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Contents

Federal Register

Vol. 88, No. 50

Wednesday, March 15, 2023

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

10 CFR
429.....16052
430.....16052
Proposed Rules:
430.....16112

14 CFR
39.....15901
43.....15905
65.....19505
147.....19505

29 CFR
4044.....15906

33 CFR
Proposed Rules:
147.....15939

38 CFR
9.....15907

40 CFR
174.....15915
Proposed Rules:
50.....15940

42 CFR
405.....15918
410.....15918
411.....15918
414.....15918
415.....15918
423.....15918
424.....15918
425.....15918
455.....15918

48 CFR
Proposed Rules:
538.....15941

50 CFR
17.....15921
Proposed Rules:
648.....15944

Rules and Regulations

Federal Register
Vol. 88, No. 50
Wednesday, March 15, 2023

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0435; Project Identifier AD–2023–00384–E; Amendment 39–22385; AD 2023–05–16]

RIN 2120–AA64

Airworthiness Directives; Continental Aerospace Technologies, Inc., Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2023–04–08 which applied to certain Continental Aerospace Technologies, Inc. (Continental) GTSIO–520–C, –D, –H, –K, –L, –M, –N, and –S; IO–360–A, –AB, –AF, –C, –CB, –D, –DB, –E, –ES, –G, –GB, –H, –HB, –J, –JB, –K, and –KB; IO–470–D, –E, –G, –H, –J, –K, –L, –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, and –MB; IO–550–A, –B, –C, –D, –E, –F, –G, –L, –N, –P, and –R; LTSIO–360–E, –EB, –KB, and –RB; LTSIO–520–AE; O–470–A, –B, –E, –G, –H, –J, –K, –L, –M, –N, –R, –S, –T, and –U; TSIO–360–A, –AB, –B, –BB, –C, –CB, –D, –DB, –E, –EB, –G, –GB, –H, –HB, –JB, –KB, –LB, –MB, –RB, and –SB; TSIO–520–A, –AE, –AF, –B, –BB, –BE, –C, –CE, –D, –DB, –E, –EB, –G, –H, –J, –JB, –K, –KB, –L, –LB, –M, –NB, –P, –R, –T, –UB, –VB, and –WB; TSIO–550–A, –B, –C, –E, –G, –K, and –N; TSIOF–550–K; and TSIOL–550–A, –B, and –C model reciprocating engines. AD 2023–04–08 required inspection of the crankshaft assembly for proper installation of the counterweight retaining rings in the counterweight groove and, depending on the results of the inspection, corrective actions if improper installation was found. This AD continues to require inspection of the crankshaft assembly for proper installation of the counterweight retaining rings in the counterweight groove, and corrective actions if improper installation is found. Since the FAA issued AD 2023–04–08, operators notified the FAA, and Continental confirmed, that certain affected model reciprocating engines not included in the applicability of AD 2023–04–08 are also affected by the unsafe condition. Additionally, the FAA determined the special flight permit paragraph required revision. This AD was prompted by a report of a quality escape involving improper installation of counterweight retaining rings in the engine crankshaft counterweight groove during manufacture. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 15, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 23, 2023 (88 FR 11383, February 23, 2023).

The FAA must receive any comments on this AD by May 1, 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–2023–0435; 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 Continental service information identified in this final rule, contact Continental Aerospace Technologies, Inc., 2039 South Broad Street, Mobile, AL 36615; phone: (251) 308–9100; email: *MSB23Support@continental.aero;* website: *continental.aero.*
- 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–2023–0435.

FOR FURTHER INFORMATION CONTACT: Nicholas Reid, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5650; email: *nicholas.j.reid@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued AD 2023–04–08, Amendment 39–22355 (88 FR 11383, February 23, 2023) (AD 2023–04–08), for Continental GTSIO–520–C, –D, –H, –K, –L, –M, –N, and –S; IO–360–A, –AB, –AF, –C, –CB, –D, –DB, –E, –ES, –G, –GB, –H, –HB, –J, –JB, –K, and –KB; IO–470–D, –E, –G, –H, –J, –K, –L, –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, and –MB; IO–550–A, –B, –C, –D, –E, –F, –G, –L, –N, –P, and –R; LTSIO–360–E, –EB, –KB, and –RB; LTSIO–520–AE; O–470–A, –B, –E, –G, –H, –J, –K, –L, –M, –N, –R, –S, –T, and –U; TSIO–360–A, –AB, –B, –BB, –C, –CB, –D, –DB, –E, –EB, –G, –GB, –H, –HB, –JB, –KB, –LB, –MB, –RB, and –SB; TSIO–520–A, –AE, –AF, –B, –BB, –BE, –C, –CE, –D, –DB, –E, –EB, –G, –H, –J, –JB, –K, –KB, –L, –LB, –M, –NB, –P, –R, –T, –UB, –VB, and –WB; TSIO–550–A, –B, –C, –E, –G, –K, and –N; TSIOF–550–K; and TSIOL–550–A, –B, and –C model reciprocating engines. AD 2023–04–08 required accomplishing the actions specified in paragraph III, Action Required, of Continental Aerospace Technologies, Inc. Mandatory Service Bulletin MSB23–01, Revision A, dated February 16, 2023 (MSB23–01A), except as discussed in ''Exception to the Service Information.'' AD 2023–04–08 resulted from a report of a quality escape involving improper installation and inspection of counterweight retaining rings in the engine crankshaft counterweight groove during manufacture. AD 2023–04–08 also resulted from reports of two ground

engine seizures and one in–flight loss of engine oil pressure due to improper installation of the counterweight retaining rings during manufacture. The counterweight retaining rings are part of the engine crankshaft counterweight assembly retention system. Loosening of a counterweight retaining ring may result in the loss of retention of the counterweight. The FAA issued AD 2023–04–08 to prevent departure of counterweight and retaining hardware from the crankshaft assembly, which could result in loss of engine oil pressure, catastrophic engine damage, engine seizure, and consequent loss of the aircraft.

Actions Since AD 2023–04–08 Was Issued

Since the FAA issued AD 2023–04–08, the FAA has determined, and Continental has confirmed that IO–470–A, –C, –F, and –LO; TSIO–360–F; and TSIO–360–FB model reciprocating engines are also affected by the unsafe condition and should be added to the applicability. Additionally, the FAA determined that the limitations in the special flight permit paragraph, specifying no metal contamination in the oil filter, did not account for trace metal particles that may be found in newer engines due to break-in of the engine.

Accordingly, Continental IO–470–A, –C, –F, and –LO; TSIO–360–F; and TSIO–360–FB model reciprocating engines are added to the applicability paragraph of this AD. Also, the special flight permit paragraph of this AD has been revised, removing the limitation of ''no metal contamination.'' The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments on AD 2023–04–08

The FAA received comments from seven individual commenters. The following presents the comments received on AD 2023–04–08 and the FAA's response to each comment.

Request To Add Engine Models to Applicability

Two individual commenters noted that there are engine models listed in the appendices of MSB23–01A that are omitted from the applicability of AD 2023–04–08.

The FAA agrees, and has revised the applicability paragraph of this AD to include Continental IO–470–A, –C, –F, and –LO; TSIO–360–F; and TSIO–360–FB model reciprocating engines.

Request To Include Part Listing and Serial Numbers in the AD

Two individual commenters requested that the list of affected parts and production dates should be included in the AD. Another individual commenter requested that the serial numbers of affected crankshafts and applicable manufacture date range of the affected engines should be included in the AD.

The FAA disagrees with the requests. MSB23–01A, which is incorporated by reference into this AD, contains the list of affected engines and crankshafts. Therefore, duplicating the appendix information from the service information into the AD is unnecessary. The FAA notes that paragraph (g)(2) of the required actions specifies ''crankshaft assembly that was repaired or installed on or after June 1, 2021.'' The FAA did not change this AD as a result of this comment.

Request To Correct Text in the Required Actions Paragraph

One individual commenter stated that AD 2023–04–08 has incorrect language in the required actions, paragraph (g)(1), which reads; ''(1) Crankshaft assembly having a crankshaft serial number listed in Appendix 1 of MSB23–01A; or''. The commenter noted that Appendix 1 of MSB23–01A lists engine assembly serial numbers with associated installed crankshaft serial numbers.

The FAA disagrees that the language in paragraph (g)(1) is incorrect. MSB23–01A contains the affected engine serial numbers and crankshaft serial numbers, differentiated by engine model. The FAA did not change this AD as a result of this comment.

Request To Review Labor Cost

Two individual commenters stated that the $85 labor rate in the estimated costs section of the AD is outdated. One commenter noted that the rate is well below the average shop rate for other trades, and suggested that by endorsing this rate, the FAA may be attracting less detail-oriented employees, thereby creating an unsafe condition.

The FAA disagrees. The FAA Office of Aviation Policy and Plans provides the labor rate of $85 per work-hour for the FAA to use when estimating the labor costs of complying with AD requirements. The FAA did not change this AD as a result of this comment.

Request To Include Cost of Individual Parts

An individual commenter noted that costs of complete seal and gasket kits for each cylinder (valve cover, induction, push rods × 4, cylinder) are not included in the cost estimate in AD–2023–04–08.

The FAA acknowledges the commenter's concerns. The FAA recognizes that in accomplishing the requirements of any AD, operators might incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD. However, the cost analysis in ADs typically does not include incidental costs. No change was made to this AD regarding this issue.

Request To Add Information on Cylinder Ring Seating

An individual commenter stated they have a factory new Continental IO–470–N engine that is affected by this AD. The commenter stated their new motor was run at the factory before being shipped to them, so ring scoring had taken place. The commenter suggested that the AD might serve the impacted population by pointing out that cylinder rings may not seat. The commenter also expressed concern over the potential need to install new counterweight retaining rings on their factory new Continental IO–470–N engine.

