, whether or not those services or products are specifically identified in the categories listed in the HRSA-Supported Guidelines.[80] Additionally, the FAQs reiterated the requirement to cover FDA-approved emergency contraception, including emergency contraception that is available over-the-counter (OTC), when prescribed, and encouraged plans and issuers to cover OTC emergency contraceptive products with no cost sharing when purchased without a prescription. The FAQs also state that a health savings account, health flexible spending arrangement, or health reimbursement arrangement can reimburse expenses incurred for OTC contraception obtained without a prescription.[81] Further, the FAQs addressed instruction in fertility awareness-based methods and encouraged plans and issuers to cover the dispensing of a 12-month supply of contraception without cost sharing.[82]

FAQs Part 54 also addressed the use of reasonable medical management techniques as applied to contraceptive products or services, including explaining that plans and issuers may use reasonable medical management techniques for contraceptive products or services not included in the categories described in the HRSA-Supported Guidelines only if multiple, substantially similar services or products that are not included in a category are available and are medically appropriate for an individual.[83] For contraceptive products or services included in the categories described in the HRSA-Supported Guidelines, the FAQs reiterate that plans and issuers may utilize reasonable medical management techniques only within a specified category of contraception and only to the extent the HRSA-Supported Guidelines do not specify the frequency, method, treatment, or setting for the provision of a recommended preventive service that is a contraceptive service or FDA-approved, cleared, or granted product.[84] The FAQs offered guidance on how to determine whether a medical management technique is reasonable for purposes of the requirements under PHS Act section 2713, including examples of unreasonable medical management techniques, such as imposing an age limit on contraceptive coverage instead of providing these benefits to all individuals with reproductive capacity.[85] In addition, FAQs Part 54 offered guidance on what constitutes an easily accessible, transparent, and sufficiently expedient exceptions process that is not unduly burdensome on the individual or their provider and explained that the Departments will consider an exceptions process to be easily accessible if plan documentation includes relevant information regarding the exceptions process under the plan or coverage, including how to access the exceptions process without initiating an appeal pursuant to the plan's or issuer's internal claims and appeals procedures, the types of information the plan or issuer requires as part of a request for an exception, and contact information for a representative of the plan or issuer who can answer questions related to the exceptions process.[86] The FAQs state that a plan or issuer may not require a participant, beneficiary, or enrollee to appeal an adverse benefit determination using the plan or issuer's internal claims and appeals process as the means for an individual to obtain an exception.[87]

As explained in FAQs Part 51 and FAQs Part 54, the Departments have received a number of complaints and reports regarding potential violations of the contraceptive coverage requirement. The Departments are committed to ensuring consumers have access to the contraceptive benefits, without cost sharing, that they are entitled to under the ACA and implementing regulations. In addition to previously issued clarifications, the Departments are continuing to assess what changes to existing regulations or guidance may be needed to better ensure individuals receive the coverage to which they are entitled under the law and will issue additional guidance, as warranted. The Departments solicit comments regarding whether any other clarifications or additional guidance is needed in these proposed rules to help ensure that women covered under group health plans or health insurance coverage have access to contraceptive services at no cost. Moreover, stakeholders who have information regarding potential noncompliance with these requirements should contact the Departments as the Departments continue to consider what additional oversight and enforcement actions could be taken to ensure health plans and issuers are complying with the contraceptive benefits guaranteed under the ACA.[88]

[77] A copy of the Medicare Part D Coverage Determination Request Form is available at *https://www.cms.gov/Medicare/Appeals-and-Grievances/MedPrescriptDrugApplGriev/CoverageDeterminations-*.

[78] *See* Q9, available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-51.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-51.pdf*.

[79] *See* Q1, available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-54.pdf* and at *https://www.cms.gov/files/document/faqs-part-54.pdf*.

[80] *Id.* at Q2.

[81] *Id.* at Q5 and Q6.

[82] *Id.* at Q4 and Q7.

[83] *Id.* at Q3.

[84] *Id.* at Q8.

[85] *Id.*

[86] *Id.* at Q9.

[87] *Id.* at Q10.

[88] As stated in FAQs Part 54, Q14, consumers who have fully-insured coverage and who have

Continued

However, these proposed rules would not alter these coverage standards applicable to contraceptive services. Rather, these proposed rules focus on the religious and moral objections of entities otherwise subject to those coverage standards, and participants', beneficiaries', and enrollees' access to contraceptive services without cost sharing when their plan or coverage excludes coverage for these services based on religious objections and does not adopt the existing optional accommodation. No new Federal processes, resources, data systems, or reporting mechanisms are anticipated for monitoring and tracking entities' objections, or the identities of entities availing themselves of these exemptions. Therefore, the Departments propose only minor changes to 26 CFR 54.9815–2713, 29 CFR 2590.715–2713, and 45 CFR 147.130.

2. Addition of the Phrase ''Evidence-Informed''

The Departments propose to add the phrase ''evidence-informed'' immediately before ''comprehensive'' in 26 CFR 54.9815–2713(a)(1)(iv), 29 CFR 2590.715–2713(a)(1)(iv), and 45 CFR 147.130(a)(1)(iv), so that the reference in the paragraph would be to evidence-informed comprehensive guidelines supported by HRSA.

Section 2713(a) of the PHS Act specifies that the preventive services that must be covered without cost sharing are: (1) evidence-based items or services that have in effect a rating of ''A'' or ''B'' in the current recommendations of the United States Preventive Services Task Force (USPSTF) with respect to the individual involved; (2) immunizations that have in effect a recommendation from the Advisory Committee on Immunization Practices of the CDC with respect to the individual involved; (3) with respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by HRSA; and (4) with respect to women, such additional preventive care and screenings not described in the aforementioned recommendations by USPSTF as provided for in comprehensive guidelines supported by HRSA for purposes of section 2713(a)(4) of the PHS Act.[89] The reference to ''evidence-informed'' preventive care and screenings in comprehensive HRSA-Supported Guidelines was removed in the October 2017 Religious Exemption interim final rules to align with the statutory text.[90] However, because the statute requires that the USPSTF recommendations relate to ''evidence-based'' items and services, and because the statute also requires that HRSA's guidelines for infants, children, and adolescents be ''evidence-informed,'' the Departments are of the view that it is consistent with the general purpose of section 2713 of the PHS Act that, with respect to women, the additional preventive care and screenings provided for in comprehensive guidelines supported by HRSA be evidence-informed.[91]

Furthermore, the Departments recognize that section 2713 of the PHS Act establishes special coverage requirements for certain services that have been shown by evidence to have benefits as preventive services.[92] Most studies suggest that removing cost-sharing barriers to these items and services helps to increase access and utilization by participants, beneficiaries, and enrollees who might otherwise delay or skip care due to financial barriers.[93] However, coverage, without cost sharing, of recommended preventive items and services and the resulting increases in utilization can increase costs to consumers in the form of increased premiums, unless those costs are offset by savings. By reinstating the requirement that the HRSA-Supported Guidelines be evidence-informed, these proposed rules would help ensure that plans and issuers are required to cover recommended preventive items and services, without cost sharing, only when evidence supports the items' or services' value as preventive care. Thus, this proposed amendment would help to limit overutilization of services and promote efficiencies in care delivery while ensuring that participants, beneficiaries, and enrollees have access to critical women's preventive services.

Additionally, this proposed change would better reflect current practice. HRSA's process for developing clinical guidelines for women's preventive services is, and has historically been, evidence-based. In establishing the HRSA-Supported Guidelines, HHS, acting through HRSA, depends on the work of the Women's Preventive Services Initiative (WPSI). According to WPSI, its recommendations are intended to guide clinical practice and coverage of services for HRSA and other stakeholders.[94] The recommendation development process of the WPSI is based on adaptation of the eight criteria for evidence-based clinical practice guideline development as articulated in the 2011 report, Clinical Practice Guidelines We Can Trust from the National Academy of Medicine (formerly the Institute of Medicine [IOM]).[95] The WPSI clinical recommendations are based on reaching a threshold of supportive evidence, similar to the 2011 IOM Panel.[96] The WPSI bases recommendations on evidence of both benefits and harms of an intervention or service and an assessment of the balance between

concerns about their health insurance issuer's compliance with these requirements may contact their State Department of Insurance (for more information, visit *https://content.naic.org/state_web_map.htm*). Consumers who are covered by a private-sector, employer-sponsored group health plan and have concerns about their plan's compliance with these requirements may contact the Department of Labor at *https://www.dol.gov/agencies/ebsa/about-ebsa/ask-a-question/ask-ebsa* or by calling toll free at 1–866–444–3272. Consumers who are covered by a non-Federal public-sector employer-sponsored plan (such as a State or local government employee plan) and have concerns about their plan's compliance with these requirements may contact the Center for Consumer Information and Insurance Oversight at (888) 393–2789 or *contraception_complaints@cms.hhs.gov* for further assistance with a question or issue.

[89] In addition, under section 3203 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act and its implementing regulations, plans and issuers must cover, without cost-sharing requirements, any qualifying coronavirus preventive service pursuant to section 2713(a) of the PHS Act and its implementing regulations (or any successor regulations). The term ''qualifying coronavirus preventive service'' means an item, service, or immunization that is intended to prevent or mitigate coronavirus disease 2019 (COVID–19) and that is, with respect to the individual involved (1) an evidence-based item or service that has in effect a rating of ''A'' or ''B'' in the current USPSTF recommendations; or (2) an immunization that has in effect a recommendation from ACIP (regardless of whether the immunization is recommended for routine use). On November 6, 2020, the Departments published interim final rules with a request for comment regarding this requirement, Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency (85 FR 71142).

[90] The explanation for why the reference to ''evidence-informed'' was removed, that is, to align with the statutory text, was provided in the November 2018 Religious Exemption final rules. *See* 83 FR 57536, 57557 (November 15, 2018).

[91] The Departments interpret ''evidence-based'' to require that the standards be based solely on scientific ''evidence,'' while, as discussed later in this preamble, ''evidence-informed'' means that they are informed by a consideration of scientific evidence, but such evidence need not be the only basis for its standards. As the Court held in *Little Sisters,* HRSA is also authorized to consider the propriety of including exemptions based upon religious or moral objections. 140 S. Ct. at 2381.

[92] *See* section 2713(a)(1) and (3) of the PHS Act.

[93] Norris, HCH. C., Richardson, HM., et al. (2021). ''H. M., Benoit, M. C., Shrosbree, B., Smith, J. E., & Fendrick, A. M. (2022). Utilization Impact of Cost-Sharing Elimination for Preventive Care Services: A Rapid Review.'' *Medical Care Research and Review.* Available at, 79(2), 175–197. *https://journals.sagepub.com/doi/pdf.org/10.1177/10775587211027372.*

[94] *See* WPSI's Methodology Summary at *https://www.womenspreventivehealth.org/wp-content/uploads/WPSI-Methodology-1.pdf.*

[95] *Id.*

[96] *Id.*

them.[97] As part of the WPSI process, an evidence report on an approved topic is presented to its multidisciplinary steering committee (MSC), and is used as the basis for recommendation development.[98] The MSC is then asked to consider the evidence in depth and to formulate a recommendation.[99] Recommendations, which include this evidence review, that are approved by 75 percent of the MSC are submitted to HRSA by December 1 of the given calendar year.[100] If approved by HHS, acting through the HRSA Administrator, the WPSI Clinical Recommendation is added to the HRSA-Supported Guidelines.[101] Thus, HRSA-Supported Guidelines, as currently developed, are evidence-informed. The proposed addition of the term ''evidence-informed'' in 26 CFR 54.9815–2713(a)(1)(iv), 29 CFR 2590.715–2713(a)(1)(iv), and 45 CFR 147.130(a)(1)(iv) would more precisely describe the process through which the HRSA-Supported Guidelines are established and ensure the Guidelines continue to be evidence-informed in the future.

For these reasons, the Departments propose to codify that standard. The Departments do not anticipate that this proposed amendment would alter the existing processes through which the HRSA-Supported Guidelines are developed, as these processes, as stated previously, already include a robust consideration of evidence.

The Departments seek comment on this proposal.

3. Conforming Edits

As discussed in section II.C.2 of this preamble, the Departments also propose to eliminate the exemption for entities with moral objections to contraceptive coverage at 45 CFR 147.133, and therefore to also make conforming edits to remove references to 45 CFR 147.133 that appear in paragraph (a)(1) of 45 CFR 147.130 and paragraph (a)(1)(iv) of 26 CFR 54.9815–2713, 29 CFR 2590.715–2713 and 45 CFR 147.130. Finally, HHS proposes to remove from 45 CFR 147.130(a)(1) references to 45 CFR 147.131 and 45 CFR 147.132. Those references also appear in paragraph (a)(1)(iv), for the same purpose, and therefore are duplicative and unnecessary in 45 CFR 147.130(a)(1).

C. Exemptions in Connection With Coverage of Contraceptive Services (45 CFR 147.132 and 147.133)

1. Religious Exemptions

This proposed rule would maintain the religious exemption from the November 2018 Religious Exemption final rules. Each of the proposed changes made to the regulations with respect to religious objections is either technical in nature or codifies the intent specified in the preamble to the November 2018 Religious Exemption final rules. The proposed changes in no way narrow the scope of the exemption or further restrict the types of religious entities that may use the exemption.

Under the regulations at 26 CFR 54.9815–2713(a)(1)(iv), 29 CFR 2590.715–2713(a)(1)(iv), and 45 CFR 147.130(a)(1)(iv), a non-grandfathered group health plan, or a health insurance issuer offering non-grandfathered group or individual health insurance coverage, must provide coverage for, and must not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible) for, with respect to women, such additional preventive care and screenings as provided for in comprehensive guidelines supported by HRSA, subject to the exemptions and accommodations related to contraceptive coverage. The November 2018 Religious Exemption final rules at 45 CFR 147.132(a)(1) state that guidelines issued under 45 CFR 147.130(a)(1)(iv) by HRSA must not provide for or support the requirement of coverage or payments for contraceptive services with respect to a group health plan established or maintained by an objecting entity, to the extent of the objections specified in the regulations.

The Departments note that the regulations require HRSA to include an exemption in its guidelines. Although the Supreme Court held in *Little Sisters* that the ACA ''gives HRSA broad discretion to define preventive care and screenings and to create the religious and moral exemptions,'' it also concluded that ''the plain language of the statute clearly allows *the Departments* to create the preventive care standards as well as the religious and moral exemptions'' [102] [103] (emphasis added). This is understandable because the HRSA Administrator exercises authority delegated from and subject to the control of the Secretary of HHS.[104]

Paragraph (a)(1)(i) through (iv) of 45 CFR 147.132 lists the types of objecting entities that are exempted from the HRSA-Supported Guideline requirements that relate to the provision of contraceptive services. These proposed rules would make minor technical amendments to 45 CFR 147.132(a)(1)(i). That paragraph currently reads as follows: ''A group health plan and health insurance coverage provided in connection with a group health plan to the extent the non-governmental plan sponsor objects as specified in *paragraph (a)(2)* of this section. Such non-governmental plan sponsors include, but are not limited to, the following entities –.'' These proposed rules would add the phrase ''of the plan or coverage'' immediately following ''sponsor'' solely for purposes of precision and clarity. Additionally, these proposed rules would delete the phrase '', but are not limited to,''. This change is not intended to limit the types of non-governmental plan sponsors that may avail themselves of the religious exemption as compared to the November 2018 Religious Exemption final rules, but is rather intended as a stylistic, grammatical change that is consistent with other regulations issued by the Departments.

In addition, the proposed rules would add language in 45 CFR 147.132(a)(1)(iv) clarifying that, notwithstanding the guaranteed availability requirements in 45 CFR 146.150 and 45 CFR 147.104, a health insurance issuer may not offer coverage that excludes some or all contraceptive services to any entity or individual that

[97] *Id.*

[98] *Id.*

[99] *Id.*

[100] *Id.*

[101] *Id.*

[102] *Little Sisters of the Poor Saints Peter and Paul Home* v. *Pennsylvania,* 140 S. Ct. 2367, 2382 (2020); *see also id.* at 2374–75, 2377–78 (recounting the Departments' history of deciding what should be included in the HRSA-Supported Guidelines).

[103] Exempting the types of objecting entities listed in the November 2018 final rules from any guideline requirements that relate to the provision of contraceptive services is consistent with the Departments' proposed requirement (discussed in section II.B of this preamble) that the comprehensive guidelines supported by HRSA be evidence-informed. The Departments interpret ''evidence-informed'' to mean that the Guidelines must be informed by a consideration of scientific evidence; however, the implementation of the requirement with respect to group health plans or group or individual health insurance coverage can also take into account the Departments' decisions to provide religious exemptions.

[104] *See* 42 U.S.C. 202 (''The Public Health Service in the Department of Health and Human Services shall be administered by the Assistant Secretary for Health under the supervision and direction of the Secretary.''); Reorganization Plan No. 3 of 1966 § 1, 5 U.S.C. app 1 (transferring to the Secretary ''all functions of the Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service.''); Health Resources and Services Administration; Statement of Organization, Functions, and Delegations of Authority, 47 F. R. 38,409 (Aug. 31, 1982). Note that HHS is the successor of the U.S. Department of Health, Education, and Welfare, the latter of which is referenced in Reorganization Plan No. 3 of 1966 mentioned earlier in this footnote.

is not an objecting entity or objecting individual. The preamble to the November 2018 final rules specified this prohibition with respect to exempt entities,[105] but the provision was not included in the regulatory text. This prohibition would apply to all health insurance issuers, whether or not the issuer is an exempt or non-exempt entity. The Departments have identified no reason to treat exempt and non-exempt issuers differently in this regard. This prohibition is important to ensure that entities and individuals that are not objecting entities or individuals are not offered coverage that excludes some or all contraceptive services from being provided without cost sharing. In addition, the Departments are of the view that this prohibition properly respects both the interests of ensuring that women have the opportunity to obtain coverage for contraceptive services without cost sharing and the interests of entities that have religious objections to offering contraceptive coverage. By allowing health insurance issuers to offer coverage that excludes some or all such contraceptive services to entities or individuals that have religious objections to involvement with contraceptive services, the November 2018 final rules provided important protections to objecting entities and individuals. On the other hand, by limiting the individuals and entities to whom an objecting health insurance issuer can offer the coverage, the November 2018 final rules took critical steps to ensure that women employed by or who are students of entities that do not have an objection to coverage of contraceptive services (or women purchasing coverage in the individual market who do not have such an objection) continue to have access to contraceptive services as required under 26 CFR 54.9815–2713, 29 CFR 2590.715–2713, and 45 CFR 147.130. These proposed regulations would codify this limitation in regulatory text.

These proposed rules include amendments to reorganize the regulatory text of 45 CFR 147.132(b) for clarity. These proposed amendments do not affect the exemption in the HRSA-Supported Guidelines and in the November 2018 Religious Exemption final rules for individuals who have a religious objection to contraception coverage. Paragraph (b) of 45 CFR 147.132 of the November 2018 Religious Exemption final rules provided that HRSA-Supported Guidelines under 45 CFR 147.130(a)(1)(iv) must not provide for or support the requirement of coverage or payments for contraceptive services with respect to individuals who so object. The paragraph also states that nothing in 26 CFR 54.9815–2713(a)(1)(iv), 29 CFR 2590.715–2713(a)(1)(iv), or 45 CFR 147.130(a)(1)(iv) may be construed to prevent a willing health insurance issuer offering group or individual health insurance coverage and, as applicable, a willing plan sponsor of a group health plan, from offering a separate policy, certificate or contract of insurance, or a separate group health plan or benefit-package option, to any group health plan sponsor (with respect to an individual) or individual, as applicable, who objects to coverage or payments for some or all contraceptive services based on sincerely held religious beliefs. Under this exemption, if an individual objects to some but not all contraceptive services, but the issuer (and, as applicable, the plan sponsor) is willing to provide the plan sponsor or individual, as applicable, with a separate policy, certificate or contract of insurance or a separate group health plan or benefit package option that omits all contraceptives, and the individual agrees, then the exemption applies as if the individual objects to all contraceptive services.

In addition to the proposed amendments to reorganize the regulatory text of 45 CFR 147.132(b) for clarity, these proposed rules would also make clear that the ability of a willing issuer to offer a separate policy, certificate, or contract of insurance that omits some or all contraceptive services to an objecting individual is permitted under these proposed rules only to the extent permitted by applicable State law.

The Departments note that section 2713 of the PHS Act applies to a group health plan and a health insurance issuer offering group or individual health insurance coverage. Because group health plans and health insurance issuers are separate legal entities, in the case of an insured group health plan, the requirements under section 2713 of the PHS Act apply directly to both the group health plan that provides benefits through a group health insurance policy and the health insurance issuer. In the case of an insured student health plan, although the institution of higher education is not directly subject to section 2713 of the PHS Act, the institution arranges student health insurance coverage for students and their dependents, similar to the sponsor of a group health plan purchasing coverage in the group market. In recognition of the statute's applicability, the November 2018 final rules exempt a group health insurance issuer and an issuer of student health insurance coverage from complying with the requirement to cover contraceptive services under section 2713 of the PHS Act, if the sponsor of the plan or institution of higher education that arranges student health insurance coverage is an exempt entity, even when the issuer itself is not an exempt entity. The Departments seek comment on what challenges or concerns would exist under an approach in which, if an entity that is a group health plan sponsor, group health plan, or institution of higher education is an objecting entity and sponsors or arranges for an insured group health plan or student health insurance coverage, the contraceptive coverage requirement would continue to apply directly to the health insurance issuer (that is, whether the exemption should no longer extend to the issuer).

Notwithstanding that the group health plan sponsor, group health plan, or institution of higher education is an exempt entity, under this alternative approach, the health insurance issuer would still be required to fulfill its separate and independent obligation to provide contraceptive coverage, unless the issuer itself has a religious objection to contraceptive services. Requiring the health insurance issuer to independently provide coverage for contraceptive services, unless it has its own religious objection to doing so, would ensure that women who are in fully-insured plans sponsored or arranged by objecting entities (and who thus otherwise might not have access to contraceptive services under the existing optional accommodation or might be limited in their ability to access contraceptive services through the individual contraceptive arrangement proposed in these rules) would have seamless access to contraceptive coverage. Under the current regulations, an issuer may exclude coverage of contraceptive services if the coverage is sponsored or arranged for by an objecting entity. In order for the issuer to instead provide the coverage directly to participants, beneficiaries, and enrollees, the Departments expect that the objecting entity would have to communicate its religious objections to the issuer in some manner.

The Departments seek comment on all aspects of this alternative approach. Specifically, the Departments seek comment on whether and how an objecting entity that is a group health plan sponsor, group health plan, or institution of higher education generally communicates to the health insurance issuer its religious objection to providing contraceptive coverage, and

[105] 83 FR 57536, 57565.

whether this form of communication would be sufficient for an issuer to understand that it must fulfill its separate and independent obligation to provide coverage of contraceptive services. The Departments also seek comment on whether and how the health insurance issuer, in instances in which it does not have its own religious objection to covering contraceptive services, should be required to provide the contraceptive coverage, and what guardrails should be in place to separate the issuer's coverage of contraceptive services from the coverage provided under the insured group health plan or student health insurance coverage.

2. Moral Exemptions

Under 45 CFR 147.133, the HRSA-Supported Guidelines must not provide for or support the requirement of coverage or payments for contraceptive services with respect to a group health plan established or maintained by an objecting organization, or health insurance coverage offered or arranged by an objecting organization, to the extent of the entity's objections, based on its sincerely held moral convictions, to its establishing, maintaining, providing, offering, or arranging for (as applicable) coverage or payments for some or all contraceptive services; or a plan, issuer, or third party administrator that provides or arranges such coverage or payments. Similarly, under 45 CFR 147.133, the HRSA-Supported Guidelines must not provide for, or support, the requirement of coverage or payments for contraceptive services with respect to individuals who object to coverage or payments for some or all contraceptive services based on sincerely held moral convictions.

These proposed rules would remove the ability of entities to claim an exemption to establishing, maintaining, providing, offering, or arranging for contraceptive coverage based on a non-religious moral objection, and would remove the exemption on the basis of moral convictions applicable to objecting individuals.

As the Departments explained in the November 2018 Moral Exemption final rule, and as pointed out in section I.A of this preamble, the Departments' adoption of the moral exemptions was not legally required but rather an exercise of the Departments' discretion to protect moral convictions.[106] Additionally, as noted in the November 2018 Moral Exemption final rules, the moral exemption likely affects very few individuals.[107] In *Little Sisters,* the Supreme Court concluded that it was appropriate for HRSA to consider the prevalence of RFRA claims, and the possibility of required exemptions under RFRA, as a reason for establishing the religious exemption.[108] The Departments have done so, and these proposed rules continue to provide exemptions for religious organizations, employers and institutions of higher education, and health insurance issuers with sincerely held religious objections to providing, sponsoring, or arranging coverage of contraceptive services.

However, there is no such justification for treating non-religious moral objectors in the same manner as religious objectors. RFRA does not require any exemption for non-religious moral objections that do not result in a substantial burden on someone's exercise of religion; therefore, there is no prospect of successful RFRA claims for those entities that might have only non-religious moral objections to contraception. Nor does the existence of the religious exemption compel the conferral of corresponding exemptions based on non-religious moral objections. The Supreme Court has held that where ''government acts with the proper purpose of lifting a regulation that burdens the exercise of religion, we see no reason to require that the exemption come packaged with benefits to secular entities.'' [109]

In considering whether to propose removing the moral exemption, the Departments considered past litigation and settlements related to non-religious moral objections to the requirement that plans and issuers provide coverage of certain preventive services. The Departments are aware that one entity, March for Life, has obtained a permanent injunction preventing the enforcement of the contraceptive coverage requirement against it because of its non-religious moral objections. The District Court for the District of Columbia in that case reasoned that there was no rational basis for the Departments to distinguish between religious and moral objections.[110] The Departments respectfully disagree with that conclusion: as noted previously, the reason for the distinction is that the Departments can account for the prospect of numerous RFRA claims with respect to a religious exemption, some of which might be meritorious, but there is no analogous need to heed the possibility of successful claims to a non-religious moral exemption, because there is no moral-exemption statute similar to RFRA.

The Departments are of the view that few entities make use of the moral exemption at this time. In the November 2018 Moral Exemption final rules, without data available to estimate the actual number of entities that would make use of the exemption for entities with sincere moral objections, the Departments assumed that the moral exemption would be used by nine nonprofit entities and nine for-profit entities.[111] These assumptions were made in the absence of data. Thus, the Departments seek comment on how many women lost contraceptive coverage without cost sharing based on the moral exemption rule, and how many would regain access to such coverage by rescinding the availability of the moral exemption. The Departments seek evidence of the quantitative harms from the moral exemption rule. The Departments note, however, that eliminating the moral exemption is likely justified even if more entities than previously estimated make use of the moral exemption.

In the November 2018 Moral Exemption final rules, the Departments noted that the organizations that have sued seeking a moral exemption have adopted longstanding moral tenets opposed to certain FDA-approved contraceptives and hire only employees who share this view. Commenters on the October 2017 Moral Exemption interim final rules made similar points and also suggested that therefore requiring coverage of contraceptive services by a group health plan or coverage sponsored, arranged, or provided by an objecting entity subject to a moral exemption would yield no benefits, because that entity's employees would neither want nor use contraception. At the time, the Departments concluded that employees of these organizations would not benefit from the requirement to provide contraceptive services coverage.[112] Yet, although employees of these organizations may typically share the views of the organizations, it is not necessarily true that all employees of these organizations share all of these

[106] 83 FR 57592, 57598.

[107] 83 FR 57592, 57627. The November 2018 Moral Exemption final rules assumed that nine nonprofit entities and nine for-profit entities would avail themselves of the moral exemption, and estimated that approximately 15 women may incur contraceptive costs due to use of the moral exemption by for-profit entities.

[108] *Little Sisters of the Poor Saints Peter and Paul Home* v. *Pennsylvania,* 140 S. Ct. 2367 (2020).

[109] *Corporation of Presiding Bishop of Jesus Christ of Latter-Day Saints* v. *Amos,* 483 U.S. 327, 339, 107 S. Ct. 2862 (1987).

[110] *March for Life* v. *Burwell,* 128 F. Supp. 3d 116 (D.D.C. 2015).

[111] 83 FR 57592, 57625 (November 15, 2018).

[112] 83 FR 57536, 57602.

views, and employees may share these views in general while wishing to make personal benefits elections that arguably conflict with certain organizational views. This is true regardless of how many, or how few, entities object to covering contraceptives based on a moral exemption. Furthermore, dependents covered under plans sponsored by these organizations may not share the views of these organizations and could not be required to share these views as a condition of employment, unless they are also employees of the organizations. It is now the Departments' view that the potential harm to these individuals was not adequately considered when the Departments adopted the November 2018 Moral Exemption final rules. The Departments seek comment on the potential impact to these individuals.

In the preamble to the November 2018 Moral Exemption final rules, the Departments referred to a number of Federal statutes demonstrating Congress' historical desire and intent to protect non-religious moral objections to abortion and other activities. For example, the Departments referred at length to the Church Amendments. The preamble to the November 2018 Moral Exemption final rules stated:

> The Church Amendments specifically provide conscience protections based on sincerely held moral convictions, not just religious beliefs. Among other things, the amendments protect the recipients of certain federal health funds [under the Public Health Service Act (42 U.S.C.A. 201 *et seq.*), the Community Mental Health Centers Act (42 U.S.C.A. 2689 *et seq.*), the Developmental Disabilities Assistance, or the Bill of Rights Act of 2000 (42 U.S.C.A. 15001 *et seq.*)] from being required to perform, assist, or make their facilities available for abortions or sterilizations if they object 'on the basis of religious beliefs or moral convictions,' and they prohibit recipients of certain federal health funds from discriminating against any personnel 'because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions.' Later additions to the Church Amendments protect other conscientious objections, including some objections on the basis of moral conviction to 'any lawful health service,' or to 'any part of a health service program.' In contexts covered by those sections of the Church Amendments, the provision or coverage of certain contraceptives, depending on the circumstances, could constitute 'any lawful health service' or a 'part of a health service program.' [113]

However, the Departments now find it significant that Congress chose not to apply those statutory provisions to private entities that typically do not accept funds from or do business with the government, that is, entities that are, in that respect, similar to sponsors of private group health plans.[114] The Departments also note that the Church Amendments primarily address the imposition of employment responsibilities or personal service requirements that would infringe upon an individual's moral beliefs, which is not directly relevant to an employer's, college's or university's, or health insurance issuer's moral objections to contraceptive coverage. The Departments also find it significant that those statutory provisions were enacted before the Supreme Court's opinion in *Dobbs*. Given that decision and the consequent threat to women's access to abortion and their ability to exercise control over their reproductive health care decisions, it is now all the more critical that women have access to contraceptive coverage. In fact, the Departments noted in the November 2018 Moral Exemption final rules that ''[t]he Church Amendments were enacted in the wake of the Supreme Court's decision in *Roe* v. *Wade*.'' [115] At that time, Congress was acting in an environment in which there were, or were about to be, fewer restrictions on reproductive health.

The Departments are of the view that non-religious moral objections to contraceptives are outweighed by the strong public interest in making contraceptive coverage as accessible to women as possible. As a result, and for the reasons stated above, these proposed rules would eliminate the moral exemption from the requirement to provide contraceptive coverage without cost sharing.

The Departments considered proposing to retain the moral exemption, and apply the individual contraceptive arrangement with respect to women enrolled in plans or coverage that are sponsored, arranged, or provided by non-religious moral objectors, in instances where the sponsor of the coverage was eligible for but did not avail itself of the optional accommodation, but decided against such a proposal. As explained more fully in section VI.B.2 of this preamble, it is possible that through the individual contraceptive arrangement, an eligible individual would need to seek care from a provider of contraceptive services who is not one of their regular providers, which not only adds inconvenience, but also could lead to disruptions in care. Additionally, eligible individuals that participate in the individual contraceptive arrangement would have to confirm eligibility to their provider of contraceptive services. The Departments are of the view that these additional burdens are not justified when weighed against a moral as opposed to a religious objection.

However, given the larger number of entities that have religious objections to contraceptive coverage, and the fact that RFRA in some circumstances could require religious exemptions from such coverage, the Departments are retaining the religious exemption.

Correspondingly, the Departments propose to make conforming edits to remove references to 45 CFR 147.133 (which is where the moral exemption is codified in the current rules) that appear in paragraph (a)(1) of 45 CFR 147.130 and paragraph (a)(1)(iv) of 26 CFR 54.9815–2713, 29 CFR 2590.715–2713, and 45 CFR 147.130. The Departments seek comments on these proposals.

The Departments acknowledge that some objecting entities have relied on the moral exemption, and that removing that exemption, if finalized, would disrupt that reliance by requiring such entities to begin covering contraceptive services without cost sharing. However, the Departments are of the view that newly applying the contraceptive coverage requirement on non-religious moral objectors is no different from requiring a plan or issuer to newly provide coverage without cost sharing for a preventive service after an applicable recommendation or guideline is first established. The Departments seek comment on how, and the degree to which, reliance on the moral exemption would be disrupted by requiring such entities to begin covering contraceptive services without cost sharing, and the type and magnitude of burden that such disruption would cause such entities.

Although the Departments are proposing to eliminate the exemptions for entities with non-religious moral objections to providing coverage of contraceptive services, the Departments respect non-religious moral objections and also seek comment on alternatives to fully rescinding the moral exemption that would balance the interests of entities with non-religious moral objections against the strong public interest of ensuring women have access to contraceptive services without cost

[113] 83 FR 57592, 57599 (internal citations removed).

[114] As noted, the Departments also observe that the Church Amendments apply only to recipients of certain types of Federal funds, further narrowing the Church Amendments' application.

[115] *Id.*

sharing.[116] The Departments also seek comment on whether such an approach would introduce unwarranted barriers for women to access contraceptive services, as compared to simply eliminating the moral exemption.

D. Alternate Availability of Certain Preventive Health Services (26 CFR 54.9815–2713A, 29 CFR 2590.715–2713A, and 45 CFR 147.131)

1. Optional Accommodation for Exempt Entities

The Departments propose several amendments to the existing regulatory text in 26 CFR 54.9815–2713A, 29 CFR 2590.715–2713A, and 45 CFR 147.131 regarding the optional accommodation for exempt entities. The Departments propose to amend the language describing which entities are eligible for the optional accommodation to align with the scope of entities eligible for an exemption under these proposed rules. The Departments also propose changes to reflect needed updates and several minor additional changes.

In the list of organizations eligible for the optional accommodation (26 CFR 54.9815–2713A(a)(1), 29 CFR 2590.715–2713A(a)(1), and 45 CFR 147.131(c)(1)[117]), the Departments propose to remove the cross-reference to 45 CFR 147.133(a)(1)(i) or (ii) because, as discussed in section II.C.2 of this preamble, these proposed rules would eliminate the moral exemption and entities that object to coverage of contraceptive services based on non-religious moral objections would no longer be exempt entities. Thus, if finalized, these proposed rules would not allow these entities to avail themselves of the optional accommodation.

In the same paragraph, the Departments propose to add a cross-reference to 45 CFR 147.132(a)(1)(iii), in addition to the existing cross-references to 45 CFR 147.132(a)(1)(i) and (ii), to clarify that the existing optional accommodation for objecting entities is available to objecting entities that are institutions of higher education. The preamble to the November 2018 Religious Exemption final rules stated that the optional accommodation is available to objecting entities that are institutions of higher education,[118] but the text of the November 2018 Religious Exemption final rules inadvertently did not specify that the optional accommodation is available to these entities. These proposed rules would also add a rule of construction to the HHS regulation at 45 CFR 147.131 as redesignated paragraph (f) to clarify that in the case of student health insurance coverage, 45 CFR 147.131 would be applicable in the same manner as to group health insurance coverage provided in connection with a group health plan established or maintained by a plan sponsor that is an employer, and references to ''plan participants and beneficiaries'' would be interpreted as references to student enrollees and their covered dependents.

The Departments also propose technical amendments to the regulatory text to remove the transitional rule provision, which was added in the November 2018 Religious Exemption final rules. In instances where an issuer or third party administrator makes separate payments for contraceptive services through the optional accommodation process on January 14, 2019, this transitional rule permitted the eligible organization to give accelerated notice of revocation of the accommodation. The period during which this accelerated notice process was permitted has expired. In addition, the Departments do not see a reason to create a new opportunity for such an accelerated notice, since all entities currently availing themselves of the optional accommodation are doing so voluntarily. Therefore, the Departments propose technical amendments to remove the transitional rule. The Departments do not propose to modify the generally applicable rule of revocation, which requires an eligible organization's revocation of use of the optional accommodation process to be effective no sooner than the first day of the first plan year that begins on or after 30 days after the date of the revocation.

Additionally, the Departments propose to replace the cross-reference to section 2719A of the PHS Act with a cross-reference to section 9822 of the Code, section 722 of ERISA, and section 2799A–7 of the PHS Act, in 26 CFR 54.9815–2713A(c)(2)(ii), 29 CFR 2590.715–2713A(c)(2)(ii), and redesignated 45 CFR 147.131(b)(2)(ii). The current cross-reference establishes that, when an insured group health plan avails itself of the optional accommodation, its health insurance issuer must provide separate payments for contraceptive services in a manner that is consistent with, among others, the patient protection requirements under section 2719A of the PHS Act. Section 2719A of the PHS Act provided that if a plan or issuer requires or provides for designation by a participant, beneficiary, or enrollee of a participating primary care provider, individuals may designate any participating primary care providers available to accept them, including pediatricians, and prohibits the plan or issuer from requiring authorization or referral for obstetrical or gynecological care. Section 102 of title I of Division BB of the Consolidated Appropriations Act, 2021 (CAA)[119] amended section 2719A of the PHS Act to include a sunset provision effective for plan years beginning on or after January 1, 2022, when the new protections under the No Surprises Act took effect. Additionally, the No Surprises Act recodified the patient protections regarding choice of health care professional from section 2719A(a), (c), and (d) of the PHS Act at new section 9822 of the Code, section 722 of ERISA, and section 2799A–7 of the PHS Act.[120] The Departments are of the view that it would be appropriate to continue to require that, when making separate payments for contraceptive services through the optional accommodation for insured plans, an issuer must make those payments in a manner that is consistent with these patient protections. The Departments seek comment on the circumstances under which contraceptive services would constitute emergency services,[121] as well as whether to continue to apply the protections for emergency services, which were set forth under section 2719A of the PHS Act, and subsequent to that provision sunsetting, are now set

[116] While no other Federal law may require the Departments to provide for an across-the-board moral exemption via regulation, Federal law continues to protect the exercise of convictions in certain specific contexts covered by the respective statutory text. *See,* for example, the Church Amendments at 42 U.S.C. 300a–7(c)(2) and (d) (requiring certain covered entities to provide for persons' lawful exercise of conscience with respect to certain services or programs, which may include contraceptive services or coverage).

[117] In 45 CFR 147.131, these proposed rules would eliminate reserved paragraphs (a) and (b), and redesignate paragraph (c) as paragraph (a).

[118] *See* 83 FR 57536, 57564. (''These rules treat the plans of institutions of higher education that arrange student health insurance coverage similarly to the way in which the rules treat the plans of employers. These rules do so by making such student health plans eligible for the expanded exemptions, and by permitting them the option of electing to utilize the accommodation process.'')

[119] Title I of Division BB of the CAA is also known as the No Surprises Act.

[120] Section 2719A(b) of the PHS Act and the Departments' implementing regulations established requirements applicable to group health plans and health insurance issuers offering group or individual health insurance related to the coverage of emergency services, which are also covered under the CAA's sunset provision. The No Surprises Act added section 9816 of the Code, section 716 of ERISA, and section 2799A–1 of the PHS Act, which expand the patient protections related to emergency services under section 2719A of the PHS Act, in part, by providing additional consumer protections related to balance billing.

[121] The term emergency services is defined in regulations at 26 CFR 54.9816–4T(c)(2), 29 CFR 2590.716–4(c)(2), and 45 CFR 149.110(c)(2).

forth in section 2799A–1 of the PHS Act but include different such protections, to issuers making separate payments for contraceptive services through the optional accommodation for insured plans.

Redesignated paragraphs 26 CFR 54.9815–2713A(d), 29 CFR 2590.715–2713A(d), and 45 CFR 147.131(c) set forth model language for the written notice of the availability of separate payments for contraceptive services with respect to eligible organizations exercising the optional accommodations set forth in 26 CFR 54.9815–2713A(b) and (c), 29 CFR 2590.715–2713A(b) and (c), and 45 CFR 147.131(b). Under current paragraphs 26 CFR 54.9815–2713A(d), 29 CFR 2590.715–2713A(d), and 45 CFR 147.131(e), the language explains to a participant or beneficiary that a plan sponsor has certified that the plan or coverage qualifies for an accommodation with respect to the requirement to cover all FDA-approved contraceptive services for women, as prescribed by a health care provider, without cost sharing. The Departments propose to redesignate those paragraphs and amend the language that refers to FDA-approved contraceptive services to refer to all FDA-approved, cleared, or granted contraceptives. This proposed change is consistent with the fact that FDA does not approve contraceptive ''services,'' but rather contraceptive products, which may be approved, cleared, or granted, depending on the product type.

The Departments also propose several minor additional grammatical, conforming, and technical changes. In 26 CFR 54.9815–2713A(b)(1)(ii)(B) and (c)(1)(ii)(B), 29 CFR 2590.715–2713A(b)(1)(ii)(B) and (c)(1)(ii)(B), and 45 CFR 147.131(d)(1)(ii)(B) of the current rules, which are redesignated as 26 CFR 54.9815–2713A(b)(1)(ii)(B) and (c)(1)(ii)(C), 29 CFR 2590.715–2713A(b)(1)(ii)(B) and (c)(1)(ii)(C), and 45 CFR 147.131(b)(1)(ii)(B) in these proposed rules, the Departments propose to update the reference to a student health insurance plan to refer to student health insurance coverage, to be consistent with the terminology used in 45 CFR 147.145(a). The Departments also propose to add a reference to section 414(e) of the Code when referring to church plans, to fully account for the fact that the Internal Revenue Service and the Department of the Treasury regulate such plans. In addition, in what is proposed to be redesignated as 26 CFR 54.9815–2713A(f), 29 CFR 2590.715–2713A(f), and 45 CFR 147.131(e) (which are paragraphs 26 CFR 54.9815–2713A(e), 29 CFR 2590.715–2713A(e), and 45 CFR 147.131(f) in current regulations), the Departments propose non-substantive amendments for clarity.

These proposed rules retain the optional accommodation process for self-insured group health plans under 26 CFR 54.9815–2713A(b) and 29 CFR 2590.715–2713A(b). Under that optional accommodation, an eligible organization is not required to contract, arrange, pay, or provide a referral for the delivery of contraceptive benefits in cases where the organization objects to providing contraception coverage, but does not object to having third parties (such as a third party administrator) provide for the benefits. The Department of the Treasury and DOL propose to make minor amendments to the existing regulatory text in 26 CFR 54.9815–2713A(b) and 29 CFR 2590.715–2713A(b) regarding the optional accommodation for exempt entities that provide benefits on a self-insured basis. The proposed amendments make conforming edits to paragraphs (b)(1)(ii) and (b)(1)(ii)(B) that remove references to 45 CFR 147.133 and add language to paragraph (b)(1)(ii) noting that third party administrators provide administrative services in connection with the plan consistent with the parallel optional accommodation for insured plans. The proposed rules would also add a reference to State Exchange on the Federal platform user fees to paragraph (b)(3) to be consistent with amendments made to the user fee provisions in 45 CFR 156.50(d).[122]

The Departments seek comment on all aspects of these proposed amendments.

2. Individual Contraceptive Arrangement for Eligible Individuals

By making the accommodations in 26 CFR 54.9815–2713A, 29 CFR 2590.715–2713A, and 45 CFR 147.131 optional in the November 2018 final rules, the Departments responded to litigants' concerns that some objecting entities believed the accommodations under the prior rules left the objecting entity complicit in contracting, arranging, paying, or providing a referral for the contraceptive coverage. Those rules left the accommodation process intact as a voluntary option that objecting entities could avail themselves of if they did not object to the accommodation. However, the November 2018 final rules had the adverse effect of failing to provide women enrolled in a health plan established or maintained or arranged by an objecting entity with an alternative mechanism for obtaining contraceptive services with no cost sharing if the entity did not choose to use the accommodation. Additionally, the November 2018 final rules did not require objecting entities or their health plans to notify eligible individuals that the coverage offered excludes contraceptive services. The Departments have determined that it is necessary to provide these women with an alternative pathway to obtaining contraceptive services at no cost (other than the premium or contribution paid for health coverage) because of the public health interest in ensuring women's access to reproductive health care and contraceptive services without cost sharing, particularly in light of the Supreme Court's opinion in *Dobbs* v. *Jackson Women's Health Organization.* Specifically, the Departments propose to amend 26 CFR 54.9815–2713A, 29 CFR 2590.715–2713A, and 45 CFR 147.131 to create an individual contraceptive arrangement for women enrolled in a group health plan or health insurance coverage sponsored, offered, or arranged by an objecting entity that does not provide contraceptive coverage and that elects not to use the existing optional accommodations with respect to some or all contraceptive services. By enabling individuals to directly receive contraceptive services at no cost, this proposal would provide them with access to all contraceptive services the plan or coverage would otherwise be required to cover, absent the exemption. Critically, this would be accomplished independent of any action by the objecting entity, which would not be required to take any steps to facilitate this provision of contraceptive services.