The FAA disagrees with adding additional language to the AD regarding cylinder ring seating. The AD requires inspection of the counterweight retaining rings on affected engines using the referenced service information. MSB23–01A Paragraph III, note to paragraph 2(c) specifies that if counterweight retaining ring(s) are removed from the counterweight, new retaining ring(s) are required for reassembly. The FAA did not change this AD as a result of this comment.

Revision of Special Flight Permit Paragraph

The FAA revised the special flight permit paragraph of this AD by modifying the requirement to inspect the engine oil filter pleats or screen for evidence of metal contamination. The revised special flight permit paragraph in this AD requires that the engine first undergoes, or has undergone within the previous five flight hours, an oil change and filter/screen replacement that was accomplished by an appropriately rated mechanic or repair station, and any material found in the spent oil and oil filter pleats or oil screen has been evaluated to assess the engine's condition.

FAA's Determination

The FAA is issuing this AD because the agency 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 MSB23–01A. This service information specifies procedures for inspection of the crankshaft assembly for improper installation of the counterweight retaining rings in the counterweight, and corrective actions if improper installation is found. 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 accomplishing the actions specified in paragraph III, Action Required, of MSB23–01A, except as discussed in ''Exception to the Service Information.''

Differences Between This AD and the Service Information

The service information specifies compliance for engines with less than 200 operating hours, while this AD requires compliance for all affected engines, regardless of the operating hours. The FAA has determined that this unsafe condition, of improperly installed counterweight retaining rings, is likely to exist on affected engines. While the manufacturer's service information excludes engines accumulating 200 or more operating hours, the FAA has not, as of yet, been provided with adequate data to support that exclusion. In the event the FAA receives data to support the exclusion of engines with more than 200 operating hours, or to make other changes to this AD, the FAA may consider further rulemaking.

The service information excludes Continental IO–470–A, –C, –F, and –LO; TSIO–360–F; and TSIO–360–FB model reciprocating engines from its list of affected engine models, while this AD includes these engines in the applicability paragraph.

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 manufacturer discovered an assembly error for the affected engines. It is possible that one or more counterweight retaining rings were not properly seated in the crankshaft counterweight groove of the engine. This condition could allow the counterweight to depart from the crankshaft during engine operation. Because of the urgency of the unsafe condition, this AD requires inspection of any affected crankshaft assembly before further flight.

Since the FAA issued AD 2023–04–08, the FAA has determined, and Continental has confirmed that Continental IO–470–A, –C, –F, and –LO; TSIO–360–F; and TSIO–360–FB model reciprocating engines were inadvertently left off of the list of affected engine models in MSB23–01A. Due to this omission, Continental IO–470–A, –C, –F, and –LO; TSIO–360–F; and TSIO–360–FB model reciprocating engines with affected crankshafts were not captured by the applicability of AD 2023–04–08. Because the urgency of the unsafe condition applies to these additional model engines, this AD also requires inspection of the crankshaft assemblies on these engines before further flight, in addition to the population originally captured by AD 2023–04–08.

The manufacturing quality escape has resulted in ground engine seizures and an in-flight loss of engine oil pressure, which could lead to catastrophic engine damage, engine seizure, and consequent loss of the aircraft. Due to the low operational hours on the known crankshaft assembly failures, the short-term risk to the fleet is such that expeditious action must be taken and therefore this AD is effective upon publication.

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 forgo 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–2023–0435 and Project Identifier AD–2023–00384–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend 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 Nicholas Reid, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337. 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 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 has revised the cost estimate of AD 2023–04–08 based on updated information from the manufacturer. The model engines added to the applicability of this superseding AD were accounted for in the cost estimate of AD 2023–04–08, as that cost estimate was based on the list of affected engines and crankshafts in the appendices of MSB23–01A, not on the list of model engines in MSB23–01A.

The manufacturer has notified the FAA that 2,211 crankshaft assemblies are subject to the unsafe condition. The FAA estimates that of those 2,211 crankshaft assemblies, 1,659 are installed on aircraft of U.S. registry. The FAA estimates that 553 engines will need to remove one cylinder, 553 engines will need to remove two cylinders, and 553 engines will need to remove three cylinders for compliance with this AD.

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 one cylinder	10 work-hours × $85 per hour = $850	$0	$850	$470,050
Remove two cylinders	18 work-hours × $85 per hour = $1,530.	0	1,530	846,090
Remove three cylinders	22 work-hours × $85 per hour = $1,870.	0	1,870	1,034,110
Inspect crankshaft counterweight retaining rings	0.75 work-hours × $85 per hour = $64.	0	64	106,176
Reposition, repeat, or remove/install counterweight assemblies.	1.5 work-hours × $85 per hour = $127.50.	0	127.50	211,522.50

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:

■ a. Removing Airworthiness Directive 2023–04–08, Amendment 39–22355 (88 FR 11383, February 23, 2023); and

■ b. Adding the following new airworthiness directive:

2023–05–16 Continental Aerospace Technologies, Inc.: Amendment 39–22385; Docket No. FAA–2023–0435; Project Identifier AD–2023–00384–E.

(a) Effective Date

This airworthiness directive (AD) is effective March 15, 2023.

(b) Affected ADs

This AD replaces AD 2023–04–08, Amendment 39–22355 (88 FR 11383, February 23, 2023).

(c) Applicability

This AD applies to Continental Aerospace Technologies, Inc. (Continental) GTSIO–520–C, –D, –H, –K, –L, –M, –N, and –S; IO–360–A, –AB, –AF, –C, –CB, –D, –DB, –E, –ES, –G, –GB, –H, –HB, –J, –JB, –K, and –KB; 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, and –MB; IO–550–A, –B, –C, –D, –E, –F, –G, –L, –N, –P, and –R; LTSIO–360–E, –EB, –KB, and –RB; LTSIO–520–AE; O–470–A, –B, –E, –G, –H, –J, –K, –L, –M, –N, –R, –S, –T, and –U; TSIO–360–A, –AB, –B, –BB, –C, –CB, –D, –DB, –E, –EB, –F, –FB, –G, –GB, –H, –HB, –JB, –KB, –LB, –MB, –RB, and –SB; TSIO–520–A, –AE, –AF, –B, –BB, –BE, –C, –CE, –D, –DB, –E, –EB, –G, –H, –J, –JB, –K, –KB, –L, –LB, –M, –NB, –P, –R, –T, –UB, –VB, and –WB; TSIO–550–A, –B, –C, –E, –G, –K, and –N; TSIOF–550–K; and TSIOL–550–A, –B, and –C model reciprocating engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 8520, Reciprocating Engine Power Section.

(e) Unsafe Condition

This AD was prompted by a report of a quality escape involving improper installation of counterweight retaining rings in the counterweight groove during manufacture. The FAA is issuing this AD to prevent departure of counterweight and retaining hardware from the crankshaft assembly. The unsafe condition, if not addressed, could result in loss of engine oil pressure, catastrophic engine damage, engine seizure, and consequent loss of the aircraft.

(f) Compliance

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

(g) Required Action

For affected engines with an installed crankshaft assembly identified in paragraphs

(g)(1) or (2) of this AD, before further flight, do the actions identified in, and in accordance with paragraph III, Action Required, of Continental Mandatory Service Bulletin MSB23–01, Revision A, dated February 16, 2023 (MSB23–01A).

(1) Crankshaft assembly having a crankshaft serial number listed in Appendix 1 of MSB23–01A; or

(2) Crankshaft assembly that was repaired or installed on or after June 1, 2021, having a part number and crankshaft serial number listed in Appendix 2 of MSB23–01A.

(h) Exception to the Service Information

Where paragraph III.1.a. of MSB23–01A specifies actions for spare crankshaft assemblies, this AD does not require those actions.

(i) Parts Installation Prohibition

After the effective date of this AD, do not install on any engine a crankshaft assembly having a crankshaft serial number identified in Appendix 1 or Appendix 2 of MSB23–01A, unless the actions required by paragraph (g) of this AD have first been accomplished for that crankshaft assembly.

(j) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Continental Mandatory Service Bulletin MSB23–01, dated February 13, 2023.

(k) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to only permit a one-time, non-revenue ferry flight to operate the aircraft to a location where the maintenance actions can be performed, provided that the engine first undergoes, or has undergone within the previous five flight hours, an oil change and filter/screen replacement that was accomplished by an appropriately rated mechanic or repair station, and any material found in the spent oil and oil filter pleats or oil screen has been evaluated to assess the engine's condition.

Note 1 to paragraph (k) of this AD: Guidance for accomplishing the actions required by paragraph (k) of this AD can be found in Section 6–4.8.2 and Section 6–4.8.5.1 of Continental Aerospace Technologies Standard Practice Maintenance Manual, Revision 1, Change 3, dated January 6, 2023 (also known as M–0).

(l) Alternative Methods of Compliance (AMOCs)

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

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

(m) Related Information

(1) For more information about this AD, contact Nicholas Reid, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5650; email: *nicholas.j.reid@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(4) and (5) of this AD.

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on February 23, 2023 (88 FR 11383, February 23, 2023).

(i) Continental Aerospace Technologies, Inc. Mandatory Service Bulletin MSB23–01, Revision A, dated February 16, 2023.

(ii) [Reserved]

(4) For Continental service information identified in this AD, contact Continental Aerospace Technologies, Inc., 2039 South Broad Street, Mobile, AL 36615; phone: (251) 308–9100; email: *MSB23Support@continental.aero;* website: *continental.aero.*

(5) 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.

(6) 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 March 9, 2023.

Christina Underwood,

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

[FR Doc. 2023–05339 Filed 3–13–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 65, and 147

[Docket No.: FAA–2021–0237; Amdt. No. 43–52A, 65–63A, 147–9A]

RIN 2120–AL67

Aviation Maintenance Technician Schools

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

ACTION: Interim final rule; reopening of comment period for regulatory impact analysis only.