Under these proposed rules, an eligible individual may voluntarily, and independent of any actions by the objecting entity, elect this individual contraceptive arrangement. Under proposed 26 CFR 54.9815–2713A(e), 29 CFR 2590.715–2713A(e), and 45 CFR 147.131(d), a provider of contraceptive services would furnish contraceptive services to the eligible individual without imposing any fee or charge of any kind, directly or indirectly, on the eligible individual or any other entity for the cost of the items and services or any portion thereof.[123] The provider of

[122] In 2021, HHS amended 45 CFR 156.50(d) to clarify that issuers participating through SBE–FPs are eligible to receive adjustment to their Federal user fee amounts that reflect the value of contraceptive claims they have reimbursed to third-party administrators (TPAs) that have provided contraceptive coverage on behalf of an eligible employer. 86 FR 24140, 24229 (May 5, 2021).

[123] Under these proposed rules, the provider of contraceptive services would furnish contraceptive services to the eligible individual in a manner that is totally independent of any costs that are associated with a group health plan or health insurance coverage sponsored, arranged, or provided by an objecting entity. The Departments

contraceptive services would be permitted to seek reimbursement from a participating issuer as defined under 45 CFR 156.50,[124] with which the provider has a signed agreement for the costs of providing these contraceptive services. The Departments expect that administrative costs incurred by participating providers of contraceptive services would be included in the amounts they submit to issuers for reimbursement. The issuer in turn would be able to receive a reduction equal to this amount (plus an administrative allowance for costs and margin) to the issuer's FFE or SBE–FP user fees pursuant to 45 CFR 156.50(d). See section III of this preamble for a discussion of how a provider of contraceptive services would be reimbursed through such an adjustment.

Participation in an individual contraceptive arrangement would be entirely voluntary for the provider of contraceptive services. A willing provider of contraceptive services would also be reimbursed for items and services that are integral to the furnishing of the contraceptive service, for an amount agreed to by the provider and eligible issuer, regardless of whether the provider would typically bill for the item or service separately. Reimbursing for the items and services that are integral to the furnishing of the contraceptive service, regardless of whether the provider would typically bill for the item or service separately, is consistent with how the Departments have interpreted section 2713 of the PHS Act as applied to group health plans and health insurance issuers offering group or individual health insurance coverage.[125]

For purposes of this individual contraceptive arrangement, these proposed rules would define an eligible individual under 26 CFR 54.9815–2713A(a)(3), 29 CFR 2590.715–2713A(a)(3), and 45 CFR 147.131(a)(3) as a participant or beneficiary enrolled in a group health plan established or maintained, or an enrollee in individual health insurance coverage offered or arranged, by an objecting entity described in 45 CFR 147.132(a) that, to the extent eligible, has not invoked the accommodation, and who confirms to a provider of contraceptive services (that agrees to meet certain criteria) that the individual is enrolled in a group health plan or group or individual health insurance coverage sponsored, provided, or arranged by an objecting entity that does not provide coverage for all or a subset of contraceptive services as generally required for non-objecting entities under 26 CFR 54.9815–2713(a)(1)(iv), 29 CFR 2590.715–2713(a)(1)(iv), and 45 CFR 147.130(a)(1)(iv).

The individual may make this confirmation by producing any documentation that may include the relevant information, such as a summary of benefits (for example, a summary of benefits and coverage (SBC) that includes the relevant information), or through other methods, such as by providing an attestation.[126] The provider of contraceptive services would have discretion on choosing what confirmation method to accept. The Departments seek comment on additional sources of information that participants, beneficiaries, and enrollees could provide for this confirmation, including what documentation plans and issuers may already be providing to participants, beneficiaries, and enrollees independent of any Federal requirements.

Excluded from the proposed definition of eligible individual are a participant or beneficiary enrolled in a group health plan established or maintained, or an enrollee in individual health insurance coverage offered or arranged, by an objecting entity that has invoked the optional accommodation. The Departments do not expect many such participants, beneficiaries, or enrollees would avail themselves of the individual contraceptive arrangement, even if they were eligible, as it would likely be easier for them to obtain contraceptive services through the accommodation. However, the Departments recognize that it may be challenging for an individual or a provider of contraceptive services to distinguish between an eligible individual, as defined under these proposed rules, and a participant or beneficiary enrolled in a group health plan established or maintained, or an enrollee in individual health insurance coverage offered or arranged, by an objecting entity that has invoked the optional accommodation. Therefore, the Departments seek comment on whether these individuals should be included within the definition of eligible individual.

The Departments acknowledge that grandfathered health plans are not required to comply with section 2713 of the PHS Act, including the implementing regulations. However, because there are relatively few grandfathered plans and coverage still in existence,[127] and these plans and issuers providing grandfathered coverage may voluntarily, or as required by State law, provide contraceptive coverage, the Departments are not proposing to apply the proposed individual contraceptive arrangement to women enrolled in grandfathered plans.

These proposed rules, if finalized, would not place any additional obligations on a plan or health insurance issuer. Under this individual contraceptive arrangement, an exempt entity would not have to provide any verbal or written documentation to an eligible individual, a provider of contraceptive services, a health insurance issuer, a third party administrator, a government agency, or any other person or entity, that an exempt entity would not already be required to provide by virtue of sponsoring, arranging, or offering health coverage in general.[128] Under these

note that, because the individual contraceptive arrangement would be completely separate from a plan or coverage sponsored, arranged, or provided by an objecting entity, the provision of the proposed rules that would require a provider of contraceptive services to furnish contraceptive services to eligible individuals without imposing any fee or charge of any kind would mean that the provider of contraceptive services would not collect any amounts that would typically be associated with an eligible individual's plan or coverage, such as any premiums, cost-sharing requirements, or other similar amounts.

[124] 45 CFR 156.50 defines participating issuer as any issuer offering a plan that participates in the specific function that is funded by user fees. This term may include: health insurance issuers, QHP issuers, issuers of multi-State plans (as defined in 45 CFR 155.1000(a), issuers of stand-alone dental plans (as described in 45 CFR 155.1065), or other issuers identified by an Exchange.

[125] 85 FR 71142, 71174. *See also* FAQs about Affordable Care Act Implementation Part 54 (July 28, 2022), Q1, available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-54.pdf* and *https://www.cms.gov/files/document/faqs-part-54.pdf.*

[126] The Departments are proposing to add sample attestation language for this purpose to the regulations at 26 CFR 54.9815–2713A(e)(2), 29 CFR 2590.715–2713A(e)(2), and 45 CFR 147.131(d)(2).

[127] In 2020, the Departments estimated that there are 2.5 million ERISA-covered plans offered by private employers that cover an estimated 136.2 million participants and beneficiaries in those private employer-sponsored plans. Similarly, the Departments estimated that there were 84,087 State and local governments that offer health coverage to their employees, with an estimated 32.8 million participants and beneficiaries in those employer-sponsored plans. The Departments estimated that, of firms offering health benefits, 400,000 sponsor ERISA-covered plans that are grandfathered (or include a grandfathered benefit package option) and cover 19.1 million participants and beneficiaries. The Departments further estimated there are 13,454 State and local governments offering at least one grandfathered health plan and 4.6 million participants and beneficiaries covered by a grandfathered State or local government plan. *See* 85 FR 81097, 81108. The Departments expect that those numbers are now somewhat lower.

[128] However, these proposed rules would not prohibit an eligible individual from requesting that the plan or coverage provide documentation showing the plan or coverage does not cover all or a subset of contraceptive services as generally required under 26 CFR 54.9815–2713(a)(1)(iv), 29

Continued

proposed rules, an eligible individual may voluntarily, without the objecting entity's knowledge, and independent of any actions by the objecting entity, elect this individual contraceptive arrangement. The individual contraceptive arrangement option would therefore operate independently of any health plan or health insurance arrangement that involves or implicates an objecting entity. The Departments seek comment on adequate ways to ensure individuals are aware of the individual contraceptive arrangement, can learn if they are eligible, and can find participating providers to access contraceptive services at no cost.

These proposed rules would also add a definition of provider of contraceptive services for purposes of 26 CFR 54.9815–2713A, 29 CFR 2590.715–2713A, and 45 CFR 147.131 in new paragraphs 26 CFR 54.9815–2713A(g)(2), 29 CFR 2590.715–2713A(g)(2), and 45 CFR 147.131(g)(2). The term ''provider of contraceptive services'' would mean any health care provider (including a clinician, pharmacy, or other facility) acting within the scope of that provider's license, certification, or authority under applicable law to provide contraceptive services. This definition is intended to be interpreted broadly to encompass any provider or facility authorized to provide any contraceptive services, including when provided via telehealth or mail. The Departments specifically seek comment on whether there are any entities that would be equipped to facilitate the individual contraceptive arrangement that would not be included within this definition.

The Departments acknowledge that this proposal would not achieve the Women's Health Amendment's goal of ensuring that women have seamless cost-free coverage of contraceptives, because the individual contraceptive arrangement would require some additional action by the affected women and could require them to obtain contraceptive care from providers other than those from whom they typically receive women's health care. As the Departments have explained, however, they have been unable to identify a mechanism that would achieve seamless coverage while addressing the religious objections to the contraceptive coverage requirement and the existing accommodations as well as resolving the long-running litigation.[129] Nonetheless, the proposed individual contraceptive arrangement would be more effective than the existing regulations at advancing the goals of the Women's Health Amendment, because the current regulations provide no pathway to obtain contraceptive services at no cost for women whose employers, institutions of higher education, or health insurance issuers exercise a religious exemption and either opt not to or are not eligible to invoke the accommodation.

The Departments propose to codify the proposed individual contraceptive arrangement in the same section of the regulations as the existing optional accommodation for exempt entities, as both would operate to ensure that women enrolled in coverage sponsored or offered or arranged by an exempt entity have access to contraceptive services otherwise required to be covered, without cost sharing. Therefore, the Departments propose to change the titles of 26 CFR 54.9815–2713A, 29 CFR 2590.715–2713A, and 45 CFR 147.131 from ''Accommodations in connection with coverage of certain preventive health services,'' to ''Alternate availability of certain preventive health services.''

The Departments seek comment on all aspects of these proposed amendments.

III. Overview of Proposed Rules—Department of Health and Human Services

Financial Support (45 CFR 156.50)

To facilitate the proposed individual contraceptive arrangement, HHS proposes to amend 45 CFR 156.50(d) to allow a participating issuer[130] on the FFE or an SBE–FP to receive an FFE or SBE–FP user fee adjustment for reimbursing a provider of contraceptive services for the costs of providing contraceptive services pursuant to the individual contraceptive arrangement.[131] Additionally, for purposes of 45 CFR 156.50(a), HHS proposes that ''provider of contraceptive services'' would have the same meaning as ''provider of contraceptive services'' under proposed 45 CFR 147.131(g)(2). Under this definition, a provider of contraceptive services would not be required to be located in an FFE or SBE–FP State, but a participating issuer would need to be subject to FFE or SBE–FP user fees to be eligible to receive a user fee adjustment. In other words, a provider of contraceptive services would be able to seek reimbursement from a participating issuer in another State.

To summarize, a provider of contraceptive services that incurs costs for furnishing contraceptive services pursuant to the individual contraceptive arrangement would be able to seek reimbursement of these costs from a participating issuer, with the issuer in turn receiving a reduction equal to this amount, plus an administrative allowance for costs and margin, of the issuer's FFE or SBE–FFP user fees as discussed in detail in this section of the preamble:

- In order to receive reimbursement for contraceptive services provided pursuant to the individual contraceptive arrangement, a provider of contraceptive services would be required to enter into a signed agreement with a participating issuer to reimburse the provider for the cost of furnishing contraceptive services.
- For the participating issuer to receive the user fee adjustment and for the provider of contraceptive services to receive reimbursement from the participating issuer as a result of the participating issuer's user fee adjustment, the participating issuer would be required to submit to HHS: (1) a copy of the signed agreement it entered into with the provider of

CFR 2590.715–2713(a)(1)(iv), or 45 CFR 147.130(a)(1)(iv). The Departments note that a plan or coverage would be required to comply with generally applicable disclosure requirements. For example, if an individual requests that the plan or coverage provide them with a copy of their SBC, the plan or coverage would be required to furnish the SBC in accordance with existing regulations. See 26 CFR 54.9815–2715(a)(1), 29 CFR 2590.715–2715(a)(1), and 45 CFR 147.200(a)(1). Additionally, group health plans covered by ERISA are required to provide a summary plan description to participants and beneficiaries that describe, in terms understandable to the average plan participant, the rights, benefits, and responsibilities of participants and beneficiaries. See ERISA section 102 and 29 CFR 2520.104b–2.

[129] *See* FAQs Part 36, available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-36.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/ACA-FAQs-Part36_1-9-17-Final.pdf*.

[130] Under 45 CFR 156.50(a), a participating issuer means any issuer offering a plan that participates in the specific function that is funded by user fees. This term may include: health insurance issuers, QHP issuers, issuers of multi-State plans (as defined in 45 CFR 155.1000(a)), issuers of stand-alone dental plans (as described in 45 CFR 155.1065), or other issuers identified by an Exchange. The references to ''participating issuer'' in this section would mean a participating issuer on the FFE or an SBE–FP.

[131] HHS notes it is not proposing to change the substantive requirements on participating issuers and third party administrators when participating issuers make payments to third party administrators, nor is HHS proposing to make substantive changes related to information and documentation requirements on third party administrators and participating issuers that have made arrangements with each other. To conform with proposed changes for the individual contraceptive arrangement, HHS would amend 45 CFR 156.50 to include references to the individual contraceptive arrangement and re-designate paragraphs to include references to the individual contraceptive arrangement provisions. These changes are discussed in more detail in the following paragraphs.

contraceptive services; (2) information that identifies the provider of contraceptive services it reimbursed or will reimburse; and (3) the total dollar amount of the payments it made or will make to reimburse the provider of contraceptive services for the costs of furnishing contraceptive services to eligible individuals pursuant to the individual contraceptive arrangement.

• If the necessary conditions are met, the participating issuer would receive an adjustment to its user fee obligation equal to the total amount of costs of furnishing contraceptive services for each provider of contraceptive services in accordance with the individual contraceptive arrangement, plus an allowance for administrative costs and margin.[132] If the adjustment exceeds the user fees owed in the month of the initial adjustment or in any later month, any excess adjustment would be carried over to later months.

• Under these proposed rules and the current regulation, the administrative allowance—which would be at least 10 percent of the total dollar amount of the costs of furnishing contraceptive services pursuant to the individual contraceptive arrangement[133]—would be specified by HHS in the annual HHS notice of benefit and payment parameters or other rulemaking. If the administrative allowance for an applicable year is not specified in that year's HHS notice of benefit and payment parameters or other rulemaking, then the administrative allowance would be the amount last specified in rulemaking.

• The participating issuer may pay the provider of contraceptive services as soon as the contraceptive services are delivered pursuant to the individual contraceptive arrangement, but the participating issuer would be required to pay the provider, no later than within 60 days of receipt of any adjustment of a user fee. No payment would be required with respect to the allowance for administrative costs and margin. This proposal sets the latest date on which the participating issuer must reimburse the provider of contraceptive services. This proposal would not preclude the participating issuer and provider of contraceptive services from agreeing that the participating issuer would reimburse the provider at more frequent intervals, such as on a monthly or quarterly basis, or upfront for the full cost of services provided during the applicable benefit year rather than in the following benefit year in which the issuer receives the monthly user fee adjustment.

Each of the items from the preceding list laying out this proposed user fee adjustment is discussed in more detail in the following paragraphs.

HHS proposes to add paragraph (d)(1)(iii) to 45 CFR 156.50 to require that a provider of contraceptive services and a participating issuer enter into an agreement for that issuer to seek a user fee adjustment as a result of reimbursing the provider's costs pursuant to the individual contraceptive arrangement. An agreement between the participating issuer and the provider of contraceptive services would be a condition of participation in the individual contraceptive arrangement and required to receive reimbursement for the costs of furnishing contraceptive services.

HHS proposes to amend 45 CFR 156.50(d)(2)(i) to establish the information and documentation a participating issuer that is eligible for a user fee adjustment must provide to HHS to receive a user fee adjustment as a result of reimbursement of (or intention to reimburse pursuant to proposed 45 CFR 156.50(d)(5)) the cost of furnishing contraceptive services incurred by a provider of contraceptive services. HHS proposes to amend 45 CFR 156.50(d)(2)(i)(A) to require that, to receive a user fee adjustment under the individual contraceptive arrangement, a participating issuer must submit to HHS identifying information on each provider of contraceptive services it reimbursed (or will reimburse pursuant to proposed 45 CFR 156.50(d)(5)). Additionally, HHS proposes to add 45 CFR 156.50(d)(2)(i)(D) and (E) to require the participating issuer offering a plan through the FFE or an SBE–FP to submit: (1) documentation that demonstrates that the participating issuer and the provider of contraceptive services have entered into an agreement through which the participating issuer would reimburse the provider for the costs of contraceptive services furnished under the individual contraceptive arrangement; and (2) the total dollar amount of the payments the participating issuer made (or will make) to reimburse the provider for the costs of furnishing those contraceptive services already provided under the individual contraceptive arrangement.

To facilitate the individual contraceptive arrangement, HHS proposes that providers of contraceptive services and participating issuers, as a condition for participating in this individual contraceptive arrangement, must enter into a signed agreement and that the participating issuer must submit a copy of this agreement to HHS to satisfy the proposed submission requirements at 45 CFR 156.50(d)(2)(i)(A) and (D). HHS proposes that this signed agreement must include identifying information of the provider of contraceptive services, such as the name and contact information for the provider's practice or facility or, if applicable, the provider's National Provider Identifier.[134] In addition, the agreement would need to include the signatures of individuals with the authority to legally and financially bind the provider of contraceptive services and the participating issuer. The agreement would need to demonstrate that the provider of contraceptive services and participating issuer have entered into an arrangement through which the participating issuer will reimburse the provider for the costs of furnishing contraceptive services in accordance with the individual contraceptive arrangement at proposed 26 CFR 54.9815–2713A(e), 29 CFR 2590.715–2713A(e), and 45 CFR 147.131(d), and that the participating issuer will seek a user fee adjustment for the amount of those eligible costs (plus an administrative allowance as specified at proposed 45 CFR 156.50(d)(3)(iii)). HHS notes that other terms of the agreement between a provider of contraceptive services and a participating issuer, such as the period of time over which the agreement is effective, are at the discretion of the participating issuer and provider. HHS also notes that, to facilitate the individual contraceptive arrangement, a single participating issuer may enter into separate agreements with more than one provider of contraceptive services. Additionally, providers of contraceptive services may enter into separate agreements with more than one participating issuer. HHS recognizes that there may be additional

[132] The allowance for administrative costs and margin is intended to cover a participating issuer's administrative costs associated with reimbursing providers of contraceptive services, such as the costs associated with entering into arrangements with such providers and submitting documentation to seek a reduction in the user fee obligation, as well as provide a margin to ensure that participating issuers receive appropriate compensation for providing such reimbursements. *See* 78 FR 39870, 39884.

[133] Pursuant to 45 CFR 156.50(d)(3)(ii), the minimum administrative allowance permitted for the existing third party administrator optional accommodation is also at least 10 percent of the total dollar amount of payments for contraceptive services. See 78 FR 39870, 39885. Per the HHS Notice of Benefit and Payment Parameters for 2015 (''2015 Payment Notice''), HHS set the administrative allowance for the existing third party administrator optional accommodation at 15 percent. *See* 79 FR 13743, 13809 (March 11, 2014).

[134] *See* ''NPI: What You Need to Know'' (March 2021), available at *https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/NPI-What-You-Need-To-Know.pdf.*

forms of documentation that could satisfy these proposed submission requirements; thus, HHS seeks comment on the types of documentation HHS should accept. HHS also seeks comment on the types of information participating issuers must submit to adequately identify the providers of contraceptive services with which the participating issuers have entered into such arrangements.

HHS proposes to add 45 CFR 156.50(d)(2)(i)(E) to require a participating issuer to submit the total dollar amount of the provider's costs of furnishing contraceptive services under the individual contraceptive arrangement and for which a participating issuer would be able to receive a user fee adjustment (plus an administrative allowance as specified at proposed 45 CFR 156.50(d)(3)(iii)). HHS recognizes that the costs of furnishing contraceptive services under the individual contraceptive arrangement would vary based on the specific contraceptive service provided and the time it takes to provide that service. Because of this cost variance, HHS proposes to allow a provider of contraceptive services to calculate its actual costs of furnishing these contraceptive services and to provide that calculation of actual costs to the participating issuer offering a plan through the FFE or an SBE–FP with which the provider has entered into an arrangement for reimbursement of these costs. Consistent with how the Departments have interpreted section 2713 of the PHS Act as applied to group health plans, and health insurance issuers offering group or individual health insurance coverage,[135] HHS proposes that the actual costs of the provider of contraceptive services would include items and services that are integral to the furnishing of the contraceptive service, for an amount agreed to by the provider and eligible issuer, regardless of whether the provider would typically bill for the item or service separately. This would include the administrative costs incurred by participating providers of contraceptive services to deliver the contraceptive services. HHS seeks comment on the costs a provider of contraceptive services could include in its calculation of actual costs provided to the participating issuer with which it has entered into an arrangement for reimbursement of these costs. In determining how a provider's costs should be calculated for reimbursement under the individual contraceptive arrangement, HHS considered whether costs should be calculated using a standard methodology. However, due to the wide variation in costs depending on the specific contraceptive services provided and how the service is delivered, HHS determined that permitting a provider of contraceptive services to calculate its actual costs would allow the provider to receive a more accurate cost reimbursement. HHS seeks comment on whether the reimbursement should be equal to the provider's actual costs of furnishing contraceptive services to eligible individuals or whether HHS should instead establish a standard methodology to calculate costs. HHS seeks comment on benchmarks HHS could use to establish a reimbursement rate.

Additionally, HHS proposes to revise 45 CFR 156.50(d)(3)(ii) to permit a participating issuer that satisfies the requirements as proposed in 45 CFR 156.50(d)(2) to receive a user fee adjustment equal to the total dollar amount of a provider's costs of furnishing contraceptive services plus the administrative allowance. HHS proposes to re-designate the administrative allowance provision at existing 45 CFR 156.50(d)(3)(ii) to new paragraph (d)(3)(iii), and amend it to establish that the allowance should be calculated as a percentage of the sum of the total dollar amount of the payments for contraceptive services provided to a third party administrator as calculated at 45 CFR 156.50(d)(3)(i) and the provider's costs of furnishing contraceptive services as calculated at proposed 45 CFR 156.50(d)(3)(ii). HHS is of the view that it is appropriate to provide an administrative allowance because participating issuers will incur additional administrative costs to providers of contraceptive services for the actual cost of furnishing contraceptive services. As established in the 2015 Payment Notice,[136] the current administrative allowance is 15 percent for issuers that have entered into agreements with third party administrators to reimburse the cost of contraceptive services with respect to women getting non-contraceptive coverage through eligible organizations.[137] Consistent with the 2015 Payment Notice administrative allowance for third party administrators, HHS proposes an administrative allowance of at least 10 percent for issuers that enter into agreements with providers of contraceptive services pursuant to the individual contraceptive arrangement. HHS proposes a 15 percent administrative allowance for this adjustment, similar to the administrative allowance set in the 2015 Payment Notice for third party administrators.

Additionally, for clarification and consistency with current practice, HHS proposes to clarify at 45 CFR 156.50(d)(3)(iii) that, unless a new allowance for administrative costs and margin is specified in the applicable year's HHS notice of benefit and payment parameters or other rulemaking, HHS will, for a particular calendar year, maintain the allowance that was last specified in rulemaking. HHS believes this proposal makes clear the allowance and the mechanism HHS would use to propose any changes to the allowance. While HHS is proposing to maintain that the administrative allowance must be at least 10 percent, as set forth in the 2015 Payment Notice, the current, applicable administrative allowance is 15 percent.[138] HHS is not proposing making changes to this percentage in this rulemaking.

HHS also proposes to amend 45 CFR 156.50(d)(5) to provide that a participating issuer may provide payments for contraceptive services as soon as they are delivered, but must provide payments within 60 days to a third party administrator or a provider of contraceptive services. Such payments must be made within 60 days of receipt of any adjustment of a user fee in an amount that is no less than the portion of the adjustment attributable to the total dollar amount of the payments for contraceptive services submitted by the third party administrator or provider of contraceptive services. This proposed amendment to 45 CFR 156.50(d)(5) is intended to clarify and codify in regulation the current policy as applied to the existing optional accommodation with respect to a third party administrator, as well as to extend this policy to providers of contraceptive services pursuant to the individual contraceptive arrangement. The adjustments to a participating issuer's user fee through the FFE or an SBE–FP for a given year are based on data submitted by third party administrators to HHS regarding the prior benefit year, and adjustments to a participating issuer's current user fee charges are made on a monthly basis based on the data received to date regarding the payments for contraceptive services from the prior year. For example, a

[135] 85 FR 71142, 71174. *See also* FAQs Part 54, Q1, available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-54.pdf* and *https://www.cms.gov/files/document/faqs-part-54.pdf.*

[136] 79 FR 13743.

[137] 79 FR 13743 at 13809.

[138] 79 FR 13743 at 13809.

participating issuer and a provider of contraceptive services could agree that, prior to and in anticipation of receiving a user fee adjustment as specified at 45 CFR 156.50(d)(3), the participating issuer would reimburse the provider on a monthly or quarterly basis in an amount equal to the provider's costs of furnishing contraceptive services in accordance with the individual contraceptive arrangement. However, HHS notes that if any monthly user fee adjustment that a participating issuer receives does not cover the full costs of contraceptive services provided by the provider of contraceptive services or the full payment for contraceptive services made or arranged for by the third party administrator for the applicable benefit year, then the provider may not receive full reimbursement for all contraceptive services furnished during the applicable calendar year within 60 days of when the participating issuer has first received an adjustment to its FFE or SBE–FP user fee. Thus, HHS proposes that the signed agreement between a participating issuer and a provider of contraceptive services must define the terms for payment to the provider.

Next, HHS proposes to amend 45 CFR 156.50(d)(6) to establish that, for 10 years following the calendar year for which the user fee adjustment is received, a participating issuer must retain documentation demonstrating that it timely paid each provider of contraceptive services for which it received any user fee adjustment. These proposals align with the existing recordkeeping requirements for a participating issuer under the third party administrator contraceptive user fee adjustment process.

In addition, HHS proposes to add 45 CFR 156.50(d)(8) to establish recordkeeping requirements with which providers must comply as a condition of participating in the individual contraceptive arrangement. HHS proposes to require that, for 10 years following the contraceptive service being provided, providers of contraceptive services must maintain documentation showing the actual costs of furnishing contraceptive services in compliance with the requirements of the individual contraceptive arrangement and documentation supporting the total dollar amount of those costs, and must make this documentation available upon request to HHS, the HHS Office of the Inspector General, the Comptroller General, and their designees. This timeframe is similar to the standard used for third party administrators under the existing optional accommodation and the standards used for other Exchange programs. We solicit comment on this timeframe and whether the timeframe should be tied to the issuer payment instead of the timeframe from when the contraceptive service is being provided.

As explained previously, an eligible individual would be able to access the individual contraceptive arrangement without the exempt entity providing any documentation to an issuer, third party administrator, or HHS. Nevertheless, a provider of contraceptive services seeking to furnish contraceptive services pursuant to the individual contraceptive arrangement would be required to confirm an individual's eligibility for the individual contraceptive arrangement. As explained earlier in this preamble, the individual may make this confirmation by producing a summary of benefits, such as an SBC that includes the relevant information or through other methods, such as by providing an attestation. The provider of contraceptive services would have discretion on choosing what confirmation method to accept. HHS expects that providers would choose to document receiving this representation in a variety of ways, such as by making a notation in a specific eligible individual's medical chart. HHS is of the view that allowing providers of contraceptive services to choose how they document an eligible individual's representation would decrease operational barriers related to these recordkeeping requirements and would thereby allow a greater number of interested providers to furnish contraceptive services under the individual contraceptive arrangement.

Recognizing the various types of representations a provider of contraceptive services could receive from or on behalf of an individual to demonstrate that individual's eligibility for the individual contraceptive arrangement, HHS proposes to add 45 CFR 156.50(d)(9) and (10). These proposals would preserve, if certain reliance requirements are met, a provider's ability to receive reimbursement for contraceptive services furnished, as well as a participating issuer's ability to receive a user fee adjustment, if the representation as to the individual's eligibility for the individual contraceptive arrangement is later determined to be incorrect. Specifically, proposed 45 CFR 156.50(d)(9) would establish that if a provider of contraceptive services relies reasonably and in good faith on a representation that the individual is eligible to receive contraceptive services pursuant to the individual contraceptive arrangement, and the representation is later determined to be incorrect, then the provider of contraceptive services would be considered to have received a representation by an eligible individual for purposes of receiving a reimbursement for contraceptive services furnished by a participating issuer, and would meet any requirements related to maintaining documentation of this representation. Similarly, 45 CFR 156.50(d)(10), if finalized, would establish that if a participating issuer relies reasonably and in good faith on the provider's representation that the provider of contraceptive services furnished contraceptive services for an eligible individual, and the representation the provider received from or on behalf of the individual is later determined to be incorrect, then the participating issuer would meet any requirements that involve the provider's receipt of such representation.

HHS also proposes to add 45 CFR 156.50(d)(11) to preserve, if certain requirements are met, the ability of a participating issuer to receive a user fee adjustment if the provider's representation to the participating issuer that the provider furnished contraceptive services in accordance with the individual contraceptive arrangement is later determined to be incorrect. First, proposed 45 CFR 156.50(d)(11) would establish that if a participating issuer relies reasonably and in good faith on a provider's representation that the provider furnished contraceptive services in accordance with the individual contraceptive arrangement, and the representation by the provider of contraceptive services is later determined to be incorrect, then the participating issuer's good faith reliance on that incorrect representation would meet any requirements that involve that representation. Second, the proposal at 45 CFR 156.50(d)(11) would apply only when a participating issuer has already reimbursed a provider of contraceptive services for any amount of its costs of furnishing contraceptive services as specified in proposed 45 CFR 156.50(d)(2)(i)(E). HHS is of the view that it is appropriate to limit this proposal to instances in which the participating issuer has already paid the provider of contraceptive services. If the participating issuer has not yet paid the provider of contraceptive services at the time the provider's representation is determined to be incorrect, the participating issuer will not have incurred a financial loss by no longer having the ability to receive a user fee adjustment.

To participate in the individual contraceptive arrangement, proposed 45 CFR 147.131(d)(1) would require that a provider of contraceptive services furnish contraceptive services to the eligible individual without imposing a fee or charge of any kind, directly or indirectly, on the eligible individual or any other entity for the cost of the items and services or any portion thereof. Consistent with this requirement, HHS proposes to include in new 45 CFR 156.50(d)(1)(iii), (d)(10), and (d)(11) that a provider of contraceptive services must furnish contraceptive services to the eligible individual ''without imposing a fee or charge of any kind, directly or indirectly, on the eligible individual or any other entity for the cost of the items and services or any portion thereof.''

Finally, HHS proposes technical corrections to 45 CFR 156.50(d)(1)(ii), (d)(2)(i)(A) and (B), (d)(2)(ii), (d)(2)(iii)(B), and (d)(7)(i) to align with these proposed changes. First, HHS proposes a technical correction to 45 CFR 156.50(d)(1)(ii), (d)(2)(i)(A) and (B), (d)(2)(ii), (d)(2)(iii)(B), and (d)(7)(i) to update cross-references to 26 CFR 54.9815–2713A(a)(4) and 29 CFR 2590.715–2713A(a)(4), which have been re-designated to 26 CFR 54.9815–2713A(a)(1)(iii) and 29 CFR 2590.715–2713A(a)(1)(iii), respectively. Second, HHS proposes a technical correction to 45 CFR 156.50(d)(1)(ii) to clarify that a participating issuer participating on an SBE–FP is eligible to receive an adjustment to its Federal user fee amounts that reflect the value of contraceptive services it has agreed to reimburse to third party administrators or has agreed to reimburse to providers for the providers' actual costs of furnishing contraceptive services consistent with this individual contraceptive arrangement. In the HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Manager Standards final rule,[139] HHS explained that issuers participating through an SBE–FP have been able to qualify for user fee adjustments as provided for in the HHS Notice of Benefit and Payment Parameters for 2017,[140] and amended 45 CFR 156.50 to make explicit that issuers are eligible to receive SBE–FP user fee adjustments.[141] Thus, HHS proposes to make a conforming amendment to 45 CFR 156.50(d)(1)(ii).

HHS notes that it is not proposing to raise the FFE or SBE–FP user fee rates finalized in the HHS Notice of Benefit and Payment Parameters for 2023 [142] to offset the FFE and SBE–FP user fee adjustments, and HHS estimates reimbursements for contraceptive services will represent only a small portion of total FFE user fees.

HHS is of the view that the proposed amendment to 45 CFR 156.50(d)(2)(i)(A) and the proposed addition of 45 CFR 156.50(d)(2)(i)(D), which would require participating issuers, but not providers of contraceptive services, to submit documentation demonstrating the agreement, would mitigate the operational burden on providers of providing contraceptive services through the individual contraceptive arrangement, without materially increasing the burden for participating issuers that are already familiar with the process of submitting information to HHS as part of the existing conditions for receiving a user fee adjustment through an arrangement with a third party administrator, pursuant to the requirements of 45 CFR 156.50(d). To facilitate the individual contraceptive arrangement, HHS proposes to make available to providers of contraceptive services a list of participating issuers that have previously participated in the third party administrator optional contraceptive user fee adjustment process under current 45 CFR 156.50(d). HHS seeks comment on this proposal, including whether prior participating issuers or issuers that intend to participate in these arrangements in future years would have concerns with HHS making this public disclosure. HHS seeks comment on the proposed amendments to 45 CFR 156.50(d).

As mentioned in section I.B of this preamble, section 3 of E.O. 14009 directs HHS and other heads of agencies to review all agency actions, such as the FFE or SBE–FP user fees, to determine whether they are inconsistent with policy priorities described in section 1 of E.O. 14009, to include protecting and strengthening the ACA and making high-quality health care accessible and affordable for all individuals.[143] Collectively, these proposed rules on the user fee adjustment would further the goals of E.O. 14009 by making high-quality health care that is inclusive of contraceptive services accessible and affordable for more individuals. Under the current rules, participants, beneficiaries, and enrollees enrolled in a group health plan or coverage sponsored, arranged, or provided by an objecting entity subject to a moral exemption lack contraceptive coverage and access to contraceptive services without cost sharing. The Departments lack the data to accurately estimate the number of, or demographics of, participants, beneficiaries, or enrollees who have been affected by previous rules, as objecting employers, institutions of higher education, and issuers are not required to notify HHS of their objection. However, as discussed earlier in this preamble, low-income women face a disproportionate burden of out-of-pocket spending on contraceptive services.[144]

Also, as noted in section I.B, section 3 of E.O. 14076 requires the Secretary of HHS to submit a report to the President that is focused on, among other priorities, ''protect[ing] and expand[ing] access to the full range of reproductive healthcare services, including actions to enhance family planning services such as access to emergency contraception,'' and ''promoting awareness of and access to the full range of contraceptive services.'' Collectively, these proposed rules are consistent with the objectives of E.O. 14076 by protecting and expanding access to the full range of reproductive health care services and enhancing family planning services, and promoting access to the full range of contraceptive services.

IV. Severability

It is the Departments' intent that if any provision of these proposed rules, if finalized, is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, the rules shall be construed so as to continue to give maximum effect to the rules as permitted by law, unless the holding shall be one of utter invalidity or unenforceability. In the event a provision is found to be utterly invalid or unenforceable, the provision shall be severable from these proposed rules as finalized, as well as the final rules they amend, and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

[139] 86 FR 24140 at 24229 (May 5, 2021).

[140] 81 FR 12203 at 12293 (March 8, 2016).

[141] 86 FR 24229.

[142] *See* 87 FR 27208 at 27288. In part 3 of the HHS Notice of Benefit and Payment Parameters 2022 final rule, HHS finalized the repeal of the Exchange Direct Enrollment (DE) option and the removal of 45 CFR 155.221(j). See 86 FR 53412 at 53429 (September 27, 2021). To align with these actions, HHS finalized in the 2023 Payment Notice conforming amendments to 45 CFR 156.50(c) and (d) to remove references to 45 CFR 155.221(j) and the Exchange DE option.

[143] E.O. 14009 also revoked Executive Order 13765 of January 20, 2017 (Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal). The Departments adopted the moral exemption and accommodation in part to further this now revoked Executive Order by relieving a regulatory burden imposed on entities with moral convictions opposed to providing certain contraceptive coverage.

[144] *See* FN 54.

V. Response to Comments

Because of the large number of public comments that the Departments normally receive on **Federal Register** documents, the Departments are not able to acknowledge or respond to them individually. The Departments will consider all comments received by the date and time specified in the **DATES** section of this preamble, and, when the Departments proceed with a subsequent document, the Departments will respond to the comments in the preamble to that document.

VI. Economic Impact and Paperwork Burden

A. Summary

These proposed rules would expand access to contraceptive services without cost sharing for women through the provision of a new individual contraceptive arrangement, whereby an eligible individual would be able to obtain contraceptive services from willing providers of contraceptive services at no cost to the individual, and the providers of contraceptive services would be reimbursed for the costs of furnishing contraceptive services by a participating issuer on the FFE or an SBE–FP through an adjustment to the FFE or SBE–FP user fee for the participating issuer. These proposed rules would maintain the existing exemptions and optional accommodations for eligible entities and individuals claiming a religious objection to providing contraceptive coverage.

These proposed rules would also expand access to contraceptive services without cost sharing by eliminating the exemption for entities and individuals that object to contraceptive coverage based on non-religious moral beliefs.

The Departments have examined the effects of these proposed rules as required by Executive Order 13563 (76 FR 3821, January 21, 2011, Improving Regulation and Regulatory Review); Executive Order 12866 (58 FR 51735, October 4, 1993, Regulatory Planning and Review); the Regulatory Flexibility Act (September 19, 1980, Pub. L. 96–354); section 1102(b) of the Social Security Act (42 U.S.C. 1102(b)); section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995, Pub. L. 104–4); Executive Order 13132 (64 FR 43255, August 10, 1999, Federalism); and the Congressional Review Act (5 U.S.C. 804(2)).

B. Executive Orders 12866 and 13563

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866.

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 economically significant effects (for example, $100 million or more in any one year), and a ''significant'' regulatory action is subject to review by the Office of Management and Budget (OMB). The Departments anticipate that this regulatory action is not likely to have economic impacts of $100 million or more in at least 1 year and is therefore not expected to be economically significant under Executive Order 12866. OMB has determined, however, that the actions are significant within the meaning of section 3(f)(4) of the Executive Order. Therefore, the Departments have provided an assessment of the potential costs, benefits, and transfers associated with these proposed rules. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by OMB.

1. Need for Regulatory Action

Previous rules, regulations, and court decisions have left many women without contraceptive coverage and access to contraceptive services without cost sharing. These proposed rules, if finalized, seek to resolve the long-running litigation with respect to religious objections to providing contraceptive coverage, by honoring the objecting entities' religious objections, while also ensuring that women enrolled in a group health plan established or maintained, or in health insurance coverage offered or arranged, by an objecting entity described in 45 CFR 147.132(a) have the opportunity to obtain contraceptive services at no cost. These proposed rules would also eliminate the exemption for entities and individuals that object to contraceptive coverage based on non-religious moral beliefs, which prevents access to contraceptive services without cost sharing.

2. Summary of Impacts

These proposed rules would expand access to contraceptive services without cost sharing and reduce out-of-pocket spending on contraceptive services for individuals eligible for the individual contraceptive arrangement. Issuers that reimburse providers of contraceptive services for the costs of furnishing contraceptive services for individuals eligible for the individual contraceptive arrangement and in turn seek an adjustment to the FFE or SBE–FP user fee would incur administrative costs, which would be offset by Federal payments in the form of user fee adjustments. Providers of contraceptive services would also incur administrative costs associated with furnishing the contraceptive services and entering into a signed agreement with a participating issuer on the FFE or an SBE–FP to receive reimbursement for the contraceptive services furnished, and individuals might incur costs related to finding providers of contraceptive services willing to participate in the program.

These proposed rules would also expand access to contraceptive services without cost sharing and reduce out-of-pocket spending on contraceptive services for individuals by eliminating the exemption for entities and individuals that object to contraceptive coverage based on non-religious moral beliefs. However, as noted later in the Transfers discussion of this section the Departments do not have information on the number of entities and individuals that have claimed a moral exemption to providing contraceptive coverage, and are therefore uncertain of the amount of the potential transfer from plans and issuers to participants, beneficiaries, and enrollees due to reduced out-of-pocket spending on contraceptive services associated with the proposed elimination of the exemption for entities and individuals that object to contraceptive coverage based on non-religious moral beliefs.

In accordance with Executive Order 12866, the Departments are of the view

that the benefits of this regulatory action justify the costs. The expected benefits, costs, and transfers associated with these proposed rules are summarized in Table 1 and discussed in detail later in this section.

TABLE 1—ACCOUNTING TABLE

Benefits:
Qualitative:
- Expansion of access to contraceptive services without cost sharing for eligible individuals through the creation of a new individual contraceptive arrangement.
- Expansion of access to contraceptive services without cost sharing for participants, beneficiaries, and enrollees through the elimination of the exemption for entities and individuals that object to contraceptive coverage based on non-religious moral beliefs.
- Potential increase in health equity, given the expected reduction in out-of-pocket spending on contraceptive services by individuals.
- Potential reduction in unintended pregnancies and improved health outcomes for individuals.

Costs:	Estimate (million)	Year dollar	Discount rate (percent)	Period covered
Annualized Monetized ($/year)	$30.11 30.11	2022 2022	7 3	2023–2027 2023–2027

Quantitative:
- Administrative costs of approximately $4.7 million annually to participating providers of contraceptive services related to signing agreements with issuers. These costs would likely be included in the service charges of providers of contraceptive services and ultimately incurred by the Federal Government.
- Administrative costs of approximately $14.5 million annually to participating providers of contraceptive services associated with verifying eligibility for the proposed individual contraceptive arrangement, submitting amounts to participating issuers on the FFE or an SBE–FP to receive reimbursement for the contraceptive services furnished, and maintaining records. These costs would likely be included in the service charges of providers of contraceptive services and ultimately incurred by the Federal Government.
- Administrative costs and margin of approximately $10.4 million annually to participating issuers associated with signing agreements with participating providers of contraceptive services, processing amounts requested from participating providers of contraceptive services, submitting required information to HHS, and maintaining records. These administrative costs would be offset by Federal payments in the form of adjustments to FFE and SBE–FP user fees.
- Costs of approximately $590,077 annually to eligible individuals that participate in the individual contraceptive arrangement to confirm eligibility to their provider of contraceptive services.

Qualitative:
- Potential costs to eligible individuals associated with finding providers of contraceptive services that are willing to participate in the individual contraceptive arrangement.
- Potential reduction in health care costs due to a reduction in unintended pregnancies and improved health outcomes.
- Potential cost savings to states associated with reduced spending on State-funded programs that provide contraceptive services.
- Potential cost savings to states associated with a reduction in unintended pregnancies that would otherwise impose costs to states.

Transfers:	Estimate (million)	Year dollar	Discount rate (percent)	Period covered
Annualized Monetized ($/year)	$49.9 49.9	2022 2022	7 3	2023–2027 2023–2027

Quantitative:
- Transfer of $49.9 million annually from the Federal Government to eligible individuals who would spend less out-of-pocket on contraceptive services, in the form of user fee adjustments to participating issuers who would reimburse providers of contraceptive services for the costs of furnishing participants, beneficiaries, and enrollees with contraceptive services as a result of the individual contraceptive arrangement.

Qualitative:
- Potential transfer from plans and issuers to participants, beneficiaries, and enrollees who would gain access to contraceptive services without cost sharing as a result of the elimination of the exemption for entities and individuals that object to contraceptive coverage based on non-religious moral beliefs and who spend less out-of-pocket on contraceptive services as a result.

Number of Affected Entities

The Departments lack the data to accurately estimate the number of eligible individuals who would participate in the individual contraceptive arrangement. In the October 2017 Religious Exemption interim final rules and the November 2018 Religious Exemption final rules, the Departments noted that the 122 nonprofit entities that had filed litigation challenging the accommodation process and the 87 closely held for-profit entities that had filed suit challenging the contraceptive coverage requirement in general could have been affected by the November 2018 Religious Exemption final rules, but were uncertain how many of these organizations would use the expanded exemption provided under the November 2018 Religious Exemption final rules and how many of these entities would use the optional accommodation process. The Departments assumed that slightly more than half of these entities, or 109 organizations, would use the expanded exemption.

The Departments previously estimated that between 70,500 and 126,400 individuals would be affected by the November 2018 Religious Exemption final rules. Since the implementation of the November 2018 Religious Exemption final rules, additional entities may have claimed a religious exemption to contraceptive coverage without participating in the

optional accommodation process. For this reason, the Departments view the estimate of 126,400 individuals to be the lower bound estimate of the number of eligible individuals and 109 health plans to be the lower bound estimate of the number of exempt entities. The Departments seek comment on the number of entities that have claimed a religious exemption to providing contraceptive coverage without using the optional accommodation process and the number of individuals who might receive contraceptive coverage through the provision of the individual contraceptive arrangement.

Eligible individuals would need to find providers of contraceptive services that would be willing to participate in the individual contraceptive arrangement. The Departments lack sufficient information to accurately estimate the number of providers of contraceptive services that would participate. The Departments assume that at least 10 pharmacy chains (including mail order pharmacies) would participate. The Departments also assume that for each exempt entity, the participants, beneficiaries, and enrollees in its health plan or coverage are located in the same geographical area, and there would be, on average, 20 providers of contraceptive services (10 clinicians or facilities, and at least 10 retail pharmacies) in the area that would participate in the individual contraceptive arrangement.[145] Based on these assumptions, for the participants, beneficiaries, and enrollees in the plans for the 109 exempt entities, there would be approximately 2,180 participating providers of contraceptive services (1,090 retail pharmacies and 1,090 clinicians and facilities) that would participate in the individual contraceptive arrangement. If these providers of contraceptive services already participate in the health plan's provider network, an eligible individual would be able to receive contraceptive services from one of their regular providers of contraceptive services or another in-network provider of contraceptive services. However, it is possible that an eligible individual would need to find a provider of contraceptive services other than the provider or providers from whom the individual typically receives care in order to access contraceptive services at no cost. The Departments seek comment on the number of providers of contraceptive services that would participate in the individual contraceptive arrangement.

These proposed rules would also eliminate the exemption for entities and individuals that object to contraceptive coverage based on non-religious moral beliefs. In the November 2018 Moral Exemption final rules, without data available to estimate the actual number of entities that would make use of the exemption for entities with sincere non-religious moral objections, the Departments assumed that the exemption would be used by nine nonprofit entities and nine for-profit entities and that approximately 15 women may incur contraceptive costs due to for-profit entities using the moral exemption. The Departments do not have any data on how many individuals object to contraceptive coverage based on non-religious moral beliefs.

Benefits

These proposed rules would increase access to contraceptive services without cost sharing through the individual contraceptive arrangement for eligible individuals and the elimination of the exemption for entities and individuals that object to contraceptive coverage based on non-religious moral beliefs.

As stated in section I.B of this preamble, studies report that 99 percent of sexually-active women have used at least one method of contraception at some point during their lifetime, regardless of religious affiliation. Prior to the implementation of the ACA, out-of-pocket expenses for contraceptive services represented a significant portion, estimated to range from 30 percent to 44 percent, of a woman's total out-of-pocket health care spending.[146] It has been estimated that the implementation of the ACA contraceptive coverage requirement led to out-of-pocket savings to consumers on contraceptive pills of approximately $1.4 billion between 2012 and 2013.[147] Additionally, several studies have found that the ACA contraceptive coverage requirement increased access to and utilization of contraceptives.[148] The coverage of contraceptive services has been shown to improve the consistent use of the most effective short-acting methods of contraception, and the removal of cost sharing also increases the use of more effective LARC methods.[149] One study found that following the implementation of the ACA contraceptive coverage requirement, the discontinuation of use of oral contraceptive pills fell and that nonadherence to brand-name oral contraceptive pills also declined.[150] Another study reported that having no copayment on contraceptive services assisted 80 percent of women in affording and using birth control, helped 60 percent choose a better method, and helped 71 percent use contraceptive services more consistently.[151] These proposed rules would have similar effects, as they would increase access to contraceptive services for eligible individuals who currently do not have access to contraceptive services without cost sharing.

More than half of pregnancies in 2008 (51 percent or approximately 3.4 million) were estimated to be unintended; by 2011 this number had declined to 45 percent,[152] and by 2020 it had declined further to an estimated 39.5 percent,[153] which may be due to a change in the frequency and type of contraceptive use over time. Studies indicate that some groups tend to have higher rates of unintended pregnancies;

[145] Although pharmacies are generally licensed as facilities, for purposes of this regulatory impact analysis, the Departments treat them separately.

[146] Nora B. & Polsky, D. (2015). ''Women Saw Large Decrease in Out-Of-Pocket Spending for Contraceptives After ACA Mandate Removed Cost Sharing.'' *Health Affairs;* 34(7): 1204–1211.

[147] Becker, N. & Polsky, D. (2015). ''Women Saw Large Decrease In Out-Of-Pocket Spending For Contraceptives After ACA Mandate Removed Cost Sharing.'' *Health Affairs,* 34(7): 1204–1211. *See also* Sobel, L., Salganicoff, A. et al. (2018). ''New Regulations Broadening Employer Exemptions to Contraceptive Coverage: Impact on Women.'' *KFF Issue Brief.* Available at *https://www.kff.org/health-reform/issue-brief/new-regulations-broadening-employer-exemptions-to-contraceptive-coverage-impact-on-women/.*

[148] Becker, N. (2018). ''The Impact of Insurance Coverage on Utilization of Prescription Contraceptives: Evidence from the Affordable Care Act.'' *Journal of Policy Analysis and Management,* 37(3): 571–601; Nora, B., Keating, N. et al. (2021). ''ACA Mandate Led to Substantial Increase in Contraceptive Use Among Women Enrolled in High-Deductible Health Plans.'' *Health Affairs,* 40(4): 579–586; Snyder, A., Weisman, C., et al. (2018). ''The Impact of the Affordable Care Act on Contraceptive Use and Costs among Privately Insured Women.'' *Women's Health Issues,* 28(3): 219–223; Weisman, C., Chuang, C., et al. (2019). ''ACA's Contraceptive Coverage Requirement: Measuring Use and Out-of-Pocket Spending.'' *Health Affairs,* 38(9): 1537–1541.

[149] Behn, M., Pace, LE., et al. (2019). ''The Trump Administration's Final Regulations Limit Insurance Coverage of Contraception.'' *Women's Health Issues,* 29(2): 103–106.

[150] Pace, L., Dusetzina, S., et al. (2016). ''Early Impact of the Affordable Care Act on Oral Contraceptive Cost Sharing, Discontinuation, and Nonadherence.'' *Health Affairs,* 35(9): 1616–1624.

[151] Bearak, J.& Johns, R. (2017). ''Did Contraceptive Use Patterns Change after the Affordable Care Act? A Descriptive Analysis.'' *Women's Health Issues,* 27(3): 316–321.

[152] Finer, L. & Zolna, M. (2016) ''Declines in Unintended Pregnancy in the United States, 2008–2011.'' *N Engl J Med,* 374(9):843–52.

[153] Permanency Risk Assessment Monitoring System: Prevalence of Selected Maternal and Child Health Indicators for all Pregnancy Risk Assessment Monitoring System (PRAMS) Sites, 2016–2020. Available at: *https://www.cdc.gov/prams/prams-data/mch-indicators/states/pdf/2020/All-Sites-PRAMS-MCH-Indicators-508.pdf.*

for example, one study found that 75 percent of pregnancies among teens aged 15 to 19 years of age were unplanned,[154] and another study reported that nearly 70 percent of pregnancies among unmarried women aged 20 to 29 years of age were unplanned.[155] In 2008, unplanned pregnancies of those covered by Medicaid or the Children's Health Insurance Program (CHIP) were estimated to have cost Federal and State taxpayers between $9.6 billion and $12.6 billion, and without publicly funded family planning the costs would have been an estimated $25 billion.[156] In addition to the costs associated with unintended pregnancies, unintended pregnancies can pose increased health risks to both mother and baby. Women with unplanned pregnancies are less likely to receive prenatal care and have higher rates of postpartum depression and mental health problems later in life.[157] Unplanned pregnancies have also been associated with increases in low birthweight and preterm births, and children born due to an unplanned pregnancy are more likely to fare worse in school achievement, have social and emotional disorders, and have less success in the labor market later in life.[158] One study found evidence of a decrease in births following the elimination of cost sharing for contraceptives under the ACA; further, it showed a 22.2 percent reduction in birth rates for women in the lowest income group between 2014 and 2018 (from 8 to 6.2 per 100 women).[159] These proposed rules would reduce unintended pregnancies and lead to better health outcomes for eligible individuals by increasing access to contraceptive services.

Finally, these proposed rules would increase health equity, given the disproportionate burden of out-of-pocket spending on contraceptive services currently faced by low-income individuals (as those individuals with lower incomes must spend a greater percentage of their incomes on contraceptive services). As discussed earlier in this section, prior to the implementation of the ACA, out-of-pocket expenses for contraceptives represented a significant portion, estimated to range from 30 percent to 44 percent, of a woman's total out-of-pocket health care spending.[160] A recent study found that people of color (and low-income people) are more likely to live in areas in which the proportion of reproductive-aged residents have a lack of, or difficulty obtaining, reproductive and contraceptive health care—referred to as ''contraception deserts.'' [161] The study found that the proportion of the population living within these types of areas ranges from approximately 17 percent in California to approximately 50 percent in Texas. One study has shown that in 2011, women with incomes below 100 percent of the Federal poverty level had unplanned pregnancies at a rate seven times higher than those at or above 200 percent of the Federal poverty level. Unplanned pregnancies were also more common in women who have low incomes or are racial or ethnic minorities.[162]

The enactment of the ACA has been shown to provide gains in coverage and access to women's reproductive health services and accompanying reduced costs for women who would otherwise be without health coverage or face large out-of-pocket costs. As noted in a recent study, even in some cases where ''medical insurance is available among women in the same socioeconomic strata, unexplained disparities persist and suggest that racism and other social and clinician-level issues are factors'' that can still result in unequal access to health care and distrust of physicians.[163] Although it is believed that these proposed rules would have marginal effects on the overall level of health inequity, the presence of barriers to contraceptive coverage would be more burdensome on insured women with lower incomes and reducing those barriers could have the potential to reduce socioeconomic, racial, and ethnic disparities in health outcomes.[164]

Costs

Participating providers of contraceptive services and issuers would need to enter into signed agreements for reimbursement of costs associated with the provision of contraceptive services to eligible individuals and would therefore incur related administrative costs. In order to estimate these costs, providers of contraceptive services have been divided into two broad categories—clinicians or facilities, and pharmacies. For each signed agreement between clinicians or facilities and issuers, the Departments estimate that, on average, senior managers would spend 4 hours (at $110.82 per hour [165]), lawyers would spend 40 hours (at $142.34 per hour), legal secretaries would spend 40 hours (at $50.52 per hour), a clinician would spend 1 hour (at $284.82 per hour), and a chief executive officer would spend 15 minutes (at $204.82 per hour). The total burden for each signed agreement would be 85.25 hours, with an associated cost of approximately $8,494. There would be an estimated 1,090 signed agreements between 1,090 participating clinicians or facilities and issuers. The total estimated cost for all signed agreements between clinicians or facilities and issuers would be approximately $9.3 million. The number of signed agreements and related costs could be lower if multiple facilities are owned by the same entity. For each signed agreement between pharmacy chains and issuers, the Departments estimate that senior managers would spend 4 hours (at $110.82 per hour), lawyers would spend 40 hours (at $142.34 per hour), legal

[154] *See* FN 173.

[155] Monea, E., & Thomas, A. (2011). ''Unintended Pregnancy and Taxpayer Spending.'' *Perspectives on Sexual & Reproductive Health,* 43(2), 88–93; and Sonfield, A. and Kost, K. (2013). ''Public Costs from Unintended Pregnancies and the Role of Public Insurance Programs in Paying for Pregnancy and Infant Care: Estimates for 2008.'' *Guttmacher Institute.* Available at: *http://www.guttmacher.org/pubs/public-costs-of-UP.pdf.*

Kaye, K., Gootman, J.A., Ng, A.S., & Finley, C. (2014). ''The Benefits of Birth Control in America: Getting the Facts Straight.'' *The National Campaign to Prevent Teen and Unplanned Pregnancy.* Available at: *https://powertodecide.org/sites/default/files/resources/primary-download/benefits-of-birth-control-in-america.pdf.*

[156] Sonfield, A. & Kost, K. (2013). ''Public Costs from Unintended Pregnancies and the Role of Public Insurance Programs in Paying for Pregnancy and Infant Care: Estimates for 2008.'' *Guttmacher Institute.* Available at: *http://www.guttmacher.org/pubs/public-costs-of-UP.pdf.*

[157] ''Preventing Unplanned Pregnancy.'' *National Conference of State Legislatures* (2021). Available at: *https://www.ncsl.org/research/health/preventing-unplanned-pregnancy.aspx.*

[158] *Id.*

[159] Dalton, V., Moniz, M., et al. (2020). ''Trends in Birth Rates After Elimination of Cost Sharing for Contraception by the Patient Protection and Affordable Care Act.'' *JAMA Network Open,* 3(11): e2024398.

[160] Becker, N., & Polsky, D. (2015). ''Women Saw Large Decrease in Out-Of-Pocket Spending for Contraceptives After ACA Mandate Removed Cost Sharing.'' Health Affairs; 34(7): 1204–1211.

[161] Kreitzer, R.J., Watts Smith, C., et al. (2021). ''Affordable but Inaccessible? Contraception Deserts in the US States.'' *Journal of Health Politics, Policy and Law* 46(2): 277–304.

[162] Finer, L. & Zolna, M. (2016) ''Declines in Unintended Pregnancy in the United States, 2008–2011.'' *N Engl J Med,* 374(9):843–52 and Behn, M., Pace, LE., et al. (2019). ''The Trump Administration's Final Regulations Limit Insurance Coverage of Contraception.'' *Women's Health Issues,* 29(2): 103–106.

[163] Sutton, M.Y., Anachebe, F., et al. (2021) Racial and Ethnic Disparities in Reproductive Health Services and Outcomes, 2020. *Obstetrics & Gynecology:* 137(2): 225–233.

[164] Behn, M., Pace, L.E., et al. (2019). The Trump Administration's Final Regulations Limit Insurance Coverage of Contraception. *Women's Health Issues,* 29(2): 103–106.

[165] The Departments generally used data from the Bureau of Labor Statistics to derive average labor costs (including a 100 percent increase for fringe benefits and other indirect costs). May 2021 Bureau of Labor Statistics, Occupational Employment Statistics, National Occupational Employment and Wage Estimates, available from *https://www.bls.gov/oes/current/oes_nat.htm.*

secretaries would spend 40 hours (at $50.52 per hour), and chief executive officers would spend 30 minutes (at $204.82 per hour). The total burden for each signed agreement would be 84.5 hours, with an associated cost of approximately $8,260. There would be an estimated 10 signed agreements between 10 participating pharmacy chains and issuers. The total estimated cost for all signed agreements between pharmacy chains and issuers would be approximately $82,601.

The total cost of 1,100 signed agreements between all providers of contraceptive services and issuers would be approximately $9.3 million in the first year. The Departments assume that half of these costs would be incurred by participating providers of contraceptive services and half by issuers (approximately $4.7 million each). Providers of contraceptive services are likely to incorporate these costs into their fees for providing the contraceptive services, while costs to issuers would be offset by Federal payments in the form of user fee adjustments. The annual costs of renegotiating and signing agreements in future years might be lower, unless providers of contraceptive services enter into new agreements with different issuers. The Departments seek comment on the number of signed agreements that would be executed annually and the magnitude of the potential administrative costs to providers of contraceptive services and issuers.

TABLE 2—ANNUAL COSTS RELATED TO SIGNED AGREEMENTS

Entities	Estimated number of signed agreements	Estimated cost per signed agreement	Total estimated cost
Clinicians/Facilities and Issuers	1,090	$8,494	$9,258,138
Pharmacies and Issuers	10	8,260	82,601
Total	1,100	.....	9,340,739

Participating providers of contraceptive services would also incur administrative costs related to eligibility verification, submission of claims, and document retention. These costs are estimated to be approximately $14.5 million annually and are discussed in detail later in the HHS Paperwork Reduction Act section, section VI.D of this preamble.

Participating issuers would also incur administrative costs related to processing of amounts received from participating providers of contraceptive services, and submission of required information to HHS. As mentioned previously in this preamble, HHS proposes to reimburse participating issuers an administrative allowance of 15 percent for administrative costs and margin. Therefore, the estimated administrative costs and margin to issuers would be approximately $10.4 million,[166] which would be offset by Federal payments in the form of user fee adjustments. This total includes the estimated approximately $11,866 in costs related to the submission of required information to HHS as detailed later in the HHS Paperwork Reduction Act section, section VI.D of this preamble, and approximately $4.7 million in costs related to signing agreements discussed earlier in this section.

Individuals would incur costs associated with finding providers of contraceptive services that would be willing to participate in the individual contraceptive arrangement. Some individuals might have to switch providers of contraceptive services if their usual providers of contraceptive services are not willing to participate in the individual contraceptive arrangement. The Departments seek comment on ways to mitigate search costs for eligible individuals and how access to the individual contraceptive arrangement can best be promoted. One option could be to make a list of participating providers publicly available on a public website. The Departments also seek comment on whether making provider information publicly available might deter provider participation in the individual contraceptive arrangement. Additionally, as discussed previously, people of color and low-income people are more likely to live in areas considered contraception deserts. If eligible individuals live in contraception deserts, they might have to spend more time and money traveling longer distances in order to meet with a participating provider of contraceptive services. The Departments seek comment on the number of eligible individuals without access to contraceptive services without cost sharing under their existing plan or coverage or living in contraception deserts and the potential search costs of these proposed rules on such individuals.

There would also be a reduction in health care costs for individuals who gain access to contraceptive services and for group health plans and coverage sponsored, arranged, or provided by exempt entities if these proposed rules lead to a reduction in unintended pregnancies or improved health outcomes.

Individuals who do not currently have contraceptive coverage through group health plans and coverage sponsored by exempt entities may turn to State-funded programs to obtain contraceptive services. States may also currently incur costs related to unintended pregnancies resulting from a lack of access to contraceptive services for these individuals. These proposed rules may therefore lead to cost savings for states, to the extent that states are currently incurring costs to provide or fund contraceptive services or birth and maternity care for individuals who would gain access to contraceptive services as a result of these proposed rules. The Departments seek comment on the potential impacts of these proposed rules on states and State finances.

Transfers

These proposed rules would result in a transfer from the Federal Government, via the provision of user fee adjustments to issuers that would then reimburse providers of contraceptive services for the costs of furnishing contraceptive services, to individuals who would now have access to contraceptive services without cost sharing and no longer incur out-of-pocket spending on contraceptive services. As discussed previously in the Number of Affected Entities discussion of this section, it is estimated that at least 126,400

[166] Estimated total amount = cost of contraceptive services ($49.9 million) + administrative costs to providers of contraceptive services (= $14.5 million + $4.7 million) = $69 million. 15 percent of $69 million = $10.4 million approximately.

individuals would be eligible to participate in the individual contraceptive arrangement. Based on the limited information available from the 2019 user fee adjustment data,[167] the Departments estimate that the average annual cost of contraceptive services for one individual is approximately $395. Therefore, the Departments estimate that the provision of the individual contraceptive arrangement could lead to a transfer from the Federal Government to individuals (via issuers to providers of contraceptive services) of approximately $49.9 million annually.[168] This estimate is uncertain due to the limited information available in the 2019 user fee adjustment data, and the Departments seek comment on the estimated average annual cost of contraceptive services per individual. Assuming these proposed regulations are finalized and become applicable during 2023, transfers might be lower in 2023, since 2023 transfers would include services furnished during only part of the year.

In addition, a reduction in unintended pregnancies or improved health outcomes could lead to a reduction in premiums.

The Departments also expect that the proposed elimination of the exemption for entities and individuals that object to contraceptive coverage based on non-religious moral beliefs could lead to a transfer from plans and issuers to participants, beneficiaries, and enrollees due to reduced out-of-pocket spending on contraceptive services. However, the Departments do not have information on the number of entities and individuals that have claimed a moral exemption to providing contraceptive coverage and seek comment on the number of entities and individuals that would be affected by this proposed change.

Uncertainty

Although the Departments expect that these proposed rules would expand access to contraceptive services without cost sharing, as noted earlier in this section, there are several areas of uncertainty regarding the potential impacts of these proposed rules.

The Departments are uncertain how many providers of contraceptive services, issuers, and eligible individuals would participate in the individual contraceptive arrangement. The Departments seek comment on potential barriers that might prevent providers, issuers, and eligible individuals from participating in the individual contraceptive arrangement. The Departments anticipate that the administrative allowance—which would be expected to cover participating issuers' administrative costs and provide a margin to ensure that participating issuers receive appropriate compensation for providing reimbursements—would incentivize issuers to participate in the individual contraceptive arrangement.

The Departments expect that administrative costs incurred by participating providers of contraceptive services to deliver the services would be included in the amounts they submit to issuers for reimbursement (as noted earlier in this section), and therefore would not be a deterrent to participation in the individual contraceptive arrangement. The Departments are unable to estimate these costs precisely because these costs are expected to vary. These costs might be lower for larger providers, due to larger economies of scale, and for providers that might currently have contracts with participating issuers. The Departments are uncertain as to how the number of participating providers might vary (for example, across rural and urban areas) and how this variation might affect access to services under the individual contraceptive arrangement.

Due to the lack of data, the Departments are unable to develop a precise estimate of the number of eligible individuals who might participate in the individual contraceptive arrangement because the Departments do not know how many entities have claimed an exemption under the November 2018 Religious Exemption final rules. Further, take-up of the individual contraceptive arrangement by eligible individuals would be affected by, among other things, awareness of the individual contraceptive arrangement, the number of providers of contraceptive services that participate in the individual contraceptive arrangement, and the amount of time and effort it would take an individual to find a participating provider.

The Departments are unable to develop a more accurate estimate of the transfers and cost to the Federal Government (discussed earlier in this section) as there is uncertainty regarding the total amounts for contraceptive services that would be submitted by providers of contraceptive services to issuers for reimbursement, and therefore the total amount of the transfer from the Federal Government to eligible individuals, and the total amounts of the administrative costs incurred by participating providers and issuers. Finally, this overall lack of data leads to uncertainty regarding the magnitudes of the total cost savings to eligible individuals and any resulting potential cost savings to states (associated with reduced spending on State-funded programs that provide contraceptive services or a potential reduction in the number of unintended pregnancies that would otherwise impose costs to states).

The Departments seek comment on all of these areas of uncertainty regarding the impacts of these proposed rules.

C. Regulatory Alternatives

In developing these proposed rules, the Departments considered various alternative approaches.

The Departments considered maintaining the exemption (along with the existing accommodations and the proposed individual contraceptive arrangement) with respect to group health plans, health insurance issuers, and institutions of higher education that have a non-religious moral objection to contraceptive coverage. The Departments, however, are of the view that neither RFRA nor any other Federal statute compels such an exemption, and propose eliminating this exemption for several reasons, especially given the strong public interest in assuring contraceptive coverage to women enrolled in group health plans, or group or individual (including student) health insurance coverage.

With respect to individuals enrolled in coverage through entities that have a religious objection to contraceptive coverage, the Departments considered an approach under which contraceptive coverage would be available through separate individual insurance policies that cover only contraceptives and in which participants, beneficiaries, and enrollees would have to separately enroll if they desired contraceptive coverage. Because separate contraception-only coverage would not comply with the individual market reforms, it would be necessary for the Departments to create, by regulation, a new excepted benefit category for individual contraceptive-only coverage.[169] Under this approach, issuers of this coverage would receive FFE or SBE–FP user fee reductions to pay for this coverage, as the issuer generally would not realize offsetting savings in pregnancy-related costs when providing coverage separate from the plan or coverage offered by the objecting entity. If the issuer of this coverage did not participate in the FFE or an SBE–FP,

[167] HHS used 2019 data for this estimate to better reflect claims experience outside of the COVID–19 public health emergency.

[168] 126,400 × $395 = $49.9 million approximately.

[169] See, for example, section 2791(c)(2)(C) of the PHS Act.

it could partner with an FFE or SBE–FP issuer to receive the user fee adjustment.

The Departments decided against this option for a number of reasons. The Departments are concerned that issuers would not offer these products to a sufficient extent to ensure access nationwide, as commenters on the July 2016 RFI explained that it would be costly and administratively burdensome for issuers to develop and implement new eligibility, enrollment, and claims-adjudication systems for contraception-only coverage, as they would differ from their existing systems. Additionally, some State regulators might not have authority or capacity to approve single-benefit insurance policies (other than dental or vision or disease-specific excepted benefits policies) within a relatively short period of time after Federal rules would permit these policies. Cost-free contraception policies would also not satisfy some State laws conditioning policy approval on a ''reasonable premium'' or the existence of valid contracts because the prospective policyholder would not provide consideration in exchange for the coverage.

The Departments also considered an approach under which, if an objecting entity designs or contracts for a health plan without contraceptive coverage, the contraceptive coverage requirement would apply directly to the issuer, in the case of a fully insured plan (that is, the issuer would not be exempted from the requirement on the basis of the objecting entity's objection), or the third party administrator, in the case of a self-insured plan. The issuer or third party administrator would then be required to fulfill its separate and independent obligation to provide contraceptive coverage, in the same manner as it is required to do so with respect to a non-exempt entity. However, the Departments are of the view that there would not be legal authority for imposing this obligation on a third party administrator. With respect to issuers, the Departments decided to solicit comment on this approach, as further described in section II.C.1 of this preamble.

With respect to the proposed changes to 45 CFR 156.50(d), in addition to the proposed submission requirements on the part of the participating issuer, HHS considered whether to condition a provider of contraceptive services' participation in the individual contraceptive arrangement for eligible individuals on the provider of contraceptive services' agreement to submit to HHS identifying information for itself and the participating issuer, the total dollar amount of the cost of furnishing contraceptive services pursuant to the individual contraceptive arrangement, and an attestation that the costs for furnishing such services were incurred in compliance with the requirements of the individual contraceptive arrangement. However, HHS is of the view that conditioning participation in the individual contraceptive arrangement on compliance with a separate submission requirement for providers of contraceptive services would create significant additional burden on providers of contraceptive services and could deter participation in the individual contraceptive arrangement, reducing access to contraceptive services for eligible individuals.

In addition to an arrangement with a participating issuer on the FFE or an SBE–FP, HHS considered whether to allow a provider of contraceptive services to arrange with a third party administrator to submit documentation to HHS on their behalf under 45 CFR 156.50(d). Under this arrangement, a third party administrator entering into an agreement with a provider of contraceptive services would partner with an FFE or SBE–FP issuer to receive reimbursement for its costs of furnishing contraceptive services and then the third party administrator would pay the provider of contraceptive services. Establishing a direct contractual relationship between providers of contraceptive services and third party administrators was rejected as more administratively complex because providers and third party administrators do not have the same existing contractual agreements to deliver these services as providers and issuers do. In contrast, the proposed approach of direct agreements between providers of contraceptive services and participating issuers on the FFE or an SBE–FP builds upon existing relationships between providers and issuers.

D. Paperwork Reduction Act—Department of Health and Human Services

Under the Paperwork Reduction Act of 1995 (PRA), HHS is required to provide 60-days' notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to OMB for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that HHS solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of the agency.
- The accuracy of HHS' estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

1. Wage Estimates

HHS generally uses data from the Bureau of Labor Statistics to derive average labor costs (including a 100 percent increase for the cost of fringe benefits and other indirect costs) for estimating the burden associated with the information collection requirements (ICRs).[170] Table 3 presents the mean hourly wage, the cost of fringe benefits and other indirect costs, and the adjusted hourly wage.

As indicated, employee hourly wage estimates have been adjusted by a factor of 100 percent. This is necessarily a rough adjustment, both because the cost of fringe benefits and other indirect costs vary significantly across employers, and because methods of estimating these costs vary widely across studies. Nonetheless, there is no practical alternative, and HHS is of the view that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

[170] *See* May 2021 Bureau of Labor Statistics, Occupational Employment Statistics, National Occupational Employment and Wage Estimates, available at *https://www.bls.gov/oes/current/oes_nat.htm.*

TABLE 3—ADJUSTED HOURLY WAGES USED IN BURDEN ESTIMATES

Occupation title	Occupational code	Mean hourly wage ($/hour)	Cost of fringe benefits and other indirect costs ($/hour)	Adjusted hourly wage ($/hour)
All Occupations	00–0000	$28.01	$28.01	$56.02
Actuary	15–2011	60.24	60.24	120.48
Insurance Claims and Policy Processing Clerks.	43–9041	22.02	22.02	44.04
Medical Secretaries and Administrative Assistants.	43–6013	19.11	19.11	38.22

2. ICRs Regarding Adjustment of Exchange User Fees—Participating Issuers (45 CFR 156.50(d)(2))

The proposed provisions would require a participating issuer on the FFE or an SBE–FP seeking a user fee adjustment to submit to HHS, in the year following the calendar year in which the contraceptive services for which reimbursement pursuant to the proposed individual contraceptive arrangement were furnished, the following: (A) identifying information for the participating issuer and each provider of contraceptive services with respect to which the participating issuer seeks an adjustment of any user fee; (B) documentation, with respect to each provider of contraceptive services, demonstrating that the participating issuer and provider of contraceptive services have agreed that the participating issuer will seek an adjustment of the user fee to reimburse the provider of contraceptive services for the costs of furnishing contraceptive services; and (C) for each provider of contraceptive services, the total dollar amount of the costs of the contraceptive services that were furnished during the applicable calendar year pursuant to the proposed individual contraceptive arrangement. The proposed amendments also require that a participating issuer on the FFE or an SBE–FP receiving an adjustment to any user fee under 45 CFR 156.50(d) for a particular calendar year must maintain documentation for 10 years demonstrating that it timely paid each provider of contraceptive services, with respect to which it received such adjustment, any amount required under paragraph 45 CFR 156.50(d)(5).

Approximately 40 QHP issuers have entered into arrangements with third party administrators under the third party administrator optional accommodation.[171] HHS anticipates that all (or some subset) of those issuers that have already entered into arrangements with third party administrators would be most likely to enter into arrangements with providers of contraceptive services because they would already be familiar with the process for seeking a user fee adjustment related to payments for contraceptive services. HHS anticipates there would be an increase in burden associated with these proposed data submission requirements for those issuers that participate in the individual contraceptive arrangement.

HHS would collect the required data elements for participating issuers on the FFE or an SBE–FP to receive a user fee adjustment under the proposed individual contraceptive arrangement through the same web form online tool and at the same time as participating issuers complete the data submission process for the third party administrator optional accommodation. HHS previously estimated that for the issuers that enter into arrangements with third party administrators, each issuer needs approximately 3 hours of actuarial work, 5 hours of work by claims and policy processing clerks, 2 hours for legal counsel, and 1 hour for a top executive.[172] For issuers that would participate in arrangements with providers of contraceptive services, HHS estimates that each issuer would incur an additional burden of 1 hour of work by an actuary (at $120.48 per hour), and 4 hours of work by claims and policy processing clerks (at $44.04 per hour) including time for recordkeeping. The total additional burden for each issuer would be 5 hours annually, with an equivalent cost of approximately $297. Therefore, if all 40 issuers enter into arrangements with providers of contraceptive services, the total annual burden associated with this requirement would be approximately 200 hours, at a cost of approximately $11,866. These costs would be offset by Federal payments in the form of user fee adjustments.

TABLE 4—ANNUAL BURDEN AND COSTS FOR PARTICIPATING ISSUERS

Estimated number of respondents	Estimated number of responses	Estimated burden per response (hours)	Total annual burden (hours)	Total estimated cost
40	40	5	200	$11,866

HHS will revise the information collection currently approved under OMB control number 0938–1285 (CMS–10492), to account for this new burden.

3. ICRs Regarding Adjustment of Exchange User Fees—Participating Providers of Contraceptive Services (45 CFR 156.50(d)(8))

The proposed provisions require that, as a condition of participation in the proposed individual contraceptive arrangement, providers of contraceptive services would be required to maintain documentation for 10 years demonstrating that the costs of furnishing contraceptive services were

[171] *See* 78 FR 39870 at 39875 through 39886 for additional background on the third party administrator optional accommodation.

[172] This burden is currently approved under OMB control number 0938–1285 (CMS–10492, Coverage of Certain Preventive Services Under the Affordable Care Act: Data Submission Requirements to Receive the Federally-facilitated Exchange User Fee Adjustment).

made in compliance with the individual contraceptive arrangement, including a representation by (or on behalf of) the individual demonstrating the individual's eligibility for the individual contraceptive arrangement, and the total dollar amount of the costs of the contraceptive services furnished. As discussed previously in section VI.B.2 of this preamble, HHS estimates that at least 2,180 providers of contraceptive services (1,090 pharmacies, and 1,090 clinicians and facilities), and 126,400 individuals would participate in the individual contraceptive arrangement. Eligible individuals could receive contraceptive services from more than one provider of contraceptive services (1,090 pharmacies, and 1,090 clinicians or facilities). HHS anticipates that eligible individuals would likely receive contraceptive services from more than one provider of contraceptive services (for example, during a visit to a clinician or facility and during a visit to a pharmacy to fill a prescription) and more than once a year. HHS therefore estimates that each provider of contraceptive services would furnish contraceptive services to approximately 116 eligible individuals annually, on average.

HHS assumes that a provider of contraceptive services (for example, clinician, facility, or pharmacy) would confirm eligibility for each individual only once annually and submit all claims for all eligible individuals together to the issuer. HHS estimates that for each provider of contraceptive services, a medical secretary would need, on average, approximately 1.5 hours (at $38.22 per hour) to record each representation demonstrating an individual's eligibility for the individual contraceptive arrangement, calculate and record the costs associated with the contraceptive services furnished throughout the year, submit the amounts to the participating issuer on the FFE or an SBE–FP, and maintain records. The total burden for each provider of contraceptive services would be, on average, 1.5 hours for each individual, with an associated cost of $57.33. For 2,180 providers of contraceptive services, the total burden related to furnishing contraceptive services to 126,400 individuals (assuming each individual receives contraceptive services from 2 providers on average each year) would be 379,200 hours with an associated cost of approximately $14.5 million. These estimates constitute the lower bound, as burden and costs would be higher if the number of eligible individuals is higher, or if eligible individuals see more than two providers of contraceptive services in a year. Providers of contraceptive services would be likely to incorporate these costs into their fees for providing the contraceptive services.

TABLE 5—ANNUAL BURDEN AND COSTS FOR PARTICIPATING PROVIDERS OF CONTRACEPTIVE SERVICES

Provider or facility type	Estimated number of respondents	Estimated number of responses	Estimated burden per response (hours)	Total annual burden (hours)	Total estimated cost
Clinicians or Facilities	1,090	126,400	1.5	189,600	$7,246,512
Pharmacies	1,090	126,400	1.5	189,600	7,246,512
Total	2,180	252,800	1.5	379,200	14,493,024

HHS will revise the information collection currently approved under OMB control number 0938–1285 (CMS–10492), to account for this new burden.

4. ICRs Regarding Confirmation of Eligibility for the Individual Contraceptive Arrangement (45 CFR 147.131(a)(3)(ii))

Individuals could confirm their eligibility for the individual contraceptive arrangement with a provider of contraceptive services by providing a summary of benefits that includes the relevant information provided under the plan, or by providing an attestation. These proposed rules include, in 45 CFR 147.131(d)(2), an example of language that could be used by participants, beneficiaries and enrollees or their authorized representatives to confirm eligibility. The Departments estimate that at least 126,400 individuals would be eligible for the individual contraceptive arrangement and would need to confirm their eligibility, and that each eligible individual would need, on average, 5 minutes (at an equivalent cost of $56.02 per hour) to do so. The total burden for all individuals to confirm their eligibility for the individual contraceptive arrangement to their provider of contraceptive services would be approximately 10,533 hours with an equivalent cost of approximately $590,077. The Departments consider these estimates to be a lower bound, as the total burden and costs would be higher if the number of eligible individuals that take part in the individual contraceptive arrangement is higher. As HHS, DOL, and the Department of the Treasury share jurisdiction, HHS would account for 50 percent of the burden, or approximately 5,267 hours annually, with an equivalent annual cost of $295,039. DOL and the Department of the Treasury would each account for 25 percent of the burden, as discussed in section VI.E of this preamble.

TABLE 6—ANNUAL BURDEN AND COSTS FOR INDIVIDUALS

Estimated number of respondents	Estimated number of responses	Estimated burden per response (hours)	Total annual burden (hours)	Total estimated cost
63,200	63,200	0.08	5,267	$295,039

HHS will revise the information collection currently approved under OMB control number 0938–1344 (CMS–10653),[173] to account for this new burden.

5. ICRs Regarding the Existing Optional Accommodation for Exempt Entities (45 CFR 147.131(b))

An entity seeking to be treated as an eligible organization for the existing optional accommodation may self-certify (by using EBSA Form 700), prior to the beginning of the first plan year to which an accommodation is to apply, that it meets the definition of an eligible organization. An eligible organization may submit a notification to HHS as an alternative to submitting the EBSA Form 700 to the eligible organization's health insurance issuer or third party administrator.

The burden related to this optional accommodation is currently approved under OMB Control Number: 0938–1344 (CMS–10653). HHS will revise this information collection to update the EBSA Form 700 and model notice to HHS to reflect the proposal to remove the moral exemption. However, the burden estimates would not be affected by the provisions in these proposed rules as the Departments did not previously expect any entities with non-religious moral objections to use the existing optional accommodation.

6. ICRs Regarding Notice of Availability of Separate Payments for Contraceptive Services (45 CFR 147.131(c))

A health insurance issuer or third party administrator providing or arranging separate payments for services for participants and beneficiaries in insured plans (or student enrollees and covered dependents in student health insurance coverage) of eligible organizations exercising the existing optional accommodation is required to provide a written notice to the plan participants and beneficiaries (or student enrollees and covered dependents) informing them of the availability of these payments. As discussed previously in section II.D.1 of this preamble, the Departments propose to amend the model language for this notice. The burden related to this notice is currently approved under OMB Control Number: 0938–1344 (CMS–10653). HHS will revise this information collection to update the model notice to reflect this proposed amendment. The Departments previously estimated that 109 respondents will incur an annual burden of 136.25 hours with an equivalent cost of approximately $7,000, and materials and mailing cost of approximately $358,000 annually to comply with this ICR. The burden and cost estimates would not be affected by the proposed change in model language for the notice.

7. Summary of Annual Burden Estimates for Proposed Information Collection Requirements

TABLE 7—ANNUAL RECORDKEEPING AND REPORTING REQUIREMENTS

Regulation section	OMB control No.	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Average hourly labor cost of reporting	Total labor cost of reporting	Total cost
45 CFR § 156.50(d)(2)	0938–1285	40	40	5	200	$59.33	$11,866	$11,866
45 CFR § 156.50(d)(8)	0938–1285	2,180	252,800	1.5	379,200	38.22	14,493,024	14,493,024
45 CFR § 147.131(a)(3)(ii)	0938–1285	63,200	63,200	0.08	5,267	56.02	295,039	295,039
Total		65,420	63,200		384,667		14,799,928	14,799,928

8. Submission of PRA-Related Comments

HHS has submitted a copy of these proposed rules to OMB for its review of the rule's information collection and recordkeeping requirements. These requirements are not effective until they have been approved by the OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections, please visit CMS's website at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.* HHS invites public comments on these potential information collection requirements. If you wish to comment, please submit your comments electronically as specified in the **ADDRESSES** section of these proposed rules and identify the rule (CMS–9903–P), the ICR's CFR citation, CMS ID number, and OMB control number.

ICR-related comments are due April 3, 2023.

E. Paperwork Reduction Act—Department of Labor and Department of the Treasury

As part of their continuing effort to reduce paperwork and respondent burden, the Department of Labor and the Department of the Treasury conduct a preclearance consultation program to allow the general public and Federal agencies to comment on proposed and continuing collections of information in accordance with the PRA.[174] This helps to ensure that the public understands the Departments' collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Departments can properly assess the impact of collection requirements on respondents.

Currently, the Department of Labor and the Department of the Treasury are soliciting comments concerning the proposed information collection request (ICR) included in the Coverage of Certain Preventive Services under the Affordable Care Act—Private Sector. To obtain a copy of the ICR, contact the PRA addressee shown below or go to *http://www.RegInfo.gov.*

The Departments have submitted a copy of these proposed rule to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Departments and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the functions of the agency, including whether the information will have practical utility;

[173] OMB Control Number: 0938–1344 (CMS–10653, Coverage of Certain Preventive Services Under the Affordable Care Act).

[174] 44 U.S.C. 3506(c)(2)(A) (1995).

• Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronically delivered responses).

Commenters may send their views on the Departments' PRA analysis in the same way they send comments in response to the proposed rule as a whole (for example, through the *www.regulations.gov* website), including as part of a comment responding to the broader proposed rule. Comments are due by April 3, 2023 to ensure their consideration.

PRA Addressee: Address requests for copies of the ICR to James Butikofer, Office of Research and Analysis, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210; or send to *ebsa.opr@dol.gov.*

1. ICRs Regarding Confirmation of Eligibility for the Individual Contraceptive Arrangement (26 CFR 54.9815–2713A(a)(3)(iii), 29 CFR 2590.715–2713A(a)(3)(iii))

Individuals could confirm their eligibility for the individual contraceptive arrangement with a provider of contraceptive services by providing a summary of benefits that includes the relevant information provided under the plan, or by providing an attestation. The Departments propose, in 26 CFR 54.9815–2713A(a)(3)(iii) and 29 CFR 2590.715–2713A(a)(3)(iii), an example of language that could be used by participants, beneficiaries, and enrollees or their authorized representatives to confirm eligibility. The Departments estimate that at least 126,400 individuals would be eligible for the individual contraceptive arrangement and would need to confirm their eligibility, and that each eligible individual would need, on average, 5 minutes (at an equivalent cost of $68.96 per hour) to do so. The total burden for all individuals to confirm their eligibility for the individual contraceptive arrangement to their provider of contraceptive services would be approximately 10,533 hours with an equivalent cost of approximately $726,356. The Departments consider these estimates to be a lower bound, as the total burden and costs would be higher if the number of eligible individuals that take part in the individual contraceptive arrangement is higher. As HHS, DOL, and the Department of the Treasury share jurisdiction, HHS would account for 50 percent of the burden, as discussed in section VI.D of this preamble and DOL and the Department of the Treasury would each account for 25 percent of the burden, or approximately 2,633 hours annually with an equivalent annual cost of $181,572.

The burden related to the confirmation of eligibility for the individual contraceptive arrangement will be included under OMB Control Number: 1210–0150 (Coverage of Certain Preventive Services under the Affordable Care Act—Private Sector). The information collection has a current expiration date of November 30, 2024.

2. ICRs Regarding the Existing Optional Accommodation for Exempt Entities (26 CFR 54.9815–2713A, 29 CFR 2590.715–2713A)

An entity seeking to be treated as an eligible organization for the existing optional accommodation may self-certify (by using EBSA Form 700), prior to the beginning of the first plan year to which an accommodation is to apply, that it meets the definition of an eligible organization. An eligible organization may submit a notification to HHS as an alternative to submitting the EBSA Form 700 to the eligible organization's health insurance issuer or third party administrator.

The burden related to this optional accommodation is currently approved under OMB Control Number: 1210–0150 (Coverage of Certain Preventive Services under the Affordable Care Act—Private Sector). The Departments will revise this information collection to update the EBSA Form 700 and model notice to HHS to reflect the proposal to remove the moral exemption. However, the burden estimates would not be affected by the provisions in these proposed rules, as the Departments did not previously expect entities with non-religious moral objections to use the existing optional accommodation. The information collection has a current expiration date of November 30, 2024.

3. ICRs Regarding Notice of Availability of Separate Payments for Contraceptive Services (26 CFR 54.9815–2713A, 29 CFR 2590.715–2713A)

A health insurance issuer or third party administrator providing or arranging separate payments for contraceptive services for participants and beneficiaries in insured plans (or student enrollees and covered dependents in student health insurance coverage) of eligible organizations exercising the existing optional accommodation is required to provide a written notice to such plan participants and beneficiaries (or such student enrollees and covered dependents) informing them of the availability of such payments. The Departments propose to amend the model language for this notice. The burden related to this notice is currently approved under OMB Control Number: 1210–0150 (Coverage of Certain Preventive Services under the Affordable Care Act—Private Sector). The Departments will revise this information collection to update the model notice to reflect this proposed amendment. The Departments previously estimated that 109 respondents will incur an annual burden of 136.25 hours with an equivalent cost of approximately $7,000, and materials and mailing cost of approximately $358,000 annually to comply with this ICR. The burden and cost estimates would not be affected by the proposed change in model language for the notice. The information collection has a current expiration date of November 30, 2024.