SUMMARY: This action reopens the comment period for the regulatory evaluation associated with the FAA's interim final rule, *Aviation Maintenance Technician Schools,* which was published in the **Federal Register** on May 24, 2022. The regulatory evaluation associated with this rule was not posted to the docket prior to the close of the comment period. Therefore, the FAA is reopening the comment period to allow the public the opportunity to adequately analyze the full regulatory evaluation of the interim final rule. The FAA will accept comments on the regulatory evaluation only and not on the regulatory changes in the interim final rule.

DATES: The comment period for the interim final rule published on May 24, 2022 (87 FR 31391), closed on June 23, 2022, is reopened until April 14, 2023.

ADDRESSES: You may send comments identified by docket number FAA–2021–0237 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments,

without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or visit Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Tanya Glines, Aircraft Maintenance Division, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 380–5896; email *Tanya.Glines@faa.gov.*

SUPPLEMENTARY INFORMATION: See the ''Additional Information'' section for information on how to comment on this action and how the FAA will handle comments received. The ''Additional Information'' section also contains information on obtaining copies of related rulemaking documents.

Background

On December 27, 2020, Congress passed the Consolidated Appropriations Act (Pub. L. 116–260), which includes the Aircraft Certification, Safety, and Accountability Act (the ''Act''). Section 135 of the Act, titled ''Promoting Aviation Regulations for Technician Training,'' directed the FAA to issue interim final regulations to establish requirements for issuing aviation maintenance technician school (AMTS) certificates and associated ratings and the general operating rules for the holders of those certificates and ratings in accordance with the requirements set forth within section 135.

On May 24, 2022, the FAA published the interim final rule (IFR), titled ''Aviation Maintenance Technician Schools'' (87 FR 31391). The comment period for this rulemaking closed on June 23, 2022. On July 26, 2022, the Office of Management and Budget (OMB) approved the collection under the existing information collection OMB Control Number 2120–0040. The rule became effective on September 21, 2022, except for amendatory instructions 6 and 9, which will become effective on August 1, 2023.

The regulatory evaluation (also referred to as the regulatory impact analysis) associated with this IFR was not posted to the docket before the close of the comment period. To ensure that the public has the opportunity to provide comments specifically on the regulatory evaluation now posted in the docket (FAA–2021–0237), the FAA is reopening the comment period for 30 days to allow for the comments on the regulatory evaluation only. The FAA will not address comments on the substance of the IFR itself because the comment period for the IFR closed on June 23, 2022.

Accordingly, the comment period for the interim final rule is reopened only as it pertains to the regulatory evaluation that is now in the docket until April 14, 2023.

Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the regulatory evaluation, explain the reasons for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The FAA will consider all comments it receives on or before the closing date for comments. The FAA will also consider comments filed late to the extent practicable. The IFR may be amended based on comments received.

B. Availability of the Regulatory Impact Analysis

An electronic copy of rulemaking documents may be obtained by using the internet—

1. Search the Federal eRulemaking Portal at *www.regulations.gov;*

2. Visit the FAA's Regulations and Policies web page at *www.faa.gov/regulations_policies/;* or

3. Access the Government Printing Office's web page at *GovInfo.gov.*

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677.

Issued in Washington, DC, on March 10, 2023.

Brandon Roberts,

Executive Director, Office of Rulemaking.

[FR Doc. 2023–05291 Filed 3–14–23; 8:45 am]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the asset allocation regulation for plans with valuation dates in the second quarter of 2023. These interest assumptions are used for valuing benefits under terminating single-employer plans and for other purposes.

DATES: Effective April 1, 2023.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, 202–229–3829. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions—including interest assumptions—for valuing benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulation are also published on PBGC's website (*https://www.pbgc.gov*).

PBGC uses the interest assumptions in appendix B to part 4044 (''Interest Rates Used to Value Benefits'') to determine the present value of annuities in an involuntary or distress termination of a single-employer plan under the asset allocation regulation. The assumptions are also used to determine the value of multiemployer plan benefits and certain assets when a plan terminates by mass withdrawal in accordance with PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281).

The second quarter 2023 interest assumptions will be 5.38 percent for the first 20 years following the valuation date and 5.09 percent thereafter. In comparison with the interest assumptions in effect for the first quarter of 2023, these interest assumptions represent no change in the select period (the period during which the select rate (the initial rate) applies), an increase of 0.52 percent in the select rate, and an increase of 0.39 percent in the ultimate rate (the final rate).

Need for Immediate Guidance

PBGC has determined that notice of, and public comment on, this rule are impracticable, unnecessary, and contrary to the public interest. PBGC routinely updates the interest assumptions in appendix B of the asset allocation regulation each quarter so that they are available to value benefits. Accordingly, PBGC finds that the public interest is best served by issuing this rule expeditiously, without an opportunity for notice and comment, and that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication to allow the use of the proper assumptions to estimate the value of plan benefits for plans with valuation dates early in the second quarter of 2023.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. In appendix B to part 4044, an entry for ''April–June 2023'' is added at the end of the table to read as follows:

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*	*		*
April–June 2023	0.0538	1–20	0.0509	>20	N/A	N/A

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2023–05350 Filed 3–14–23; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900–AQ53

Servicemembers' Group Life Insurance Traumatic Injury Protection Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule adopts, with changes, a proposed rule amending the Department of Veterans Affairs (VA) Servicemembers' Group Life Insurance Traumatic Injury Protection (TSGLI) program regulations. This final rule allows nurse practitioners to sign a hospital or facility-approved pass for a member to leave a hospital or treating facility as part of the member's treatment plan. This final rule also responds to comments received during a reopened 60-day comment period on the response to a petition for rulemaking and withdraws a proposed revision to the TSGLI schedule of losses for traumatic injuries from burns.

DATES: This rule is effective April 14, 2023.

FOR FURTHER INFORMATION CONTACT: Paul Weaver, Department of Veterans Affairs Insurance Service (310/290B), 5000 Wissahickon Avenue, Philadelphia, PA 19144, (215) 842–2000, ext. 4263. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 19, 2020, VA published a proposed rule in the **Federal Register**, 85 FR 50,973, to amend its regulations governing the TSGLI program, and addressed and denied a petition for rulemaking submitted to VA on March 16, 2015, requesting that VA amend the TSGLI regulations to cover traumatic injuries due to illness and disease caused by explosive ordnance. VA provided a 60-day comment period, which ended on October 19, 2020. We received comments from 10 individuals during this comment period. Overall, the comments supported our proposed rulemaking; however, several of the commenters made additional recommendations, which we address below.

On March 23, 2021, we published a supplemental notice of proposed rulemaking (SNPRM), 86 FR 15,448, that provided a new opportunity for the public to submit comments pertaining to our proposal to deny the petition for rulemaking requesting that VA amend the TSGLI regulations to cover traumatic injuries due to illness and disease caused by explosive ordnance. We received three comments during the SNPRM comment period and address these comments in this final rulemaking. In addition, we explain VA is withdrawing the proposed amendment to the TSGLI burn standard that was published in the **Federal Register** in August 2020.

1. Definition of Therapeutic Trip

We received one comment from the American Association of Nurse Practitioners, suggesting that VA amend the proposed definition of the term ''therapeutic trip'' in new 38 CFR 9.21(a)(11) to allow a nurse practitioner, as well as an attending physician, to sign a member's hospital or facility-approved pass to leave the hospital or facility as part of the member's treatment plan. The comment indicated that nurse practitioners have similar, full practice authority within VA medical facilities, and that these nurse practitioners will likely be the primary provider for members in settings such as hospitals and long-term care facilities. The comment also stated that the group believed that this change would serve to ensure that members are able to receive approved passes for therapeutic trips without unnecessary delay. We agree and, therefore, are revising the proposed

definition of the term therapeutic pass so that nurse practitioners will have authority to endorse a member's pass to leave a hospital or other facility as part of the member's treatment plan.

2. Eligibility Requirements Regarding Causation

One commenter stated that VA does not explain the standard we propose to determine whether an illness or disease caused a member's loss. They further stated the concept for using the standard is amorphous and highly subjective, and that medical opinions regarding the extent the illness or disease contributed to the member's loss could differ, making it very difficult to determine how much of a factor a pre-existing illness or disease could have been in contributing to the member's loss. TSGLI is modeled on commercial accidental death and dismemberment (AD&D) insurance coverage, and this coverage does not cover losses caused by illness or disease. 70 FR 75,940, 75,942 (Dec. 22, 2005). We explained in the TSGLI interim final rulemaking published in 2005 that 38 U.S.C. 1980A(e)(4) and (5) obligate VA ''to manage the TSGLI program 'on the basis of sound actuarial principles,' '' and that private AD&D coverage has proven to be actuarially sound over the long-term in the commercial insurance industry. *Id.* at 75,940. We also explained that limitations set forth in the TSGLI regulations follow insurance-industry standards and are based upon sound actuarial and financial principles that VA must utilize in administering TSGLI. *Id.* at 75,942. In addition, in our proposed rulemaking we stated that, in AD&D cases, courts have interpreted the phrase ''direct result of a traumatic injury and no other cause'' that 38 CFR 9.20(d)(2) uses, to mean that a loss is not covered if a preexisting condition or disease ''substantially contributed'' to the loss. 85 FR at 50,974. The proposed directive in 38 CFR 9.20(d)(2) that a scheduled loss would not result directly from a traumatic injury and no other cause if a preexisting disease, illness, or condition substantially contributed to the loss is based on the courts' interpretation. Because we are obligated to administer TSGLI on the basis of sound actuarial and financial principles that have been adopted by commercial insurers, and commercial AD&D insurers utilize the same ''substantially contributed'' standard to evaluate whether illness or disease caused the loss, we are not making any change to proposed 38 CFR 9.20(d).