4. Summary of Annual Burden Estimates for Proposed Information Collection Requirements

A summary of paperwork burden estimates follows:

Type of Review: Revision.

Agency: Employees Benefits Security Administration, U.S. Department of Labor.

Title: Coverage of Certain Preventive Services under the Affordable Care Act—Private Sector.

OMB Control Number: 1210–0150.

Affected Public: Individuals and households, Businesses or other for-profits, Not-for-profit institutions.

Estimated Number of Respondents: 31,630.

Estimated Number of Annual Responses: 329,255.

Frequency of Response: Annual.

Estimated Total Annual Burden Hours: 2,669.

Estimated Total Annual Burden Cost: $80,873.

Agency: Internal Revenue Service, Department of the Treasury.

Title: Coverage of Certain Preventive Services under the Affordable Care Act—Private Sector.

OMB Control Number: 1545–NEW.

Affected Public: Individuals and households, Businesses or other for-profits, Not-for-profit institutions.

Estimated Number of Respondents: 31,630.

Estimated Number of Annual Responses: 329,255.

Frequency of Response: Annual.

Estimated Total Annual Burden Hours: 2,669.

Estimated Total Annual Burden Cost: $80,873.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act, (5 U.S.C. 601, *et seq.*), requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of proposed rules on small entities, unless the head of the agency can certify that the rules will not have a significant economic impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' The Departments use a change in revenues of more than 3 to 5 percent as its measure of significant economic impact on a substantial number of small entities.

The provisions in these proposed rules would affect health insurance issuers and providers that furnish contraceptive services (including clinicians, facilities, and pharmacies). Health insurance issuers would be classified under the North American Industry Classification System (NAICS) code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards, [175] entities with average annual receipts of $41.5 million or less are considered small entities for this NAICS code. Issuers could possibly be classified in 621491 (HMO Medical Centers) and, if this is the case, the SBA size standard would be $39 million or less. The Departments expect that few, if any, insurance companies underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) fall below these size thresholds. Based on data from medical loss ratio (MLR) annual report [176] submissions for the 2020 MLR reporting year, approximately 78 out of 481 issuers of health insurance coverage nationwide had total premium revenue of $41.5 million or less. This estimate may overstate the actual number of small health insurance companies that may be affected, since over 72 percent of these small companies belong to larger holding groups, and many, if not all, of these small companies are likely to have non-health lines of business that will result in their revenues exceeding $41.5 million. In addition, costs incurred by issuers would be offset by Federal payments in the form of user fee adjustments.

Clinicians and facilities would be classified under either NAICS code 621111 (Offices of Physicians) with a size standard of $14 million or less or NAICS code 621399 (Offices of All Other Miscellaneous Health Practitioners) with a size standard of $9 million or less. Facilities could also be classified under NAICS code 621410 (Family Planning Centers), with a size standard of $16.5 million or less. The Departments estimate that approximately 1,090 clinicians and facilities would participate in the individual contraceptive arrangement and would incur costs related to signing agreements with participating issuers, eligibility verification, and recordkeeping. Most, if not all, participating clinicians and facilities might be considered small entities. As discussed earlier in section VI.D of this preamble, these costs per clinician or facility are estimated to be approximately $10,895 annually [177] and would likely be accounted for in amounts submitted to participating issuers for reimbursement by the Federal Government. The Departments assume that clinicians or facilities would not participate in the individual contraceptive arrangement if it results in a decline in their revenues or profitability.

Pharmacies would be classified under NAICS code 446110 (Pharmacies and Drug Stores) with a size standard of $30 million or less. The Departments assume that 10 pharmacy chains would participate in the individual contraceptive arrangement and would incur costs related to signing agreements with participating issuers, eligibility verification, and recordkeeping. As discussed earlier in section VI.D of this preamble, these costs per pharmacy chain are estimated to be approximately $728,781 annually.[178] These costs would likely be accounted for in amounts submitted to participating issuers for reimbursement by the Federal Government. The major pharmacy chains would not fall below this size threshold. The Departments assume that independent pharmacies or small pharmacy chains would not participate in the individual contraceptive arrangement if it results in a decline in their revenues or profitability.

Therefore, the Departments do not anticipate that participation in the individual contraceptive arrangement would have a significant effect on a substantial number of small entities. The Departments seek comment on this analysis.

In addition, section 1102(b) of the Social Security Act requires HHS to prepare a regulatory impact analysis if a rule may have a significant economic 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. This rule is not subject to section 1102 of the Social Security Act, HHS does not expect that these proposed rules would have a significant economic impact on the operations of a substantial number of small rural hospitals. Some providers of contraceptive services might be affiliated with small rural hospitals, and these providers might choose to participate in the individual contraceptive arrangement and therefore incur related costs, which would ultimately be reimbursed by the Federal Government.

G. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a proposed rule or any final rule for which a general notice of proposed rulemaking was published that includes any Federal mandate that may result in expenditures in any 1 year by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2022, that threshold is approximately $165 million. As discussed earlier in section VI of this preamble, providers of contraceptive services and issuers that choose to participate in the individual contraceptive arrangement would incur costs to comply with the proposed provisions of these proposed rules,

[175] *https://www.sba.gov/document/support--table-size-standards,* as of October 2022.

[176] Available at *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.html.*

[177] Total administrative costs for 1,090 clinicians and facilities = $4,629,069 in administrative costs for signed agreements + $7,246,512 in administrative costs related to providing contraceptive services = $11,875,581. Average administrative costs for each clinician or facility = $10,895.

[178] Total administrative costs for 10 pharmacy chains = $41,300 in administrative costs for signed agreements + $7,246,512 in administrative costs related to providing contraceptive services = $7,287,812. Average administrative costs for each pharmacy chain = $728,781.

which would likely be reimbursed and ultimately incurred by the Federal Government. The Departments estimate the combined impact on State, local, or Tribal governments and the private sector would not be above the threshold.

H. Federalism

Executive Order 13132 outlines fundamental principles of federalism. It requires adherence to specific criteria by Federal agencies in formulating and implementing policies that have ''substantial direct effects'' on the states, the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the proposed rules.

The Departments do not anticipate that these proposed rules would have any federalism implications or limit the policy making discretion of the states, in compliance with the requirement of Executive Order 13132.

While developing this rule, the Departments attempted to balance the states' interests in regulating health insurance issuers with the need to ensure market stability. By doing so, the Departments complied with the requirements of Executive Order 13132.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Part 147

Aged, Citizenship and naturalization, Civil rights, Health care, Health insurance, Individuals with disabilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sex discrimination.

45 CFR Part 156

Administrative practice and procedure, Advertising, Advisory committees, Aged, Alaska, Brokers, Citizenship and naturalization, Civil rights, Conflicts of interests, Consumer protection, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organizations (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs-health, Medicaid, Organization and functions (Government agencies), Prescription drugs, Public assistance programs, Reporting and recordkeeping requirements, Sex discrimination, State and local governments, Sunshine Act, Technical assistance, Women, Youth.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 54 as follows:

PART 54—PENSION EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 54 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par 2.** Section 54.9815–2713 is amended by revising paragraphs (a)(1) introductory text and (a)(1)(iv) to read as follows:

§ 54.9815–2713 Coverage of preventive health services.

(a) * * *

(1) *In general.* Beginning at the time described in paragraph (b) of this section, a group health plan, or a health insurance issuer offering group health insurance coverage, must provide coverage for and must not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible) for—

* * * * *

(iv) With respect to women, such additional preventive care and screenings not described in paragraph (a)(1)(i) of this section as provided for in evidence-informed comprehensive guidelines supported by the Health Resources and Services Administration for purposes of section 2713(a)(4) of the Public Health Service Act, subject to 45 CFR 147.131 and 147.132.

* * * * *

■ **Par 3.** Section 54.9815–2713A is revised to read as follows:

§ 54.9815–2713A Alternate availability of certain preventive health services.

(a) *Organizations eligible for optional accommodations and individuals eligible for individual contraceptive arrangements.* (1) An eligible organization is an organization that meets the criteria of paragraphs (a)(1)(i) through (iii) of this section.

(i) The organization is an objecting entity described in 45 CFR 147.132(a)(1)(i) through (iii);

(ii) Notwithstanding its exempt status under 45 CFR 147.132(a), the organization voluntarily seeks to be considered an eligible organization to invoke the optional accommodation under paragraph (b) or (c) of this section; and

(iii) The organization self-certifies in the form and manner specified by the Secretary of Labor or provides notice to the Secretary of Health and Human Services as described in paragraph (b) or (c) of this section. To qualify as an eligible organization, the organization must make such self-certification or notice available for examination upon request by the first day of the first plan year to which the accommodation in paragraph (b) or (c) of this section applies. The self-certification or notice must be executed by a person authorized to make the certification or provide the notice on behalf of the organization and must be maintained in a manner consistent with the record retention requirements under section 107 of ERISA.

(2) An eligible organization may revoke its use of the accommodation under paragraph (b) or (c) of this section, and its issuer or third party administrator must provide participants and beneficiaries written notice of the revocation; the eligible organization's revocation of the accommodation will be effective no sooner than the first day of the first plan year that begins on or after 30 days after the date of the revocation.

(3) An eligible individual is an individual who—

(i) Is a participant or beneficiary enrolled in a group health plan established or maintained by an objecting entity described in 45 CFR 147.132(a) that, to the extent eligible, has not invoked the optional accommodation under paragraph (b) or (c) of this section; and

(ii) Confirms (such as by making an attestation) to a provider of contraceptive services that agrees to meet the conditions in paragraph (d)(1) of this section that the individual is enrolled in a group health plan or group health insurance coverage that does not provide coverage for all or a subset of contraceptive services as generally required under § 54.9815–2713(a)(1)(iv).

(b) *Optional accommodation—self-insured group health plans.* (1) A group health plan established or maintained by an eligible organization that provides benefits on a self-insured basis may voluntarily elect an optional accommodation under which its third party administrator(s) will provide or arrange payments for all or a subset of contraceptive services for one or more

plan years. To invoke the optional accommodation process:

(i) Except as provided in paragraph (b)(5) of this section, the eligible organization or its plan must contract with one or more third party administrators.

(ii) The eligible organization must provide either a copy of the self-certification to each third party administrator it contracts with to provide administrative services in connection with the plan or a notice to the Secretary of Health and Human Services that it is an eligible organization and of its objection as described in 45 CFR 147.132 to coverage of all or a subset of contraceptive services.

(A) When a copy of the self-certification is provided directly to a third party administrator, the self-certification must include a notice that obligations of the third party administrator are set forth in in 29 CFR 2510.3–16 and this section.

(B) When a notice is provided to the Secretary of Health and Human Services, the notice must include the name of the eligible organization; a statement that it objects as described in 45 CFR 147.132 to coverage of some or all contraceptive services (including an identification of the subset of contraceptive services the eligible organization objects to covering, if applicable), but that it would like to elect the optional accommodation process; the plan name and type (that is, whether it is student health insurance coverage within the meaning of 45 CFR 147.145(a) or a church plan within the meaning of section 414(e) or section 3(33) of ERISA); and the name and contact information for any of the plan's third party administrators. If there is a change in any of the information required to be included in the notice, the eligible organization must provide updated information to the Secretary of Health and Human Services for the optional accommodation process to remain in effect. The Department of Labor (working with the Department of Health and Human Services) will send a separate notification to each of the plan's third party administrators informing the third party administrator that the Secretary of Health and Human Services has received a notice under paragraph (b)(1)(ii) of this section and describing the obligations of the third party administrator under 29 CFR 2510.3–16(c) and this section.

(2) If a third party administrator receives a copy of the self-certification from an eligible organization or a notification from the Department of Labor, as described in paragraph (b)(1)(ii) of this section and is willing to enter into or remain in a contractual relationship with the eligible organization or its plan to provide administrative services for the plan, then the third party administrator will provide or arrange payments for contraceptive services, using one of the following methods—

(i) Provide payments for the contraceptive services for plan participants and beneficiaries without imposing any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries; or

(ii) Arrange for an issuer or other entity to provide payments for contraceptive services for plan participants and beneficiaries without imposing any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries.

(3) If a third party administrator provides or arranges payments for contraceptive services in accordance with either paragraph (b)(2)(i) or (ii) of this section, the costs of providing or arranging such payments may be reimbursed through an adjustment to the Federally-facilitated Exchange or State Exchange on the Federal platform user fees for a participating issuer pursuant to 45 CFR 156.50(d).

(4) A third party administrator may not require any documentation other than a copy of the self-certification from the eligible organization or notification from the Department of Labor described in paragraph (b)(1)(ii) of this section.

(5) Where an otherwise eligible organization does not contract with a third party administrator and it files a self-certification or notice under paragraph (b)(1)(ii) of this section, the obligations under paragraph (b)(2) of this section do not apply, and the otherwise eligible organization is not required to provide coverage or payments for contraceptive services to which it objects. The plan administrator for that otherwise eligible organization may, if it and the otherwise eligible organization choose, arrange for payments for contraceptive services from an issuer or other entity in accordance with paragraph (b)(2)(ii) of this section, and such issuer or other entity may receive reimbursements in accordance with paragraph (b)(3) of this section.

(6) Where an otherwise eligible organization is a church plan within the meaning of section 3(33) of ERISA or section 414(e) and it files a self-certification or notice under paragraph (b)(1)(ii) of this section, the obligations under paragraph (b)(2) of this section do not apply, and the otherwise eligible organization is under no requirement to provide coverage or payments for contraceptive services to which it objects. The third party administrator for that otherwise eligible organization may, if it and the otherwise eligible organization choose, provide or arrange payments for contraceptive services in accordance with paragraph (b)(2)(i) or (ii) of this section, and receive reimbursements in accordance with paragraph (b)(3) of this section.

(c) *Optional accommodation—insured group health plans*—(1) A group health plan established or maintained by an eligible organization that provides benefits through one or more group health insurance issuers may voluntarily elect an optional accommodation under which its health insurance issuer(s) will provide payments for all or a subset of contraceptive services for one or more plan years. To invoke the optional accommodation process:

(i) The eligible organization or its plan must contract with one or more health insurance issuers.

(ii) The eligible organization must provide either a copy of the self-certification to each issuer it contracts with to provide coverage in connection with the plan or a notice to the Secretary of Health and Human Services that it is an eligible organization and of its objection as described in 45 CFR 147.132 to coverage for all or a subset of contraceptive services.

(A) When a copy of the self-certification is provided directly to an issuer, the issuer has sole responsibility for providing such coverage in accordance with § 54.9815–2713(a)(1)(iv).

(B) When a notice is provided to the Secretary of Health and Human Services, the notice must include the name of the eligible organization; a statement that it objects as described in 45 CFR 147.132 to coverage of some or all contraceptive services (including an identification of the subset of contraceptive services to which coverage the eligible organization objects, if applicable), but that it would like to elect the optional accommodation process; the plan name and type (that is, whether it is student health insurance coverage within the meaning of 45 CFR 147.145(a) or a church plan within the meaning of

section 414(e) or section 3(33) of ERISA); and the name and contact information for any of the plan's health insurance issuers. If there is a change in any of the information required to be included in the notice, the eligible organization must provide updated information to the Secretary of Health and Human Services for the optional accommodation to remain in effect. The Department of Health and Human Services will send a separate notification to each of the plan's health insurance issuers informing the issuer that the Secretary of Health and Human Services has received a notice under paragraph (c)(1)(ii) of this section and describing the obligations of the issuer under this section.

(2) If an issuer receives a copy of the self-certification from an eligible organization or the notification from the Department of Health and Human Services as described in paragraph (c)(1)(ii) of this section and does not have an objection as described in 45 CFR 147.132 to providing the contraceptive services identified in the self-certification or the notification from the Department of Health and Human Services, the issuer will provide payments for contraceptive services as follows—

(i) The issuer must expressly exclude contraceptive coverage from the group health insurance coverage provided in connection with the group health plan and provide separate payments for any contraceptive services required to be covered under § 54.9815–2713(a)(1)(iv) for plan participants and beneficiaries for so long as they remain enrolled in the plan.

(ii) With respect to payments for contraceptive services, the issuer may not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries. The issuer must segregate premium revenue collected from the eligible organization from the monies used to provide payments for contraceptive services. The issuer must provide payments for contraceptive services in a manner that is consistent with the requirements under sections 2706, 2709, 2711, 2713, and 2719 of the PHS Act, as incorporated into section 9815, and section 9822. If the group health plan of the eligible organization provides coverage for some but not all of any contraceptive services required to be covered under § 54.9815–2713(a)(1)(iv), the issuer is required to provide payments only for those contraceptive services for which the group health plan does not provide coverage. However, the issuer may provide payments for all contraceptive services at the issuer's option.

(3) A health insurance issuer may not require any documentation other than a copy of the self-certification from the eligible organization or the notification from the Department of Health and Human Services described in paragraph (c)(1)(ii) of this section.

(d) *Notice of availability of separate payments for contraceptive services—self-insured and insured group health plans.* For each plan year to which the optional accommodation in paragraph (b) or (c) of this section is to apply, a third party administrator required to provide or arrange payments for contraceptive services pursuant to paragraph (b) of this section, and an issuer required to provide payments for contraceptive services pursuant to paragraph (c) of this section, must provide to plan participants and beneficiaries written notice of the availability of separate payments for contraceptive services contemporaneous with (to the extent possible), but separate from, any application materials distributed in connection with enrollment (or re-enrollment) in group health coverage that is effective beginning on the first day of each applicable plan year. The notice must specify that the eligible organization does not administer or fund contraceptive benefits, but that the third party administrator or issuer, as applicable, provides or arranges separate payments for contraceptive services, and must provide contact information for questions and complaints. The following model language, or substantially similar language, may be used to satisfy the notice requirement of this paragraph (d): ''Your employer has certified that your group health plan qualifies for an accommodation with respect to the Federal requirement to cover contraceptive services for women, including all Food and Drug Administration-approved, cleared, or granted contraceptives, as prescribed by a health care provider, without cost sharing. This means that your employer will not contract, arrange, pay, or refer for contraceptive coverage. Instead, [name of third party administrator/health insurance issuer] will provide separate payments for contraceptive services that you use, without cost sharing and at no other cost, for so long as you are enrolled in your group health plan. Your employer will not administer or fund these payments. If you have any questions about this notice, contact [contact information for third party administrator/health insurance issuer].''

(e) *Individual contraceptive arrangements for eligible individuals.* (1) An eligible individual may elect an individual contraceptive arrangement under which a willing provider of contraceptive services furnishes the eligible individual with contraceptive services that a group health plan or health insurance issuer would have been required to cover pursuant to § 54.9815–2713(a)(1)(iv), if not for the plan's or issuer's exempt status under 45 CFR 147.132(a). Under this individual contraceptive arrangement, the willing provider of contraceptive services must furnish contraceptive services (including items and services that are integral to the furnishing of the contraceptive services) to the eligible individual without imposing a fee or charge of any kind, directly or indirectly, on the eligible individual or any other entity for the cost of the items and services or any portion thereof, except that the provider of contraceptive services may seek payment from, and be reimbursed by, an issuer for the costs of providing the items and services through an adjustment to the issuer's Federally-facilitated Exchange or State Exchange on the Federal platform user fees pursuant to 45 CFR 156.50(d).

(2) The following language may, but is not required to, be used by a participant or beneficiary (or an authorized representative of a participant or beneficiary) to confirm to a provider of contraceptive services that the plan or coverage is sponsored, provided, or arranged by an objecting entity and does not provide coverage for all or a subset of contraceptive services as generally required under § 54.9815–2713(a)(1)(iv): ''I certify that I am enrolled (or am an authorized representative of a person who is enrolled) in an employer-sponsored health plan or health insurance coverage that does not provide coverage for all or a subset of contraceptive services as generally required under the Affordable Care Act.'' A participant or beneficiary (or an authorized representative of a participant or beneficiary) may use other means to confirm to a provider of contraceptive services that the plan or coverage is sponsored, provided, or arranged by an objecting entity and does not provide coverage for all or a subset of contraceptive services.

(f) *Reliance—insured group health plans.* (1) If an issuer reasonably and in good faith relies on a representation by an eligible organization indicating that the organization is eligible for the accommodation in paragraph (c) of this section, and the representation is later

determined to be incorrect, the issuer is considered to comply with any applicable requirement under § 54.9815–2713(a)(1)(iv) to provide contraceptive coverage if the issuer complies with the obligations under this section applicable to such issuer.

(2) A group health plan is considered to comply with any applicable requirement under § 54.9815–2713(a)(1)(iv) to provide contraceptive coverage if the plan complies with its obligations under paragraph (c) of this section, without regard to whether the issuer complies with the obligations under this section applicable to such issuer.

(g) *Definitions.* (1) For the purposes of this section, reference to ''contraceptive'' services, benefits, or coverage includes contraceptive or sterilization items, procedures, or services, or related patient education or counseling, to the extent specified for purposes of § 54.9815–2713(a)(1)(iv).

(2) For the purposes of this section, the term ''provider of contraceptive services'' means any health care provider (including a clinician, pharmacy, or other facility) acting within the scope of that provider's license, certification, or authority under applicable law to provide contraceptive services (as defined in paragraph (g)(1) of this section).

(h) *Severability.* Any provision of this section held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to continue to give maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

DEPARTMENT OF LABOR

Employee Benefits Security Administration

For the reasons stated in the preamble, the Department of Labor proposes to amend 29 CFR part 2590 as set forth below:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 4. The authority citation for part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a–n, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L.104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Division M, Pub. L. 113–235, 128 Stat. 2130; Pub. L. 116–260 134 Stat. 1182; Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012).

■ 5. Section 2590.715–2713 is amended by revising paragraphs (a)(1) introductory text and (a)(1)(iv) to read as follows:

§ 2590.715–2713 Coverage of preventive health services.

(a) * * *

(1) *In general.* Beginning at the time described in paragraph (b) of this section, a group health plan, or a health insurance issuer offering group health insurance coverage, must provide coverage for and must not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible) for—

* * * * *

(iv) With respect to women, such additional preventive care and screenings not described in paragraph (a)(1)(i) of this section as provided for in evidence-informed comprehensive guidelines supported by the Health Resources and Services Administration for purposes of section 2713(a)(4) of the Public Health Service Act, subject to 45 CFR 147.131 and 147.132; and

* * * * *

■ 6. Section 2590.715–2713A is revised to read as follows:

§ 2590.715–2713A Alternate availability of certain preventive health services.

(a) *Organizations eligible for optional accommodations and individuals eligible for individual contraceptive arrangements.*

(1) An eligible organization is an organization that meets the criteria of paragraphs (a)(1)(i) through (iii) of this section.

(i) The organization is an objecting entity described in 45 CFR 147.132(a)(1)(i) through (iii);

(ii) Notwithstanding its exempt status under 45 CFR 147.132(a), the organization voluntarily seeks to be considered an eligible organization to invoke the optional accommodation under paragraph (b) or (c) of this section; and

(iii) The organization self-certifies in the form and manner specified by the Secretary or provides notice to the Secretary of Health and Human Services as described in paragraph (b) or (c) of this section. To qualify as an eligible organization, the organization must make such self-certification or notice available for examination upon request by the first day of the first plan year to which the accommodation in paragraph (b) or (c) of this section applies. The self-certification or notice must be executed by a person authorized to make the certification or provide the notice on behalf of the organization and must be maintained in a manner consistent with the record retention requirements under section 107 of ERISA.

(2) An eligible organization may revoke its use of the accommodation under paragraph (b) or (c) of this section, and its issuer or third party administrator must provide participants and beneficiaries written notice of the revocation; the eligible organization's revocation of the accommodation will be effective no sooner than the first day of the first plan year that begins on or after 30 days after the date of the revocation.

(3) An eligible individual is an individual who—

(i) Is a participant or beneficiary enrolled in a group health plan established or maintained by an objecting entity described in 45 CFR 147.132(a) that, to the extent eligible, has not invoked the optional accommodation under paragraph (b) or (c) of this section; and

(ii) Confirms (such as by making an attestation) to a provider of contraceptive services that agrees to meet the conditions in paragraph (d)(1) of this section that the individual is enrolled in a group health plan or group health insurance coverage that does not provide coverage for all or a subset of contraceptive services as generally required under § 2590.715–2713(a)(1)(iv).

(b) *Optional accommodation—self-insured group health plans.* (1) A group health plan established or maintained by an eligible organization that provides benefits on a self-insured basis may voluntarily elect an optional accommodation under which its third party administrator(s) will provide or arrange payments for all or a subset of contraceptive services for one or more plan years. To invoke the optional accommodation process:

(i) Except as provided in paragraph (b)(5) of this section, the eligible organization or its plan must contract with one or more third party administrators.

(ii) The eligible organization must provide either a copy of the self-certification to each third party administrator it contracts with to provide administrative services in connection with the plan or a notice to the Secretary of Health and Human Services that it is an eligible

organization and of its objection as described in 45 CFR 147.132 to coverage of all or a subset of contraceptive services.

(A) When a copy of the self-certification is provided directly to a third party administrator, the self-certification must include a notice that obligations of the third party administrator are set forth in § 2510.3–16 of this chapter and this section.

(B) When a notice is provided to the Secretary of Health and Human Services, the notice must include the name of the eligible organization; a statement that it objects as described in 45 CFR 147.132 to coverage of some or all contraceptive services (including an identification of the subset of contraceptive services the eligible organization objects to covering, if applicable), but that it would like to elect the optional accommodation process; the plan name and type (that is, whether it is student health insurance coverage within the meaning of 45 CFR 147.145(a) or a church plan within the meaning of section 414(e) of the Internal Revenue Code or section 3(33) of ERISA); and the name and contact information for any of the plan's third party administrators. If there is a change in any of the information required to be included in the notice, the eligible organization must provide updated information to the Secretary of Health and Human Services for the optional accommodation process to remain in effect. The Department of Labor (working with the Department of Health and Human Services) will send a separate notification to each of the plan's third party administrators informing the third party administrator that the Secretary of Health and Human Services has received a notice under paragraph (b)(1)(ii) of this section and describing the obligations of the third party administrator under § 2510.3–16(c) of this chapter and this section.

(2) If a third party administrator receives a copy of the self-certification from an eligible organization or a notification from the Department of Labor, as described in paragraph (b)(1)(ii) of this section and is willing to enter into or remain in a contractual relationship with the eligible organization or its plan to provide administrative services for the plan, then the third party administrator will provide or arrange payments for contraceptive services, using one of the following methods—

(i) Provide payments for the contraceptive services for plan participants and beneficiaries without imposing any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries; or

(ii) Arrange for an issuer or other entity to provide payments for contraceptive services for plan participants and beneficiaries without imposing any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries.

(3) If a third party administrator provides or arranges payments for contraceptive services in accordance with either paragraph (b)(2)(i) or (ii) of this section, the costs of providing or arranging such payments may be reimbursed through an adjustment to the Federally-facilitated Exchange or State Exchange on the Federal platform user fees for a participating issuer pursuant to 45 CFR 156.50(d).

(4) A third party administrator may not require any documentation other than a copy of the self-certification from the eligible organization or notification from the Department of Labor described in paragraph (b)(1)(ii) of this section.

(5) Where an otherwise eligible organization does not contract with a third party administrator and it files a self-certification or notice under paragraph (b)(1)(ii) of this section, the obligations under paragraph (b)(2) of this section do not apply, and the otherwise eligible organization is not required to provide coverage or payments for contraceptive services to which it objects. The plan administrator for that otherwise eligible organization may, if it and the otherwise eligible organization choose, arrange for payments for contraceptive services from an issuer or other entity in accordance with paragraph (b)(2)(ii) of this section, and such issuer or other entity may receive reimbursements in accordance with paragraph (b)(3) of this section.

(c) *Optional accommodation—insured group health plans.* (1) A group health plan established or maintained by an eligible organization that provides benefits through one or more group health insurance issuers may voluntarily elect an optional accommodation under which its health insurance issuer(s) will provide payments for all or a subset of contraceptive services for one or more plan years. To invoke the optional accommodation process:

(i) The eligible organization or its plan must contract with one or more health insurance issuers.

(ii) The eligible organization must provide either a copy of the self-certification to each issuer it contracts with to provide coverage in connection with the plan or a notice to the Secretary of Health and Human Services that it is an eligible organization and of its objection as described in 45 CFR 147.132 to coverage for all or a subset of contraceptive services.

(A) When a copy of the self-certification is provided directly to an issuer, the issuer has sole responsibility for providing such coverage in accordance with § 2590.715–2713(a)(1)(iv).

(B) When a notice is provided to the Secretary of Health and Human Services, the notice must include the name of the eligible organization; a statement that it objects as described in 45 CFR 147.132 to coverage of some or all contraceptive services (including an identification of the subset of contraceptive services to which coverage the eligible organization objects, if applicable), but that it would like to elect the optional accommodation process; the plan name and type (that is, whether it is student health insurance coverage within the meaning of 45 CFR 147.145(a) or a church plan within the meaning of section 414(e) of the Internal Revenue Code or section 3(33) of ERISA); and the name and contact information for any of the plan's health insurance issuers. If there is a change in any of the information required to be included in the notice, the eligible organization must provide updated information to the Secretary of Health and Human Services for the optional accommodation to remain in effect. The Department of Health and Human Services will send a separate notification to each of the plan's health insurance issuers informing the issuer that the Secretary of Health and Human Services has received a notice under paragraph (c)(1)(ii) of this section and describing the obligations of the issuer under this section.

(2) If an issuer receives a copy of the self-certification from an eligible organization or the notification from the Department of Health and Human Services as described in paragraph (c)(1)(ii) of this section and does not have an objection as described in 45 CFR 147.132 to providing the contraceptive services identified in the self-certification or the notification from the Department of Health and Human Services, the issuer will provide

payments for contraceptive services as follows—

(i) The issuer must expressly exclude contraceptive coverage from the group health insurance coverage provided in connection with the group health plan and provide separate payments for any contraceptive services required to be covered under § 2590.715–2713(a)(1)(iv) for plan participants and beneficiaries for so long as they remain enrolled in the plan.

(ii) With respect to payments for contraceptive services, the issuer may not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries. The issuer must segregate premium revenue collected from the eligible organization from the monies used to provide payments for contraceptive services. The issuer must provide payments for contraceptive services in a manner that is consistent with the requirements under sections 2706, 2709, 2711, 2713, and 2719 of the PHS Act, as incorporated into section 715 of ERISA, and section 722 of ERISA. If the group health plan of the eligible organization provides coverage for some but not all of any contraceptive services required to be covered under § 2590.715–2713(a)(1)(iv), the issuer is required to provide payments only for those contraceptive services for which the group health plan does not provide coverage. However, the issuer may provide payments for all contraceptive services at the issuer's option.

(3) A health insurance issuer may not require any documentation other than a copy of the self-certification from the eligible organization or the notification from the Department of Health and Human Services described in paragraph (c)(1)(ii) of this section.

(d) *Notice of availability of separate payments for contraceptive services—self-insured and insured group health plans.* For each plan year to which the optional accommodation in paragraph (b) or (c) of this section is to apply, a third party administrator required to provide or arrange payments for contraceptive services pursuant to paragraph (b) of this section, and an issuer required to provide payments for contraceptive services pursuant to paragraph (c) of this section, must provide to plan participants and beneficiaries written notice of the availability of separate payments for contraceptive services contemporaneous with (to the extent possible), but separate from, any application materials distributed in connection with enrollment (or re-enrollment) in group health coverage that is effective beginning on the first day of each applicable plan year. The notice must specify that the eligible organization does not administer or fund contraceptive benefits, but that the third party administrator or issuer, as applicable, provides or arranges separate payments for contraceptive services, and must provide contact information for questions and complaints. The following model language, or substantially similar language, may be used to satisfy the notice requirement of this paragraph (d): ''Your employer has certified that your group health plan qualifies for an accommodation with respect to the Federal requirement to cover contraceptive services for women, including all Food and Drug Administration-approved, cleared, or granted contraceptives, as prescribed by a health care provider, without cost sharing. This means that your employer will not contract, arrange, pay, or refer for contraceptive coverage. Instead, [name of third party administrator/health insurance issuer] will provide separate payments for contraceptive services that you use, without cost sharing and at no other cost, for so long as you are enrolled in your group health plan. Your employer will not administer or fund these payments. If you have any questions about this notice, contact [contact information for third party administrator/health insurance issuer].''

(e) *Individual contraceptive arrangements for eligible individuals.* (1) An eligible individual may elect an individual contraceptive arrangement under which a willing provider of contraceptive services furnishes the eligible individual with contraceptive services that a group health plan or health insurance issuer would have been required to cover pursuant to § 2590.715–2713(a)(1)(iv), if not for the plan's or issuer's exempt status under 45 CFR 147.132(a). Under this individual contraceptive arrangement, the willing provider of contraceptive services must furnish contraceptive services (including items and services that are integral to the furnishing of the contraceptive services) to the eligible individual without imposing a fee or charge of any kind, directly or indirectly, on the eligible individual or any other entity for the cost of the items and services or any portion thereof, except that the provider of contraceptive services may seek payment from, and be reimbursed by, an issuer for the costs of providing the items and services through an adjustment to the issuer's Federally-facilitated Exchange or State Exchange on the Federal platform user fees pursuant to 45 CFR 156.50(d).

(2) The following language may, but is not required to, be used by a participant or beneficiary (or an authorized representative of a participant or beneficiary) to confirm to a provider of contraceptive services that the plan or coverage is sponsored, provided, or arranged by an objecting entity and does not provide coverage for all or a subset of contraceptive services as generally required under § 2590.715–2713(a)(1)(iv): ''I certify that I am enrolled (or am an authorized representative of a person who is enrolled) in an employer-sponsored health plan or health insurance coverage that does not provide coverage for all or a subset of contraceptive services as generally required under the Affordable Care Act.'' A participant or beneficiary (or an authorized representative of a participant or beneficiary) may use other means to confirm to a provider of contraceptive services that the plan or coverage is sponsored, provided, or arranged by an objecting entity and does not provide coverage for all or a subset of contraceptive services.

(f) *Reliance—insured group health plans.* (1) If an issuer reasonably and in good faith relies on a representation by an eligible organization indicating that the organization is eligible for the accommodation in paragraph (c) of this section, and the representation is later determined to be incorrect, the issuer is considered to comply with any applicable requirement under § 2590.715–2713(a)(1)(iv) to provide contraceptive coverage if the issuer complies with the obligations under this section applicable to such issuer.

(2) A group health plan is considered to comply with any applicable requirement under § 2590.715–2713(a)(1)(iv) to provide contraceptive coverage if the plan complies with its obligations under paragraph (c) of this section, without regard to whether the issuer complies with the obligations under this section applicable to such issuer.

(g) *Definitions.* (1) For the purposes of this section, reference to ''contraceptive'' services, benefits, or coverage includes contraceptive or sterilization items, procedures, or services, or related patient education or counseling, to the extent specified for purposes of § 2590.715–2713(a)(1)(iv).

(2) For the purposes of this section, the term ''provider of contraceptive services'' means any health care provider (including a clinician, pharmacy, or other facility) acting

within the scope of that provider's license, certification, or authority under applicable law to provide contraceptive services (as defined in paragraph (g)(1) of this section).

(h) *Severability.* Any provision of this section held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to continue to give maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR parts 147 and 156 as set forth below:

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 7. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300gg through 300gg–63, 300gg–91, 300gg–92, and 300gg–111 through 300gg–139, as amended, and section 3203, Pub. L. 116–136, 134 Stat. 281.

■ 8. Section 147.130 is amended by revising paragraphs (a)(1) introductory text and (a)(1)(iv) to read as follows:

§ 147.130 Coverage of preventive health services.

(a) * * *

(1) *In general.* Beginning at the time described in paragraph (b) of this section, a group health plan, or a health insurance issuer offering group or individual health insurance coverage, must provide coverage for and must not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible) for—

* * * * *

(iv) With respect to women, such additional preventive care and screenings not described in paragraph (a)(1)(i) of this section as provided for in evidence-informed comprehensive guidelines supported by the Health Resources and Services Administration for purposes of section 2713(a)(4) of the Public Health Service Act, subject to §§ 147.131 and 147.132; and

* * * * *

■ 9. Section 147.131 is revised to read as follows:

§ 147.131 Alternate availability of certain preventive health services.

(a) *Organizations eligible for optional accommodations and individuals eligible for individual contraceptive arrangements.* (1) An eligible organization is an organization that meets the criteria of paragraphs (a)(1)(i) through (iii) of this section.

(i) The organization is an objecting entity described in § 147.132(a)(1)(i) through (iii);

(ii) Notwithstanding its exempt status under § 147.132(a), the organization voluntarily seeks to be considered an eligible organization to invoke the optional accommodation under paragraph (b) of this section; and

(iii) The organization self-certifies in the form and manner specified by the Secretary of Health and Human Services or provides notice to the Secretary of Health and Human Services as described in paragraph (b) of this section. To qualify as an eligible organization, the organization must make such self-certification or notice available for examination upon request by the first day of the first plan year to which the accommodation in paragraph (b) of this section applies. The self-certification or notice must be executed by a person authorized to make the certification or provide the notice on behalf of the organization and must be maintained in a manner consistent with the record retention requirements under section 107 of ERISA.

(2) An eligible organization may revoke its use of the accommodation under paragraph (b) of this section, and its issuer must provide participants and beneficiaries written notice of the revocation; the eligible organization's revocation of the accommodation will be effective no sooner than the first day of the first plan year that begins on or after 30 days after the date of the revocation.

(3) An eligible individual is an individual who—

(i) Is a participant or beneficiary enrolled in a group health plan established or maintained, or an enrollee in individual health insurance coverage offered or arranged, by an objecting entity described in § 147.132(a) that, to the extent eligible, has not invoked the optional accommodation under paragraph (b) of this section; and

(ii) Confirms (such as by making an attestation) to a provider of contraceptive services that agrees to meet the conditions in paragraph (d)(1) of this section that the individual is enrolled in a group health plan or group or individual health insurance coverage that does not provide coverage for all or a subset of contraceptive services as generally required under § 147.130(a)(1)(iv).

(b) *Optional accommodation—insured group health plans.* (1) A group health plan established or maintained by an eligible organization that provides benefits through one or more group health insurance issuers may voluntarily elect an optional accommodation under which its health insurance issuer(s) will provide payments for all or a subset of contraceptive services for one or more plan years. To invoke the optional accommodation process:

(i) The eligible organization or its plan must contract with one or more health insurance issuers.

(ii) The eligible organization must provide either a copy of the self-certification to each issuer it contracts with to provide coverage in connection with the plan or a notice to the Secretary of Health and Human Services that it is an eligible organization and of its objection as described in § 147.132 to coverage for all or a subset of contraceptive services.

(A) When a copy of the self-certification is provided directly to an issuer, the issuer has sole responsibility for providing such coverage in accordance with § 147.130(a)(1)(iv).

(B) When a notice is provided to the Secretary of Health and Human Services, the notice must include the name of the eligible organization; a statement that it objects as described in § 147.132 to coverage of some or all contraceptive services (including an identification of the subset of contraceptive services to which coverage the eligible organization objects, if applicable), but that it would like to elect the optional accommodation process; the plan name and type (that is, whether it is student health insurance coverage within the meaning of § 147.145(a) or a church plan within the meaning of section 3(33) of ERISA or section 414(e) of the Internal Revenue Code); and the name and contact information for any of the plan's health insurance issuers. If there is a change in any of the information required to be included in the notice, the eligible organization must provide updated information to the Secretary of Health and Human Services for the optional accommodation to remain in effect. The Department of Health and Human Services will send a separate notification to each of the plan's health insurance issuers informing the issuer that the Secretary of Health and Human Services has received a notice under paragraph (b)(1)(ii) of this section and

describing the obligations of the issuer under this section.

(2) If an issuer receives a copy of the self-certification from an eligible organization or the notification from the Department of Health and Human Services as described in paragraph (b)(1)(ii) of this section and does not have an objection as described in § 147.132 to providing the contraceptive services identified in the self-certification or the notification from the Department of Health and Human Services, the issuer will provide payments for contraceptive services as follows—

(i) The issuer must expressly exclude contraceptive coverage from the group health insurance coverage provided in connection with the group health plan and provide separate payments for any contraceptive services required to be covered under § 147.130(a)(1)(iv) for plan participants and beneficiaries for so long as they remain enrolled in the plan.

(ii) With respect to payments for contraceptive services, the issuer may not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries. The issuer must segregate premium revenue collected from the eligible organization from the monies used to provide payments for contraceptive services. The issuer must provide payments for contraceptive services in a manner that is consistent with the requirements under sections 2706, 2709, 2711, 2713, 2719, and 2799A–7 of the PHS Act. If the group health plan of the eligible organization provides coverage for some but not all of any contraceptive services required to be covered under § 147.130(a)(1)(iv), the issuer is required to provide payments only for those contraceptive services for which the group health plan does not provide coverage. However, the issuer may provide payments for all contraceptive services at the issuer's option.

(3) A health insurance issuer may not require any documentation other than a copy of the self-certification from the eligible organization or the notification from the Department of Health and Human Services described in paragraph (b)(1)(ii) of this section.

(c) *Notice of availability of separate payments for contraceptive services—insured group health plans and student health insurance coverage.* For each plan year to which the optional accommodation in paragraph (b) of this section is to apply, an issuer required to provide payments for contraceptive services pursuant to paragraph (b) of this section must provide to plan participants and beneficiaries written notice of the availability of separate payments for contraceptive services contemporaneous with (to the extent possible), but separate from, any application materials distributed in connection with enrollment (or re-enrollment) in group health coverage that is effective beginning on the first day of each applicable plan year. The notice must specify that the eligible organization does not administer or fund contraceptive benefits, but that the issuer provides separate payments for contraceptive services, and must provide contact information for questions and complaints. The following model language, or substantially similar language, may be used to satisfy the notice requirement of this paragraph (c): ''Your [employer/institution of higher education] has certified that your [group health plan/student health insurance coverage] qualifies for an accommodation with respect to the Federal requirement to cover contraceptive services for women, including all Food and Drug Administration-approved, cleared, or granted contraceptives, as prescribed by a health care provider, without cost sharing. This means that your [employer/institution of higher education] will not contract, arrange, pay, or refer for contraceptive coverage. Instead, [name of health insurance issuer] will provide separate payments for contraceptive services that you use, without cost sharing and at no other cost, for so long as you are enrolled in your [group health plan/student health insurance coverage]. Your [employer/institution of higher education] will not administer or fund these payments. If you have any questions about this notice, contact [contact information for health insurance issuer].''

(d) *Individual contraceptive arrangements for eligible individuals.* (1) An eligible individual may elect an individual contraceptive arrangement under which a willing provider of contraceptive services furnishes the eligible individual with contraceptive services that a group health plan or health insurance issuer would have been required to cover pursuant to § 147.130(a)(1)(iv), if not for the plan's or issuer's exempt status under § 147.132(a). Under this individual contraceptive arrangement, the willing provider of contraceptive services must furnish contraceptive services (including items and services that are integral to the furnishing of the contraceptive services) to the eligible individual without imposing a fee or charge of any kind, directly or indirectly, on the eligible individual or any other entity for the cost of the items and services or any portion thereof, except that the provider of contraceptive services may seek payment from, and be reimbursed by, an issuer for the costs of providing the items and services through an adjustment to the issuer's federally-facilitated Exchange or State Exchange on the Federal platform user fees pursuant to § 156.50(d) of this subchapter.

(2) The following language may, but is not required to, be used by a participant, beneficiary, or enrollee (or an authorized representative of a participant, beneficiary, or enrollee) to confirm to a provider of contraceptive services that the plan or coverage is sponsored, provided, or arranged by an objecting entity and does not provide coverage for all or a subset of contraceptive services as generally required under § 147.130(a)(1)(iv): ''I certify that I am enrolled (or am an authorized representative of a person who is enrolled) in an employer-sponsored health plan or individual health insurance coverage that does not provide coverage for all or a subset of contraceptive services as generally required under the Affordable Care Act.'' A participant, beneficiary, or enrollee (or an authorized representative of a participant, beneficiary, or enrollee) may use other means to confirm to a provider of contraceptive services that the plan or coverage is sponsored, provided, or arranged by an objecting entity and does not provide coverage for all or a subset of contraceptive services.

(e) *Reliance.* (1) If an issuer reasonably and in good faith relies on a representation by an eligible organization indicating that the organization is eligible for the accommodation in paragraph (b) of this section, and the representation is later determined to be incorrect, the issuer is considered to comply with any applicable requirement under § 147.130(a)(1)(iv) to provide contraceptive coverage if the issuer complies with the obligations under this section applicable to such issuer.

(2) A group health plan is considered to comply with any applicable requirement under § 147.130(a)(1)(iv) to provide contraceptive coverage if the plan complies with its obligations under paragraph (b) of this section, without regard to whether the issuer complies with the obligations under this section applicable to such issuer.

(f) *Rule of construction.* In the case of student health insurance coverage, this section is applicable in the same manner as it is applicable to group health insurance coverage provided in connection with a group health plan established or maintained by a plan sponsor that is an employer, and references to ''plan participants and beneficiaries'' will be interpreted as references to student enrollees and their covered dependents.

(g) *Definitions.* (1) For the purposes of this section, reference to ''contraceptive'' services, benefits, or coverage includes contraceptive or sterilization items, procedures, or services, or related patient education or counseling, to the extent specified for purposes of § 147.130(a)(1)(iv).

(2) For the purposes of this section, the term ''provider of contraceptive services'' means any health care provider (including a clinician, pharmacy, or other facility) acting within the scope of that provider's license, certification, or authority under applicable law to provide contraceptive services (as defined in paragraph (g)(1) of this section).

(h) *Severability.* Any provision of this section held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to continue to give maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

■ 10. Section 147.132 is amended by revising paragraphs (a)(1)(i) introductory text, (a)(1)(iv), and (b) to read as follows:

§ 147.132 Religious exemptions in connection with coverage of certain preventive health services.

(a) * * *

(1) * * *

(i) A group health plan and health insurance coverage provided in connection with a group health plan, to the extent the non-governmental sponsor of the plan or coverage objects as specified in paragraph (a)(2) of this section. Such non-governmental plan sponsors include the following entities—

* * * * *

(iv) A health insurance issuer offering group or individual health insurance coverage to the extent the issuer objects as specified in paragraph (a)(2) of this section. Where a health insurance issuer providing group health insurance coverage is exempt under this paragraph (a)(1)(iv), the group health plan established or maintained by the plan sponsor with which the health insurance issuer contracts remains subject to any requirement to provide coverage for contraceptive services under guidelines issued under § 147.130(a)(1)(iv) unless it is also exempt from that requirement. Notwithstanding §§ 146.150 of this subchapter and 147.104, a health insurance issuer may not offer coverage that excludes some or all contraceptive services to any entity or individual that is not an objecting entity or objecting individual under paragraph (a) or (b) of this section, respectively.

* * * * *

(b) *Objecting individuals.* (1) Guidelines issued under § 147.130(a)(1)(iv) by the Health Resources and Services Administration must not provide for or support the requirement of coverage or payments for contraceptive services with respect to an individual who objects to coverage or payments for some or all contraceptive services based on sincerely held religious beliefs. Thus, the following entities will be exempt from any Health Resources and Services Administration guidelines requirements that relate to the provision of contraceptive services with respect to such an individual:

(i) A health insurance issuer offering group or individual health insurance coverage willing to provide the plan sponsor (with respect to the individual) or individual, as applicable, with a separate policy, certificate, or contract of insurance; or

(ii) A group health plan willing to provide the individual a separate group health plan or benefit package option.

(2) For purposes of this paragraph (b), if an individual objects to some but not all contraceptive services and the issuer, to the extent permitted by applicable State law, and the plan sponsor, as applicable, are willing to provide the plan sponsor or individual, as applicable, with a separate policy, certificate or contract of insurance or a separate group health plan or benefit package option that omits all contraceptives, and the individual agrees, then the exemption applies as if the individual objects to all contraceptive services.

* * * * *

§ 147.133 [Removed]

■ 11. Section 147.133 is removed.

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 12. The authority citation for part 156 continues to read as follows:

Authority: 42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, and 26 U.S.C. 36B.

■ 13. Section 156.50 is amended in paragraph (a) by adding the definition of ''provider of contraceptive services'' in alphabetical order and revising paragraph (d) to read as follows:

§ 156.50 Financial support.

(a) * * *

Provider of contraceptive services has the meaning given to the term in § 147.131(g)(2) of this subchapter.

* * * * *

(d) *Adjustment of Exchange user fees.* (1) A participating issuer offering a plan through a Federally-facilitated Exchange or State Exchange on the Federal platform may qualify for an adjustment of the federally-facilitated Exchange user fee specified in paragraph (c)(1) of this section or the State Exchange on the Federal platform user fee specified in paragraph (c)(2) of this section, to the extent that the participating issuer—

(i) Made payments for contraceptive services on behalf of a third party administrator pursuant to 26 CFR 54.9815–2713A(b)(2)(ii) or 29 CFR 2590.715–2713A(b)(2)(ii);

(ii) Seeks an adjustment in the Federally-facilitated Exchange user fee or State Exchange on the Federal platform user fee with respect to a third party administrator that, following receipt of a copy of the self-certification referenced in 26 CFR 54.9815–2713A(a)(1)(iii) or 29 CFR 2590.715–2713A(a)(1)(iii), made or arranged for payments for contraceptive services pursuant to 26 CFR 54.9815–2713A(b)(2)(i) or (ii) or 29 CFR 2590.715–2713A(b)(2)(i) or (ii); or

(iii) Seeks an adjustment in the federally-facilitated Exchange user fee or State Exchange on the Federal platform user fee with respect to a provider of contraceptive services that, following receipt of a representation by or on behalf of an individual that the individual is an eligible individual (as defined in 26 CFR 54.9815–2713A(a)(3), 29 CFR 2590.715–2713A(a)(3), or § 147.131(a)(3) of this subchapter), furnished contraceptive services to the eligible individual, without imposing a fee or charge of any kind, directly or indirectly, on the eligible individual or any other entity for the cost of the items

and services or any portion thereof pursuant to 26 CFR 54.9815–2713A(e), 29 CFR 2590.715–2713A(e), or § 147.131(d) of this subchapter.

(2) For a participating issuer described in paragraph (d)(1) of this section to receive an adjustment of a user fee under this section—

(i) The participating issuer must submit to HHS, in the manner and timeframe specified by HHS, in the year immediately following the calendar year in which the contraceptive services for which payments pursuant to 26 CFR 54.9815–2713A(b)(2) or (e), 29 CFR 2590.715–2713A(b)(2) or (e), or § 147.131(d) of this subchapter were provided—

(A) Identifying information for the participating issuer and each third party administrator that received a copy of the self-certification referenced in 26 CFR 54.9815–2713A(a)(1)(iii) or 29 CFR 2590.715–2713A(a)(1)(iii), whether or not the participating issuer was the entity that made the payments for contraceptive services, and each provider of contraceptive services that furnished contraceptive services in compliance with 26 CFR 54.9815–2713A(e), 29 CFR 2590.715–2713A(e), or 45 CFR 147.131(d) to an eligible individual (as defined in 26 CFR 54.9815–2713A(a)(3), 29 CFR 2590.715–2713A(a)(3), or § 147.131(a)(3) of this subchapter), with respect to which the participating issuer seeks an adjustment of the user fee specified in paragraph (c)(1) or (2) of this section, as applicable;

(B) Identifying information for each self-insured group health plan with respect to which a copy of the self-certification referenced in 26 CFR 54.9815–2713A(a)(1)(iii) or 29 CFR 2590.715–2713A(a)(1)(iii) was received by a third party administrator, and with respect to which the participating issuer seeks an adjustment of the user fee specified in paragraph (c)(1) or (2) of this section, as applicable;

(C) For each such self-insured group health plan, the total dollar amount of the payments that were made pursuant to 26 CFR 54.9815–2713A(b)(2) or 29 CFR 2590.715–2713A(b)(2) for contraceptive services that were provided during the applicable calendar year. If such payments were made by the participating issuer directly as described in paragraph (d)(1)(i) of this section, the total dollar amount should reflect the amount of the payments made by the participating issuer; if the third party administrator made or arranged for such payments, as described in paragraph (d)(1)(ii) of this section, the total dollar amount should reflect the amount reported to the participating issuer by the third party administrator;

(D) Documentation, with respect to each provider of contraceptive services, demonstrating that the participating issuer and the provider of contraceptive services have a signed written agreement providing that the participating issuer will reimburse (or has reimbursed) the provider of contraceptive services for the costs of furnishing contraceptive services during the applicable calendar year in compliance with 26 CFR 54.9815–2713A(e), 29 CFR 2590.715–2713A(e), or § 147.131(d) of this subchapter, and will seek an adjustment of the user fee specified in paragraph (c)(1) or (2) of this section as a result of the agreement to reimburse the provider's costs under 26 CFR 54.9815–2713A(e), 29 CFR 2590.715–2713A(e), or § 147.131(d) of this subchapter; and

(E) For each provider of contraceptive services as specified in paragraph (d)(2)(i)(A) of this section, the total dollar amount of the costs of furnishing contraceptive services during the applicable calendar year pursuant to 26 CFR 54.9815–2713A(e), 29 CFR 2590.715–2713A(e), or § 147.131(d) of this subchapter.

(ii) Each third party administrator that intends to seek an adjustment on behalf of a participating issuer of the Federally-facilitated Exchange user fee or the State-based Exchange on the Federal platform user fee based on payments for contraceptive services, must submit to HHS a notification of such intent, in a manner specified by HHS, by the 60th calendar day following the date on which the third party administrator receives the applicable copy of the self-certification referenced in 26 CFR 54.9815–2713A(a)(1)(iii) or 29 CFR 2590.715–2713A(a)(1)(iii).

(iii) Each third party administrator identified in paragraph (d)(2)(i)(A) of this section must submit to HHS, in the manner and timeframe specified by HHS, in the year following the calendar year in which the contraceptive services for which payments were made pursuant to 26 CFR 54.9815–2713A(b)(2) or 29 CFR 2590.715–2713A(b)(2) were provided—

(A) Identifying information for the third party administrator and the participating issuer;

(B) Identifying information for each self-insured group health plan with respect to which a copy of the self-certification referenced in 26 CFR 54.9815–2713A(a)(1)(iii) or 29 CFR 2590.715–2713A(a)(1)(iii) was received by the third party administrator and with respect to which the participating issuer seeks an adjustment of the user fee specified in paragraph (c)(1) or (2) of this section, as applicable;

(C) The total number of participants and beneficiaries in each such self-insured group health plan during the applicable calendar year; and

(D) For each such self-insured group health plan with respect to which the third party administrator made payments pursuant to 26 CFR 54.9815–2713A(b)(2) or 29 CFR 2590.715–2713A(b)(2) for contraceptive services, the total dollar amount of such payments that were provided during the applicable calendar year. If such payments were made by the participating issuer directly as described in paragraph (d)(1)(i) of this section, the total dollar amount should reflect the amount reported to the third party administrator by the participating issuer; if the third party administrator made or arranged for such payments, as described in paragraph (d)(1)(ii) of this section, the total dollar amount should reflect the amount of the payments made by or on behalf of the third party administrator.

(E) An attestation that the payments for contraceptive services were made in compliance with 26 CFR 54.9815–2713A(b)(2) or 29 CFR 2590.715–2713A(b)(2).

(3) If the requirements set forth in paragraph (d)(2) of this section are met, the participating issuer will be provided a reduction in its obligation to pay the user fee specified in paragraph (c)(1) or (2) of this section, as applicable, equal in value to the sum of the following:

(i) The total dollar amount of the payments for contraceptive services submitted by the applicable third party administrators, as described in paragraph (d)(2)(iii)(D) of this section;

(ii) The total dollar amount of the costs of furnishing contraceptive services submitted by the participating issuer on behalf of applicable providers of contraceptive services, described in paragraph (d)(2)(i)(E) of this section; and

(iii) An allowance for administrative costs and margin. The allowance will be no less than 10 percent of the total dollar amount of the payments for contraceptive services and the costs of furnishing contraceptive services specified in paragraphs (d)(3)(i) and (d)(3)(ii) of this section. Unless a new allowance is specified for an applicable year in the HHS notice of benefit and payment parameters or other rulemaking, HHS will maintain the allowance that was last specified in rulemaking.

(4) If the amount of the adjustment under paragraph (d)(3) of this section is greater than the amount of the participating issuer's obligation to pay

the user fee specified in paragraph (c)(1) or (2) of this section, as applicable, in a particular month, the participating issuer will be provided a credit in succeeding months in the amount of the excess.

(5) The participating issuer may reimburse each third party administrator and provider of contraceptive services for payments for contraceptive services submitted by the third party administrator or the provider of contraceptive services' costs of furnishing contraceptive services, as described in paragraphs (d)(2)(iii)(D) and (d)(2)(i)(E) of this section, as soon as the services are delivered. The participating issuer must pay, within 60 days of receipt of any adjustment of a user fee under this section, each third party administrator and provider of contraceptive services with respect to which it received any portion of such adjustment an amount that is no less than the portion of the adjustment attributable to the total dollar amount of the payments for services submitted by the third party administrator or the provider of contraceptive services' costs of furnishing contraceptive services, as described in paragraphs (d)(2)(iii)(D) and (d)(2)(i)(E) of this section. No payment to a third administrator or provider of contraceptive services is required with respect to the allowance for administrative costs and margin described in paragraph (d)(3)(iii) of this section. This paragraph does not apply if the participating issuer made the payments for contraceptive services on behalf of the third party administrator, as described in paragraph (d)(1)(i) of this section, or is in the same issuer group as the third party administrator.

(6) A participating issuer that receives an adjustment in the user fee specified in paragraph (c)(1) or (2) of this section for a particular calendar year must maintain for 10 years following that year, and make available upon request to HHS, the Office of the Inspector General, the Comptroller General, and their designees, documentation demonstrating that it timely paid each third party administrator and provider with respect to which it received any such adjustment any amount required to be paid to the third party administrator or provider under paragraph (d)(5) of this section.

(7) A third party administrator of a plan with respect to which an adjustment of the user fee specified in paragraph (c)(1) or (2) of this section is received under this section for a particular calendar year must maintain for 10 years following that year, and make available upon request to HHS, the Office of the Inspector General, the Comptroller General, and their designees, all of the following documentation:

(i) A copy of the self-certification referenced in 26 CFR 54.9815–2713A(a)(1)(iii) or 29 CFR 2590.715–2713A(a)(1)(iii) for each self-insured plan with respect to which an adjustment is received.

(ii) Documentation demonstrating that the payments for contraceptive services were made in compliance with 26 CFR 54.9815–2713A(b)(2) or 29 CFR 2590.715–2713A(b)(2).

(iii) Documentation supporting the total dollar amount of the payments for contraceptive services submitted by the third party administrator, as described in paragraph (d)(2)(iii)(D) of this section.

(8) A provider of contraceptive services that has furnished contraceptive services in compliance with the individual contraceptive arrangement, with respect to which a participating issuer received an adjustment of the user fee specified in paragraph (c)(1) or (2) of this section for a particular calendar year must, as a condition of participating in the individual contraceptive arrangement, maintain for 10 years following the contraceptive service being provided, and make available upon request to HHS, the Office of the Inspector General, the Comptroller General, and their designees, all of the following documentation:

(i) Documentation demonstrating that the provider of contraceptive services furnished contraceptive services in compliance with 26 CFR 54.9815–2713A(e), 29 CFR 2590.715–2713A(e), or § 147.131(d) of this subchapter.

(ii) Documentation supporting the total dollar amount of the costs of furnishing contraceptive services submitted by the provider of contraceptive services under paragraph (d)(2)(i)(E) of this section.

(9) If a provider of contraceptive services relies reasonably and in good faith on a representation by or on behalf of an individual that the individual is an eligible individual (as defined in 26 CFR 54.9815–2713A(a)(3), 29 CFR 2590.715–2713A(a)(3), or § 147.131(a)(3) of this subchapter), and the representation is later determined to be incorrect, the provider of contraceptive services is considered to comply with the applicable requirements under paragraphs (d)(1)(iii), (d)(2)(i)(A), and (d)(8)(i) of this section.

(10) If a participating issuer relies reasonably and in good faith on a representation by a provider of contraceptive services that the provider of contraceptive services furnished contraceptive services to an eligible individual (as defined in 26 CFR 54.9815–2713A(a)(3), 29 CFR 2590.715–2713A(a)(3), or § 147.131(a)(3) of this subchapter), without imposing a fee or charge of any kind, directly or indirectly, on the eligible individual or any other entity for the cost of the items and services or any portion thereof, and the representation that the provider of contraceptive services received from or on behalf of the individual is later determined to be incorrect, the participating issuer is considered to comply with the applicable requirements under paragraphs (d)(1)(iii) and (d)(2)(i)(A) of this section.

(11) If a participating issuer relies reasonably and in good faith on a representation by a provider of contraceptive services that the provider of contraceptive services furnished contraceptive services to an eligible individual (as defined in 26 CFR 54.9815–2713A(a)(3), 29 CFR 2590.715–2713A(a)(3), or § 147.131(a)(3) of this subchapter), without imposing a fee or charge of any kind, directly or indirectly, on the eligible individual or any other entity for the cost of the items and services or any portion thereof, and the representation by the provider of contraceptive services is determined to be incorrect after the participating issuer has paid the provider of contraceptive services the amount described in (d)(2)(i)(E) of this section, the participating issuer is considered to comply with the applicable requirements under paragraphs (d)(1)(iii) and (d)(2)(i)(A) of this section.

Melanie R. Krause,

Acting Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Xavier Becerra,

Secretary, Department of Health and Human Services.

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Part V

Department of Energy

10 CFR Part 430

Energy Conservation Program: Energy Conservation Standards for External Power Supplies; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2020–BT–STD–0006]

RIN 1904–AD87

Energy Conservation Program: Energy Conservation Standards for External Power Supplies

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

ACTION: 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 external power supplies (''EPSs''). 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 notice of proposed rulemaking (''NOPR''), DOE proposes amended energy conservation standards for EPSs, 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 Wednesday, March 1, 2023, from 1:00 p.m. to 4:00 p.m. See section VII, ''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 NOPR 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 6, 2023.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov,* under docket number EERE–2020–BT–STD–0006. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–STD–0006, by any of the following methods:

Email: EPS2020STD006@ee.doe.gov. Include the docket number EERE–2020–BT–STD–0006 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-2020-BT-STD-0006.* 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 rule.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Nolan Brickwood, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–4498. Email: *Nolan.Brickwood@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: DOE proposes to incorporate by reference the following industry standard in part 430:

International Efficiency Marking Protocol for External Power Supplies, Version 4.0, January, 2023.

The above referenced document has been added to the docket for this rulemaking and can be downloaded from Docket EERE–2020–BT–STD–0006 on *Regulations.gov.*

For a further discussion of this standard, see section VI.M of this document.

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I. Synopsis of the Proposed Rule

Title III, Part B [1] of EPCA,[2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include external power supplies (''EPSs''), 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 6 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 amended energy conservation standards for EPSs. The proposed standards, which are expressed in percentage and Watts (''W''), are shown in Table I.1. These proposed standards, if adopted, would apply to all EPSs listed in Table I.1 manufactured in, or imported into, the United States starting on the date 2 years after the publication of the final rule for this rulemaking.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR EXTERNAL POWER SUPPLIES

Nameplate output power (P_{out})	Minimum average efficiency in active mode (expressed as a decimal)	Maximum power in no-load mode [W]
Single-Voltage External AC–DC Power Supply, Basic-Voltage		
$P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.169$	≤0.075
1 W < $P_{out} \leq 49$ W	$\geq 0.071 \times \ln(P_{out}) - 0.00115 \times P_{out} + 0.67$	≤0.075
49 W < $P_{out} \leq 250$ W	≥0.890	≤0.150

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

[2] 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.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR EXTERNAL POWER SUPPLIES—Continued

Nameplate output power (P_{out})	Minimum average efficiency in active mode (expressed as a decimal)	Maximum power in no-load mode [W]
P_{out} > 250 W	≥0.890	≤0.150
Single-Voltage External AC–DC Power Supply, Low-Voltage		
$P_{out} \leq 1$ W	$\geq 0.517 \times P_{out} + 0.091$	≤0.075
1 W < $P_{out} \leq 49$ W	$\geq 0.0834 \times \ln(P_{out}) - 0.0011 \times P_{out} + 0.609$	≤0.075
49 W < $P_{out} \leq 250$ W	≥0.880	≤0.150
P_{out} > 250 W	≥0.880	≤0.150
Single-Voltage External AC–AC Power Supply, Basic-Voltage		
$P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.169$	≤0.075
1 W < $P_{out} \leq 49$ W	$\geq 0.0582 \times \ln(P_{out}) - 0.00104 \times P_{out} + 0.727$	≤0.075
49 W < $P_{out} \leq 250$ W	≥0.902	≤0.075
P_{out} > 250 W	≥0.902	≤0.200
Single-Voltage External AC–AC Power Supply, Low-Voltage		
$P_{out} \leq 1$ W	$\geq 0.517 \times P_{out} + 0.091$	≤0.072
1 W < $P_{out} \leq 49$ W	$\geq 0.0834 \times \ln(P_{out}) - 0.0011 \times P_{out} + 0.609$	≤0.072
49 W < $P_{out} \leq 250$ W	≥0.880	≤0.185
P_{out} > 250 W	≥0.880	≤0.500
Multiple-Voltage External Power Supply		
$P_{out} \leq 1$ W	$\geq 0.497 \times P_{out} + 0.067$	≤0.075
1 W < $P_{out} \leq 49$ W	$\geq 0.0782 \times \ln(P_{out}) - 0.0013 \times P_{out} + 0.643$	≤0.075
49 W < $P_{out} \leq 250$ W	≥0.885	≤0.125
P_{out} > 250 W	≥0.885	≤0.125

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of EPSs, as measured by the average life-cycle cost (''LCC'') savings and the simple payback period (''PBP'').[3] The average LCC savings are positive or nearly zero for all product classes and the PBP is similar to or less than the average lifetime of EPSs, which is estimated to range from 4.2 to 6.2 years (see section IV.G of this document).

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF EXTERNAL POWER SUPPLIES

Product class	Average LCC savings [2021 dollars]	Simple payback period [years]
AC–DC, Basic-Voltage	$ − 0.03	5.0
AC–DC, Low-Voltage	0.01	3.2
AC–AC, Basic-Voltage	0.52	4.1
Multiple-Voltage	0.24	7.0

DOE's analysis of the impacts of the proposed standards on consumers is described in section IV.G 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 7.1 percent, DOE estimates that the INPV for manufacturers of EPSs in the case without amended standards is $847.5 million in 2021 dollars. Under the proposed standards, the change in INPV is estimated to range from a decrease of 1.4 percent to a decrease of 0.9 percent, which corresponds to decreases of approximately $11.6 million and $7.9 million. In order to bring products into compliance with amended standards, it is estimated that the industry would incur total conversion costs of $17.4 million.

DOE's analysis of the impacts of the proposed standards on manufacturers is described in section IV.K of this document. The analytic results of the manufacturer impact analysis (''MIA'') are presented in section V.B.2 of this document.

[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. The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (see section IV.G of this document).

C. National Benefits and Costs [4]

DOE's analyses indicate that the proposed energy conservation standards for EPSs would save a significant amount of energy. Relative to the case without amended standards, the lifetime energy savings for EPSs purchased in the 30-year period that begins in the anticipated year of compliance with the amended standards (2027–2056) amount to 0.11 quadrillion British thermal units (''Btu''), or quads.[5] This represents a savings of 2.9 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 EPSs ranges from $0.17 billion (at a 7-percent discount rate) to $0.45 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for EPSs purchased in 2027–2056.

In addition, the proposed standards for EPSs 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 3.9 million metric tons (''Mt'') [6] of carbon dioxide (''CO_2''), 26.3 thousand tons of methane (''CH_4''), 0.04 thousand tons of nitrous oxide (''N_2O''), 6.0 thousand tons of nitrogen oxides (''NO_X''), 1.7 thousand tons of sulfur dioxide (''SO_2''), and 0.01 tons of mercury (''Hg'').[7]

DOE estimates 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] as discussed in section IV.M of this document. For presentational purposes, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are $0.20 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 also estimates health benefits from SO_2 and NO_X emissions reductions.[10] DOE estimates the present value of the health benefits would be $0.16 billion using a 7-percent discount rate, and $0.36 billion using a 3-percent discount rate.[11] DOE is currently monetizing only $PM_{2.5}$ precursor health benefits for SO_2 and NO_X and ozone precursor health benefits for NO_X, but will continue to assess the ability to monetize other effects, such as health benefits from reductions in direct $PM_{2.5}$ emissions. If any such additional health benefits were monetized, they would only further increase the total benefits of the proposed rule.

Table I.3 summarizes the economic benefits and costs expected to result from the proposed standards for EPSs. In the table, total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate, but the Department emphasizes the importance and value of considering the benefits calculated using all four SC–GHG cases. The estimated total net benefits using each of the four cases are presented in section IV.M of this document.

TABLE I.3—SUMMARY OF ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR EXTERNAL POWER SUPPLIES

[TSL 4]

	Billion 2020 dollars
3% discount rate	
Consumer Operating Cost Savings	0.82
Climate Benefits *	0.20
Health Benefits **	0.36
Total Benefits †	1.38
Consumer Incremental Product Costs	0.37
Net Benefits	1.01

[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.I 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.L 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 that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible 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 (''February 2021 SC–GHG TSD''). */www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.*

[10] DOE estimated the monetized value of SO_2 and NO_X emissions reductions associated with electricity savings using benefit per ton estimates from the scientific literature. See section IV.M of this document for further discussion.

[11] 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.3—SUMMARY OF ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR EXTERNAL POWER SUPPLIES—Continued

[TSL 4]

	Billion 2020 dollars
7% discount rate	
Consumer Operating Cost Savings	0.40
Climate Benefits * (3% discount rate)	0.20
Health Benefits **	0.16
Total Benefits †	0.76
Consumer Incremental Product Costs	0.23
Net Benefits	0.53

Note: This table presents the costs and benefits associated with EPSs 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–GHG (see section IV.M of this proposed rule). 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. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible 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. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.M of this document for more details.

† 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 SC–GHG estimates. See Table V.24 for net benefits using all four SC–GHG estimates.

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 the benefits of GHG and NO_X and SO_2 emission reductions, all annualized.[12] 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 EPSs 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 EPSs shipped in 2027–2056.

Estimates of annualized benefits and costs of the proposed standards are shown in Table I.4. 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 $24.3 million per year in increased equipment costs, while the estimated annual benefits are $42.7 million in reduced equipment operating costs, $11.5 million in climate benefits, and $16.7 million in health benefits. The net benefit would amount to $46.6 per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is $21.4 per year in increased equipment costs, while the estimated annual benefits are $47.3 in reduced operating costs, $11.5 million in climate benefits, and $20.4 million in health benefits. In this case, the net benefit would amount to $57.8 million per year.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR EXTERNAL POWER SUPPLIES

[TSL 4]

	Million 2021 dollars/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	47.3	46.1	48.8

[12] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2021, 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.4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR EXTERNAL POWER SUPPLIES—Continued

[TSL 4]

	Million 2021 dollars/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
Climate Benefits *	11.5	11.5	11.5
Health Benefits **	20.4	20.4	20.4
Total Benefits †	79.2	78.0	80.7
Consumer Incremental Product Costs	21.4	23.4	19.3
Net Benefits	57.8	54.6	61.3
7% discount rate			
Consumer Operating Cost Savings	42.7	41.8	43.9
Climate Benefits * (3% discount rate)	11.5	11.5	11.5
Health Benefits **	16.7	16.7	16.7
Total Benefits †	70.9	70.0	72.1
Consumer Incremental Product Costs	24.3	26.1	22.4
Net Benefits	46.6	43.9	49.6

Note: This table presents the costs and benefits associated with EPSs 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 global SC–GHG (see section IV.M of this proposed rule). 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. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible 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. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.M of this document for more details.

† 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 SC–GHG estimates. See Table V.24 for net benefits using all four SC–GHG estimates.

DOE's analysis of the national impacts of the proposed standards is described in sections IV.I, IV.L and IV.M 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 that they would result in the significant conservation of energy. Regarding technological feasibility, products achieving these standard levels are already commercially available for all product classes covered by this proposal. Considering economic justification, DOE's analysis shows that the benefits of the proposed standard greatly exceed the burdens of the proposed standards. Using a 7-percent discount rate for consumer benefits and costs and NOx and SO_2 reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the proposed standards for EPSs is $24.3 million per year in increased EPS costs, while the estimated annual benefits are $42.7 million in reduced EPS operating costs, $11.5 million in climate benefits and $16.7 million in health benefits. The net benefit amounts to $46.6 million per year.

The significance of energy savings is evaluated by DOE on a case-by-case basis considering the specific circumstances surrounding a specific rulemaking. The standards are projected to result in estimated national energy savings of 0.11 quads. Based on the amount of FFC savings, the corresponding reduction in GHG emissions, and the need to confront the global climate crisis DOE has initially determined the energy savings that would result 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 TSD.

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 EPSs.

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 EPSs, the subject of this document. (42 U.S.C. 6295(u)) EPCA prescribed the initial energy conservation standards for these products (42 U.S.C. 6295(u)(3)), and directed DOE to conduct several future rulemakings to determine whether to amend these initial standards. (42 U.S.C. 6295(u)(1)(E)(i)(I) and 42 U.S.C. 6295(u)(3)(D)) EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a 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))

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(o)(3)(A) and 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) and 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 EPSs appear at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix Z (''Appendix Z'').

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including EPSs. 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 determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt a standard that DOE determines would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

Moreover, DOE may not prescribe a standard: (1) for certain products, including EPSs, if no test procedure has been established for the product, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(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 manufacturers and consumers of the products subject to the standard;

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

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

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

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

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

(7) Other factors the Secretary of Energy (''Secretary'') considers relevant. (42 U.S.C. 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 the Secretary finds that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (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 the utility of the feature to the consumer 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''), Pub. L. 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)) DOE's current test procedures for EPSs address standby mode energy use. In this rulemaking, DOE intends to incorporate such energy use into any amended energy conservation standards that it may adopt.

B. Background

1. Current Standards

In a final rule published on February 10, 2014 (''February 2014 Final Rule''), DOE prescribed the current energy conservation standards for EPSs manufactured on and after February 10, 2016. 79 FR 7846. These standards are set forth in DOE's regulations at 10 CFR 430.32(w) and are repeated in Table II.1.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR EXTERNAL POWER SUPPLIES

Nameplate output power (P_{out})	Minimum average efficiency in active mode (*expressed as a decimal*)	Maximum power in no-load mode [W]
Single-Voltage External AC–DC Power Supply, Basic-Voltage		
$P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.16$	≤ 0.100
1 W $< P_{out} \leq 49$ W	$\geq 0.071 \times \ln(P_{out}) - 0.0014 \times P_{out} + 0.67$	≤ 0.100
49 W $< P_{out} \leq 250$ W	≥ 0.880	≤ 0.210
$P_{out} > 250$ W	≥ 0.875	≤ 0.500
Single-Voltage External AC–DC Power Supply, Basic-Voltage		
$P_{out} \leq 1$ W	$\geq 0.517 \times P_{out} + 0.087$	≤ 0.100
1 W $< P_{out} \leq 49$ W	$\geq 0.0834 \times \ln(P_{out}) - 0.0014 \times P_{out} + 0.609$	≤ 0.100
49 W $< P_{out} \leq 250$ W	≥ 0.870	≤ 0.210
$P_{out} > 250$ W	≥ 0.875	≤ 0.500
Single-Voltage External AC–AC Power Supply, Basic-Voltage		
$P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.16$	≤ 0.210
1 W $< P_{out} \leq 49$ W	$\geq 0.071 \times \ln(P_{out}) - 0.0014 \times P_{out} + 0.67$	≤ 0.210
49 W $< P_{out} \leq 250$ W	≥ 0.880	≤ 0.210
$P_{out} > 250$ W	≥ 0.875	≤ 0.500
Single-Voltage External AC–AC Power Supply, Low-Voltage		
$P_{out} \leq 1$ W	$\geq 0.517 \times P_{out} + 0.087$	≤ 0.210
1 W $< P_{out} \leq 49$ W	$\geq 0.0834 \times \ln(P_{out}) - 0.0014 \times P_{out} + 0.609$	≤ 0.210
49 W $< P_{out} \leq 250$ W	≥ 0.870	≤ 0.210
$P_{out} > 250$ W	≥ 0.875	≤ 0.500
Multiple-Voltage External Power Supply		
$P_{out} \leq 1$ W	$\geq 0.497 \times P_{out} + 0.067$	≤ 0.300
1 W $< P_{out} \leq 49$ W	$\geq 0.075 \times \ln(P_{out}) + 0.561$	≤ 0.300
$P_{out} > 49$ W	≥ 0.860	≤ 0.300

2. History of Standards Rulemaking for External Power Supplies

On December 19, 2007, Congress enacted EISA 2007, which, among other things, amended sections 321, 323, and 325 of EPCA (42 U.S.C. 6291, 6293, and 6295). As part of these amendments, EISA 2007 supplemented the EPS definition, which the statute defines as an external power supply circuit ''used to convert household electric current into DC current or lower-voltage AC current to operate a consumer product.'' (42 U.S.C. 6291(36)(A)) In particular, Section 301 of EISA 2007 created a subset of EPSs called ''Class A External Power Supplies,'' which consist of, among other elements, those EPSs that can convert to only 1 AC or DC output voltage at a time and have a nameplate output power of no more than 250 watts (W). The Class A definition excludes any device requiring Federal Food and Drug Administration (FDA) listing and approval as a medical device in accordance with section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(c)) along with devices that power the charger of a detachable battery pack or that charge the battery of a product that is fully or primarily motor operated. (42 U.S.C. 6291(36)(C)) Section 301 of EISA 2007 also established energy conservation standards for Class A EPSs (hereinafter referred to as ''Level IV standards'') that became effective on July 1, 2008, and directed DOE to conduct an energy conservation standards rulemaking to review those standards.

In the February 2014 Final Rule, DOE completed a rulemaking cycle by adopting amended performance standards for EPSs manufactured on or after February 10, 2016. 79 FR 7846. The final rule amended the Level IV standards prescribed by Congress and separated EPSs into two groups regardless of whether they met the Class A criteria—direct operation EPSs and indirect operation EPSs.[13] 79 FR 7846, 7865–7866. The February 2014 Final Rule set new standards that applied only to direct operation EPSs (hereafter referred to as ''Level VI standards''), which increased the stringency of the average active-mode and no-load power consumption metrics over the Level IV standards. 79 FR 7846, 7849. Under the February 2014 Final Rule, Class A EPSs that could directly power a consumer product (excluding battery chargers)

[13] An indirect operation EPS is an EPS that cannot power a consumer product (other than a battery charger) without the assistance of a battery. Conversely, if the battery's charge status does not impact the end-use product's ability to operate as intended, and the end-use product can function using only power from the EPS, DOE considers that device a direct operation EPS.

became subject to the Level VI standards, whereas Class A EPSs that require the use of a battery to power a consumer product remained subject to the Level IV standards. (*Id.*) Likewise, non-Class A EPSs that could directly power a consumer product (excluding battery chargers) became subject to efficiency standards for the first time (Level VI standards)—non-Class A indirect operation EPSs continued to remain free from any efficiency requirements. 79 FR 7846, 7849, 7865.

As part of the current analysis, on May 20, 2020, DOE prepared a Request for Information (''May 2020 RFI''), which solicited information from the public to help DOE determine whether amended standards for EPSs would result in a significant amount of additional energy savings and whether those standards would be technologically feasible and economically justified. 85 FR 30636.

Comments received following the publication of the May 2020 RFI helped DOE identify and resolve issues related to the subsequent preliminary analysis.[14] DOE published a notice of public meeting and availability of the preliminary technical support document (''TSD'') on February 25, 2022 (''February 2022 Preliminary Analysis''). 87 FR 10719.

DOE subsequently held a public meeting on March 24, 2022, to discuss and receive comments on the preliminary TSD. The preliminary TSD that presented the methodology and results of the preliminary analysis is available at: *www.regulations.gov/document/EERE-2020-BT-STD-0006-0012*. DOE received comments in response to the February 2022 Preliminary Analysis from the interested parties listed in Table II.2.

TABLE II.2—FEBRUARY 2022 PRELIMINARY ANALYSIS WRITTEN COMMENTS

Commenter(s)	Abbreviation	Comment number in the docket	Commenter type
Association of Home Appliance Manufacturers (''AHAM''), Consumer Technology Association (''CTA''), National Electrical Manufacturers Association (''NEMA''), Outdoor Power Equipment Institute (''OPEI''), Plumbing Manufacturers Institute (PMI), and Power Tool Institute (''PTI'').	Joint Trade Associations	23	Trade Associations.
Appliance Standards Awareness Project (''ASAP''), National Consumer Law Center (''NCLC''), Natural Resources Defense Council (''NRDC''), and New York State Energy Research and Development Authority (''NYSERDA'').	Joint Efficiency Advocates.	24	Efficiency Organizations.
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison.	CA IOUs	25	Utility Association.
Information Technology Industry Council	ITI	20	Trade Association.
Northwest Energy Efficiency Alliance	NEEA	21	Efficiency Organization.
National Electrical Manufacturers Association	NEMA	22	Trade Association.
Power Sources Manufacturers Association	PSMA	19	Trade Association.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[15]

3. 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 pre-NOPR stages for an energy conservation standards rulemaking. Section 6(d)(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 NOPR, DOE has opted to instead provide a 60-day comment period. DOE requested comment in the May 2020 RFI on the technical and economic analyses and provided stakeholders with a 47-day comment period. 85 FR 30636. Additionally, DOE reopened the comment period for the May 2020 RFI for an additional 32 days. 85 FR 44484. Furthermore, DOE requested comment on the February 2022 Preliminary Analysis for a period of 60 days. 87 FR 10719. DOE has relied on many of the same analytical assumptions and approaches as used in the preliminary assessment and has determined that a 60-day comment period in conjunction with the prior comment periods provides sufficient time for interested parties to review the proposed rule and develop comments.

Section 6(a)(2) of appendix A states that if the Department determines it is appropriate to proceed with a rulemaking, the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking. DOE is opting to deviate from this step by publishing a NOPR following the preliminary analysis without a framework document. A framework document is intended to introduce and summarize the various analyses DOE conducts during the rulemaking process and requests initial feedback from interested parties. As discussed, prior to the preliminary analysis and this NOPR, DOE published the May 2020 RFI, in which DOE identified and sought comment on the technical and economic analyses to be conducted in determining whether amended energy conservation standards would be justified. Comments received following publication of the May 2020 RFI assisted DOE in identifying and resolving issues related to the preliminary analyses. As a result, publication of a framework document would be largely redundant with the published RFI and preliminary analysis. As such, DOE is deviating from the procedures provided in appendix A and is not publishing a framework document prior to the publication of this NOPR. The Department has determined that it

[14] Comments are available at *www.regulations.gov/document/EERE-2020-BT-STD-0006-0001/comment* and *www.regulations.gov/document/EERE-2020-BT-STD-0006-0008/comment*.

[15] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for EPSs. (Docket No. EERE–2020–BT–STD–0006, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

is appropriate to proceed with this proposal due to the information obtained through the May 2020 RFI and the preliminary analysis.

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. 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, by capacity, or by other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q))

EPSs are currently classified as direct operation and indirect operation EPSs. Direct operation EPSs are further divided into the following five single-voltage sub-product classes: AC–DC, Basic-Voltage; AC–DC, Low-Voltage (except those with nameplate output voltage less than 3 volts and nameplate output current greater than or equal to 1,000 milliamps that charge the battery of a product that is fully or primarily motor operated); AC–DC, Low-Voltage (with nameplate output voltage less than 3 volts and nameplate output current greater than or equal to 1,000 milliamps and charges the battery of a product that is fully or primarily motor operated); AC–AC, Basic-Voltage; AC–AC, Low-Voltage; and Multiple-Voltage.

The February 2014 Final Rule maintained the Level IV standards established by Congress for all Class A[16] EPSs, including indirect operation EPSs, and adopted more stringent Level VI standards applicable to all direct operation non-Class A EPSs. 79 FR 7846, 7849. A summary of the standards currently applicable to these different types of EPSs are shown in Table III.1.

TABLE III.1—APPLICATION OF ENERGY CONSERVATION STANDARDS FOR EXTERNAL POWER SUPPLIES

	Class A EPS	Non-class A EPS
Direct Operation EPS	Level VI	Level VI.
Indirect Operation EPS	Level IV	No-standards.

In this NOPR, DOE proposes more stringent Level VII standards that would be applicable to all EPSs, including direct and indirect operation Class A and non-Class A EPSs. This approach makes the distinction between these various types of EPSs redundant with respect to the applicability of energy conservation standards. See section IV.B.1 of this document for additional discussion on this point.

B. Materials Incorporated by Reference

The current Level VI standards mandate the labeling of compliant EPSs in accordance with the International Efficiency Marking Protocol for External Power Supplies (''IEMP''), Version 3. *See* 10 CFR 430.3(s). DOE proposes to incorporate by reference version 4.0 of IEMP, which will outline the marking requirements for the proposed amendments to the energy conservation standards.

DOE requests comment on its proposal to incorporate by reference version 4.0 of IEMP for this proposed rulemaking.

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 published a test procedure final rule for EPSs on August 19, 2022 (''August 2022 TP Final Rule''), which amended appendix Z by clarifying the scope of the test procedure more explicitly, providing more specific instructions for testing single-voltage EPSs with multiple-output busses and EPSs shipped without an output cord, providing instructions allowing for functionality unrelated to the external power supply circuit to be disconnected during testing so long as the disconnection does not impact the functionality of the EPS itself, and specifying test requirements for adaptive EPSs. 87 FR 51200. Except where specifically noted, changes from the August 2022 TP Final Rule were incorporated into the methodology used to test EPSs for this NOPR analysis.

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 to 10 CFR part 430 subpart C (''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.C of this document discusses the results of the

[16] A Class A EPS means a device that (i) Is designed to convert line voltage AC input into lower voltage AC or DC output; (ii) Is able to convert to only one AC or DC output voltage at a time; (iii) Is sold with, or intended to be used with, a separate end-use product that constitutes the primary load; (iv) Is contained in a separate physical enclosure from the end-use product; (v) Is connected to the end-use product via a removable or hard-wired male/female electrical connection, cable, cord, or other wiring; and (vi) Has nameplate output power that is less than or equal to 250 watts; But, does not include any device that—(i) Requires Federal Food and Drug Administration listing and approval as a medical device in accordance with section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(c)); or (ii) Powers the charger of a detachable battery pack or charges the battery of a product that is fully or primarily motor operated. 42 U.S.C. 6291(36)(C)

screening analysis for EPSs, 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 NOPR TSD.

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 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 EPSs, 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.D.1.b of this proposed rule and in chapter 5 of the NOPR TSD.

E. Energy Savings

1. Determination of Savings

For each trial standard level (''TSL''), DOE projected energy savings from application of the TSL to EPSs purchased in the 30-year period that begins in the year of compliance with the proposed standards ([2027–2056]).[17] The savings are measured over the entire lifetime of EPSs 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 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 EPSs. The NIA spreadsheet model (described in section IV.I 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. 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.[18] 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.I 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.[19] 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. In evaluating the significance of energy savings, DOE considers differences in primary energy and FFC effects for different covered products and equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards.

Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis, taking into account the significance of cumulative FFC national energy savings, the cumulative FFC emissions reductions, and the need to confront the global climate crisis, among other factors. DOE has initially determined the energy savings 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

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 each of those seven factors in this proposed rulemaking.

a. Economic Impact on Manufacturers and Consumers

EPCA requires DOE to consider the economic impact of the standard on manufacturers and consumers of the product that would be subject to the standard. (42 U.S.C. 6295(o)(2)(B)(i)(I). In determining the impacts of a potential amended standard on manufacturers, DOE conducts an MIA, as discussed in section IV.K of this document. First, DOE 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 section IV. 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

[17] Each TSL is composed of specific efficiency levels for each product class. The TSLs considered for this NOPR are described in section V.A of this document. DOE conducted a sensitivity analysis that considers impacts for products shipped in a 30-year period.

[18] 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).

[19] 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 70892).

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 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.G 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 likely 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

EPCA requires that DOE evaluate whether potential standards would lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) DOE considers this evaluation in establishing product classes and considering design options and the impact of potential standard levels. 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 proposed 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 is required to consider 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 improve 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.N 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 GHGs associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.L of this document; the estimated emissions impacts are reported in section IV.L of this document. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section V.B 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.'' In this proposed rulemaking, DOE has not identified or considered any other factors for determining whether the proposed standard is economically justified.

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 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 V.B of this document.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to EPSs. Separate subsections 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-2020-BT-STD-0006*. 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. General Comments and Responses

In response to the February 2022 Preliminary Analysis, the Joint Trade Associations and ITI commented that DOE's preliminary analysis clearly demonstrated that amended energy conservation standards for EPSs were not economically justified and instead made a strong case for no new standards. (Joint Trade Associations, No. 23 at pp. 1–3; ITI, No. 20 at p. 2) The Joint Trade Associations noted that for all of the product classes DOE analyzed, the payback periods significantly exceeded the average useful life of the products and that consumers would therefore not recoup the additional cost of the more efficient products over its lifetime, and that this alone could justify not amending standards for EPSs. (Joint Trade Associations, No. 23 at pp. 2–3)

DOE notes that the costs and benefits of amended standards presented in the February 2022 Preliminary Analysis were incomplete and the notice primarily served to provide stakeholders with a preview of the methodology undertaken in evaluating whether amended standards are justified. The preliminary analysis stage of the rulemaking also allows stakeholders an opportunity to help refine the analysis prior to NOPR. The results presented in the preliminary analysis should therefore not be relied upon in determining whether amended standards are economically justified.