3. TSGLI Payment Range

One commenter stated that the TSGLI payment schedule has not been addressed since 2005 and that the proposed rule should have adjusted the range of payment for TSGLI. When the TSGLI interim final rule was published in 2005, we explained that the TSGLI schedule follows the commercial AD&D model. We established the TSGLI payment range based on the AD&D policies that we reviewed. Since 2005, we have conducted a Year-One Review and a Year-Ten Review. *See* 73 FR 71,926 (Nov. 26, 2008); 85 FR at 50,973; *see also https://www.benefits.va.gov/INSURANCE/docs/TSGLI_YTR.pdf.* As a result of these reviews, we have published rulemakings that have amended certain sections of the TSGLI schedule to: (1) increase from one to two years the period of time for a loss from a traumatic injury to occur (72 FR 10,362, 10,363 (Mar. 8, 2007)); (2) provide TSGLI benefits for genitourinary losses (76 FR 75,458 (Dec. 2, 2011)); and (3) create a graduated, tiered standard for evaluating losses for reconstruction of limbs (85 FR at 50,981). Furthermore, after reviewing payment amounts during the Year-One and Year-Ten Reviews, we have found the current TSGLI benefit payouts to be larger than the payouts for many commercial AD&D policies. Further, Congress wanted VA to keep the TSGLI premium low to ease the financial stress for Servicemembers and their families and the current premium does not support additional payment amounts. *See* 151 Cong. Rec. S4095 (2005) (statement of Sen. Craig) (''To meet these needs, our amendment would create a traumatic insurance rider [that] would provide coverage for severely disabling conditions at a cost of approximately $1 a month . . . .''). Therefore, we will not make any change based on this comment.

4. TSGLI Appeals Process

One commenter stated that the proposed rule should have addressed the TSGLI appeals process because it was applied inconsistently for different members serving in various branches of the uniformed services. As part of the TSGLI Year-Ten Review, VA met with TSGLI adjudicators from the uniformed services and reviewed the TSGLI appeals process for each branch. Based on these meetings, VA developed the procedures that we proposed in revised 38 CFR 9.20(h). We explained with regard to the proposed amendments to paragraph (h) that the uniformed services and members must follow the established procedural process that each respective branch has developed for hearing TSGLI claims. 85 FR at 50,976. In addition, new 38 CFR 9.20(h)(4) states that a member is not precluded from pursuing legal remedies under 38 U.S.C. 1975 and 38 CFR 9.13 and can leave the TSGLI appeals process at any time and seek a different venue for their appeal. Because we have reviewed the TSGLI appeals process for the uniformed services and addressed it in the proposed rulemaking by making revisions to the process, we do not make any further changes based on this comment.

5. Two-Year Period To Suffer Loss From Traumatic Injury

Two commenters stated that the two-year eligibility period to suffer a loss from a traumatic injury should be expanded. The commenters indicated that certain losses, such as traumatic brain injury (TBI), often do not become disabling medical conditions until longer than two years following a traumatic injury. One of the commenters suggested increasing the two-year period for a member to suffer a loss from a traumatic injury to two years from the date of diagnosis of the traumatic injury or date surgery is performed, whichever is later. VA is obligated to administer TSGLI according to the sound actuarial and financial practices of commercial AD&D insurers. When TSGLI was created in 2005, a one-year loss period was established because the one-year period reflected the longest loss period for an individual insured under a policy of commercial AD&D. In 2007, we extended this one-year period to two years in response to concerns from the uniformed services that one year was not enough time for a member to decide whether to attempt to salvage a limb. This extension of an additional year to suffer a loss provides more extensive coverage than the coverage offered by most commercial AD&D insurers. Further extending the loss period risks undermining the actuarial soundness of TSGLI and would make it difficult for TSGLI adjudicators to determine if a nexus exists between a traumatic injury and a qualifying loss. Therefore, we do not make any change based on this comment.

6. Exposure to Burn Pits

One commenter stated that the proposed rule language should be more inclusive of toxic exposures that occur from military-specific events, such as burn pits. We define a qualifying traumatic event for purposes of TSGLI in 38 CFR 9.20(b) as an application of external force; application of violence or chemical, biological, or radiological

weapons; accidental ingestion of a contaminated substance; exposure to low temperatures, excessive heat, or non-penetrating blast waves; or an animal or insect bite or insect sting. We define traumatic injury in 38 CFR 9.20(c) to expressly exclude illnesses and diseases, unless the illness or disease was caused by a biological, chemical or radiological weapon, pyogenic infection, or accidental ingestion of a contaminated substance. For exposure to burn pit toxins to qualify as a traumatic event and for the resulting injury to qualify as a traumatic injury, the member would have to have been exposed to a burn pit that was burning nuclear, radiological, or chemical weapons. Exposure to nuclear, radiological, or chemical weapons causes an immediate harm to the member. As we explained in the TSGLI interim final rule in 2005, including immediate traumatic harm due to these unique hazards of military service is consistent with the purpose of TSGLI. 70 FR 75,940, 75,941 (Dec. 22, 2005). Exposure to burn pits where conventional weapons or materials were burned would not cause such immediate traumatic harm so as to fall within the purpose of TSGLI. Therefore, we do not make a change based on this comment.

7. Petition for VA To Engage in TSGLI Rulemaking

One comment was submitted by counsel representing a member who is appealing the uniformed services' denial of his TSGLI claim. In our proposed rulemaking we evaluated the commenter's petition for VA to engage in a TSGLI rulemaking that would add illness and disease to the TSGLI schedule if the illness or disease was caused by explosive ordnance. The commenter stated that VA did not explain why it did not grant the member's petition and why it adopted a two-year time period for a loss from a traumatic injury to occur. The comments also stated that losses from explosive ordnance such as stroke do occur within two years of members' exposure to explosive ordnance and VA's denial of the petition is arbitrary and capricious and violates the Administrative Procedure Act.

In the proposed rulemaking, we explained that we were proposing to deny the petition for rulemaking because covering losses from illness or disease resulting from explosive ordnance would be inconsistent with the plain language of the authorizing statute and the purpose of TSGLI to cover injuries occurring immediately after a traumatic event as losses due to illness or disease do not result from immediate traumatic harm unless the harm is caused by nuclear, biological, or chemical weapons. 85 FR at 50,983. We included immediate traumatic harm caused by nuclear, biological, and chemical weapons as exceptions to the TSGLI illness and disease exclusion because these weapons are unique to the hazards of military service. *Id.* As we further explained in the proposed rulemaking, the legislative history of the TSGLI authorizing statute shows that Congress intended to provide TSGLI compensation for injuries, rather than diseases, that occur immediately after a traumatic event and that require prompt medical treatment. *Id.* Thus, we proposed to deny the commenter's petition to provide TSGLI coverage for physical illness or disease caused by TBI because losses from illness or disease caused by TBI may not immediately manifest but may manifest many years after the member's TBI. *Id.* Further, although the commenter noted that one of the medical studies cited by VA in the proposed rule found an average time of 543 days between a TBI patient's use of health care services and the onset of stroke, we identified other scientific reports suggesting a longer latent period before clinical presentation of adverse health effects such as meningioma and an increase in risk of brain tumors. *Id.* Additionally, we cited to a report that showed a delayed onset of symptoms of Parkinson Disease following TBI. *Id.*

The commenter also stated that VA has not provided sufficient justification for adopting a two-year period for a loss to occur following a traumatic injury and that we have offered no actuarial or statistical data to support the denial of the petition for rulemaking. As stated previously, VA is obligated to manage TSGLI according to sound actuarial principles, and we have modeled TSGLI on commercial AD&D policies. The TSGLI two-year period to suffer a loss provides more extensive coverage than the coverage offered by most commercial AD&D insurers; further extending the loss period risks the financial health of TSGLI and would make it difficult for TSGLI adjudicators to determine if a nexus exists between a traumatic injury and a qualifying loss. Accordingly, we make no change based on this commenter's comments and deny the petition for rulemaking.

8. Comments Received During SNPRM Comment Period

We received three additional comments in response to our supplemental notice of proposed rulemaking providing a new opportunity for the public to submit comments pertaining to our proposal to deny the petition for rulemaking described in the previous section. One commenter indicated that the types of illnesses and diseases that result from exposure to low-level blasts often are not diagnosed until as long as a decade later and should be covered under TSGLI. VA considers low-level blasts a traumatic event and calculates the two-year period from the last documented blast. Any ''immediate'' losses, such as hospitalization or the inability to perform ADL from a TBI resulting from a low-level blast, are losses covered under TSGLI. Covering a disease or illness that occurs many years following a traumatic event would be contrary to Congressional intent that TSGLI provide benefits for losses from traumatic injuries that are suffered soon after a traumatic event. *See* 85 FR at 50,983. Therefore, we do not make a change based on this comment.

VA received one comment from counsel representing the member appealing the uniformed services' denial of his TSGLI claim and who submitted the petition for rulemaking stating that our proposal to deny the petition to add illness and disease to the TSGLI schedule if the illness and disease was caused by explosive ordnance was arbitrary and capricious. The comment submitted was similar to a comment submitted during the prior notice and comment period. As stated previously, VA does not make any changes based on this comment because covering losses from illness or disease resulting from explosive ordnance would be inconsistent with commercial AD&D coverage after which Congress modeled TSGLI and the purpose of TSGLI to cover injuries occurring immediately after a traumatic event.

We received another comment from a licensed physician and the author of a report to which we cited in our August 2020 **Federal Register** submission that proposed to deny the petitioner's request. The commenter stated that TBI from explosive ordnance follows a disease process and that losses from illness and disease caused by TBI that is caused by explosive ordnance should be covered under TSGLI. As we explained in the proposed rulemaking and in previous sections of this final rulemaking, the types of long-term illnesses and diseases associated with TBI do not cause the immediate type of harm against which TSGLI is designed to protect. Our research shows that, while several conditions, such as Alzheimer's Disease and dementia, have a positive association with TBI, these conditions do not immediately manifest,

and losses from these conditions usually do not occur until more than two years after TBI. Institute of Medicine of the National Academies, *Gulf War and Health—Vol. 9: Long-Term Effects of Blast Exposures* (2014), *available at https://doi.org/10.17226/18253.* We also identified a positive association between TBI and Parkinson's Disease, however the symptoms from Parkinson's Disease that would cause a member to suffer a loss do not appear within the two-year loss period, but usually appear as many as twenty years following a TBI. *Id.* Further, members who suffer immediate harm due to TBI caused by explosive ordnance and are hospitalized or suffer the loss of ADL are eligible for TSGLI payment if the loss occurs during the two-year period for TSGLI losses. Therefore, we do not make any changes based on this comment and deny the petition for rulemaking.