In addition, PSMA urged DOE to publish a roadmap of energy conservation standards over the next 3–5 years, to assist the industry in adapting to any higher tiers of energy conservation standards. (PSMA, No. 19 at p. 3) DOE notes that it is required by EPCA to conduct two cycles of rulemakings to determine whether to amend existing standards for EPSs. (42 U.S.C. 6295(u)(3)(D)) DOE completed the first of the two rulemaking cycles in 2014 by adopting amended performance standards in the February 2014 Final Rule for EPSs manufactured on or after February 10, 2016. 79 FR 7846. DOE is publishing this NOPR to satisfy its obligation to conduct a second rulemaking cycle under EPCA.

EISA 2007 directed DOE to publish an updated final rule for EPSs by July 1, 2021, and further stipulated that any amended standards would apply to products manufactured on or after July 1, 2023, two years later. (42 U.S.C. 6295(u)(3)(D)(ii)) In DOE's view, Congress created this two-year interval to ensure that manufacturers would have sufficient time to meet any new and amended standards that DOE may set for EPSs. Consistent with this two-year lead time provided by EISA 2007, DOE will provide manufacturers with a lead-time of the same two-year duration as prescribed by statute to comply with any amended standards after the publication of a final rule in the **Federal Register**. This aligns with DOE's approach in the February 2014 Final Rule. 79 FR 7846, 7859. The Joint Trade Associations stated that DOE's process decreases the value of early stakeholder engagement. They stated that it would have been more effective and efficient for DOE to use the completed, amended test procedure rather than the currently applicable test procedure to conduct the preliminary analysis. They further commented that DOE provided a shortened 60-day comment period on the preliminary analysis, which significantly overlapped with other comment periods relevant to many of the same stakeholders. (Joint Trade Associations, No. 23 at pp. 4–)

As stated above, the preliminary analysis is primarily intended to provide stakeholders with an opportunity to comment on the various methodologies DOE intends to use in the NOPR. DOE again notes that the preliminary analysis results should not be relied upon to assess whether amended standards for EPSs are justified. DOE weighed the arguments for and against delaying the preliminary analysis until after the test procedure final rule had been published and concluded that the contemplated differences between the two test procedures, as it applies to the development of amended standards, were minor. DOE further determined that the benefits of using the revised test procedure did not outweigh the benefits of publishing the preliminary analysis on time. Moreover, as the EPS test procedure had not been finalized at the time the preliminary analysis was published, any analysis based on proposed changes to the test procedure would itself have been subject to change; DOE therefore chose to proceed using its then-current finalized test procedure. Additionally, unless otherwise noted, test results used in support of this NOPR were obtained using the test procedure as finalized in the August 2022 TP Final Rule.

With regards to a shortened comment period, DOE believes the length of time provided to have been sufficient because of extensive stakeholder engagement in prior rulemaking cycles as well as the lengthy 79-day comment period provided for stakeholders to comment on the May 2020 RFI.

ITI commented that given the long payback periods and limited energy savings, DOE must consider the opportunity costs of amended standards. ITI stated that work to increase the efficiency of EPSs with little energy savings would divert original equipment manufacturer (''OEM'') resources away from other significant technological developments that could have a bigger impact on society. (ITI, No. 20 at p. 9) DOE considers multiple factors in its analysis when considering amended energy conservation standards, as explained in sections III.D and III.E of this document, including the significance of national energy savings and manufacturer impacts.

B. 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 EPSs. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

1. Scope of Coverage and Product Classes

In the February 2022 Preliminary Analysis, DOE did not identify any potential changes to the existing scope of coverage for EPSs. 87 FR 10719, 10723. In the August 2022 TP Final Rule, DOE clarified that the EPS test procedure did not apply to commercial and industrial power supplies and devices that provide power conversion as an auxiliary function. DOE additionally provided a definition of commercial and industrial power supplies, and noted that commercial and industrial power supplies are not covered unless distributed in commerce for use with a consumer product. 87 FR 51200, 51206–51207.

NEMA commented in response to the February 2022 Preliminary Analysis that hard-wired AC-outlets traditionally found in residential environments can now be purchased with built-in Universal Serial Bus (''USB'') ports that provide USB services as a secondary function. NEMA stated that such outlets correctly have been omitted from previous DOE analyses for EPSs and recommended that DOE exempt duplex receptacles until such time as a thorough analysis and LCC benefit examination is completed, because the installation of duplex receptacles requires certified professionals and results in a non-negligible cost to the consumer. (NEMA, No. 22 at pp. 1–2) An EPS is defined to be an external power supply circuit that is used to convert household electric current into DC current or lower-voltage AC current to operate a consumer product. 10 CFR 430.2. In the August 2022 TP Final Rule, DOE specified that devices for which the primary load of the *converted* voltage within the device is not delivered to a separate end-use product are not subject to the test procedure. 87 FR 51200, 51207–51208. For the EPS test procedure to be applicable to a power supply, the intended primary load of the converted voltage must be to a separate end-use product. *Id.* DOE believes this to be the case for the hard-wired AC receptacles with USB ports described by NEMA. In these products, the USB ports provide converted power with the intention of delivering that converted power to a separate end-use product. DOE tentatively determines that it would not be appropriate to include the installation costs of these products in its LCC estimates because there are no higher installation costs above the baseline. Because a consumer is willing to accept the installation cost at the baseline, this cost doesn't factor into the determination of LCC savings.

The CA IOUs urged DOE to consider including certain AC-input ''combination'' products that incorporate convenient charging ports within the scope of this regulation, as the CA IOUs had described in response to the EPS November 2021 test procedure supplementary notice of proposed rulemaking.[20] (CA IOUs, No. 25 at pp. 6–7)

DOE addressed the CA IOUs comment in the August 2022 TP Final Rule. 87 FR 51200, 51208. As in that final rule, DOE here maintains that devices for which the primary load of the converted voltage within the device is not a separate end-use product are not subject to the test procedure. As such, only those combination products that meet this criterion would be in scope. As an example, a bedside table lamp with an LED bulb and a USB port may be in scope of EPS regulations if the power provided to a separate end-use load by the USB port constitutes the main load of the converted power inside the lamp. Such a product however would not be in scope if the LED bulb, which is internal to the product, is the primary load.

In the preliminary analysis, DOE tentatively determined that evaluation of separate standards for indirect operation and direct operation product classes would not be warranted. The Joint Efficiency Advocates, the CA IOUs, and NEEA supported DOE's decision to evaluate direct and indirect power supplies together, as these commenters believe the distinction is unnecessary, confusing, and leaves achievable energy savings untapped. (Joint Efficiency Advocates, No. 24 at pp. 1–2; CA IOUs, No. 25 at p. 6; NEEA, No. 21 at pp. 5–6) CA IOUs noted the distinction was not warranted based on technological differences and should be eliminated. (CA IOUs, No. 25 at p. 6)

The Joint Trade Associations commented that DOE should retain the current distinction in product classes, citing that there were good reasons for splitting them apart—the main reason being avoiding double-regulation—and nothing has changed to render this conclusion obsolete. (Joint Trade Associations, No. 23 at pp. 3–4) They conceded that indirect operation EPSs make up only .5 percent of certified EPSs, and that 71% of those indirect operation EPSs meet the Level IV and VI standards, but disagreed that this warranted terminating the differentiation. The Joint Trade Associations noted that indirect operation EPSs would be forced to meet both EPS and battery charger standards if subject to the EPS standards, and therefore DOE should retain the current distinction. (*Id.*)

Since the publication of the February 2014 Final Rule, DOE has received many questions regarding EPSs that provide direct operation with one end-use product but may also be used to provide indirect operation with a different consumer product containing batteries and or a battery charging system. In an August 25, 2015 final rule (''August 2015 TP Final Rule'') amending the EPS test procedures, DOE clarified that if an EPS can operate any consumer product directly, that product would be treated as a direct operation EPS. 80 FR 51424, 51434. Of particular importance are EPSs with common output plugs that can be used with products made by different manufacturers. An example of this scenario are EPSs with standard USB connectors. These devices are often sold with end-use products containing batteries, such as a smartphone. Because these same EPSs are also capable of directly operating other end-use products that do not contain batteries (*e.g.,* small LED lamps, external speakers, *etc.*), they are not treated as indirect operation EPSs under DOE's regulations. As such, only a small percentage of EPSs are considered to be true indirect operation EPSs. DOE noted in section 2.3.1.2 of the preliminary TSD that indirect operation EPSs make up a small percentage of certified EPSs in the Compliance Certification Database (''CCD''). According to the CCD, indirect operation EPSs comprise 0.5 percent of all certified EPSs, and of

[20] DOE responded to CA IOUs comment on the November 2021 TP SNOPR seeking clarification for combination products that internally convert power to supply another product via a ''convenience charging port'' (for example, lamps and furniture with USB ports). 87 FR 51200, 51208.

those units, 71 percent meet DOE Level VI standards. Therefore, different standards would not be justified for indirect EPSs. Furthermore, since the February 2014 Final Rule, questions received by DOE enquiring how to effectively classify products into these categories demonstrates that the indirect/direct operation classification complicates the readability of regulations. This observation, coupled with limited prevalence of true indirect operation EPSs in the marketplace (*i.e.,* they do not become direct operation EPSs when used in another application) and their ability to meet Level VI standards with ease, suggests that continuing to treat these EPSs separately is unwarranted. As such, in this NOPR, DOE proposes to remove the distinction in the standards between direct and indirect operation EPSs, and to require indirect operation EPSs to meet the same standards as for their direct operation counterparts.

As noted in section II.B.2, the February 2014 Final Rule required direct operation EPSs, including Class A and non-Class A direct operation EPS, to be subject to the Level VI standards and maintained the Level IV standards established by EISA for indirect operation Class A EPSs. DOE retained the use of the term Class A to ensure that DOE's regulations reflected that indirect operation EPSs meeting the definition of a Class A EPS remained subject to the Level IV standards established by EISA. However, at this time, DOE notes that continued use of the terms Class A and non-Class A would not be necessary and may be confusing to maintain in the regulations if all EPSs became subject to standards that are more stringent than Level IV. In addition to removing the distinction between indirect and direction operation EPS, DOE therefore also proposes to remove use of the terms Class A and non-Class A in the amended standards for EPSs.

ITI recommended DOE create new product classes for adaptive EPSs, stating that it is harder to achieve a given efficiency level in an adaptive design than in a fixed voltage design, and that DOE should track different adaptive technologies within adaptive EPS classes to avoid stifling innovation. (ITI, No. 20 at pp. 2–3) In addition, ITI expressed that for USB–C adaptive EPSs rated above 65W, there is typically a regulatory requirement to provide power factor correction circuitry, which it commented can significantly decrease average efficiency for low-voltage outputs (3.3 volts (''V'') or 5V). ITI urged DOE to make a distinction between single output EPSs and adaptive EPSs, with adaptive EPSs having a less stringent efficiency limit for 3.3V and 5V outputs. (ITI, No. 20 at p. 7)

According to the CCD, over 85 percent of adaptive EPS models rated above 65W meet or exceed the first candidate standard level (''CSL'') above the baseline, CSL1, that DOE analyzed in the preliminary analysis, and over 60 percent of such models meet or exceed CSL2 analyzed in the preliminary analysis. This indicates that any added redesign burden or efficiency penalty from factoring in power factor correction is already accounted for with current adaptive EPS designs. Accordingly, DOE does not propose a new product class or separate standards for adaptive EPSs.

The CA IOUs commented that the four size bins (less than or equal to 1 W; greater than one to 49 W; greater than 49 to 250 W; and greater than 250 W) may limit DOE's ability to capture cost-effective savings. Therefore, the CA IOUs recommended using more granular wattage bins to capture cost-effective savings; more specifically, DOE should consider delineating the current wattage bin for the largest EPS products. (CA IOUs, No. 25 at pp. 3–4)

The equations representing the different efficiency levels analyzed in this rulemaking are presented in three groups simply for ease of readability and accuracy. In the preliminary TSD as well as this NOPR TSD, DOE describes in detail the derivation of these equations, noting that the process considers far more granular output wattage ''bins'' than the 0 to 1W, 1W to 49W, and greater than 49W bins described by the CA IOUs. While the multiple regression analysis can be used to generate any number of equations spanning the entire output power range, DOE settled on three groups because doing so allowed the equations to be expressed in the same ''a*ln(P) + b*P + c'' format found in DOE's current standards at 10 CFR 430.32(w). Therefore, the number of bins used to present the proposed active mode efficiency equations did not limit DOE's ability to capture cost-effective savings.

ITI stated that it was unclear how DOE determined market share and noted that EPSs are sold both bundled and unbundled, but that DOE does not explain how this is accounted for in its analysis. In addition, ITI encouraged DOE to start collecting data on cable length and gauge to assist the analyses, as well as require reporting in the CCD the type of adaptive technologies used in adaptive EPSs. (ITI, No. 20 at pp. 1–2)

DOE estimates market share by using model counts for products registered in the CCD as a proxy. For example, DOE observed that many models were clustered around 24W in the AC–DC Basic-Voltage product class, which DOE estimated was indicative of 24W EPSs having a significant market share of the AC–DC Basic-Voltage product class. DOE clarifies that its analysis is agnostic regarding bundling and unbundling, as the cost of the EPS carries through to the consumer regardless. With regards to collecting data on adaptive EPS topologies, DOE notes that it typically requires reporting of only those product characteristics that would be necessary to determine the applicable energy conservation standards. Given that the information about the topologies employed is not required for either of these determinations, DOE is not proposing to require such a reporting requirement in this NOPR.

2. Existing Efficiency Programs

When evaluating the potential for amended energy conservation standards, DOE considers other relevant efficiency programs. Most notably for EPSs, DOE has established one of its CSLs based on the proposed, but never implemented, European Union Code of Conduct Version 5 Tier 2 standards (''EU CoC''). A more detailed description of this program can be found in chapter 3 of the NOPR TSD.

ITI commented that DOE should consider international harmonization and consider that testing with a 115V input (U.S. requirement) will yield different results than testing with a 230V input (EU/United Kingdom ''UK'' requirement). Because EPSs are designed for the global market, ITI stated most models would have less margin if tested at 230V input. Furthermore, ITI requested that DOE obtain more details on EU/UK green initiatives with regards to adaptive EPSs and how efficiency would be impacted. (ITI, No. 20 at pp. 7–8)

Switched-mode power supplies (''SMPSs'') designed to operate on 115V AC input will typically demonstrate marginally lower active mode efficiency when compared to those designed to operate on 230VAC. Nonetheless, DOE's analysis indicates that nearly 75 percent of all EPSs currently certified to DOE can meet CSL1, the EU CoC Tier 2 equivalent in DOE's analysis. It should also be noted that CSL1 was evaluated as part of TSL 3 using the full cost-benefit analysis, ensuring that, if adopted, amended standards at that level would be technologically feasible and economically justified in the United States.

3. Technology Options

In the preliminary market analysis and technology assessment, DOE identified 11 technology options that would be expected to improve the efficiency of EPSs, as measured by the DOE test procedure:

TABLE IV.1—PRELIMINARY ANALYSIS TECHNOLOGY OPTIONS FOR EXTERNAL POWER SUPPLIES

Improved Transformers.
Switched-Mode Power Supplies.
Low-Power Integrated Circuits.
Diodes with Low Forward Voltage and Synchronous Rectification.
X-Capacitor Discharge Control.
Improved Shunt Regulators in Flyback SMPSs that use Optocouplers.
Low-Loss Transistors.
Resonant Switching.
Resonant (''Lossless'') Snubbers.
Active and Bridgeless Power Factor Correction (''PFC'').
Use of Emerging Semiconductor Technologies.

DOE did not receive any comments regarding the inclusion or exclusion of any technology options presented in the preliminary analysis, and evaluated the same set of technology options for this NOPR.

C. Screening Analysis

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

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

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

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

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

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

Sections 6(b)(3) and 7(b) of appendix A.

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.

1. Screened-Out Technologies

DOE did not screen out any of the technology options identified for EPSs based on the five criteria listed in section IV.B.3 of this document.

2. Remaining Technologies

Through a review of each technology, DOE tentatively concludes that all of the other identified technologies listed in section IV.B.3 of this document met all five screening criteria to be examined further as design options in DOE's NOPR analysis. In summary, DOE did not screen out the following technology options:

TABLE IV.2—NOPR TECHNOLOGY OPTIONS FOR EXTERNAL POWER SUPPLIES

Improved Transformers.
Switched-Mode Power Supplies.
Low-Power Integrated Circuits.
Diodes with Low Forward Voltage and Synchronous Rectification.
X-Capacitor Discharge Control.
Improved Shunt Regulators in Flyback SMPSs that use Optocouplers.
Low-Loss Transistors.
Resonant Switching.
Resonant (''Lossless'') Snubbers.
Active and Bridgeless Power Factor Correction (''PFC'').
Use of Emerging Semiconductor Technologies.

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 NOPR TSD.

D. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and the cost of

EPSs. 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).

DOE currently measures active-mode efficiency by averaging the efficiencies at the 100, 75, 50, and 25-percent loading conditions. Section 5(a)(1)(vi) and Section 5(b)(1)(vi) of appendix Z. In their comments responding to the February 2022 Preliminary Analysis, PSMA, NEEA, Joint Efficiency Advocates, and the CA IOUs urged DOE to incorporate a 10-percent loading condition in the EPS test procedure and energy conservation standards, stating that such a loading condition would be more representative of real-world use. (PSMA, No. 19 at p. 2–3; CA IOUs, No. 25 at p. 7; NEEA, No. 21 at pp. 4–5; Joint Efficiency Advocates, No. 24 at p. 3) NEEA noted that 10% is a unique loading condition and that the higher mode efficiencies may not guarantee that the lower loading points between 0% and 25% in actual use would also be efficient, and therefore the 10% loading condition was justified. (NEEA, No. 21 at p. 5) NEEA and the CA IOUs also noted that the EU Code of Conduct used an efficiency measurement and efficiency target at the 10% loading level, and that efficiency gains at the 10% level were possible. ((NEEA, No. 21 at p. 5; (CA IOUs, No. 25 at p. 7) The CA IOUs claimed that a separate 10-percent loading condition standard would be most effective in producing energy savings and would add no additional burden to manufacturers who sell EPSs in the EU. (CA IOUs, No. 25 at p. 7) NEEA and Joint Efficiency Advocates encouraged DOE to incorporate the 10-percent loading condition in the active-mode efficiency metric. (NEEA, No. 21 at pp. 4–5; Joint Efficiency Advocates, No. 24 at p. 3) While PSMA encouraged a separate 10-percent loading condition standard to assist in harmonizing with EU Ecodesign requirements, PSMA recommended incorporation of the 10-percent loading condition into the active-mode efficiency metric if a separate standard is not possible. (PSMA, No. 19 at pp. 2–3)

In the August 2015 TP Final Rule, DOE concluded that a voluntary or optional reporting of a 10-percent loading condition would result in very few certifications at that loading condition. 80 FR 51424, 51433. EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results that measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) As such, DOE must weigh the representativeness of test results with the associated test burden in evaluating any amendments to its test procedures. Regarding representativeness, the commenters have not provided specific data, nor is DOE aware of any specific data, demonstrating how a 10-percent loading condition improve representativeness of test results for EPSs. In addition, DOE's test procedure does not differentiate between specific end-use applications; as such, load profiles specific to certain applications (*e.g.,* charging a smartphone versus powering an LED lamp) may not be representative of overall average use of EPSs across all end-use applications. If DOE were to consider a 10-percent load condition, DOE is not aware of any data to suggest what corresponding weighting factor should be used to combine this loading condition with the other defined loading conditions comprising the overall efficiency metric. Consequently, DOE is tentatively proposing not to modify the specified loading conditions to include a measurement at 10-percent load.

a. Baseline Efficiency

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/equipment class represents the characteristics of a product/equipment 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.

In its preliminary analysis, DOE evaluated the current energy conservation standards as baseline efficiency level for all product classes.[21] DOE did not receive any comments regarding the baseline levels in response to the February 2022 Preliminary Analysis, and DOE evaluated the same baseline levels for this NOPR's analysis.

b. Higher Efficiency Levels

DOE defined several higher efficiency levels at which to evaluate manufacturer production costs (''MPCs'') for this NOPR. The first level, Efficiency Level 1 (''EL1''), corresponds to the proposed EU CoC Tier 2 standards. Higher efficiency levels were defined using an analysis of active-mode efficiencies and no-load power draws reported in the CCD. For the AC–DC Basic- and Low-Voltage product classes, EL2 and EL3 were defined on the basis of pass rates of 50 percent and 10–20 percent (termed ''best in market''), respectively. As part of DOE's analysis, the maximum available efficiency level is the highest efficiency unit currently available on

[21] See Chapter 5 of the 2022 Preliminary Analysis Technical Support Document for External Power Supplies. (Available at: *www.regulations.gov/document/EERE-2020-BT-STD-0006-0012*) (last accessed Sept. 12, 2022).

the market. DOE defined the ''max-tech'' efficiency level, EL4, as the efficiency and no-load power draw which result in a 5 percent pass rate of all AC–DC Basic-Voltage EPS models on the market. For the AC–AC product classes, DOE did not derive separate ELs based on pass rates. DOE maintained the same active mode efficiency equations as their AC–DC counterparts, with a slightly higher no-load allowance to account for the higher typical no-load consumption seen in AC–AC power supplies.

DOE notes that there are no EU COC Tier 2 equivalent standards for multiple-voltage EPSs. Therefore, DOE defined EL1 for this product class on the basis of a 70 percent pass rate. This pass rate aligns with the EL1 pass rate of 72% for AC–DC basic voltage products. EL2, EL3 and EL4 were subsequently defined based on a 40 percent, 10 percent, and 1 percent pass rate.

In summary, DOE analyzed the following efficiency levels for this proposal:

TABLE IV.3—EFFICIENCY LEVELS FOR AC–DC, BASIC-VOLTAGE EXTERNAL POWER SUPPLIES

Nameplate output power (P_{out})	Minimum average efficiency in active mode (expressed as a decimal)	Maximum power in no-load mode [W]
EL0: Current Standards		
$P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.16$	≤0.100
1 W < $P_{out} \leq 49$ W	$\geq 0.071 \times \ln(P_{out}) - 0.0014 \times P_{out} + 0.67$	≤0.100
49 W < $P_{out} \leq 250$ W	≥0.880	≤0.210
$P_{out} > 250$ W	≥0.875	≤0.500
EL1: EU CoC Tier 2 Standards		
$P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.169$	≤0.075
1 W < $P_{out} \leq 49$ W	$\geq 0.071 \times \ln(P_{out}) - 0.00115 \times P_{out} + 0.67$	≤0.075
49 W < $P_{out} \leq 250$ W	≥0.890	≤0.150
$P_{out} > 250$ W	≥0.890	≤0.150
EL2: Top 50 Percent		
$P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.169$	≤0.065
1 W < $P_{out} \leq 49$ W	$\geq 0.0617 \times \ln(P_{out}) - 0.00105 \times P_{out} + 0.704$	≤0.065
49 W < $P_{out} \leq 250$ W	≥0.895	≤0.130
$P_{out} > 250$ W	≥0.900	≤0.130
EL3: Best In Market		
$P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.169$	≤0.050
1 W < $P_{out} \leq 49$ W	$\geq 0.0582 \times \ln(P_{out}) - 0.00104 \times P_{out} + 0.727$	≤0.050
49 W < $P_{out} \leq 250$ W	≥0.902	≤0.110
$P_{out} > 250$ W	≥0.907	≤0.110
EL4: Max-Tech		
$P_{out} \leq 1$ W	$\geq 0.52 \times P_{out} + 0.170$	≤0.039
1 W < $P_{out} \leq 49$ W	$\geq 0.0654 \times \ln(P_{out}) - 0.00149 \times P_{out} + 0.732$	≤0.039
49 W < $P_{out} \leq 250$ W	≥0.916	≤0.089
$P_{out} > 250$ W	≥0.916	≤0.120

TABLE IV.4—EFFICIENCY LEVELS FOR AC–DC, LOW-VOLTAGE EXTERNAL POWER SUPPLIES

Nameplate output power (P_{out})	Minimum average efficiency in active mode (expressed as a decimal)	Maximum power in no-Load mode [W]
EL0: Current Standards		
$P_{out} \leq 1$ W	$\geq 0.517 \times P_{out} + 0.087$	≤0.100
1 W < $P_{out} \leq 49$ W	$\geq 0.0834 \times \ln(P_{out}) - 0.0014 \times P_{out} + 0.609$	≤0.100
49 W < $P_{out} \geq 250$ W	≥0.870	≤0.210
$P_{out} < 250$ W	≥0.875	≤0.500
EL1: EU CoC Tier 2 Standards		
$P_{out} \leq 1$ W	$\geq 0.517 \times P_{out} + 0.091$	≤0.075
1 W < $P_{out} \leq 49$ W	$\geq 0.0834 \times \ln(P_{out}) - 0.0011 \times P_{out} + 0.609$	≤0.075
49 W < $P_{out} \leq 250$ W	≥0.880	≤0.150
$P_{out} > 250$ W	≥0.880	≥0.150
EL2: Top 50 Percent		
$P_{out} \leq 1$ W	$\geq 0.517 \times P_{out} + 0.091$	≤0.065
1 W < $P_{out} \leq 49$ W	$\geq 0.0741 \times \ln(P_{out}) - 0.00105 \times P_{out} + 0.643$	≤0.065
49 W < $P_{out} < 250$ W	≥0.885	≤0.130

TABLE IV.4—EFFICIENCY LEVELS FOR AC–DC, LOW-VOLTAGE EXTERNAL POWER SUPPLIES—Continued

Nameplate output power (P_{out})	Minimum average efficiency in active mode (expressed as a decimal)	Maximum power in no-Load mode [W]
P_{out} < 250 W	≥0.900	≤0.150
EL3: Best In Market		
$P_{out} \leq 1$ W	$\geq 0.517 \times P_{out} + 0.091$	≤0.050
1 W < $P_{out} \leq 49$ W	$\geq 0.0706 \times \ln(P_{out}) - 0.00104 \times P_{out} + 0.666$	≤0.050
49 W < P_{out} < 250 W	≥0.892	≤0.110
P_{out} < 250 W	≥0.907	≤0.130
EL4: Max-Tech		
$P_{out} \leq 1$ W	$\geq 0.537 \times P_{out} + 0.097$	≤0.039
1 W < $P_{out} \leq 49$ W	$\geq 0.0778 \times \ln(P_{out}) - 0.00149 \times P_{out} + 0.671$	≤0.039
49 W < $P_{out} \leq 250$ W	≥0.906	≤0.089
P_{out} < 250 W	≥0.916	≤0.120

TABLE IV.5—EFFICIENCY LEVELS FOR AC–AC, BASIC-VOLTAGE EXTERNAL POWER SUPPLIES

Nameplate output power (P_{out})	Minimum average efficiency in active mode (expressed as a decimal)	Maximum power in no-load mode [W]
EL0: Current Standards		
$P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.16$	≤0.210
1 W < $P_{out} \leq 49$ W	$\geq 0.071 \times \ln(P_{out}) - 0.0014 \times P_{out} + 0.670$	≤0.210
49 W < $P_{out} \leq 250$ W	≥0.880	≤0.210
P_{out} < 250 W	≥0.875	≤0.500
EL1: EU CoC Tier 2 Standards		
$P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.169$	≤0.185
1 W < $P_{out} \leq 49$ W	$\geq 0.071 \times \ln(P_{out}) - 0.00115 \times P_{out} + 0.670$	≤0.185
49 W < $P_{out} \leq 250$ W	≥0.890	≤0.185
P_{out} < 250 W	≥0.890	≤0.500
EL2		
$P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.169$	≤0.150
1 W < $P_{out} \leq 49$ W	$\geq 0.0617 \times \ln(P_{out}) - 0.00105 \times P_{out} + 0.704$	≤0.150
49 W < $P_{out} \leq 250$ W	≥0.895	≤0.150
P_{out} < 250 W	≥0.895	≤0.300
EL3: Best In Market		
$P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.169$	≤0.075
1 W < $P_{out} \leq 49$ W	$\geq 0.0582 \times \ln(P_{out}) - 0.00104 \times P_{out} + 0.727$	≤0.075
49 W < $P_{out} \leq 250$ W	≥0.902	≤0.075
$P_{out} \leq 250$ W	≥0.902	≤0.200
EL4: Max-Tech		
$P_{out} \leq 1$ W	$\geq 0.520 \times P_{out} + 0.170$	≤ 0.039
1 W < $P_{out} \leq 49$ W	$\geq 0.0654 \times \ln(P_{out}) - 0.00149 \times P_{out} + 0.732$	≤ 0.039
49 W < $P_{out} \leq 250$ W	≥0.916	≤0.089
$P_{out} \leq 250$ W	≥0.916	≤0.100

TABLE IV.6—EFFICIENCY LEVELS FOR AC–AC, LOW-VOLTAGE EXTERNAL POWER SUPPLIES

Nameplate output power (P_{out})	Minimum average efficiency in active mode (expressed as a decimal)	Maximum power in no-load mode [W]
EL0: Current Standards		
$P_{out} \geq 1$ W	$\geq 0.517 \times P_{out} + 0.087$	≥0.210
1 W < $P_{out} \geq 49$ W	$\geq 0.0834 \times \ln(P_{out}) - 0.0014 \times P_{out} + 0.609$	≥0.210
49 W < $P_{out} \geq 250$ W	≥0.870	≥0.210
P_{out} > 250 W	≥0.875	≥0.500

TABLE IV.6—EFFICIENCY LEVELS FOR AC–AC, LOW-VOLTAGE EXTERNAL POWER SUPPLIES—Continued

Nameplate output power (P_{out})	Minimum average efficiency in active mode (expressed as a decimal)	Maximum power in no-load mode [W]
EL1: EU CoC Tier 2 Standards		
$P_{out} \geq 1$ W	$\geq 0.517 \times P_{out} + 0.091$	≥0.072
1 W < $P_{out} \geq 49$ W	$\geq 0.0834 \times \ln(P_{out}) - 0.0011 \times P_{out} + 0.609$	≥0.072
49 W < $P_{out} \geq 250$ W	≥0.880	≥0.185
$P_{out} > 250$ W	≥0.880	≥0.500
EL2		
$P_{out} \geq 1$ W	$\geq 0.517 \times P_{out} + 0.091$	≥0.060
1 W < $P_{out} \geq 49$ W	$\geq 0.0741 \times \ln(P_{out}) - 0.00105 \times P_{out} + 0.643$	≥0.060
49 W < $P_{out} \geq 250$ W	≥0.885	≥0.150
$P_{out} > 250$ W	≥0.900	≥0.300
EL3: Best In Market		
$P_{out} \geq 1$ W	$\geq 0.517 \times P_{out} + 0.091$	≥0.050
1 W < $P_{out} \geq 49$ W	$\geq 0.0706 \times \ln(P_{out}) - 0.00104 \times P_{out} + 0.666$	≥0.050
49 W < $P_{out} \geq 250$ W	≥0.892	≥0.075
$P_{out} > 250$ W	≥0.907	≥0.200
EL4: Max-Tech		
$P_{out} \geq 1$ W	$\geq 0.537 \times P_{out} + 0.097$	≥0.039
1 W < $P_{out} \geq 49$ W	$\geq 0.0778 \times \ln(P_{out}) - 0.00149 \times P_{out} + 0.671$	≥0.039
49 W < $P_{out} \geq 250$ W	≥0.906	≥0.089
$P_{out} > 250$ W	≥0.916	≥0.100

TABLE IV.7—EFFICIENCY LEVELS FOR MULTIPLE-VOLTAGE EXTERNAL POWER SUPPLIES

Nameplate output power (P_{out})	Minimum average efficiency in active mode (expressed as a decimal)	Maximum power in no-load mode [W]
EL0: Current Standards		
$P_{out} \geq 1$ W	$\geq 0.497 \times P_{out} + 0.067$	≥0.300
1 W < $P_{out} \geq 49$ W	$\geq 0.075 \times \ln(P_{out}) + 0.561$	≥0.300
$P_{out} > 49$ W	≥0.860	≥0.300
EL1: Top 65 Percent		
$P_{out} \geq 1$ W	$\geq 0.497 \times P_{out} + 0.067$	≥0.100
1 W < $P_{out} \geq 49$ W	$\geq 0.0703 \times \ln(P_{out}) - 0.000406 \times P_{out} + 0.628$	≥0.100
$P_{out} > 49$ W	≥0.880	≥0.150
EL2: Top 40 Percent		
$P_{out} \geq 1$ W	$\geq 0.497 \times P_{out} + 0.067$	≥0.075
1 W < $P_{out} \geq 49$ W	$\geq 0.0782 \times \ln(P_{out}) - 0.0013 \times P_{out} + 0.643$	≥0.075
$P_{out} > 49$ W	≥0.885	≥0.125
EL3: Best In Market		
$P_{out} \geq 1$ W	$\geq 0.497 \times P_{out} + 0.067$	≥0.050
1 W < $P_{out} \geq 49$ W	$\geq 0.0861 \times \ln(P_{out}) - 0.00169 \times P_{out} + 0.642$	≥0.050
$P_{out} > 49$ W	≥0.895	≥0.075
EL4: Max-Tech		
$P_{out} \geq 1$ W	$\geq 0.497 \times P_{out} + 0.067$	≥0.030
1 W < $P_{out} \geq 49$ W	$\geq 0.0758 \times \ln(P_{out}) - 0.00132 \times P_{out} + 0.674$	≥0.030
$P_{out} > 49$ W	≥0.905	≥0.050

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 this NOPR, DOE conducted the analysis using all three methods of analysis (physical teardowns, catalog teardowns, and price surveys) to determine manufacturing costs relating to the efficiency of a power supply. Representative units for teardown were selected from the CCD based on reported active mode efficiency and no-load power. Several units were selected as representative units for each EL. In addition to units from the CCD, DOE purchased evaluation boards from semiconductor manufacturers to evaluate generic designs likely to be used in a wide variety of power supplies on the market. DOE received additional cost data from manufacturer interviews and from stakeholder feedback, which were incorporated in the cost modeling.

Prior to testing and teardown of CCD units and evaluation boards, test units were prepared to reduce application-specific variables present in some units that might skew test results. Preparation included removal of circuitry not related to EPS functionality and installation of new, standardized cables. Prepared units were tested in accordance with DOE test procedures.

After testing, DOE performed physical teardowns of CCD units and catalog teardowns of evaluation boards. DOE developed estimates of MPCs for each unit in the teardown sample to develop a set of MPCs at each efficiency level. DOE selected most of its units from the AC–DC Basic-Voltage product class, as a significant number of models and shipments of EPSs belong to this class. Additional units belonging to the AC–DC Low-Voltage and Multiple-Voltage product classes were also torn down. Further, price survey data was collected in manufacturer interviews and from stakeholder feedback for units at each efficiency level. Data was combined to generate cost/efficiency relationships at each evaluated power level, to which exponential curve fits were applied. Finally, incremental MPCs were calculated at each efficiency level using the fit equations. A further discussion of the cost analysis can be found at chapter 5 of the NOPR TSD.

DOE received several comments about the cost analysis performed during the February 2022 Preliminary Analysis.

ITI expressed concern about the broad amount of extrapolation used during the preliminary analysis, and encouraged DOE to study more representative models in each product class. (ITI, No. 20 at p. 2) Additionally, ITI encouraged DOE to use less extrapolation and more representative units when estimating MPCs. (ITI, No. 20 at p. 3) NEEA encouraged DOE to conduct detailed teardowns of the AC–DC low-voltage product class, citing the prevalence of such EPSs in the market and the potential for differing technology options among them. (NEEA, No. 21 at pp. 3–4)

The Joint Efficiency Advocates and the CA IOUs urged DOE to conduct additional product testing and teardowns on representative units for AC–DC Basic-Voltage and Low-Voltage product classes. The Joint Efficiency Advocates acknowledged DOE's method of extrapolating and interpolating from known AC–DC basic-voltage units but stated concerns about the accuracy of the methods. (Joint Efficiency Advocates, No. 24 at p. 2) Furthermore, the Joint Efficiency Advocates and the CA IOUs stated that DOE should test and teardown more AC–DC low-voltage EPSs because these are estimated to have greater shipments than AC–DC basic-voltage EPSs. (Joint Efficiency Advocates, No. 24 at p. 2; CA IOUs, No. 25 at pp. 4–5) The CA IOUs urged DOE to expand the current analysis scope to analyze potential savings of updated standards levels more thoroughly. In addition to products with high shipments, the CA IOUs commented that ''high-energy-impact products'' should be further examined, such as those with Power over Ethernet (''PoE'') technology. (CA IOUs, No. 25 at pp. 4–5)

DOE agreed that an increased number of teardowns from the February 2022 Preliminary Analysis would improve its analysis. As such, DOE performed additional teardowns for this NOPR, including teardowns across other product classes (AC–DC Low-Voltage and Multiple-Voltage), to validate both the representative unit MPC values as well as those obtained using extrapolation methods. With regards to the CA IOUs' suggestion to evaluate ''high-energy-impact products,'' DOE's analysis adequately captures all major applications of EPSs, especially high-energy-impact-products, and pairs each application with a usage profile to calculate total energy consumption with and without amended standards.

The Joint Efficiency Advocates, NEEA, and PSMA urged DOE to update its cost assumptions about the CSLs presented in the preliminary analysis, especially CSL4 (max-tech). PSMA also stated that certain technologies can deliver efficiencies higher than those listed for CSL4, and the incremental costs DOE cited in its Preliminary Analysis were greatly overstated compared to what PSMA observes in the marketplace, and in some cases were over twice the marketplace incremental costs. (PSMA, No. 19 at p. 2) PSMA noted there was minimal cost overhead due to the high volume manufacturing and claimed that with more representative pricing, raising standards to at the very least CSL1 should be justifiable, but that CSL2 or higher would be preferable looking to where power supply efficiencies will be in the future. (*Id.*) According to PSMA, current semiconductors already meet both CSL2 and CSL3, and therefore currently available technologies could meet those standards. (*Id.*) Similarly, both NEEA and the Joint Efficiency Advocates claimed they obtained manufacturer-reported max-tech incremental cost data that differed significantly from DOE's estimates in the preliminary analysis and that DOE overestimated the incremental costs. The Joint Efficiency Advocates and NEEA further encouraged DOE to perform manufacturer interviews and additional tear-downs to improve estimated cost values. (Joint Efficiency Advocates, No. 24 at p. 2; NEEA, No. 21 at pp. 1–4)

After presenting its initial methodology and preliminary engineering analysis in the February 2022 Preliminary Analysis, DOE conducted manufacturer interviews to obtain feedback and updated the engineering analysis as presented in this NOPR. The information received during these interviews as well as additional data from further teardowns has resulted in updated incremental costs, which can be found in chapter 5 of the NOPR TSD.

More detail about the selection process and extrapolation methods can be found in chapter 5 of the NOPR TSD.

To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost 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, throughout its analysis, is using the average manufacturer markup presented in the February 2014 Final Rule TSD.[22] This markup was determined based on information collected during the manufacturer interviews preceding that rulemaking. More detail on the manufacturer markup is given in section IV.E of this document.

[22] See Chapter 12 of the 2014 Final Rule Technical Support Document for External Power Supplies. (Available at: *www.https://www.regulations.gov/document/EERE-2008-BT-STD-0005-0217*) (last accessed Sept. 28, 2022).

DOE requests comment on its cost analysis approach performed for this NOPR.

3. Cost-Efficiency Results

The results of the engineering analysis are presented as cost-efficiency data for each of the efficiency levels for each of the product classes that were analyzed at popular power output levels, as well as those extrapolated from a product class with similar capabilities and features. Tables and plots with MPC results, as well as extrapolation methods used both within and across each product class, are presented below as well as in greater detail in chapter 5 of the NOPR TSD. The results of the engineering analysis are reported as cost-efficiency data (or ''curves'') in the form of daily energy consumption (DEC) (in kWh) versus MSP (in dollars). DOE developed six curves representing the two equipment classes and three different size machines in each equipment class. The methodology for developing the curves started with determining the energy consumption for baseline equipment and MPCs for this equipment. Above the baseline, DOE implemented design options using the ratio of cost to savings, and implemented only one design option at each level. Design options were implemented until all available technologies were employed (*i.e.,* at a max-tech level). See TSD Chapter 5 for additional detail on the engineering analysis and TSD Appendix 5B for complete cost-efficiency results.

DOE requests comment on the incremental MPCs from the NOPR engineering analysis.

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Table IV.8 Incremental Manufacturer Production Costs for AC-DC, Basic-Voltage External Power Supplies

AC-DC, Basic-Voltage				
Power	Efficiency Level	Active Mode Efficiency	No Load Power (W)	Incremental MPC
2.5W	Baseline	73.16%	0.100	--
	1	73.22%	0.075	$0.01
	2	75.79%	0.065	$0.45
	3	77.77%	0.050	$0.85
	4	78.82%	0.039	$1.10
12W	Baseline	82.96%	0.100	--
	1	83.26%	0.075	$0.08
	2	84.47%	0.065	$0.42
	3	85.91%	0.050	$0.88
	4	87.66%	0.039	$1.53
24W	Baseline	86.20%	0.100	--
	1	86.80%	0.075	$0.20
	2	87.49%	0.065	$0.44
	3	88.70%	0.050	$0.90
	4	90.41%	0.039	$1.62
60W	Baseline	88.00%	0.210	--
	1	89.00%	0.150	$0.49
	2	89.50%	0.130	$0.75
	3	90.25%	0.110	$1.14
	4	91.60%	0.089	$1.89
120W	Baseline	88.00%	0.210	--
	1	89.00%	0.150	$0.78
	2	89.50%	0.130	$1.19
	3	90.25%	0.110	$1.82
	4	91.60%	0.089	$3.04

Table IV.9 Incremental Manufacturer Production Costs for AC-DC, Low-Voltage External Power Supplies

AC-DC, Low-Voltage				
Power	Efficiency Level	Active Mode Efficiency	No Load Power (W)	Incremental MPC
5W	Baseline	73.62%	0.100	--
	1	73.77%	0.075	$0.03
	2	75.70%	0.065	$0.45
	3	77.44%	0.050	$0.86
	4	78.88%	0.039	$1.23
10W	Baseline	78.70%	0.100	--
	1	79.00%	0.075	$0.08
	2	80.31%	0.065	$0.45
	3	81.82%	0.050	$0.87
	4	83.52%	0.039	$1.36
12W	Baseline	79.94%	0.100	--
	1	80.30%	0.075	$0.11
	2	81.45%	0.065	$0.45
	3	82.90%	0.050	$0.88
	4	84.64%	0.039	$1.41
24W	Baseline	84.04%	0.100	--
	1	84.76%	0.075	$0.23
	2	85.33%	0.065	$0.43
	3	86.54%	0.050	$0.91
	4	88.25%	0.039	$1.69

Table IV.10 Incremental Manufacturer Production Costs for AC-AC, Basic-Voltage External Power Supplies

AC-AC Basic-Voltage				
Power	Efficiency Level	Active Mode Efficiency	No Load Power (W)	Incremental MPC
3.6W	Baseline	75.59%	0.210	--
	1	75.68%	0.185	$0.01
	2	77.93%	0.150	$0.44
	3	79.78%	0.075	$0.86
	4	81.04%	0.039	$1.19
24W	Baseline	86.20%	0.210	--
	1	86.80%	0.185	$0.19
	2	87.49%	0.150	$0.43
	3	88.70%	0.075	$0.90
	4	90.41%	0.039	$1.68
40W	Baseline	87.59%	0.210	--
	1	88.59%	0.185	$0.26
	2	88.96%	0.150	$0.40
	3	90.01%	0.075	$0.96
	4	91.37%	0.039	$2.02

Table IV.11 Incremental Manufacturer Production Costs for AC-AC, Low-Voltage External Power Supplies

AC-AC Low-Voltage				
Power	Efficiency Level	Active Mode Efficiency	No Load Power (W)	Incremental MPC
12W	Baseline	79.94%	0.210	--
	1	80.30%	0.072	$0.11
	2	81.45%	0.060	$0.45
	3	82.90%	0.050	$0.88
	4	84.64%	0.039	$1.41
17W	Baseline	82.15%	0.210	--
	1	82.66%	0.072	$0.16
	2	83.51%	0.060	$0.45
	3	84.83%	0.050	$0.90
	4	86.61%	0.039	$1.53
24W	Baseline	84.04%	0.210	--
	1	84.76%	0.072	$0.23
	2	85.33%	0.060	$0.43
	3	86.54%	0.050	$0.91
	4	88.25%	0.039	$1.69

Table IV.12 Incremental Manufacturer Production Costs for Multiple-Voltage External Power Supplies

Multiple-Voltage				
Power	Efficiency Level	Active Mode Efficiency	No Load Power (W)	Incremental MPC
18W	Baseline	77.78%	0.300	--
	1	82.39%	0.100	$0.01
	2	84.56%	0.075	$0.44
	3	86.04%	0.050	$0.86
	4	86.93%	0.030	$1.19
30W	Baseline	81.61%	0.300	--
	1	85.49%	0.100	$0.19
	2	87.00%	0.075	$0.43
	3	88.41%	0.050	$0.90
	4	89.22%	0.030	$1.68
90W	Baseline	86.00%	0.300	--
	1	88.00%	0.150	$0.26
	2	88.50%	0.125	$0.40
	3	89.50%	0.075	$0.96
	4	90.50%	0.050	$2.02

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

For EPSs, the main parties in the distribution chain are EPS Manufacturers, End-Use Product Original Equipment Manufacturers, Consumer Product Retailers, and Consumers.