9. Withdrawal of Proposal To Amend TSGLI Burn Standard

In our August 2020 proposed rulemaking, we indicated that we would revise the TSGLI burn standard to create a graduated, tiered standard based upon the varying levels of rehabilitation associated with differing types of burns and the extent of burns on the body. 85 FR at 50,979–50,980. We received several comments during and after the comment period indicating that the proposed standard would not provide equity in payment based on the severity of the burn and the burn would be difficult to assess under the proposed standard because medical documentation of the precise location of burns is not always available. Therefore, we are withdrawing the proposed amendments to the TSGLI burn standard and restating current § 9.20(e)(6)(xvii) and (f)(8) in new § 9.21(c)(8).

For the reasons discussed above, VA is adopting the proposed rule as a final rule with the above-noted changes.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this final rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This final rule will generally be small business neutral as it applies only to members who are covered under TSGLI, and TSGLI is managed, processed, and conducted within VA and through Prudential Insurance Company of America, which is not considered to be a small business entity. Therefore, under 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

We note that in the proposed rule we did not identify any information collections. *See* 85 FR 50,983. However, we subsequently received guidance from the Office of Management and Budget (OMB) informing us that the TSGLI application and appeals forms covered in proposed § 9.20 constitute information collections and are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requiring approval by OMB. Accordingly, we requested OMB approval for these forms, and OMB granted emergency clearance under 44 U.S.C. 3507(j) and assigned OMB control number 2900–0919. On December 29, 2022, we published a separate **Federal Register** notice outside of this rulemaking requesting public comment on the information collections. *See* 87 FR 80262. If, based on public comments, OMB determines to modify its emergency clearance for these forms, VA would revise § 9.20 accordingly.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Assistance Listing

The Assistance Listing number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on January 12, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, VA is amending 38 CFR part 9 as set forth below:

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 38 U.S.C. 501, 1965–1980A, unless otherwise noted.

■ 2. Amend § 9.20 by:
■ a. Revising paragraph (b)(1);
■ b. Redesignating paragraph (c)(3) as (c)(4) and adding a new paragraph (c)(3);
■ c. Revising paragraphs (d)(2) and (4), (e)(1), (e)(3)(i)(C) and (ii), and (e)(6);
■ c. Removing paragraph (f);
■ d. Redesignating paragraph (h) as paragraph (f) and revising newly redesignated paragraph (f);
■ e. Revising paragraph (g);
■ f. Redesignating paragraphs (i) through (k) as paragraphs (h) through (j) respectively and revising newly redesignated paragraphs (h) through (j).

The revisions read as follows:

§ 9.20 Traumatic injury protection.

* * * * *

(b) * * * (1) A traumatic event is damage to a living being occurring on or after October 7, 2001, caused by:

(i) Application of an external force;

(ii) Application of violence or chemical, biological, or radiological weapons;

(iii) Accidental ingestion of a contaminated substance;

(iv) Exposure to low environmental temperatures, excessive heat, or documented non-penetrating blast waves; or

(v) An insect bite or sting or animal bite.

* * * * *

(c) * * *

(3) The term traumatic injury includes anaphylactic shock directly caused by an insect bite or sting or animal bite.

* * * * *

(d) * * *

(2) You must suffer a scheduled loss that results directly from a traumatic injury and from no other cause.

(i) A scheduled loss does not result directly from a traumatic injury and from no other cause if a pre-existing illness, condition, or disease or a post-service injury substantially contributed to the loss.

(ii) A scheduled loss results directly from a traumatic injury and no other cause if the loss is caused by a medical or surgical procedure used to treat the traumatic injury.

* * * * *

(4) You must suffer a scheduled loss under § 9.21(c) within two years of the traumatic injury.

(i) If a loss with a required time period milestone begins but is not completed within two years of the traumatic injury, the loss would nonetheless qualify for TSGLI if the requisite time period of loss continues uninterrupted and concludes after the end of the two-year period.

(ii) If a required time period for a loss is satisfied before the end of the two-year period and a member suffers another period of loss after expiration of the two-year time limit, the member is not entitled to TSGLI for this time period of loss.

* * * * *

(e) * * * (1) The term ''scheduled loss'' means a condition listed in the schedule in § 9.21(c) if directly caused by a traumatic injury and from no other cause. A scheduled loss is payable at the amount specified in the schedule.

* * * * *

(3) * * *

(i) * * *

(C) Diagnostic procedures, preventive medical procedures such as inoculations, medical or surgical treatment for an illness or disease, or any complications arising from such procedures or treatment, unless the diagnostic procedure or medical or surgical treatment is necessary to treat a traumatic injury;

* * * * *

(ii) Sustained while a member was committing an act that clearly violated a penal law classifying such an act as a felony.

* * * * *

(6) Definitions. For purposes of this section and § 9.21—

(i) The term *biological weapon* means biological agents or microorganisms intended to kill, seriously injure, or incapacitate humans through their physiological effects.

(ii) The term *chemical weapon* means chemical substances intended to kill, seriously injure, or incapacitate humans through their physiological effects.

(iii) The term *contaminated substance* means food or water made unfit for consumption by humans because of the presence of chemicals, radioactive elements, bacteria, or organisms.

(iv) The term *external force* means a sudden or violent impact from a source outside of the body that causes an unexpected impact and is independent of routine body motions such as twisting, lifting, bending, pushing, or pulling.

(v) The term *ingestion* means to take into the gastrointestinal tract by means of the mouth.

(vi) The term *medical professional* means a licensed practitioner of the healing arts acting within the scope of his or her practice, including, *e.g.,* a licensed physician, optometrist, nurse practitioner, registered nurse, physician assistant, or audiologist.

(vii) The term *medically incapacitated* means an individual who has been determined by a medical professional to be physically or mentally impaired by physical disability, mental illness, mental deficiency, advanced age, chronic use of drugs or alcohol, or other causes that prevent sufficient understanding or capacity to manage his or her own affairs competently.

(viii) The term *pyogenic infection* means a pus-producing infection.

(ix) The term *radiological weapon* means radioactive materials or radiation-producing devices intended to kill, seriously injure, or incapacitate humans through their physiological effects.

(f) *How does a member make a claim for traumatic injury protection benefits?* (1)(i) A member who believes he or she qualifies for traumatic injury protection benefits must complete and sign Part A of the TSGLI Benefits Form and submit evidence substantiating the member's traumatic injury and resulting loss. A medical professional must complete and sign Part B of the Application for TSGLI Benefits Form.

(ii) If a medical professional certifies in Part B of the Application for TSGLI Benefits Form that a member is unable to sign Part A of the Form because the member is medically incapacitated, the Form must be signed by one of the following: The member's guardian; if none, the member's agent or attorney acting under a valid Power of Attorney; if none, the member's military trustee.

(iii) If a member suffered a scheduled loss as a direct result of the traumatic injury, survived seven full days from the date of the traumatic event, and then died before the maximum benefit for which the service member qualifies is paid, the beneficiary or beneficiaries of the member's Servicemembers' Group Life Insurance policy should complete an Application for TSGLI Benefits Form.

(2) If a member seeks traumatic injury protection benefits for a scheduled loss occurring after submission of a completed Application for TSGLI Benefits Form for a different scheduled loss, the member must submit a completed Application for TSGLI Benefits Form for the new scheduled loss and for each scheduled loss that occurs thereafter and for each increment of a scheduled loss that occurs thereafter. For example, if a member seeks traumatic injury protection benefits for a scheduled loss due to coma from traumatic injury and/or the inability to carry out activities of daily living due to traumatic brain injury (§ 9.21(c)(17)), or the inability to carry out activities of daily living due to loss directly resulting from a traumatic injury other than an injury to the brain (§ 9.21(c)(20)), a completed Application for TSGLI Benefits Form must be submitted for each increment of time for which TSGLI is payable. Also, for example, if a member suffers a scheduled loss due to a coma, a completed Application for TSGLI Benefits Form should be filed after the 15th consecutive day that the member is in the coma, for which $25,000 is payable. If the member remains in a coma for another 15 days, another completed Application for TSGLI Benefits Form should be submitted and another $25,000 will be paid.

(g) *How will the uniformed service decide a TSGLI claim?* (1) Each uniformed service will certify its own members for traumatic injury protection benefits based upon section 1032 of Public Law 109–13, section 501 of Public Law 109–233, and this section. The uniformed service will certify whether a member was insured under Servicemembers' Group Life Insurance at the time of the traumatic injury and whether the member sustained a

qualifying traumatic injury and qualifying loss.

(2) The uniformed service office may request additional evidence from the member if the record does not contain sufficient evidence to decide the member's claim.

(3) The uniformed service office shall consider all medical and lay evidence of record, including all evidence provided by the member, and determine its probative value. When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of TSGLI benefits, the uniformed service shall give the benefit of the doubt to the member.

(4) Notice of a decision regarding a member's eligibility for traumatic injury protection benefits will include an explanation of the procedure for obtaining review of the decision, and all negative decisions shall include a statement of the basis for the decision and a summary of the evidence considered.

(h) *How does a member or beneficiary appeal an adverse eligibility determination?* (1) Each uniformed service has a three-tiered appeal process. The first tier of appeal is called a reconsideration, followed by a second-level appeal and then a third-level appeal. A member, beneficiary, or other person eligible to submit a claim under paragraph (f)(1)(ii) or (iii) may submit an appeal using the appeal process of the uniformed service that issued the original decision.