DOE developed baseline and incremental markups for each actor in the distribution chain. 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.[23]

In the February 2022 Preliminary Analysis, DOE used the same baseline and incremental markups that were used in the February 2014 Final Rule.[24] DOE did not receive any comments regarding the markups or distribution channels in the February 2022 Preliminary Analysis. Therefore, DOE used the same markups in this NOPR.

Chapter 6 of the NOPR TSD provides details on DOE's development of markups for EPSs.

DOE requests comment on the estimated increased manufacturer markups and incremental MSPs that result from the analyzed energy conservation standards from the NOPR engineering analysis.

F. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of EPSs at different efficiencies in representative U.S. single-family homes, multi-family residences, and commercial buildings, and to assess the energy savings potential of increased EPS efficiency. The energy use analysis estimates the range of energy use of EPSs in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performs, 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 February 2022 Preliminary Analysis, DOE used usage profiles that were developed in the February 2014 Final Rule, along with efficiency data at different load conditions to calculate the UECs for EPSs for a variety of applications.[25] Usage profiles are

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

[24] See Chapter 6 of the 2014 Final Rule Technical Support Document for External Power Supplies. (Available at: *www.regulations.gov/document/EERE-2008-BT-STD-0005-0217*) (last accessed Sept. 12, 2022). See also Chapter 6 of the 2022 Preliminary Analysis Technical Support Document for External Power Supplies. (Available at: *www.regulations.gov/document/EERE-2020-BT-STD-0006-0012*) (last accessed Sept. 12, 2022).

[25] *See* Appendix 7A of the 2014 Final Rule Technical Support Document for External Power Supplies. (Available at: *www.regulations.gov/document/EERE-2008-BT-STD-0005-0217*) (last accessed Sept. 12, 2022). *See also* Appendix 7A of the 2022 Preliminary Analysis Technical Support Document for External Power Supplies. (Available at: *www.regulations.gov/document/EERE-2020-BT-STD-0006-0012*) (last accessed Sept. 12, 2022).

estimates of the average time a device spends in each mode of operation.

DOE received a comment from ITI that the 2014 usage profiles are outdated and that they may not represent current EPS customer usage profiles and energy use, stating that devices used less energy than they used to and that they often spent different times in different modes than in the past. ITI did not provide any data regarding EPS usage and indicated that DOE should conduct a study to understand the current usage profiles of EPSs. (ITI, No. 20 at p. 3)

DOE was unable to find any updated usage information or data for most EPSs. However, in response to the comment from ITI, for certain applications, DOE revised its usage profiles compared to the 2014 estimates. These applications are likely to have more usage (and spend time in different modes) than assumed in the 2014 Final Rule analysis. The specific UECs depend on the output power and efficiency level. Some applications are analyzed across multiple output power ratings. For other applications, DOE maintained the same approach for developing UECs as in the preliminary analysis.

Chapter 7 of the NOPR TSD provides details on DOE's energy use for EPSs.

G. 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 EPSs. 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 EPSs 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 and commercial buildings. DOE developed household samples from the 2015 Residential Energy Consumption Survey [26] (RECS 2015) and the 2018 Commercial Building Energy Consumption Survey [27] (CBECS 2018). For each sample household, DOE determined the energy consumption for the EPSs 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 EPSs.

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 and PBP 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 EPCs user samples. For this rulemaking, the Monte Carlo approach is implemented in MS Excel. The model calculated the LCC and PBP for products at each efficiency level for 10,000 housing units and commercial buildings 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 and PBP 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 all consumers of EPSs 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 EPSs manufactured 2 years after the date on which any new or amended standard is published. (42 U.S.C. 6295(g)(10)(B)) At this time, DOE estimates publication of a final rule in the latter half of 2024 Therefore, for purposes of its analysis, DOE used 2027 [28] as the first year of compliance with any amended standards for EPSs.

Table IV.13 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections 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 NOPR TSD and its appendices.

[26] *www.eia.gov/consumption/residential/data/2015/* (last accessed Sept. 12, 2022). EIA is currently working on RECS 2020, and the entire RECS 2020 microdata are expected to be fully released in early 2023. Until that time, RECS 2015 remains the most recent full data release. For future analyses, DOE plans to consider using the complete RECS 2020 microdata when available.

[27] *www.eia.gov/consumption/commercial/* (last accessed Sept. 12, 2022).

[28] Compliance begins two years from the publication of the final rule (*i.e.,* latter half of 2026). However, for the purposes of simplifying it analysis, DOE used the beginning of 2027 as the first year of compliance with any amended standards for EPSs.

TABLE IV.13—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by EPS manufacturer and appliance manufacturer markups and sales tax, as appropriate. Used historical PPI data for semiconductors to derive a price scaling index to project product costs.
Installation Costs	No installation costs.
Annual Energy Use	The total annual energy use calculated using product efficiency and operating hours. *Variability:* Based on the 2015 RECS and 2018 CBECS.
Energy Prices	*Electricity:* EIA data—2021. *Variability:* Census Division.
Energy Price Trends	Based on *AEO2022* price projections.
Repair and Maintenance Costs.	No repair or maintenance costs were considered.
Product Lifetime	*Average:* 3 to 10 years.
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.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPR TSD.

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.

In the February 2022 Preliminary Analysis, DOE did not use any price trend.[29] In response, NEEA and the CA IOUs commented that DOE should incorporate price learning into its analysis and suggested that DOE use the Producer Price Index (PPI) for the semiconductor industry to develop the price trend. (NEEA, No. 21 at p. 4, CA IOUs, No. 25 at p. 2) In this NOPR, DOE has incorporated a price trend based on the PPI for semiconductors,[30] with an estimated annual deflated price decline of approximately 6 percent per year from 1967 through 2021. DOE applied this price trend to the proportion of EPS costs attributable to semiconductors.

2. Installation Cost

NEMA commented that hard-wired AC-outlets traditionally found in residential environments can now be purchased with built-in Universal Serial Bus (''USB'') ports that provide USB services as a secondary function. NEMA further stated that the installation of such a product requires certified professionals and results in a non-negligible cost to the consumer. (NEMA, No. 22 at p. 2)

With respect to installation costs, DOE notes that the installation costs would be the same regardless of efficiency level for hard-wired AC receptacles. As a result, the incremental installation costs would be $0 for higher efficiency products and would not impact the LCC analysis. Therefore, DOE did not consider installation costs in this analysis.

3. Annual Energy Consumption

For each sampled household or commercial business, DOE determined the energy consumption for an EPS at different efficiency levels using the approach described previously in section IV.F of this document.

4. Energy Prices

Because marginal electricity price more accurately captures the incremental savings associated with a change in energy use from higher efficiency, marginal electricity price 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.

For the NOPR, DOE derived average monthly residential and commercial marginal electricity prices for the various regions using 2021 data from EIA.[31]

See chapter 8 of the NOPR TSD 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.[32] To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2023 through 2050.

5. Maintenance and Repair Costs

In the February 2022 Preliminary Analysis, DOE noted that it expects consumers would discard and replace an EPS which fails before the product with which it is designed to operate, rather than seek to repair that EPS.[33] DOE did not receive comment on this approach, and therefore DOE did not consider maintenance and repair costs in this analysis.

6. Product Lifetime

In the February 2022 Preliminary Analysis, DOE based the EPS lifetime on the lifetime of the application for which it is associated.[34] In response, the CA IOUs suggested that this approach is reasonable for most EPSs, but that some manufacturers commonly sell products (like phones) with only a USB cord and

[29] See Chapters 8 and 10 of the 2022 Preliminary Analysis Technical Support Document for External Power Supplies. (Available at: *www.regulations.gov/document/EERE-2020-BT-STD-0006-0012*) (last accessed Sept. 12, 2022).

[30] Producer Price Index: Semiconductors and Related Manufacturing. Series ID: PCU334413334413. (Available at: *beta.bls.gov/dataViewer/view/timeseries/PCU334413334413*) (last accessed Sept. 12, 2022).

[31] U.S. Department of Energy-Energy Information Administration, Form EIA–861M (formerly EIA–826) Database Monthly Electric Utility Sales and Revenue Data (1990–2020). (Available at: *www.eia.gov/electricity/data/eia861m/*) (last accessed Sept. 12, 2022).

[32] EIA. *Annual Energy Outlook 2018 with Projections to 2050.* Washington, DC. (Available at *www.eia.gov/forecasts/aeo/*) (last accessed Sept. 12, 2022).

[33] See Chapter 8, section 8.3.3 of the 2022 Preliminary Analysis Technical Support Document for External Power Supplies. (Available at: *www.regulations.gov/document/EERE-2020-BT-STD-0006-0012*) (last accessed Sept. 12, 2022).

[34] See Chapter 8, section 8.3.4 of the 2022 Preliminary Analysis Technical Support Document for External Power Supplies. (Available at: *www.regulations.gov/document/EERE-2020-BT-STD-0006-0012*) (last accessed Sept. 12, 2022).

not an EPS. Therefore, an EPS with a USB connection may have a lifetime longer than that of the initial application and DOE's assumption may no longer be valid. (CA IOUs, No. 25 at p. 6) The Joint Efficiency Advocates also commented that DOE should re-evaluate the approach to lifetimes as many AC–DC low voltage EPS are sold as stand-alone products that are independent from the end-use product, and that sellers of end-use products increasingly no longer bundle low-voltage EPSs so that users may reuse their existing EPSs. The Joint Efficiency Advocates believe that these stand-alone EPSs will have much longer lifetimes than their end use applications, and therefore DOE should extend the lifetime estimates for these products. (Joint Efficiency Advocates, No. 24 at p. 3). However, the CA IOUs and the Joint Efficiency Advocates did not provide any lifetime data for this specific type of EPS.

DOE was unable to find any updated lifetime information or data for EPSs. However, in response to these comments, DOE increased the lifetime for thirteen applications. DOE agrees that some applications (*e.g.,* phones) are likely to have an EPS lifetime longer than that of the application. DOE also increased the lifetime estimates for a few other applications to be more representative of current usage. The increase in lifetime ranges from one to three years, except for security cameras which now match the lifetime of home security systems used in the 2022 Preliminary Analysis for battery chargers.[35] For the rest of the applications, DOE maintained the lifetime approach that it used in the February 2022 Preliminary Analysis.

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households and commercial buildings to estimate the present value of future operating cost savings. DOE estimated a distribution of discount rates for EPSs based on the opportunity cost of consumer funds.

For residential households, DOE applies weighted average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates.[36] 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 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 Survey of Consumer Finances[37] (''SCF'') for 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 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 4.26% percent.

For commercial buildings, DOE derived the discount rates for the LCC analysis by estimating the cost of capital for companies or public entities that purchase EPSs. For private firms, the weighted average cost of capital (''WACC'') is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so their cost of capital is the weighted average of the cost to the firm of equity and debt financing, as estimated from financial data for publicly traded firms across all commercial sectors. The average commercial cost of capital is 6.77%.

See chapter 8 of the NOPR TSD 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 February 2022 Preliminary Analysis, DOE used the CCD[38] to estimate the energy efficiency distribution of EPSs for 2027.[39] The estimated market shares for the no-new-standards case for EPSs are shown in Table IV.14. See chapter 8 of the NOPR TSD for further information on the derivation of the efficiency distributions.

TABLE IV.14—ESTIMATED MARKET SHARES OF EPSS IN NO-NEW-STANDARDS CASE

Power level	Efficiency levels				
	Current DOE stds. (%)	EU CoC T2 (%)	Top 50% (%)	Best in market (%)	Max-tech (%)
PC 1: Dir SV AC–DC Basic (2.5w)	0	52	26	22	0

[35] See Chapter 8, section 8.3.4 of the 2022 Preliminary Analysis Technical Support Document for Battery Chargers. (Available at: *www.regulations.gov/document/EERE-2020-BT-STD-0013-0009*) (last accessed Sept. 12, 2022).

[36] 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.

[37] Board of Governors of the Federal Reserve System. *Survey of Consumer Finances.* 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 2019. (Available at: *www.federalreserve.gov/econres/scfindex.htm*) (last accessed Sept. 12, 2022).

[38] *https://www.regulations.doe.gov/ccms.*

[39] See Chapter 8, section 8.4 of the 2022 Preliminary Analysis Technical Support Document for External Power Supplies. (Available at: *www.regulations.gov/document/EERE-2020-BT-STD-0006-0012*) (last accessed Sept. 12, 2022).

TABLE IV.14—ESTIMATED MARKET SHARES OF EPSS IN NO-NEW-STANDARDS CASE—Continued

Power level	Efficiency levels				
	Current DOE stds. (%)	EU CoC T2 (%)	Top 50% (%)	Best in market (%)	Max-tech (%)
PC 1: Dir SV AC–DC Basic (12w)	18	35	41	6	0
PC 1: Dir SV AC–DC Basic (24w)	22	40	34	4	0
PC 1: Dir SV AC–DC Basic (60w)	50	21	17	13	0
PC 1: Dir SV AC–DC Basic (120w)	26	32	26	16	0
PC 2: Dir SV AC–DC Low (5w)	6	65	19	8	2
PC 2: Dir SV AC–DC Low (10w)	17	29	28	26	0
PC 2: Dir SV AC–DC Low (12w)	27	28	26	17	3
PC 2: Dir SV AC–DC Low (24w)	44	7	45	4	0
PC 3: Dir SV AC–AC Basic (3.6w)	67	0	33	0	0
PC 3: Dir SV AC–AC Basic (24w)	0	50	50	0	0
PC 3: Dir SV AC–AC Basic (40w)	100	0	0	0	0
PC 5: Dir MV (18w)	2	14	51	24	8
PC 5: Dir MV (30w)	56	8	25	11	0
PC 5: Dir MV (90w)	0	50	25	0	25

9. Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods are expressed in years. 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. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

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 amended standards would be required.

H. 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.[40] 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 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.

In the February 2022 Preliminary Analysis, DOE developed shipments estimates based on actual shipments from 2019 and a population growth rate based on U.S. Census population projections through 2050.[41] DOE did not receive any comments on the shipments analysis and therefore used this same approach in the NOPR.

See Chapter 9 of the NOPR TSD for more detail on the shipments analysis.

DOE requests comment on its methodology for estimating shipments. DOE also requests comment on its approach to estimate the market share for EPSs of all product classes. DOE requests comment on the observed and expected changes in quantity and use of external power supplies, by type of power supply, and changes in shipments of products that use external power supplies, including consumer electronics, power tools, and medical devices, among others.

[40] 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.

[41] See Chapter 9 of the 2022 Preliminary Analysis Technical Support Document for External Power Supplies. (Available at: *www.regulations.gov/document/EERE-2020-BT-STD-0006-0012*) (last accessed Sept. 12, 2022).

I. National Impact Analysis

The NIA assesses the 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.[42] (''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 EPSs 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 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.

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

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.15 summarizes the inputs and methods DOE used for the NIA analysis for the NOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPR TSD for further details.

TABLE IV.15—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: Varies by application.
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 extrapolation thereafter based on the growth rate from 2023–2050.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on *AEO2022.*
Discount Rate	3 percent and 7 percent.
Present Year	2021.

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.G.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. To project the trend in efficiency absent amended standards for EPSs over the entire shipments projection period, DOE assumed a constant efficiency trend. The approach is further described in chapter 10 of the NOPR TSD.

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.

To develop standards case efficiency trends after 2027, DOE used a constant efficiency trend, keeping the distribution equal to the compliance year.

2. National Energy Savings

The national energy savings analysis involves a comparison of national energy consumption of the considered products between each potential standards case (''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 occasionally 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 consider a rebound effect in this analysis, because the price differences by EL and energy use are so small that any rebound effect would be close to zero.

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 [43] 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 NOPR TSD.

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

[43] For more information on NEMS, refer to *The National Energy Modeling System: An Overview.* (Available at: *www.eia.gov/analysis/pdfpages/0581(2009)index.php*) (last accessed Sept. 12, 2022).

costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

As discussed in section IV.G.1 of this document, DOE developed EPS price trends based on historical PPI data for the semiconductor industry. 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 EPS price is projected to drop 90 percent relative to 2021. DOE's projection of product prices is described in appendix 10C of the NOPR TSD.

The operating cost savings are energy cost savings, which 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 and commercial energy price changes in the Reference case from *AEO2022,* which has an end year of 2050. To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2023 through 2050.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this NOPR, 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 Office of Management and Budget (''OMB'') to Federal agencies on the development of regulatory analysis.[44] 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.

J. 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 NOPR, DOE analyzed the impacts of the considered standard levels on one subgroup: low-income households. The analysis used subsets of the RECS 2015 and CBECS 2018 sample composed of households that meet the criteria for the two subgroups. DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on these subgroups. Chapter 11 in the NOPR TSD describes the consumer subgroup analysis.

K. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of amended energy conservation standards on manufacturers of EPSs 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 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 Government Regulatory Impact Model (''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 markups, 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 (''TSLs''). To capture the uncertainty relating to manufacturer pricing strategies following 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, as well as impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the NOPR TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the EPS manufacturing industry based on the market and technology assessment, manufacturer interviews, and publicly-available information. This included a top-down analysis of EPS 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 EPS manufacturing industry, including company filings of form 10–K from the U.S. Securities and Exchange Commission (''SEC''),[45] corporate annual reports, the U.S. Census Bureau's *Economic Census,*[46] and reports from D&B Hoovers.[47]

In Phase 2 of the MIA, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of 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.

[44] United States Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Section E. (Available at: *www.whitehouse.gov/omb/memoranda/m03-21.html*) (last accessed Sept. 12, 2022).

[45] *See www.sec.gov/edgar.shtml.*

[46] *See www.census.gov/programs-surveys/asm/data.html.*

[47] *See https://app.dnbhoovers.com.*

In Phase 3 of the MIA, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by 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 one subgroup for a separate impact analysis: small business manufacturers. The small business subgroup is discussed in section VI.B of this document, ''Review under the Regulatory Flexibility Act'', and in chapter 12 of the NOPR TSD.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to 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 an amended energy conservation standard. The GRIM 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 EPSs, DOE used a real discount rate of 7.1 percent, which was the value used in the February 2014 Final Rule.[48]

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 amended energy conservation standard 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. 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 NOPR TSD.

[48] 79 FR 7846, 7849.

a. Manufacturer Production Costs

Manufacturing more efficient equipment is typically more expensive than manufacturing baseline equipment due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of covered products can affect the revenues, gross margins, and cash flow of the industry. An overview of the methodology used to generate MPCs is located in the engineering analysis, and a complete discussion of the MPCs can be found in chapter 5 of the NOPR TSD.

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 base year) to 2056 (the end year of the analysis period). See chapter 9 of the NOPR TSD for additional details.

c. Product and Capital Conversion Costs

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 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.

DOE estimated that EPS manufacturers would not incur any capital conversion costs. DOE expects, as is indicated by the engineering analysis, that efficiency improvements would be accomplished through component changes, changes to the design of EPSs, or some combination therein. To DOE's understanding, this would not require any significant change to the capital equipment used in the production of EPSs. Manufacturers of EPSs typically do not produce their own components but rather source these components from outside manufacturers. Manufacturers of EPSs are not expected to incur any capital costs when purchasing these more expensive and efficient components. However, the increase in per unit component costs is reflected in the higher MPCs derived in the engineering analysis. See section IV.D.2 for a complete description of the MPCs derived for this NOPR analysis. Additionally, the design of EPSs is not expected to change in such a way as a result of any amended standards that the underlying production equipment would change.

DOE does expect that manufacturers would incur product redesign costs due to amended standards. Manufacturers may need to redesign models outside of their normal product redesign cycles and would need to design around a higher efficiency constraint. To evaluate the level of product conversion costs manufacturers would likely incur to comply with amended energy conservation standards, DOE developed estimates of product conversion costs for each product class at each efficiency level using estimated revenues related to EPSs, the R&D factor of revenue used in the February 2014 Final Rule, and research related to the engineering analysis. The conversion cost estimates used in the GRIM can be found in section IV.K.2.c of this document. DOE assumes that all conversion-related investments would occur between the year of publication of the final rule and the year by which manufacturers must comply with amended energy conservation standards.

For additional information on the estimated conversion costs and the related methodology, see chapter 12 of the NOPR TSD.

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 non-production cost markups to the MPCs estimated in the engineering analysis for each product class and efficiency level. Modifying these markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy

conservation standards: (1) a preservation of gross margin scenario; and (2) a preservation of operating profit scenario. These scenarios lead to different margins that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin scenario, DOE applied a single uniform gross margin across all efficiency levels, which assumes that manufacturers would be able to maintain the same amount of profit as a percentage of revenues at all efficiency levels within a product class. This scenario represents the upper bound of INPV impacts modeled by DOE in this analysis.

Under the preservation of operating profit scenario, DOE modeled a situation in which manufacturers are not able to maintain the per-unit operating profit in proportion to increases in manufacturer production costs but are able to maintain the total amount operating profit (as a dollar value). This scenario represents the lower bound of INPV impacts modeled by DOE in this analysis.

A comparison of industry financial impacts under the two markup scenarios is presented in section V.B.2.a of this document.

3. Discussion of MIA Comments

ITI commented in response to the February 2022 Preliminary Analysis that if DOE were to raise efficiency levels for EPSs across the board, there is likely to be a significant impact for all manufacturers of small-network equipment and for other equipment that use an off-the-shelf EPS. ITI further stated that these impacts would be seen in the redesigns and supply chains required for complying with higher efficiency standards and therefore these cost impacts would likely be higher than in DOE's preliminary analysis. (ITI, No. 20 at pp. 3–4) ITI also stated that there is significant potential for many units of non-compliant EPSs to be scrapped if standard levels were raised. (ITI, No. 20 at p. 8) In the event that energy efficiency requirements are changed, ITI requested that DOE allow for an implementation time of at least 5 years to account for time needed for inventory draw down, EPS and end-product redesign considerations, and securing necessary components for production. (ITI, No. 20 at pp. 4–6) ITI stated that changing the components of an EPS to abide by more stringent efficiency standards could result in necessary redesigns for the growing or shrinking of the EPS enclosure. (ITI, No. 20 at pp. 8–9)

Regarding ITI's first point, DOE has created estimates of the conversion costs necessary to comply with amended standards as well as estimates of the MSPs of EPSs at different efficiency levels. ITI did not provide data on or quantify the costs that might be expected by manufacturers, so DOE is unable to evaluate those costs in relation to its own estimates. DOE requests comment on DOE's estimated costs to see if they align with expectations. DOE also requests comment on inventory quantities of consumer electronics and other goods that use EPSs that do not meet the proposed standard.

Regarding ITI's second point, DOE does not expect that manufacturers will need to scrap a large number of non-compliant EPSs—a large fraction of the EPSs currently in the market meet the proposed standard level, as laid out in Table IV.14. Additionally, given the compliance window, manufacturers will have time to adjust production and inventories accordingly. Further, while the domestic market is the largest market for North American-type EPSs, markets elsewhere in North America remain an option if inventories of non-compliant models are not successfully drawn down completely.

For the third point, requesting a compliance window of 5 years in the event the proposed amended standards are finalized, DOE believes that the statutorily mandated 2-year compliance window will be sufficient. A 2-year compliance window already covers much of DOE's estimated model lifecycle of 4 years for EPSs, and, as noted previously, many extant EPS models are expected to meet the proposed standard. For the fourth point, the product conversion cost estimates in this NOPR are expected to encapsulate all changes to EPS designs—including enclosure changes.

DOE requests comment on the estimated EPS model production cycle of four years. DOE requests comment on the impacts of the proposed standard, including the compliance date, on the inventory and potential redesign of products that use EPSs that would not meet the proposed standards.

L. 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 NOPR TSD. 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).[49]

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 NOPR TSD.

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.

[49] Available at *www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf* (last accessed Sept. 12, 2022).

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.[50]

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 (D.C.). (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.[51] *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.

M. 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 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 NOPR.

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

[50] 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 Sept. 12, 2022).

[51] 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).

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, including the February 2021 Interim Estimates presented by the Interagency Working Group on the Social Cost of Greenhouse Gases.

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 (''February 2021 SC–GHG TSD''). 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 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 (''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 (''SC–CH_4'') and nitrous oxide (''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.*[52] 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).[53] 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 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.

[52] 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.

[53] 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.

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, 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 SC–GHG 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,[54] 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 percent 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 document.

To calculate the present and annualized values of climate benefits, 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

[54] 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. (Available at: *www.epa.gov/sites/default/files/2016-12/documents/sc_co2_tsd_august_2016.pdf*) (Last accessed Sept. 12, 2022) ; 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. (Available at: *www.epa.gov/sites/default/files/2016-12/documents/addendum_to_sc-ghg_tsd_august_2016.pdf*) (Last accessed Sept. 12, 2022).

consulted the National Academies' 2017 recommendations on how SC–GHG estimates can ''be combined in RIAs 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 the aforementioned 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 developed in regulatory analyses between 2010 and 2016 and were 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.[55] 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 proposed rule likely underestimate the damages from GHG emissions. DOE concurs with this assessment.

DOE's derivations of the SC–CO_2, SC–N_2O, and SC–CH_4 values used for this NOPR 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 NOPR were based on the values developed for the IWG's February 2021 TSD. Table IV.16 shows the updated sets of SC–CO_2 estimates from the IWG's 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 NOPR TSD. 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.[56]

TABLE IV.16—ANNUAL SC–CO_2 VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020 Dollars 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
2045	28	79	110	242
2050	32	85	116	260

[55] 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*) (Last accessed Sept. 12, 2022).

[56] 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.

For 2051 to 2070, DOE used SC–CO_2 estimates published by EPA, adjusted to 2021 dollars.[57] 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 EPSs 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. If further analysis of monetized climate benefits beyond 2070 becomes available prior to the publication of the final rule, DOE will include that analysis in the final rule.

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 dollars 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 NOPR were generated using the values presented in the February 2021 TSD. Table IV.17 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 NOPR TSD. 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.17—ANNUAL SC–CH_4 AND SC–N_2O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020 Dollars 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	1,500	2,000	3,900	5,800	18,000	27,000	48,000
2025	800	1,700	2,200	4,500	6,800	21,000	30,000	54,000
2030	940	2,000	2,500	5,200	7,800	23,000	33,000	60,000
2035	1,100	2,200	2,800	6,000	9,000	25,000	36,000	67,000
2040	1,300	2,500	3,100	6,700	10,000	28,000	39,000	74,000
2045	1,500	2,800	3,500	7,500	12,000	30,000	42,000	81,000
2050	1,700	3,100	3,800	8,200	13,000	33,000	45,000	88,000

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 dollars 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 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 NOPR, 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.[58] 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 EPSs using a method described in appendix 14B of the NOPR TSD.

N. 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 NOPR TSD.

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.

[57] See EPA, *Revised 2026 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis,* Washington, DC, December 2021. (Available at: *www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-revise-existing-national-ghg-emissions*) (last accessed Sept. 12, 2022).

[58] *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*) (last accessed Sept. 12, 2022).

O. 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.[59] 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 NOPR using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 (''ImSET'').[60] 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 over the long run for this rule. Therefore, DOE used ImSET only to generate results for near-term timeframes (2027–2032), where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

P. Marking Requirements

Under 42 U.S.C. 6294(a)(5), Congress granted DOE with the authority to establish labeling or marking requirements for a number of consumer products, including EPSs. EISA 2007 set initial standards for Class A EPSs, and required that all Class A EPSs be clearly and permanently marked in accordance with the ''International Efficiency Marking Protocol for External Power Supplies'' (the ''Marking Protocol''). (42 U.S.C. 6295(u)(3)(C)). Subsequently, the February 2014 Final Rule amended the Marking Protocol to mandate the labeling of its finalized efficiency standards (the Level VI standards) with the Roman number VI. 79 FR 7846, 7895–7897.

DOE notes that it is proposing amended standards for EPSs across all product classes that exceed efficiency level ''VI'', the highest level currently defined in the Marking Protocol. DOE is proposing to define the proposed standards as ''Level VII'' and require updating markings per the Marking Protocol. As noted in Section III.A, these Level VII standards would be applicable to all EPSs, including direct and indirect operation Class A and non-Class A EPSs. This approach makes the distinction between these various types of EPSs redundant with respect to the applicability of energy conservation standards. Accordingly, DOE proposes to avoid using these terms in establishing Level VII standards in 10 CFR 430.32(w)(1)(iv).

DOE requests comment on its proposal for Level VII efficiency markings. DOE also requests feedback on its proposal to using the terms direct and indirect operation Class A and non-Class A EPSs in establishing Level VII standards in 10 CFR 430.32(w)(1)(iv).

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for EPSs. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for EPSs, and the standards levels that DOE is proposing to adopt in this NOPR. Additional details regarding DOE's analyses are contained in the NOPR TSD supporting this document.

A. Trial Standard Levels

In general, DOE typically evaluates potential 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 NOPR, DOE analyzed the benefits and burdens of six TSLs for EPSs. 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 NOPR TSD.

Table V.1 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for EPSs. TSL 6 represents the maximum technologically feasible

[59] See U.S. Department of Commerce–Bureau of Economic Analysis. *Regional Input-Output Modeling System (RIMS II) User's Guide.* (Available at: *www.bea.gov/resources/methodologies/RIMSII-user-guide*) (last accessed Sept. 12, 2022).

[60] 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.

(''max-tech'') energy efficiency for all product classes.

TABLE V.1—TRIAL STANDARD LEVELS FOR EPSS

TSL	Efficiency Level				
	AC–DC basic-voltage	AC–DC low-voltage	AC–AC basic-voltage	AC–AC low-voltage	Multiple-voltage
1	0	1	1	1	1
2	0	1	3	1	2
3	1	1	1	1	1
4	1	1	3	1	2
5	3	1	4	1	1
6	4	4	4	4	4

DOE constructed the TSLs for this NOPR 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.[61]

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on EPS consumers by looking at the effects that potential 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 NOPR TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through Table V.5 show the LCC and PBP results for the TSLs considered for each product class. The impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.G.8 of this document). 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. Results for AC–AC Low Voltage are not shown because there are no shipments of this product class.

TABLE V.2—AVERAGE LCC AND PBP RESULTS FOR AC–DC BASIC-VOLTAGE

EL	Average costs and savings (2021 dollars)			Average LCC savings* (2021 dollars)	Percent of consumers with net cost	Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating savings	Lifetime operating savings				
EL 1	$0.35	$0.06	$0.31	−$0.03	20	5.0	4.8
EL 2	0.53	0.09	0.43	−0.10	49	6.5	4.8
EL 3	0.95	0.14	0.68	−0.27	77	7.3	4.8
EL 4	1.82	0.24	1.17	−0.64	86	8.0	4.8

*The savings represent the average LCC for affected consumers.
Numbers may not add up due to rounding.

TABLE V.3—AVERAGE LCC AND PBP RESULTS FOR AC–DC LOW VOLTAGE

EL	Average costs and savings (2021 dollars)			Average LCC savings* (2021 dollars)	Percent of consumers with net cost	Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating savings	Lifetime operating savings				
EL 1	$0.05	$0.01	$0.05	$0.01	4	3.2	4.2
EL 2	0.59	0.02	0.09	−0.50	69	26.4	4.2
EL 3	1.07	0.04	0.15	−0.91	89	27.3	4.2
EL 4	1.51	0.05	0.21	−1.30	97	28.5	4.2

*The savings represent the average LCC for affected consumers.
Numbers may not add up due to rounding.

[61] Efficiency levels that were analyzed for this NOPR are discussed in section IV.D of this document. Results by efficiency level are presented in TSD chapters 8, 10, and 12.

TABLE V.4—AVERAGE LCC AND PBP RESULTS FOR AC–AC BASIC-VOLTAGE

EL	Average costs and savings (2021 dollars)			Average LCC savings* (2021 dollars)	Percent of consumers with net cost	Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating savings	Lifetime operating savings				
EL 1	$0.18	$0.07	$0.36	$0.18	10	2.3	6.2
EL 2	0.53	0.16	0.81	0.29	17	3.7	6.2
EL 3	1.02	0.30	1.53	0.52	28	4.1	6.2
EL 4	1.96	0.48	2.51	0.55	43	4.7	6.2

* The savings represent the average LCC for affected consumers.
Numbers may not add up due to rounding.

TABLE V.5—AVERAGE LCC AND PBP RESULTS FOR MULTIPLE-VOLTAGE

EL	Average costs and savings (2021 dollars)			Average LCC savings* (2021 dollars)	Percent of consumers with net cost	Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating savings	Lifetime operating savings				
EL 1	$0.02	$0.06	$0.49	$0.46	0	0.1	6.2
EL 2	0.42	0.09	0.65	0.24	39	7.0	6.2
EL 3	1.23	0.14	0.85	−0.38	66	9.8	6.2
EL 4	2.37	0.20	1.12	−1.25	70	12.5	6.2

* The savings represent the average LCC for affected consumers.
Numbers may not add up due to rounding.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on low-income households. Table V.6 compares the average LCC savings and PBP at each efficiency level for the consumer subgroups with similar metrics for the entire consumer sample for a product class. In most cases, the average LCC savings and PBP for low-income households at the considered efficiency levels are not substantially different from the average for all households. Chapter 11 of the NOPR TSD presents the complete LCC and PBP results for the subgroups.

TABLE V.6—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; AC–DC BASIC-VOLTAGE

	Low-income households	All households
Average LCC Savings (2021 Dollars)		
EL 1	$0.00	−$0.03
EL 2	−0.06	−0.10
EL 3	−0.20	−0.27
EL 4	−0.53	−0.64
Payback Period (years)		
EL 1	.....	5.0
EL 2	6.1	6.5
EL 3	6.8	7.3

TABLE V.6—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; AC–DC BASIC-VOLTAGE—Continued

	Low-income households	All households
EL 4	7.6	8.0
Consumers with Net Cost (%)		
EL 1	19	20
EL 2	48	49
EL 3	74	77
EL 4	84	86

TABLE V.7—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; AC–DC LOW VOLTAGE

	Low-income households	All households
Average LCC Savings (2021 Dollars)		
EL 1	$0.01	$0.01
EL 2	−0.51	−0.50
EL 3	−0.92	−0.91
EL 4	−1.31	−1.30
Payback Period (years)		
EL 1	3.0	3.2
EL 2	26.8	26.4
EL 3	27.8	27.3
EL 4	29.1	28.5

TABLE V.7—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; AC–DC LOW VOLTAGE—Continued

	Low-income households	All households
Consumers with Net Cost (%)		
EL 1	4	4
EL 2	70	69
EL 3	89	89
EL 4	98	97

TABLE V.8—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; AC–AC BASIC-VOLTAGE

	Low-income households	All households
Average LCC Savings (2021 Dollars)		
EL 1	$0.24	$0.18
EL 2	0.41	0.29
EL 3	0.74	0.52
EL 4	0.95	0.55
Payback Period (years)		
EL 1	.....	2.3
EL 2	3.5	3.7
EL 3	3.9	4.1
EL 4	4.5	4.7
Consumers with Net Cost (%)		
EL 1	10	10

TABLE V.8—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; AC–AC BASIC-VOLTAGE—Continued

	Low-income households	All households
EL 2	14	17
EL 3	22	28
EL 4	27	43

TABLE V.9—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; MULTIPLE-VOLTAGE

	Low-income households	All households
Average LCC Savings (2021 Dollars)		
EL 1	$0.46	$0.46
EL 2	0.21	0.24
EL 3	−0.43	−0.38
EL 4	−1.32	−1.25

TABLE V.9—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; MULTIPLE-VOLTAGE—Continued

	Low-income households	All households
Payback Period (years)		
EL 1		0.1
EL 2	8.1	7.0
EL 3	11.3	9.8
EL 4	14.3	12.5
Consumers with Net Cost (%)		
EL 1	0	0
EL 2	39	39
EL 3	67	66
EL 4	71	70

c. Rebuttable Presumption Payback

As discussed in section IV.G.9, 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 EPSs.

Table V.10 presents the rebuttable-presumption payback periods for the considered TSLs for EPSs. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for the NOPR 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, which may support or rebut the preliminary determination of economic justification.

TABLE V.10—REBUTTABLE-PRESUMPTION PAYBACK PERIODS

EL	AC–DC basic-voltage	AC–DC low-voltage	AC–AC basic-voltage	Multiple-voltage
1	5.0	3.2	2.3	0.1
2	6.5	26.4	3.7	7.0
3	7.3	27.3	4.1	9.8
4	8.0	28.5	4.7	12.5

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of EPSs. The following section describes the expected impacts on manufacturers at each considered TSL. Section IV.K of this document discusses the MIA methodology, and chapter 12 of the NOPR TSD 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 a standard. The following tables summarize the estimated financial impacts (represented by changes in INPV) of potential amended energy conservation standards on manufacturers of EPSs as well as the conversion costs that DOE estimates manufacturers of EPSs would incur at each TSL.

TABLE V.11—MANUFACTURER IMPACT ANALYSIS FOR EXTERNAL POWER SUPPLIES—PRESERVATION OF GROSS MARGIN SCENARIO

	Units	No-new-standards case	Trial standard level					
			1	2	3	4	5	6
INPV	*2021 Dollars millions*	847.5	846.1	845.3	840.4	839.6	801.5	814.6
Change in INPV	*2021 Dollars millions*		(1.4)	(2.2)	(7.1)	(7.9)	(46.0)	(32.9)
	%		(0.2)	(0.3)	(0.8)	(0.9)	(5.4)	(3.9)
Total Conversion Costs	*2021 Dollars millions*		2.7	4.7	15.4	17.4	105.9	186.5

*Numbers in parentheses "()" are negative. Some numbers might not round due to rounding.

TABLE V.12—MANUFACTURER IMPACT ANALYSIS FOR EXTERNAL POWER SUPPLIES—PRESERVATION OF OPERATING PROFIT SCENARIO

	Units	No-new-standards case	Trial standard level					
			1	2	3	4	5	6
INPV	*2021 Dollars millions*	847.5	845.8	844.4	837.3	835.9	775.2	700.0
Change in INPV	*2021 Dollars millions*		(1.7)	(3.1)	(10.2)	(11.6)	(72.3)	(147.5)
	%		(0.2)	(0.4)	(1.2)	(1.4)	(8.5)	(17.4)

TABLE V.12—MANUFACTURER IMPACT ANALYSIS FOR EXTERNAL POWER SUPPLIES—PRESERVATION OF OPERATING PROFIT SCENARIO—Continued

	Units	No-new-standards case	Trial standard level					
			1	2	3	4	5	6
Total Conversion Costs	*2021 Dollars millions*	.....	2.7	4.7	15.4	17.4	105.9	186.5

*Numbers in parentheses "()" are negative. Some numbers might not round due to rounding.

At TSL 1, DOE estimates impacts on INPV will range from approximately −$1.7 million to −$1.4 million, which represents a change of approximately −0.2 percent. At TSL 1, industry free cash-flow decreases to $77.6 million, which represents a decrease of approximately 1.5 percent, compared to the no-new-standards case value of $78.7 million in 2026, the year before the estimated compliance date.

TSL 1 would set the energy conservation standard at baseline for the AC–DC Basic-Voltage product class and at EL 1 for all other product classes. DOE estimates that all AC–DC basic-voltage shipments, approximately 93 percent of AC–DC low-voltage shipments, approximately 41 percent of AC–AC basic-voltage shipments, and approximately 89 percent of multiple-voltage shipments would meet the efficiency levels analyzed at TSL 1 in 2027. As noted previously, shipment data is not available for the AC–AC Low-Voltage product class. DOE expects EPS manufacturers to incur approximately $2.7 million in product conversion costs to redesign all non-compliant models.

At TSL 1, the shipment-weighted average MPC for EPSs slightly increases by 0.1 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 $2.7 million in conversion costs, causing a slightly 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 0.1 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 $2.7 million in conversion costs incurred by manufacturers cause a slightly 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 −$3.1 million to −$2.2 million, which represents a change of −0.4 percent to −0.3 percent, respectively. At TSL 2, industry free cash-flow decreases to $76.7 million, which represents a decrease of approximately 2.6 percent, compared to the no-new-standards case value of $78.7 million in 2026, the year before the estimated compliance date.

TSL 2 would set the energy conservation standard at baseline for the AC–DC Basic-Voltage product class; at EL 1 for the AC–DC Low-Voltage and AC–AC Low-Voltage product classes; at EL 2 for the Multiple-Voltage product class; and at EL 3 for the AC–AC Basic-Voltage product class. DOE estimates that all AC–DC basic-voltage shipments, approximately 93 percent of AC–DC low-voltage shipments, approximately 24 percent of AC–AC basic-voltage shipments, and approximately 23 percent of multiple-voltage shipments would meet the efficiency levels analyzed at TSL 2 in 2027. DOE expects EPS manufacturers to incur approximately $4.7 million in product conversion costs to redesign all non-compliant models.

At TSL 2, the shipment-weighted average MPC for EPSs slightly increases by 0.3 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 $4.7 million in conversion costs, causing a slightly negative change in INPV at TSL 2 under the preservation of gross margin scenario.

Under the preservation of operating profit scenario, the 0.3 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 $4.7 million in conversion costs incurred by manufacturers cause a slightly 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 −$10.2 million to −$7.1 million, which represents a change of −1.2 percent to −0.8 percent, respectively. At TSL 3, industry free cash-flow decreases to $72.1 million, which represents a decrease of approximately 8.5 percent, compared to the no-new-standards case value of $78.7 million in 2026, the year before the estimated compliance date.

TSL 3 would set the energy conservation standard at EL 1 for all AC–DC Basic-Voltage product classes. DOE estimates that approximately 75 percent of AC–DC basic-voltage shipments, approximately 93 percent of AC–DC low-voltage shipments, approximately 41 percent of AC–AC basic-voltage shipments, and approximately 89 percent of multiple-voltage shipments would meet the efficiency levels analyzed at TSL 3 in 2027. DOE expects EPS manufacturers to incur approximately $15.4 million in product conversion costs to redesign all non-compliant models.

At TSL 3, the shipment-weighted average MPC for EPSs slightly increases by 0.8 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 increase in shipment weighted average MPC is outweighed by the $15.4 million in conversion costs, resulting in a slightly negative change in INPV at TSL 3 under the preservation of gross margin scenario.

Under the preservation of operating profit scenario, the 0.8 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 $15.4 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 3 under the preservation of operating profit scenario.

At TSL 4, DOE estimates impacts on INPV will range from −$11.6 million to −$7.9 million, which represents a change of −1.4 percent to −0.9 percent, respectively. At TSL 4, industry free cash-flow decreases to $71.2 million, which represents a decrease of approximately 9.6 percent, compared to

the no-new-standards case value of $78.7 million in 2026, the year before the estimated compliance date.

TSL 4 would set the energy conservation standard at EL 1 for all product classes except for the Multiple-Voltage and AC–AC Basic-Voltage product classes, which would be set at EL 2 and EL 3 respectively. DOE estimates that approximately 75 percent of AC–DC basic-voltage shipments, approximately 93 percent of AC–DC low-voltage shipments, approximately 0 percent of AC–AC basic-voltage shipments, and approximately 49 percent of multiple-voltage shipments would meet the efficiency levels analyzed at TSL 4 in 2027. DOE expects EPS manufacturers to incur approximately $17.4 million in product conversion costs to redesign all non-compliant models.

At TSL 4, the shipment-weighted average MPC for EPSs slightly increases by 1.0 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 $17.4 million in conversion costs, causing a slightly negative change in INPV at TSL 4 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 1.0 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 $17.4 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 4 under the preservation of operating profit scenario.

At TSL 5, DOE estimates impacts on INPV will range from −$72.3 million to −$46.0 million, which represents a change of −8.5 percent to −5.4 percent, respectively. At TSL 5, industry free cash-flow decreases to $32.7 million, which represents a decrease of approximately 58.4 percent, compared to the no-new-standards case value of $78.7 million in 2026, the year before the estimated compliance date.