(i) *Reconsideration.* (A) Reconsideration of an eligibility determination, such as whether the loss occurred within 730 days of the traumatic injury, whether the member was insured under Servicemembers' Group Life Insurance when the traumatic injury was sustained, or whether the injury was self-inflicted or whether a loss of hearing was total and permanent, is initiated by filing, with the office of the uniformed service identified in the eligibility decision within one year of the date of a denial of eligibility, a written notice of appeal that identifies the issues for which reconsideration is sought.

(B) The uniformed service TSGLI office will review the claim, including evidence submitted with the notice of appeal by or on behalf of the member that was not previously part of the record before the uniformed service, and issue a decision on the claim.

(ii) *Second-level appeal.* (A) A second-level appeal of the reconsideration decision is initiated by filing, with the second-level appeal office of the uniformed service within one year of the date of the reconsideration decision, a written notice of appeal that identifies the issues being appealed.

(B) The uniformed service second-level appeal office will review the claim, including evidence submitted with the notice of appeal by or on behalf of the member that was not previously part of the record before the uniformed service, and issue a decision on the claim.

(iii) *Third-level appeal.* (A) A third-level review of the second-level uniformed service appeal office is initiated by filing, with the third-level appeal office of the uniformed service within one year of the date of the decision by the second-level appeal office of the uniformed service, a written notice of appeal that identifies the issues being appealed.

(B) The uniformed service third-level appeal office will review the claim, including evidence submitted with the notice of appeal by or on behalf of the member that was not previously part of the record before the uniformed service, and issue a decision on the claim.

(2) If a timely notice of appeal seeking reconsideration of the initial decision by the uniformed service or seeking review of the decision by the second-level uniformed service appeal office is not filed, the initial decision by the uniformed service or the decision by the second-level uniformed service appeal office, respectively, shall become final, and the claim will not thereafter be readjudicated or allowed except as provided in paragraph (h)(3).

(3) New and material evidence. (i) If a member, beneficiary, or other person eligible to submit a claim under paragraph (f)(1)(ii) or (iii) submits new and material evidence with respect to a claim that has been finally disallowed as provided in paragraph (h)(2), the uniformed service office will consider the evidence, determine its probative value, and readjudicate the claim. New and material evidence is evidence that was not previously part of the record before the uniformed service, is not cumulative or redundant of evidence of record at the time of the prior decision and is likely to have a substantial effect on the outcome.

(ii) A decision finding that new and material evidence was not submitted may be appealed in accordance with paragraph (h)(1).

(4) Nothing in this section precludes a member from pursuing legal remedies under 38 U.S.C. 1975 and 38 CFR 9.13. However, if a member files suit in U.S. district court after an adverse initial decision on a TSGLI claim by a uniformed service, the member may not file an appeal pursuant to paragraph (h)(1) if the lawsuit is pending before a U.S. district court, a U.S. court of appeals, or the U.S. Supreme Court or the time for appeal or filing a petition for a writ of certiorari has not expired. If a member files suit in U.S. district court after filing an appeal pursuant to paragraph (h)(1), the appeal will be stayed if the lawsuit is pending before a U.S. district court, a U.S. court of appeals, or the U.S. Supreme Court or the time for appeal or filing a petition for a writ of certiorari has not expired.

(i) *Who will be paid the traumatic injury protection benefit?* The injured member who suffered a scheduled loss will be paid the traumatic injury protection benefit in accordance with 38 U.S.C. 1980A except under the following circumstances:

(A) If a member has been determined by a medical professional, in Part B of the Application for TSGLI Benefits Form, to be medically incapacitated, the member's guardian or, or if there is no guardian, the member's agent or attorney acting under a valid Power of Attorney will be paid the benefit on behalf of the member.

(B) If no guardian, agent, or attorney is authorized to act as the member's legal representative, a military trustee who has been appointed under the authority of 37 U.S.C. 602 will be paid the benefit on behalf of the member. The military trustee will report the receipt of the traumatic injury benefit payment and any disbursements from that payment to the Department of Defense.

(C) If a member dies before payment is made, the beneficiary or beneficiaries who will be paid the benefit will be determined in accordance with 38 U.S.C. 1970(a).

(j) The Traumatic Servicemembers' Group Life Insurance program will be administered in accordance with this rule, except to the extent that any regulatory provision is inconsistent with subsequently enacted applicable law.

(Approved by the Office of Management and Budget under control number 2900–0919.)

§§ 9.21 and 9.22 [Redesignated]

■ 3. Redesignate §§ 9.21 and 9.22 as §§ 9.22 and 9.23.

■ 4. Add new § 9.21 to read as follows:

§ 9.21 Schedule of Losses.

(a) Definitions. For purposes of the Schedule of Losses in paragraph (c)—

(1) The term *accommodating equipment* means tools or supplies that enable a member to perform an activity of daily living without the assistance of another person, including, but not limited to, a wheelchair; walker or cane;

reminder applications; Velcro clothing or slip-on shoes; grabber or reach extender; raised toilet seat; wash basin; shower chair; or shower or tub modifications such as wheelchair access or no-step access, grab-bar or handle.

(2) The term *adaptive behavior* means compensating skills that allow a member to perform an activity of daily living without the assistance of another person.

(3) The term *amputation* means the severance or removal of a limb or genital organ or part of a limb or genital organ resulting from trauma or surgery. With regard to limbs, an amputation above a joint means a severance or removal that is closer to the body than the specified joint is.

(4) The term *assistance from another person* means that a member, even while using accommodating equipment or adaptive behavior, is nonetheless unable to perform an activity of daily living unless another person physically supports the member, is needed to be within arm's reach of the member to provide assistance because the member's ability fluctuates, or provides oral instructions to the member while the member attempts to perform the activity of daily living.

(5) The term *avulsion* means a forcible detachment or tearing of bone and/or tissue due to a penetrating or crush injury.

(6) The term *consecutive* means to follow in uninterrupted succession.

(7) The term *discontinuity defect* means the absence of bone and/or tissue from its normal bodily location, which interrupts the physical consistency of the face and impacts at least one of the following functions: mastication, swallowing, vision, speech, smell, or taste.

(8) The term *hospitalization* means admission to a ''hospital'' as defined in 42 U.S.C. 1395x(e) or ''skilled nursing facility'' as defined in 42 U.S.C. 1395i–3(a).

(9) The term *inability to carry out activities of daily living* means the inability to perform at least two of the six following functions without assistance from another person, even while using accommodating equipment or adaptive behavior, as documented by a medical professional.

(i) *Bathing* means washing, while in a bathtub or shower or using a sponge bath, at least three of the six following regions of the body in its entirety: Head and neck, back, front torso, pelvis (including the buttocks), arms, or legs.

(ii) *Continence* means complete control of bowel and bladder functions or management of a catheter or colostomy bag, if present.

(iii) *Dressing* means obtaining clothes and shoes from a closet or drawers and putting on the clothing and shoes, excluding tying shoelaces or use of belts, buttons, or zippers.

(iv) *Eating* means moving food from a plate to the mouth or receiving nutrition via a feeding tube or intravenously but does not mean preparing or cutting food or obtaining liquid nourishment through a straw or cup.

(v) *Toileting* means getting on and off the toilet; taking clothes off before toileting or putting clothes on after toileting; cleaning organs of excretion after toileting; or using a bedpan or urinal.

(vi) *Transferring* means moving in and out of a bed or chair.

(10) The term *permanent* means clinically stable and reasonably certain to continue throughout the lifetime of the member.

(11) The term *therapeutic trip* means an approved pass, by the member's attending physician or nurse practitioner, to leave a hospital as defined in 42 U.S.C. 1395x(e) or ''skilled nursing facility'' as defined in 42 U.S.C. 1395i–3(a), accompanied or unaccompanied by hospital or facility staff, as part of a member's treatment plan and with which the member is able to return without having to be readmitted to the hospital or facility.

(b)(1) For losses listed in paragraphs (c)(1) through (19) of this section—

(i) Except where noted otherwise, multiple losses resulting from a single traumatic event may be combined for purposes of a single payment.

(ii) The total payment amount may not exceed $100,000 for losses resulting from a single traumatic event.

(2) For losses listed in paragraphs (c)(20) and (21) of this section—

(i) Payments may not be made in addition to payments for losses under paragraphs (c)(1) through (19); instead, the higher amount will be paid.

(ii) The total payment amount may not exceed $100,000 for losses resulting from a single traumatic event.

(3) Required period of consecutive days of loss. For losses in paragraphs (c)(17) through (18) and (20) through (21)—

(i) A period of consecutive days of loss that is interrupted by a day or more during which the criteria for the scheduled loss are not satisfied will not be added together with a subsequent period of consecutive days of loss. The counting of consecutive days starts over at the end of any period in which the criteria for a loss are not satisfied.

(ii) A required period of consecutive days will be satisfied if a loss begins within two years of a traumatic injury and continues without interruption after the end of the two-year period. A subsequent period of consecutive days of a scheduled loss will be satisfied if it follows uninterrupted immediately after an initial period of consecutive days of loss that ended after expiration of the two-year period.

(c) *Schedule of Losses.* (1) *Total and permanent loss of sight* is:

(i) Visual acuity in the eye of 20/200 or less/worse with corrective lenses lasting at least 120 days;

(ii) Visual acuity in the eye of greater/better than 20/200 with corrective lenses and a visual field of 20 degrees of less lasting at least 120 days; or

(iii) Anatomical loss of the eye.

(iv) The amount payable for the loss of each eye is $50,000.

(2) *Total and permanent loss of hearing* is:

(i) Average hearing threshold sensitivity for air conduction of at least 80 decibels, based on hearing acuity measured at 500, 1,000, and 2,000 Hertz via pure tone audiometry by air conduction, without amplification device.

(ii) The amount payable for loss of one ear is $25,000. The amount payable for the loss of both ears is $100,000.

(3) *Total and permanent loss of speech* is:

(i) Organic loss of speech or the ability to express oneself, both by voice and whisper, through normal organs for speech, notwithstanding the use of an artificial appliance to simulate speech.

(ii) The amount payable for the loss of speech is $50,000.

(4) *Quadriplegia* is:

(i) Total and permanent loss of voluntary movement of all four limbs resulting from damage to the spinal cord, associated nerves, or brain.

(ii) The amount payable for quadriplegia is $100,000.

(5) *Hemiplegia* is:

(i) Total and permanent loss of voluntary movement of the upper and lower limbs on one side of the body from damage to the spinal cord, associated nerves, or brain.

(ii) The amount payable for hemiplegia is $100,000.

(6) *Paraplegia* is:

(i) Total and permanent loss of voluntary movement of both lower limbs resulting from damage to the spinal cord, associated nerves, or brain.

(ii) The amount payable for paraplegia is $100,000.

(7) *Uniplegia* is:

(i) Total and permanent loss of voluntary movement of one limb resulting from damage to the spinal cord, associated nerves, or brain.

(ii) The amount payable for the loss of each limb is $50,000.

(iii) Payment for uniplegia of arm cannot be combined with loss 9 or 10 for the same arm. The higher payment for uniplegia or loss 14 will be made for the same arm. Payment for uniplegia of leg cannot be combined with loss 11 or 12 for the same leg. The higher payment for uniplegia or loss 13 will be made for the same leg. The higher payment for uniplegia or loss 15 will be made for the same leg.

(8) *Burns* is: (i) 2nd degree (partial thickness) or worse burns covering at least 20 percent of the body, including the face and head, or 20 percent of the face alone. Percentage of the body burned may be measured using the Rule of Nines or any means generally accepted within the medical profession.

(ii) The amount payable for burns is $100,000.

(9) *Amputation of a hand at or above the wrist:* (i) The amount payable for the loss of each hand is $50,000.

(ii) Payment for amputation of hand cannot be combined with payment for loss 7 or 10 for the same hand. The higher payment for amputation of hand or loss 14 will be made for the same hand.

(10) *Amputation at or above the metacarpophalangeal joint(s) of either the thumb or the other 4 fingers on 1 hand:* (i) The amount payable for the loss of each hand is $50,000.

(ii) Payment for amputation of 4 fingers on 1 hand or thumb alone cannot be combined with payment for loss 7 or 9 for the same hand. The higher payment for amputation of 4 fingers on 1 hand or thumb alone or loss 14 will be made for the same hand. Payment for loss of the thumb cannot be made in addition to payment for loss of the other 4 fingers for the same hand.

(11) *Amputation of a foot at or above the ankle:* (i) The amount payable for the loss of each foot is $50,000.

(ii) Payment for amputation of foot cannot be combined with loss 7 or 12 for the same foot. The higher payment for amputation of foot or Loss 13 will be made for the same foot. The higher payment for amputation of foot or Loss 15 will be made for the same foot.

(12) *Amputation at or above the metatarsophalangeal joints of all toes on 1 foot:* (i) The amount payable for the loss of each foot is $50,000.

(ii) Payment for amputation of all toes including the big toe on 1 foot cannot be combined with loss 7 or 11 for the same foot. The higher payment for amputation of all toes including the big toe on 1 foot or loss 13 will be made for the same foot. The higher payment for amputation of all toes including the big toe on 1 foot or loss 15 will be made for the same foot.

(13) *Amputation at or above the metatarsophalangeal joint(s) of either the big toe or the other 4 toes on 1 foot:* (i) The amount payable for the loss of each foot is $25,000.

(ii) The higher payment for amputation of big toe only, or other 4 toes on 1 foot, or loss 7 will be made for the same foot. The higher payment for amputation of big toe only, or other 4 toes on 1 foot, or loss 11 will be made for the same foot. The higher payment for amputation of big toe only, or other 4 toes on 1 foot, or loss 12 will be made for the same foot. The higher payment for amputation of big toe only, or other 4 toes on 1 foot, or loss 15 will be made for the same foot.

(14) *Limb reconstruction of arm (for each arm):* (i) A surgeon must certify that a member had surgery to treat at least one of the following injuries to a limb:

(A) Bony injury requiring bone grafting to re-establish stability and enable mobility of the limb;

(B) Soft tissue defect requiring grafting/flap reconstruction to reestablish stability;

(C) Vascular injury requiring vascular reconstruction to restore blood flow and support bone and soft tissue regeneration; or

(D) Nerve injury requiring nerve reconstruction to allow for motor and sensory restoration and muscle re-enervation.

(ii) The amount payable for losses involving 1 of the 4 listed surgeries is $25,000. The amount payable for losses involving 2 or more of the 4 listed surgeries is $50,000.

(iii) The higher payment for limb reconstruction of arm or loss 7 will be made for the same arm. The higher payment for limb reconstruction of arm or loss 9 will be made for the same arm. The higher payment for limb reconstruction of arm or loss 10 will be made for the same arm.

(15) *Limb reconstruction of leg (for each leg):* (i) A surgeon must certify that a member had at least one of the following injuries to a limb requiring the identified surgery for the same limb:

(A) Bony injury requiring bone grafting to re-establish stability and enable mobility of the limb;

(B) Soft tissue defect requiring grafting/flap reconstruction to reestablish stability;

(C) Vascular injury requiring vascular reconstruction to restore blood flow and support bone and soft tissue regeneration; or

(D) Nerve injury requiring nerve reconstruction to allow for motor and sensory restoration and muscle re-enervation.

(ii) The amount payable for losses involving 1 of the 4 listed surgeries is $25,000. The amount payable for losses involving 2 or more of the 4 listed surgeries is $50,000.

(iii) The higher payment for limb reconstruction of leg or loss 7 will be made for the same leg. The higher payment for limb reconstruction of leg or loss 11 will be made for the same leg. The higher payment for limb reconstruction of leg or loss 12 will be made for the same leg. The higher payment for limb reconstruction of leg or loss 13 will be made for the same leg.

(16) *Facial reconstruction:* (i) A surgeon must certify that a member had surgery to correct a traumatic avulsion of the face or jaw that caused a discontinuity defect to one or more of the following facial areas:

(A) Surgery to correct discontinuity loss involving bone loss of the upper or lower jaw—the amount payable for this loss is $75,000;

(B) Surgery to correct discontinuity loss involving cartilage or tissue loss of 50% or more of the cartilaginous nose—the amount payable for this loss is $50,000;

(C) Surgery to correct discontinuity loss involving tissue loss of 50% or more of the upper or lower lip—the amount payable for loss of one lip is $50,000, and the amount payable for loss of both lips is $75,000;

(D) Surgery to correct discontinuity loss involving bone loss of 30% or more of the periorbita—the amount payable for loss of each eye is $25,000;

(E) Surgery to correct discontinuity loss involving loss of bone or tissue of 50% or more of any of the following facial subunits: Forehead, temple, zygomatic, mandibular, infraorbital, or chin—the amount payable for each facial subunit is $25,000.

(ii) Losses due to facial reconstruction may be combined with each other, but the maximum benefit for facial reconstruction may not exceed $75,000.

(iii) Any injury or combination of losses under facial reconstruction may be combined with other losses in § 9.21(c)(1)–(19) and treated as one loss, provided that all losses are the result of a single traumatic event. However, the total payment amount may not exceed $100,000.

(iv) Bone grafts for teeth implants alone do not meet the loss standard for facial reconstruction from jaw surgery.

(17) *Coma (8 or less on Glasgow Coma Scale) AND/OR Traumatic Brain Injury resulting in inability to perform at least 2 activities of daily living (ADL):* (i) The amount payable at the 15th consecutive day of ADL loss is $25,000.

(ii) The amount payable at the 30th consecutive day of ADL loss is an additional $25,000.

(iii) The amount payable at the 60th consecutive day of ADL loss is an additional $25,000.

(iv) The amount payable at the 90th consecutive day of ADL loss is an additional $25,000.

(v) Duration of coma and inability to perform ADLs include date of onset of coma or inability to perform ADLs and the first date on which member is no longer in a coma or is able to perform ADLs.

(18) *Hospitalization due to traumatic brain injury:* (i) The amount payable at the 15th consecutive day of hospitalization is $25,000.

(ii) Payment for hospitalization may only replace the first ADL milestone in loss 17. Payment will be made for 15-day hospitalization, coma, or the first ADL milestone, whichever occurs earlier. Once payment has been made for the first payment milestone in loss 17 for coma or ADL, there are no additional payments for subsequent 15-day hospitalization due to the same traumatic injury. To receive an additional ADL payment amount under loss 17 after payment for hospitalization in the first payment milestone, the member must reach the next payment milestones of 30, 60, or 90 consecutive days.

(iii) Duration of hospitalization includes the dates on which member is transported from the injury site to a hospital as defined in 42 U.S.C. 1395x(e) or skilled nursing facility as defined in 42 U.S.C. 1395i–3(a), admitted to the hospital or facility, transferred between a hospital or facility, leaves the hospital or facility for a therapeutic trip, and discharged from the hospital or facility.

(iv) In cases where a member is hospitalized for 15 consecutive days for a diagnostic assessment for a mental illness and/or brain or neurologic disorder, and the assessment determines the member has a mental illness or brain or neurologic disorder, and not TBI, this loss is not payable because the loss was due to illness or disease and is excluded from payment. If a member is hospitalized for 15 consecutive days for a diagnostic assessment to determine whether the member has TBI and is diagnosed with TBI, TBI and PTSD, or PTSD and not TBI, the loss is payable for $25,000. If a member is hospitalized for 15 consecutive days for a diagnostic assessment to determine whether the member has PTSD and is diagnosed with TBI or TBI and PTSD, the loss is payable for $25,000.