TSL 5 would set the energy conservation standard at EL 1 for the AC–DC Low-Voltage, AC–AC Low-Voltage, and Multiple-Voltage product classes. The AC–DC Basic-Voltage and AC–AC Basic-Voltage product classes would be set at EL 3 and EL 4 respectively. EL 4 constitutes max-tech for the AC–AC Basic-Voltage product class. DOE estimates that approximately 8 percent AC–DC basic-voltage shipments, approximately 93 percent of AC–DC low-voltage shipments, approximately 0 percent of AC–AC basic-voltage shipments, and approximately 89 percent of multiple-voltage shipments would meet the efficiency levels analyzed at TSL 5 in 2027. DOE expects EPS manufacturers to incur approximately $105.9 million in product conversion costs to redesign all non-compliant models.

At TSL 5, the shipment-weighted average MPC for EPSs moderately increases by 6.8 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 moderate cost increase. The moderate increase in shipment weighted average MPC is outweighed by the $105.9 million in conversion costs, causing a moderately negative change in INPV at TSL 5 under the preservation of gross margin scenario.

Under the preservation of operating profit scenario, the 6.8 percent shipment weighted average MPC increase results in a moderate reduction in the margin after the analyzed compliance year. This reduction in the margin and the $105.9 million in conversion costs incurred by manufacturers cause a moderately negative change in INPV at TSL 5 under the preservation of operating profit scenario.

At TSL 6, DOE estimates impacts on INPV will range from −$147.5 million to −$32.9 million, which represents a change of −17.4 percent to −3.9 percent, respectively. At TSL 6, industry free cash-flow decreases to −$5.9 million, which represents a decrease of approximately 107.5 percent, compared to the no-new-standards case value of $78.7 million in 2026, the year before the estimated compliance date.

TSL 6 would set the energy conservation standard at EL 4 for all product classes. EL 4 constitutes max-tech for all product classes. DOE estimates that approximately 0 percent of AC–DC basic-voltage shipments, approximately 2 percent of AC–DC low-voltage shipments, approximately 0 percent of AC–AC basic-voltage shipments, and approximately 19 percent of multiple-voltage shipments would meet the efficiency levels analyzed at TSL 6 in 2027. DOE expects EPS manufacturers to incur approximately $186.5 million in product conversion costs to redesign all non-compliant models.

At TSL 6, the shipment-weighted average MPC for EPSs significantly increases by 29.6 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 $186.5 million in conversion costs, causing a slightly negative change in INPV at TSL 6 under the preservation of gross margin scenario.

Under the preservation of operating profit scenario, the 29.6 percent shipment weighted average MPC increase results in a significant reduction in the margin after the analyzed compliance year. This reduction in the margin and the $186.5 million in conversion costs incurred by manufacturers cause a moderately negative change in INPV at TSL 6 under the preservation of operating profit scenario.

DOE requests comment on the GRIM results and the estimated conversion costs.

b. Direct Impacts on Employment

DOE was unable to identify any domestic EPS manufacturing facilities, based on the industry profile developments for this NOPR analysis and manufacturer interviews that were conducted for this product as well as other products that use EPSs. As such, DOE does not expect that there would be any direct impacts on domestic production employment as a result of any amended energy conservation standards.

DOE requests comment on whether there is domestic EPS manufacturing, where and to what extent such manufacturing occurs, and how the proposed energy conservation standard might affect that possible domestic EPS manufacturing.

c. Impacts on Manufacturing Capacity

As noted in prior sections, DOE does not expect that energy conservation standards would result in substantial changes to EPS manufacturing equipment. Further, DOE does not expect that there would be capacity issues providing components to EPS manufacturers for more efficient EPSs.

DOE requests comment on possible impacts on manufacturing capacity stemming from amended energy conservation standards, including any potential issues with supply chain costs, and or chips and devices used in the national security sector.

d. Impacts on Subgroups of Manufacturers

DOE identified one subgroup of manufactures that may experience disproportionate or different impacts as a result of amended standards—small businesses. Analysis of the possible impact on this group is discussed in Section VI.B of this document.

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.

TABLE V.13—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING EXTERNAL POWER SUPPLY 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)
Room Air Conditioners † 87 FR 20608 (Apr. 7, 2022).	8	3	2026	$22.8 (2020 Dollar) ..	0.5
Microwave Ovens † 87 FR 52282 (Aug. 24, 2022).	19	6	2026	$46.1 (2021 Dollars)	0.7
Clothes Dryers † 87 FR 51734 (Aug. 23, 2022).	15	2	2027	$149.7 (2020 Dollar)	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 EPSs 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 NOPR or SNOPR publications. Values may change on publication of a Final Rule.

In addition to the rulemaking listed in Table V.13 DOE has ongoing rulemakings for other products or equipment that EPS manufacturers produce, including air cleaners; [62] automatic commercial ice makers; [63] commercial clothes washers; [64] dehumidifiers; [65] miscellaneous refrigeration products; [66] refrigerators, refrigerator-freezers, and freezers; [67] conventional cooking products; [68] battery chargers; [69] and residential clothes washers.[70] If DOE proposes or finalizes any energy conservation standards for these products or equipment prior to finalizing energy conservation standards for EPSs, DOE will include the energy conservation standards for these other products or equipment as part of the cumulative regulatory burden for the EPS final rule.

DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of EPSs 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 EPSs, 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). presents DOE's projections of the national energy savings for each TSL considered for EPSs. The savings were calculated using the approach described in section IV.I of this document.

[62] *www.regulations.gov/docket/EERE-2021-BT-STD-0035.*

[63] *www.regulations.gov/docket/EERE-2017-BT-STD-0022.*

[64] *www.regulations.gov/docket/EERE-2019-BT-STD-0044.*

[65] *www.regulations.gov/docket/EERE-2019-BT-STD-0043.*

[66] *www.regulations.gov/docket/EERE-2020-BT-STD-0039.*

[67] *www.regulations.gov/docket/EERE-2017-BT-STD-0003.*

[68] *www.regulations.gov/docket/EERE-2014-BT-STD-0005.*

[69] *www.regulations.gov/docket/EERE-2020-BT-STD-0013.*

[70] *www.regulations.gov/docket/EERE-2017-BT-STD-0014.*

TABLE V.14—CUMULATIVE NATIONAL ENERGY SAVINGS FOR EXTERNAL POWER SUPPLIES; 30 YEARS OF SHIPMENTS
[2027–2056]

	Trial standard level					
	1	2	3	4	5	6
	quads					
Primary energy	0.01	0.04	0.08	0.11	0.49	1.09
FFC energy	0.02	0.04	0.09	0.11	0.51	1.14

OMB Circular A–4 [71] 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.[72] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to EPSs. 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.15. The impacts are counted over the lifetime of EPSs purchased in 2026–2035.

TABLE V.15—CUMULATIVE NATIONAL ENERGY SAVINGS FOR EXTERNAL POWER SUPPLIES; 9 YEARS OF SHIPMENTS
[2027–2036]

	Trial standard level					
	1	2	3	4	5	6
	quads					
Primary energy	0.004	0.01	0.02	0.03	0.14	0.31
FFC energy	0.004	0.01	0.02	0.03	0.14	0.32

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 EPSs. In accordance with OMB's guidelines on regulatory analysis,[73] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.16 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2027–2056.

TABLE V.16—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR EXTERNAL POWER SUPPLIES; 30 YEARS OF SHIPMENTS
[2027–2056]

Discount rate	Trial standard level					
	1	2	3	4	5	6
	billion (2021 Dollars)					
3 percent	0.08	0.22	0.31	0.45	1.96	(1.14)
7 percent	0.03	0.10	0.11	0.17	0.75	(1.72)

The NPV results based on the aforementioned 9-year analytical period are presented in . 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.

[71] 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 Sept. 12, 2022).

[72] 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.

[73] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. (Available at: *obamawhitehouse.archives.gov/omb/circulars_a004_a-4/*) (last accessed Sept. 12, 2022).

TABLE V.17—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR EXTERNAL POWER SUPPLIES; 9 YEARS OF SHIPMENTS

[2027–2035]

Discount rate	Trial standard level					
	1	2	3	4	5	6
	billion (2021 Dollars)					
3 percent	0.02	0.06	0.05	0.09	0.35	(2.47)
7 percent	0.01	0.04	0.02	0.04	0.17	(1.99)

c. Indirect Impacts on Employment

It is estimated that that amended energy conservation standards for EPSs 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.O 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 (2027–2032), 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 NOPR TSD 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 NOPR would not lessen the utility or performance of the EPSs under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the proposed standards without a loss of utility or performance.

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, 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 NOPR 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. 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. 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 NOPR TSD 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 EPSs is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V.18 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.L. DOE reports annual emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.18—CUMULATIVE EMISSIONS REDUCTION FOR EPSS SHIPPED IN 2027–2056

	Trial standard level					
	1	2	3	4	5	6
Power Sector Emissions						
CO_2 (*million metric tons*)	0.5	1.4	2.7	3.6	16.1	36.0
CH_4 (*thousand tons*)	0.04	0.1	0.2	0.3	1.3	2.8
N_2O (*thousand tons*)	0.01	0.01	0.03	0.04	0.2	0.4
NO_X (*thousand tons*)	0.2	0.7	1.4	1.8	8.2	18.5
SO_2 (*thousand tons*)	0.2	0.7	1.3	1.7	7.7	17.4
Hg (*tons*)	0.001	0.004	0.008	0.011	0.048	0.108
Upstream Emissions						
CO_2 (*million metric tons*)	0.04	0.1	0.2	0.3	1.2	2.7
CH_4 (*thousand tons*)	3.5	9.9	19.6	26.0	115.4	257.0

TABLE V.18—CUMULATIVE EMISSIONS REDUCTION FOR EPSS SHIPPED IN 2027–2056—Continued

	Trial standard level					
	1	2	3	4	5	6
N_2O (*thousand tons*)	0.0002	0.001	0.001	0.001	0.01	0.01
NO_X (*thousand tons*)	0.6	1.6	3.1	4.2	18.5	41.2
SO_2 (*thousand tons*)	0.0	0.01	0.02	0.02	0.1	0.2
Hg (*tons*)	0.000	0.000	0.000	0.000	0.0002	0.0004
Total FFC Emissions						
CO_2 (*million metric tons*)	0.5	1.5	2.9	3.9	17.3	38.7
CH_4 (*thousand tons*)	3.5	10.0	19.8	26.3	116.7	259.8
N_2O (*thousand tons*)	0.01	0.02	0.03	0.04	0.2	0.4
NO_X (*thousand tons*)	0.8	2.3	4.5	6.0	26.8	59.7
SO_2 (*thousand tons*)	0.2	0.7	1.3	1.7	7.8	17.6
Hg (*tons*)	0.001	0.004	0.008	0.011	0.048	0.109

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 EPSs. Section IV.L of this document discusses the SC–CO_2 values that DOE used. 9 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 NOPR TSD.

TABLE V.19—PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR EPSS 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 Dollars)			
1	5	22	34	67
2	15	62	97	190
3	30	124	192	377
4	39	164	255	500
5	176	738	1,145	2,245
6	395	1,650	2,560	5,023

As discussed in section IV.L.2, 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 EPSs. Table V.20 presents the value of the CH_4 emissions reduction at each TSL, and Table V.21 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 NOPR TSD.

TABLE V.20—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR EPSS 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 Dollars)			
1	2	5	6	12
2	5	13	18	35
3	9	26	36	69
4	12	35	48	92
5	54	154	213	408
6	120	343	475	910

TABLE V.21—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR EPSS 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 Dollars)			
1	0.0	0.1	0.1	0.2
2	0.1	0.2	0.3	0.6
3	0.1	0.5	0.7	1.2
4	0.2	0.6	0.9	1.6
5	0.7	2.7	4.2	7.2
6	1.6	6.1	9.3	16.2

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 EPSs. The dollar-per-ton values that DOE used are discussed in section IV.M of this document. Table V.22 presents the present value for NO_X emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates, and Table V.23 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 NOPR TSD.

TABLE V.22—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR EPSS SHIPPED IN 2027–2056

TSL	7% Discount rate	3% Discount rate
	million (2021 Dollars)	
1	15	34
2	42	97
3	86	193
4	113	256
5	510	1,146
6	1,144	2,561

TABLE V.23—PRESENT VALUE OF SO_2 EMISSIONS REDUCTION FOR EPSS SHIPPED IN 2027–2056

TSL	7% Discount rate	3% Discount rate
	million (2021 Dollars)	
1	6	13
2	17	38
3	35	76
4	46	100
5	209	455
6	472	1,024

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.24 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced GHG and 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 benefits associated with reduced GHG emissions resulting from the adopted standards are global benefits, and are also calculated based on the lifetime of EPSs shipped in 2027–2056.

TABLE V.24—CONSUMER NPV COMBINED WITH PRESENT VALUE OF BENEFITS FROM CLIMATE AND HEALTH BENEFITS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
3% discount rate for Consumer NPV and Health Benefits (billion 2021 Dollars)						
5% Average SC–GHG case	0.13	0.37	0.61	0.86	3.79	2.97
3% Average SC–GHG case	0.15	0.43	0.72	1.01	4.45	4.45
2.5% Average SC–GHG case	0.16	0.47	0.80	1.11	4.92	5.49
3% 95th percentile SC–GHG case	0.20	0.58	1.02	1.40	6.22	8.40
7% discount rate for Consumer NPV and Health Benefits (billion 2021 Dollars)						
5% Average SC–GHG case	0.06	0.17	0.27	0.38	1.70	0.42
3% Average SC–GHG case	0.08	0.23	0.38	0.53	2.36	1.90

TABLE V.24—CONSUMER NPV COMBINED WITH PRESENT VALUE OF BENEFITS FROM CLIMATE AND HEALTH BENEFITS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
2.5% Average SC–GHG case	0.09	0.27	0.46	0.64	2.83	2.95
3% 95th percentile SC–GHG case	0.13	0.38	0.68	0.93	4.13	5.85

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 NOPR, DOE considered the impacts of amended standards for EPSs 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.

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, (2) a lack of sufficient salience of the long-term or aggregate benefits, (3) a lack of sufficient 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, (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). 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 NOPR TSD. 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.[74]

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.[75] DOE welcomes comments on how to more fully assess 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 EPS Standards

Table V.25 and Table V.26 summarize the quantitative impacts estimated for each TSL for EPSs. The national impacts are measured over the lifetime of EPSs 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. The efficiency levels contained in each TSL are described in section V.A of this document.

[74] 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.*

[75] 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 Oct. 4, 2022).

TABLE V.25—SUMMARY OF ANALYTICAL RESULTS FOR EXTERNAL POWER SUPPLY TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Cumulative FFC National Energy Savings						
Quads	0.02	0.04	0.09	0.11	0.51	1.14
Cumulative FFC Emissions Reduction						
CO_2 (*million metric tons*)	0.5	1.5	2.9	3.9	17.3	38.7
CH_4 (*thousand tons*)	3.5	10.0	19.8	26.3	116.7	259.8
N_2O (*thousand tons*)	0.0	0.0	0.0	0.0	0.2	0.4
SO_2 (*thousand tons*)	0.8	2.3	4.5	6.0	26.8	59.7
NO_X (*thousand tons*)	0.2	0.7	1.3	1.7	7.8	17.6
Hg (*tons*)	0.0	0.0	0.0	0.0	0.0	0.1
Present Value of Benefits and Costs (3% discount rate, billion 2021 Dollars)						
Consumer Operating Cost Savings	0.11	0.31	0.62	0.82	3.73	8.40
Climate Benefits *	0.03	0.08	0.15	0.20	0.89	2.00
Health Benefits **	0.05	0.13	0.27	0.36	1.60	3.58
Total Benefits †	0.18	0.52	1.04	1.38	6.23	13.99
Consumer Incremental Product Costs	0.03	0.09	0.32	0.37	1.78	9.54
Consumer Net Benefits	0.08	0.22	0.31	0.45	1.96	(1.14)
Total Net Benefits	0.15	0.43	0.72	1.01	4.45	4.45
Present Value of Benefits and Costs (7% discount rate, billion 2021 Dollars)						
Consumer Operating Cost Savings	0.05	0.15	0.31	0.40	1.85	4.18
Climate Benefits *	0.03	0.08	0.15	0.20	0.89	2.00
Health Benefits **	0.02	0.06	0.12	0.16	0.72	1.62
Total Benefits†	0.10	0.29	0.58	0.76	3.46	7.79
Consumer Incremental Product Costs	0.02	0.06	0.19	0.23	1.10	5.89
Consumer Net Benefits	0.03	0.10	0.11	0.17	0.75	(1.72)
Total Net Benefits	0.08	0.23	0.38	0.53	2.36	1.90

Note: This table presents the costs and benefits associated with external power supplies 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 global SC–GHG (see section IV.M of this notice). 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. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible 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.M of this document for more details.

† 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 SC–GHG estimates. See Table V.24 for net benefits using all four SC–GHG estimates.

TABLE V.26—SUMMARY OF ANALYTICAL RESULTS FOR EXTERNAL POWER SUPPLY TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Manufacturer Impacts						
Industry NPV (*million* 2021 Dollars) (No-new-standards case INPV = 847.5)	845.8–846.1	844.4–845.3	837.3–840.4	835.9–839.6	775.2–801.5	700.0–814.6
Industry NPV (*% change*)	(0.2)–(0.2)	(0.4)–(0.3)	(1.2)–(0.8)	(1.4)–(0.9)	(8.5)–(5.4)	(17.4)–(3.9)
Consumer Average LCC Savings (2021 Dollars)						
AC–DC Basic-Vol	$0.00	$0.00	($0.03)	($0.03)	($0.27)	($0.64)
AC–DC Low-Vol	$0.01	$0.01	$0.01	$0.01	$0.01	($1.30)
AC–AC Basic-Vol	$0.18	$0.52	$0.18	$0.52	$0.55	$0.55
Multiple-Voltage	$0.46	$0.24	$0.46	$0.24	$0.46	($1.25)

TABLE V.26—SUMMARY OF ANALYTICAL RESULTS FOR EXTERNAL POWER SUPPLY TSLS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Consumer Simple PBP (years)						
AC–DC Basic-Vol	0.0	0.0	5.0	5.0	7.3	8.0
AC–DC Low-Vol	3.2	3.2	3.2	3.2	3.2	28.5
AC–AC Basic-Vol	2.3	4.1	2.3	4.1	4.7	4.7
Multiple-Voltage	0.1	7.0	0.1	7.0	0.1	12.5
Percent of Consumers that Experience a Net Cost						
AC–DC Basic-Vol	0%	0%	20%	20%	77%	86%
AC–DC Low-Vol	4%	4%	4%	4%	4%	97%
AC–AC Basic-Vol	10%	28%	10%	28%	43%	43%
Multiple-Voltage	0%	39%	0%	39%	0%	70%

Parentheses indicate negative (−) values.

DOE first considered TSL 6, which represents the max-tech efficiency levels for all product classes. Approximately 5 percent of all EPS models on the market currently meet these efficiency levels. Achieving max-tech level efficiencies may require several of the technology options identified in Table IV.1. TSL 6 would save an estimated 1.14 quads of energy, an amount DOE considers significant. Under TSL 6, the NPV of consumer impacts would represent a cost of $1.72 billion using a discount rate of 7 percent, and a cost of $1.14 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 6 are 38.7 Mt of CO_2, 259.8 thousand tons of CH_4, 0.4 thousand tons of N_2O, 59.7 thousand tons of NO_X, 17.6 thousand tons of SO_2, and 0.1 tons of Hg. 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 6 is $2.0 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 6 is $1.62 billion using a 7-percent discount rate and $3.58 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 6 is $1.90 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 6 is $4.45 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.

As discussed in chapters 3, 5, and 9 of the NOPR TSD, shipments for the AC–DC Low Voltage and AC–DC Basic Voltage product classes dominate the EPS market. These two classes are followed by Multiple Voltage, AC–DC Basic Voltage, and AC–DC Low Voltage, respectively. At TSL 6, the average LCC impact is negative for all product classes except AC–AC Basic-Voltage, which has significantly fewer shipments than the AC–DC product classes and represents approximately 1% of the market. A negative LCC results when the incremental installed costs exceed the incremental lifetime operating savings. The average increases in incremental installed costs range from $1.51 to $2.37 and the average lifetime operating savings range from $0.21 to $2.51. The simple payback period ranges from 4.7 years to nearly 30 years, the latter being significantly longer than the lifetime of most EPSs (4.8 years). The fraction of consumers experiencing a net LCC cost ranges from 43 percent to 97 percent, indicating that a majority of consumers would experience a net cost at TSL 6 over the lifetime of EPSs due to the increases in purchase costs. Low-income households would experience a similar impact as the full consumer sample and thus a majority of those households would experience a net cost.

At TSL 6, the projected change in INPV ranges from a decrease of $147.5 million to a decrease of $32.9 million, which corresponds to a decrease of 17.4 percent and a decrease of 3.9 percent, respectively. DOE estimates that industry must invest $186.5 million to comply with standards set at TSL 6—these investments would all relate to the research and development costs associated with generating new EPS designs, prototyping, and testing EPS models (conversion costs are elaborated on in IV.K.2.c). Based on DOE's shipments analysis conducted for this NOPR, DOE estimates that in the absence of new standards, less than 1 percent of AC–DC basic-voltage shipments, approximately 2 percent of AC–DC low-voltage shipments, no AC–AC basic-voltage shipments, and approximately 19 percent of multiple-voltage shipments would meet the efficiency levels analyzed at TSL 6 by 2027, the estimated compliance year. As noted previously, shipments data are not available for the AC–AC low-voltage product class. Based on this shipments analysis, at TSL 6, which is max-tech for all product classes, manufacturers would be required to redesign approximately 99 percent [76] of all EPS shipments covered by this rulemaking. This would require manufacturers to redesign models corresponding to approximately 739 million EPS shipments in the 2-year compliance time frame. These redesigns would require a significant overhaul of the design and components associated with non-compliant EPS models. It is questionable if most manufacturers would have the engineering capacity to complete the necessary redesigns within the 2-year compliance period. If manufacturers require more than 2 years to redesign all their covered EPSs, they will likely prioritize redesigns based on sales volume. There is risk that some models will become either temporarily or permanently unavailable after the compliance date.

The Secretary tentatively concludes that at TSL 6 for EPSs, the benefits of energy savings, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the substantial negative NPV of consumer benefits, and the impacts on manufacturers, including the large conversion costs and the potential

[76] DOE estimates five percent of the models in the CCD as being able to meet the max-tech levels. DOE additionally estimates that these models represent less than one percent of shipments.

impacts to profit margin that would result in a reduction in INPV, and the lack of manufacturers currently offering products meeting the efficiency levels required at this TSL for some product classes. Consequently, the Secretary has tentatively concluded that TSL 6 is not economically justified.

DOE then considered TSL 5. At this TSL, the efficiency level for the AC–AC Basic-Voltage product class remains at max-tech. For the AC–DC Basic-Voltage product class, the efficiency level represents ''best in market'' (characterized in section IV.D.1.b as the active mode efficiency and standby mode power consumption that only the top 10 to 20 percent of models on the market are able to achieve). For AC–AC and AC–DC product classes, the efficiency levels correspond to the proposed EU CoC Tier 2 standards and with Multiple-Voltage at EL1. TSL 5 would save an estimated 0.51 quads of energy, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit would be $0.75 billion using a discount rate of 7 percent, and $1.96 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 17.3 Mt of CO_2, 116.7 thousand tons of CH_4, 0.2 thousand tons of N_2O, 26.8 thousand tons of NO_X, 7.8 thousand tons of SO_2, and 0.05 tons of Hg. 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 5 is $0.89 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 5 is $0.72 billion using a 7-percent discount rate and $1.60 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 5 is $2.36 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 5 is $4.45 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 5, the average LCC impact is negative for the AC–DC Basic-Voltage product class, with a large majority (77 percent) of AC–DC basic-voltage EPS consumers experiencing a net cost due to increases in purchase costs coupled with low operating cost savings throughout the lifetime. A negative LCC results when the incremental installed costs exceed the incremental lifetime operating savings. The average increase in incremental installed costs for AC–DC basic voltage EPS consumers is $0.95 and the average lifetime operating savings is only $0.68. The simple payback period is 7.3 for the AC–DC Basic-Voltage product class, which is significantly longer than the average lifetime of 4.8 years. Additionally, individual households are likely to have several EPSs from a variety of separate end-uses, such that the aggregate LCC impact for a given household is likely to be more negative. Low-income households would experience a similar impact as the full consumer sample and thus a large majority would experience a net cost as well. The other product classes experience positive LCC savings at TSL 5 with a smaller percentage of consumers experiencing a net cost. However, given that the AC–DC Basic-Voltage product class represents nearly 40 percent of shipments of the total EPS market, overall, many EPS consumers would experience a net cost at TSL 5.

At TSL 5, the projected change in INPV ranges from a decrease of $72.3 million to a decrease of $46.0 million, which corresponds to a decrease of 8.5 percent and a decrease of 5.4 percent, respectively. DOE estimates that industry must invest $105.9 million to comply with standards set at TSL 5. DOE estimates that in the absence of new standards, approximately 8 percent of AC–DC basic-voltage shipments, approximately 93 percent of AC–DC low-voltage shipments, no AC–AC basic-voltage shipments, and approximately 89 percent of multiple-voltage shipments would meet or exceed the efficiency levels analyzed at TSL 5 by 2027, the estimated compliance year. Based on this shipments analysis, at TSL 5, manufacturers would be required to redesign approximately 36 percent of all EPS shipments covered by this rulemaking. This would require manufacturers to redesign models corresponding to approximately 284 million EPS shipments in the 2-year compliance time frame. These redesigns would require a significant overhaul of the design and components associated with the AC–DC basic and AC–AC basic product classes and less substantial component level improvements for all other product classes.

The Secretary tentatively concludes that at TSL 5 for EPSs, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on many consumers (77 percent of AC–DC basic voltage EPS consumers and 43 percent of AC–AC basic voltage EPS consumers experience a net cost), and the impacts on manufacturers, including the large conversion costs and the potential impact to profit margin that would result in a reduction in INPV, and the lack of manufacturers currently offering products meeting the efficiency levels required at this TSL for some product classes. Consequently, the Secretary has tentatively concluded that TSL 5 is not economically justified.

DOE then considered TSL 4. At this TSL, the efficiency levels for AC–AC basic-voltage EPSs represent ''best in market'' models (characterized in section IV.D.1.b as the active mode efficiency and standby mode power consumption that only the top 10 to 20 percent of models on the market are able to achieve). For multiple-voltage EPSs, approximately 50 percent of models on the market currently meet these efficiency levels, representing an approximate mid-point of the market. For the other product classes, the efficiency levels correspond to the proposed EU CoC Tier 2 standards. TSL 4 would save an estimated 0.11 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $0.17 billion using a discount rate of 7 percent, and $0.45 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 3.9 Mt of CO_2, 26.3 thousand tons of CH_4, 0.04 thousand tons of N_2O, 6.0 thousand tons of NO_X, 1.7 thousand tons of SO_2, and 0.01 tons of Hg. 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 4 is $0.20 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 4 is $0.16 billion using a 7-percent discount rate and $0.36 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 4 is $0.53 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 4 is $1.01 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 4, the average LCC impact for the AC–DC Basic-Voltage product class, while negative, is close to zero (negative $0.03) and only 20 percent of AC–DC basic-voltage EPS consumers experience a net cost. The average increase in incremental installed costs for AC–DC basic voltage EPS consumers is $0.35 and the average lifetime operating savings is $0.31. The simple payback period is 5.0 for the AC–DC Basic-Voltage product class, which is nearly the same as the average lifetime of 4.8 years. DOE also notes that the LCC impacts, as presented in Table V.26 above, are only estimated for the first year of compliance (2027) of a potential standard. However, due to the price trend on EPS costs (as described in section IV.G.1), the incremental purchase costs of more efficient EPSs will significantly decrease in years after 2027 while operating savings will remain largely the same. Therefore, LCC impacts become more positive in years beyond 2027 and a lower percentage of consumers will experience a net cost. For this reason, the NPV as estimated in the NIA is positive even though the LCC is marginally negative for the AC–DC basic voltage EPS product class. Low-income households would experience a similar impact as the full consumer sample, since the usage characteristics do not vary much between the two samples. The other product classes experience positive LCC savings at TSL 4. The average increases in incremental installed costs for product classes other than AC–DC basic voltage EPSs range from $0.05 to $1.02 and the average lifetime operating savings range from $0.05 to $1.53.

At TSL 4, the projected change in INPV ranges from a decrease of $11.6 million to a decrease of $7.9 million, which corresponds to a decrease of 1.4 percent and a decrease of 0.9 percent, respectively. DOE estimates that industry must invest $17.4 million to comply with standards set at TSL 4. DOE estimates that 75 percent of 2021 AC–DC basic-voltage shipments, approximately 93 percent of AC–DC low-voltage shipments, no AC–AC basic-voltage shipments, and approximately 49 percent of multiple-voltage shipments would meet or exceed the efficiency levels analyzed at TSL 4 by 2027, the estimated compliance year. Based on this shipments analysis, at TSL 4, manufacturers would be required to redesign approximately 15 percent of all EPS shipments covered by this rulemaking. This would require manufacturers to redesign models corresponding to approximately 113 million EPS shipments in the 2-year compliance time frame. While these redesigns would require a significant overhaul at the design and component level for the AC–AC basic voltage product class, DOE notes that the high compliance rates for the AC–DC and multiple voltage product classes demonstrate that manufacturers are already familiar with implementing the design options needed to achieve these levels for these products.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that at a standard set at TSL 4 for external power supplies would be economically justified. At this TSL, a minority of consumers experience a net cost, and the average LCC savings for consumers are positive or a minimally negative $0.03. The average incremental product costs for all EPSs are very small relative to the costs of the applications using the EPSs (*e.g.,* a smartphone), which are likely greater by several factors of 10. Furthermore, due to price trends reducing EPS costs, the average LCC savings will grow in years beyond 2027 and fewer consumers would actually experience a net cost. Low-income households are likely to experience very similar results and are not disproportionately disadvantaged at this TSL. 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 4, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent is over 14 times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at TSL 4 are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing $0.20 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and $0.36 billion (using a 3-percent discount rate) or $0.16 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 the maximization 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 at TSLs higher than the one proposed, a significant fraction of consumers for some product classes experience increased purchase costs greater than operating savings.

Although DOE considered proposed amended standard levels for EPSs by grouping the efficiency levels for each product class into TSLs, DOE evaluates all analyzed efficiency levels in its analysis.

Therefore, based on the previous considerations, DOE proposes to adopt the energy conservation standards for EPSs at TSL 4. The proposed amended energy conservation standards for EPSs, which are expressed as average efficiency in active mode and power in no-load mode, are shown in Table V.27.

TABLE V.27—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR EPSS

Nameplate output power (P_{out})	Minimum average efficiency in active mode (expressed as a decimal)	Maximum power in no-load mode [W]
Single-Voltage External AC–DC Power Supply, Basic-Voltage		
$P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.169$	≤0.075
1 W < $P_{out} \leq 49$ W	$\geq 0.071 \times \ln(P_{out}) - 0.00115 \times P_{out} + 0.67$	≤0.075
49 W < $P_{out} \leq 250$ W	≥0.890	≤0.150
$P_{out} > 250$ W	≥0.890	≤0.150

TABLE V.27—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR EPSS—Continued

Nameplate output power (P_{out})	Minimum average efficiency in active mode (expressed as a decimal)	Maximum power in no-load mode [W]
Single-Voltage External AC–DC Power Supply, Low-Voltage		
$P_{out} \leq 1$ W	$\geq 0.517 \times P_{out} + 0.091$	≤0.075
1 W < $P_{out} \leq 49$ W	$\geq 0.0834 \times \ln(P_{out}) - 0.0011 \times P_{out} + 0.609$	≤0.075
49 W < $P_{out} \leq 250$ W	≥0.880	≤0.150
$P_{out} > 250$ W	≥0.880	≤0.150
Single-Voltage External AC–AC Power Supply, Basic-Voltage		
$P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.169$	≤0.075
1 W < $P_{out} \leq 49$ W	$\geq 0.0582 \times \ln(P_{out}) - 0.00104 \times P_{out} + 0.727$	≤0.075
49 W < $P_{out} \leq 250$ W	≥0.902	≤0.075
$P_{out} > 250$ W	≥0.902	≤0.200
Single-Voltage External AC–AC Power Supply, Low-Voltage		
$P_{out} \leq 1$ W	$\geq 0.517 \times P_{out} + 0.091$	≤0.072
1 W < $P_{out} \leq 49$ W	$\geq 0.0834 \times \ln(P_{out}) - 0.0011 \times P_{out} + 0.609$	≤0.072
49 W < $P_{out} \leq 250$ W	≥0.880	≤0.185
$P_{out} > 250$ W	≥0.880	≤0.500
Multiple-Voltage External Power Supply		
$P_{out} \leq 1$ W	$\geq 0.497 \times P_{out} + 0.067$	≤0.075
1 W < $P_{out} \leq 49$ W	$\geq 0.0782 \times \ln(P_{out}) - 0.0013 \times P_{out} + 0.643$	≤0.075
49 W < $P_{out} \leq 250$ W	≥0.885	≤0.125
$P_{out} > 250$ W	≥0.885	≤0.125

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 Dollars) 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.288 shows the annualized values for EPSs under TSL 4, expressed in 2021 Dollars. 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 EPSs is $24.3 million per year in increased equipment costs, while the estimated annual benefits are $42.7 million from reduced equipment operating costs, $11.5 million from GHG reductions, and $16.7 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $46.6 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards for EPSs is $21.4 million per year in increased equipment costs, while the estimated annual benefits are $47.3 million in reduced operating costs, $11.5 million from GHG reductions, and $20.4 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $57.8 million per year.

TABLE V.28—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR EXTERNAL POWER SUPPLIES

[TSL 4]

	Million 2021 dollars/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	47.3	46.1	48.8
Climate Benefits *	11.5	11.5	11.5
Health Benefits **	20.4	20.4	20.4
Total Benefits †	79.2	78.0	80.7
Consumer Incremental Product Costs	21.4	23.4	19.3
Net Benefits	57.8	54.6	61.3
7% discount rate			
Consumer Operating Cost Savings	42.7	41.8	43.9
Climate Benefits * (3% discount rate)	11.5	11.5	11.5

TABLE V.28—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR EXTERNAL POWER SUPPLIES—Continued

[TSL 4]

	Million 2021 dollars/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
Health Benefits **	16.7	16.7	16.7
Total Benefits †	70.9	70.0	72.1
Consumer Incremental Product Costs	24.3	26.1	22.4
Net Benefits	46.6	43.9	49.6

Note: This table presents the costs and benefits associated with EPSs 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 global SC–GHG (see section IV.M of this proposed rule). 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. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible 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. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.M of this document for more details.

† 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 SC–GHG estimates. See Table V.24 for net benefits using all four SC–GHG estimates.

D. Reporting, Certification, and Sampling Plan

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For EPSs, the certification template reflects the general certification requirements specified at 10 CFR 429.12 and the product-specific requirements specified at 10 CFR 429.37. As discussed in the previous paragraphs, DOE is not proposing to amend the product-specific certification requirements 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 the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed/final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this 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 proposed rulemaking.

For manufacturers of EPSs 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 EPSs is classified under NAICS 335999, ''All Other Miscellaneous Electrical Equipment and Component Manufacturing.'' The SBA sets a threshold of 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 requires 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)).

2. Objectives of, and Legal Basis for, Rule

DOE must follow specific statutory criteria for prescribing new or amended standards for covered equipment, including EPSs. 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 determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B))

3. Description on Estimated Number of Small Entities Regulated

DOE conducted a more focused inquiry of the companies that could be small businesses that manufacture or sell EPSs covered by this rulemaking. DOE referenced DOE's publicly available CCD to generate a list of businesses producing or selling covered products and referenced D&B Hoovers reports,[77] as well as the online presence of identified businesses in order to determine whether they might meet the criteria of a small business. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign owned and operated. Additionally, DOE filters out businesses that do not directly produce EPSs, but that rather sell sourced EPSs with other products or relabel sourced EPSs to sell separately.

From these sources, DOE identified 658 unique businesses associated with at least one covered EPS model, of which 165 were identified as businesses that meet SBA's definition of a small business under this rulemaking. While each of these small businesses certify models with DOE's CCD, DOE has not been able to identify any domestic manufacturing of EPSs and therefore does not expect that any of the small businesses manufacture EPSs, even if they may be OEM manufacturers of EPS applications.

DOE requests comment on the number of small businesses identified that manufacture or sell EPSs covered by this proposed rulemaking.

4. Description and Estimate of Compliance Requirements Including Differences in Cost, if Any, for Different Groups of Small Entities

While DOE has not been able to identify any domestic manufacturing of EPSs directly, DOE does expect that some small businesses may design EPSs—in part or in total—and therefore would incur some product conversion costs as a result of the proposed standard, if finalized. As with the broader industry, outlined in section IV.K of this document, DOE has estimated that these conversion costs would be proportional to the annual revenue attributable to EPSs that do not meet the standards. If, as a result of standards, a small business were to need to redesign all of their EPS models, DOE expects that these small businesses would incur product conversion costs equivalent to one additional annual R&D expenditure across the two-year compliance window.[78] DOE estimated the industry average annual R&D expenditure to be approximately 3.8 percent of annual revenue. Accordingly, small manufacturers may incur product conversion costs of up to 1.9 percent of revenue attributable to EPSs for each year during the two-year compliance period.

Additional information about product conversion costs and small business impacts is in chapter 12 of the NOPR TSD.

DOE requests comment on the estimated product conversion costs of small businesses that manufacture or sell EPSs covered by this rulemaking.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any other rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

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 4. In reviewing alternatives to the proposed rule, DOE examined energy conservation standards set at lower efficiency levels. While selecting from TSLs 1–3, would reduce the possible impacts on small businesses, it would come at the expense of a significant reduction in energy savings. TSL 4 achieves approximately over 760 percent of the energy savings compared to the energy savings at TSL 1, over 260 percent of the energy savings compared to the energy savings at TSL 2, and over 130% of the energy savings as compared to the energy savings at TSL 3. DOE additionally estimates that TSLs 1–3 would result in a lower net present value of consumer benefits than TSL 4 to the order of approximately $142 million, $79 million, and $63 million respectively.

Based on the presented discussion, establishing standards at TSL 4 balances the benefits of the energy savings at TSL 4 with the potential burdens placed on EPS manufacturers and small businesses. 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 NOPR TSD.

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

[77] *app.avention.com.*

[78] These conversion costs would be in addition to the normal annual R&D expenditures that manufacturers incur every year associated with manufacturing EPSs.

E, and 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act

Manufacturers of EPSs must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for EPSs including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including EPSs. (*See* generally 10 CFR part 429). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

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. Public Law 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 *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 EPS 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 EPSs, 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 NOPR 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(u), this proposed rule would establish amended energy conservation standards for EPSs 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 6295(o)(2)(A) and 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 proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

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 NOPR 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 amends energy conservation standards for EPSs, 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.[79] 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.[80]

M. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference Version 4.0 of the International Efficiency Marking Protocol for External Power Supplies to account for the changes in labeling due to the proposed amended energy conservation standards. The international efficiency marking protocol provides a system for EPS manufacturers to designate the minimum efficiency performance of an EPS, so that finished product manufacturers and government representatives can easily determine a unit's efficiency. This document can be found in the docket at *www.regulations.gov/docket/EERE-2020-BT-STD-0006.*

VII. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify the Appliance and Equipment Standards staff at (202) 287–1445 or *Appliance_Standards_Public_Meetings@ee.doe.gov.*

Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email (*Regina.Washington@ee.doe.gov*) so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the Forrestal Building. Any person wishing to bring these devices into the building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (''DHS''), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. DHS maintains an updated website identifying the State and territory driver's licenses that currently are acceptable for entry into DOE facilities at *www.dhs.gov/real-id-enforcement-brief.* A driver's licenses from a State or territory identified as not compliant by DHS will not be accepted for building entry and one of the alternate forms of ID listed below will be required. Acceptable alternate forms of Photo-ID include U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by States and territories as identified on the DHS website (Enhanced licenses issued by these States and territories are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website at *www.energy.gov/eere/buildings/public-meetings-and-comment-deadlines.* 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 plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this document. The request and advance copy of statements must be received at least one week before the public meeting and are to be emailed. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the 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 public meeting. 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 public meeting, interested parties may submit further comments on the proceedings, as well as on any aspect of the rulemaking, until the end of the comment period.

The public meeting 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 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

[79] 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 Oct. 4, 2022).

[80] The report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.*

needed for the proper conduct of the public meeting.

A transcript of the public meeting 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.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (''faxes'') will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comment on its proposal to incorporate by reference version 4.0 of IEMP for this rulemaking.

(2) DOE requests comment on its cost analysis approach performed for this NOPR.

(3) DOE requests comment on the incremental MPCs from the NOPR engineering analysis.

(4) DOE requests comment on the estimated increased manufacturer markups and incremental MSPs that result from the analyzed energy conservation standards from the NOPR engineering analysis.

(5) DOE requests comment on the estimated EPS model production cycle of four years.

(6) DOE requests comment on the GRIM results and the estimated conversion costs.

(7) DOE requests comment on whether there is domestic EPS manufacturing, where and to what extent such manufacturing occurs, and how the proposed energy conservation standard might affect that possible domestic EPS manufacturing.

(8) DOE requests comment on possible impacts on manufacturing capacity stemming from amended energy conservation standards, including any potential issues with supply chain costs, and or chips and devices used in the national security sector.

(9) DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of EPSs associated with multiple DOE standards or product-specific regulatory actions of other Federal agencies.

(10) DOE requests comment on the number of small businesses identified that manufacture or sell EPSs covered by this proposed rulemaking.

(11) DOE requests comment on the estimated product conversion costs of small businesses that manufacture or

sell EPSs covered by this proposed rulemaking.

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 notice of proposed rulemaking and announcement of public meeting.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on January 13, 2023, 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 19, 2023.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends part 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Amend § 430.3 by adding a new paragraph (s)(4), to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(s) * * *

(4) International Efficiency Marking Protocol for External Power Supplies, Version 4.0, January 2023, IBR approved for § 430.32.

* * * * *

■ 3. Amend § 430.32 by adding a new paragraph (w)(1)(iv) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(w) * * *

(1) * * *

(iv) Except as provided in paragraphs (w)(5), (6), and (7) of this section, all external power supplies manufactured on or after [date 2 years after publication of a final rule], shall meet the following Level VII standards:

Nameplate output power (P_{out})	Minimum average efficiency in active mode (*expressed as a decimal*)	Maximum power in no-load mode [W]
Single-Voltage External AC–DC Power Supply, Basic-Voltage		
(A) $P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.169$	≤0.075
(B) 1 W < $P_{out} \leq 49$ W	$\geq 0.071 \times \ln(P_{out}) - 0.00115 \times P_{out} + 0.67$	≤0.075
(C) 49 W < $P_{out} \leq 250$ W	≥0.890	≤0.150
(D) $P_{out} > 250$ W	≥0.890	≤0.150
Single-Voltage External AC–DC Power Supply, Low-Voltage		
(E) $P_{out} \leq 1$ W	$\geq 0.517 \times P_{out} + 0.091$	≤0.075
(F) 1 W < $P_{out} \leq 49$ W	$\geq 0.0834 \times \ln(P_{out}) - 0.0011 \times P_{out} + 0.609$	≤0.075
(G) 49 W < $P_{out} \leq 250$ W	≥0.880	≤0.150
(H) $P_{out} > 250$ W	≥0.880	≤0.150
Single-Voltage External AC–AC Power Supply, Basic-Voltage		
(I) $P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.169$	≤0.075
(J) 1 W < $P_{out} \leq 49$ W	$\geq 0.0582 \times \ln(P_{out}) - 0.00104 \times P_{out} + 0.727$	≤0.075
(K) 49 W < $P_{out} \leq 250$ W	≥0.902	≤0.075
$P_{out} > 250$ W	≥0.902	≤0.200
Single-Voltage External AC–AC Power Supply, Low-Voltage		
(L) $P_{out} \leq 1$ W	$\geq 0.517 \times P_{out} + 0.091$	≤0.072
(M) 1 W < $P_{out} \leq 49$ W	$\geq 0.0834 \times \ln(P_{out}) - 0.0011 \times P_{out} + 0.609$	≤0.072
(N) 49 W < $P_{out} \leq 250$ W	≥0.880	≤0.185
(O) $P_{out} > 250$ W	≥0.880	≤0.500
Multiple-Voltage External Power Supply		
(P) $P_{out} \leq 1$ W	$\geq 0.497 \times P_{out} + 0.067$	≤0.075
(Q) 1 W < $P_{out} \leq 49$ W	$\geq 0.0782 \times \ln(P_{out}) - 0.0013 \times P_{out} + 0.643$	≤0.075
(R) 49 W < $P_{out} \leq 250$ W	≥0.885	≤0.125
(S) $P_{out} > 250$ W	≥0.885	≤0.125

* * * * *

[FR Doc. 2023–01282 Filed 2–1–23; 8:45 am]

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CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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