(19) *Genitourinary losses:* (i) Amputation of the glans penis or any portion of the shaft of the penis above glans penis (*i.e.,* closer to the body) or damage to the glans penis or shaft of the penis that requires reconstructive surgery—the amount payable for this loss is $50,000.

(ii) Permanent damage to the glans penis or shaft of the penis that results in complete loss of the ability to perform sexual intercourse—the amount payable for this loss is $50,000.

(iii) Amputation of or damage to a testicle that requires testicular salvage, reconstructive surgery, or both—the amount payable for this loss is $25,000.

(iv) Amputation of or damage to both testicles that requires testicular salvage, reconstructive surgery, or both—the amount payable for this loss is $50,000.

(v) Permanent damage to both testicles requiring hormonal replacement therapy—the amount payable for this loss is $50,000.

(vi) Complete or partial amputation of the vulva, uterus, or vaginal canal or damage to the vulva, uterus, or vaginal canal that requires reconstructive surgery—the amount payable for this loss is $50,000.

(vii) Permanent damage to the vulva or vaginal canal that results in complete loss of the ability to perform sexual intercourse—the amount payable for this loss is $50,000.

(viii) Amputation of an ovary or damage to an ovary that requires ovarian salvage, reconstructive surgery, or both—the amount payable for this loss is $25,000.

(ix) Amputation of both ovaries or damage to both ovaries that requires ovarian salvage, reconstructive surgery, or both—the amount payable for this loss is $50,000.

(x) Permanent damage to both ovaries requiring hormonal replacement therapy—the amount payable for this loss is $50,000.

(xi) Permanent damage to the urethra, ureter(s), both kidneys, bladder, or urethral sphincter muscle(s) that requires urinary diversion and/or hemodialysis—the amount payable for this loss is $50,000.

(xii) Losses due to genitourinary injuries may be combined with each other, but the maximum benefit for genitourinary losses may not exceed $50,000.

(xiii) Any genitourinary loss may be combined with other injuries listed in § 9.21(b)(1)–(18) and treated as one loss, provided that at all losses are the result of a single traumatic event. However, the total payment may not exceed $100,000.

(20) *Traumatic injury, other than traumatic brain injury, resulting in inability to perform at least 2 activities of daily living (ADL):* (i) The amount payable at the 15th consecutive day of ADL loss is $25,000.

(ii) The amount payable at the 30th consecutive day of ADL loss is an additional $25,000.

(iii) The amount payable at the 60th consecutive day of ADL loss is an additional $25,000.

(iv) The amount payable at the 90th consecutive day of ADL loss is an additional $25,000.

(v) Duration of inability to perform ADL includes the date of the onset of inability to perform ADL and the first date on which member is able to perform ADL.

(21) *Hospitalization due to traumatic injury other than traumatic brain injury:* (i) The amount payable at 15th consecutive day of ADL loss is $25,000.

(ii) Payment for hospitalization may only replace the first ADL milestone in loss 20. Payment will be made for 15-day hospitalization or the first ADL milestone, whichever occurs earlier. Once payment has been made for the first payment milestone in loss 20, there are no additional payments for subsequent 15-day hospitalization due to the same traumatic injury. To receive an additional ADL payment amount under loss 20 after payment for hospitalization in the first payment milestone, the member must reach the next payment milestones of 60, 90, or 120 consecutive days.

(iii) Duration of hospitalization includes the dates on which member is transported from the injury site to a hospital as defined in 42 U.S.C. 1395x(e) or skilled nursing facility as defined in 42 U.S.C. 1395i–3(a), admitted to the hospital or facility, transferred between a hospital or facility, leaves the hospital or facility for a therapeutic trip, and discharged from the hospital or facility.

(Authority: 38 U.S.C. 501(a), 1980A)

[FR Doc. 2023–05069 Filed 3–14–23; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2020–0237; 10775–01–OCSPP]

Modified Potato Acetolactate Synthase (StmALS) in Potato; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of modified potato acetolactate synthase (StmALS) in potato when used in accordance with label directions and good agricultural practices. J.R. Simplot Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of StmALS under FFDCA when used in accordance with this exemption.

DATES: This regulation is effective March 15, 2023. Objections and requests for hearings must be received on or before May 15, 2023 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0237, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Biopesticides and Pollution Prevention Division (7511M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1400; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of 40 CFR part 174 through the Government Publishing Office's e-CFR site at *https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-174?toc=1.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0237 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before May 15, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although EPA strongly encourages those interested in submitting objections or a hearing request to submit objections and hearing requests electronically. *See* Order Urging Electronic Service and Filing (April 10, 2020), *https://www.epa.gov/sites/default/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.* At this time, because of the COVID–19 pandemic, the judges and staff of the Office of Administrative Law Judges are working remotely and not able to accept filings or correspondence by courier, personal delivery, or commercial delivery, and the ability to receive filings or correspondence by U.S. Mail is similarly limited. When submitting documents to the U.S. EPA Office of Administrative Law Judges (OALJ), a person should utilize the OALJ e-filing system at *https://yosemite.epa.gov/oa/eab/eab-alj_upload.nsf.*

Although EPA's regulations require submission via U.S. Mail or hand delivery, EPA intends to treat submissions filed via electronic means as properly filed submissions during this time that the Agency continues to maximize telework due to the pandemic; therefore, EPA believes the preference for submission via electronic means will not be prejudicial. If it is impossible for a person to submit documents electronically or receive service electronically, *e.g.,* the person does not have any access to a computer, the person shall so advise OALJ by contacting the Hearing Clerk at (202) 564–6281. If a person is without access to a computer and must file documents by U.S. Mail, the person shall notify the Hearing Clerk every time it files a document in such a manner. The address for mailing documents is U.S. Environmental Protection Agency, Office of Administrative Law Judges, Mail Code 1900R, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2020–0237, by one of the following methods:

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

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

II. Background

In the **Federal Register** of June 24, 2020 (85 FR 37806) (FRL–10010–82) EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance exemption petition (PP IN–11411) by J.R. Simplot Company, 5369 W Irving Street, Boise, ID 83706. The petition requested that 40 CFR part 174 be amended by establishing an exemption from the requirement of a

tolerance for residues of StmALS in potato. That notice referenced a summary of the petition prepared by the petitioner J.R. Simplot Company, which is available in the docket via *https://www.regulations.gov.* EPA received no comments in response to the notice of filing.

III. Final Rule

A. EPA's Safety Determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity.''

EPA evaluated the available toxicological and exposure data on StmALS and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. A full summary of the data upon which EPA relied and its risk assessment based on those data can be found within the document entitled ''Review of the Application for an Experimental Use Permit for Gen 3 Potatoes expressing transgenic R-proteins BLB2, AMR3 and VNT1, PVY Coat Protein Hairpin RNA and inert ingredient StmALS and associated FFDCA Petitions for the Temporary Exemption from a Tolerance for AMR3 and BLB2, as well as FFDCA Petition for the Exemption from a Tolerance for StmALS'' (Human Health Risk Assessment). This document, as well as other relevant information, is available in the docket for this action, EPA–HQ–OPP–2020–0237, as described under **ADDRESSES**.

Available data have demonstrated that, with regard to humans, StmALS is not anticipated to be toxic or allergenic via any reasonably foreseeable route of exposure. StmALS (modified potato acetolactate synthase), is a plant-incorporated protectant (PIP) inert ingredient produced within the plant to be a selective marker for PIP transformation events. StmALS is a protein derived from the native acetolactate synthase (ALS) protein found in potato (*Solanum tuberosum*) and has been modified from the naturally occurring form by two amino acid substitutions. StmALS does not have any pesticidal activity of its own; rather, the modified protein confers tolerance to sulfonylureas and imidazolinone herbicides by interfering with their binding to native ALS protein within the plant. Thus, the herbicide tolerance serves as a positive selectable marker allowing for the identification of transformed PIP plants.

There is likely to be dietary exposure to StmALS through consumption of potato-derived foods containing this protein. However, the Agency has concluded that any potential dietary risk from the use of StmALS protein to human health is considered negligible for the following reasons. (1) As described above, the mode-of-action of StmALS protein is tolerance to sulfonylureas and imidazolinone herbicides; the protein is otherwise not pesticidal or toxic. (2) Bioinformatics analyses showed that there is no significant homology between StmALS and known toxins or allergens. (3) Data were submitted to demonstrate that the StmALS protein is denatured and becomes insoluble after heat treatment. Since potatoes are cooked by frying, boiling, or baking at high temperatures, and not consumed raw, StmALS is expected to become denatured during potato processing. (4) Additionally submitted data support the lack of allergenic potential for StmALS. The protein is not glycosylated and is rapidly and completely digested by stomach and pancreatic proteases, indicating that StmALS is not sufficiently stable or persistent enough to interact with the immune system and induce allergy. (5) ALS protein, from which StmALS is derived, has a history of safe use through the consumption of potatoes. The StmALS protein is 99.7% similar to the native ALS found in potato, differing by only two amino acids. These modifications do not affect the mode of action of StmALS and do not result in the production of a toxic protein. Since potatoes are a staple of the human diet, people have long been exposed to ALS without documented adverse effects.

Oral exposure from ingestion of drinking water is unlikely because StmALS is present at low levels and is confined within the plant cells. If StmALS does enter the water column, it is expected to degrade rapidly in the presence of soil microbes, or upon normal communal water-treatment procedures. In addition, there is unlikely to be residential or non-occupational exposure given that the inert ingredient is confined within the potato plant. Therefore, the only possible route of non-occupational exposure, other than dietary, is via handling of the plants and plant products. However, there are no risks associated with these exposure routes because, based on bioinformatics analysis and the history of safe use of the highly similar ALS protein, the StmALS protein is not toxic or allergenic.

Although FFDCA section 408(b)(2)(C) provides for an additional tenfold margin of safety for infants and children in the case of threshold effects, EPA has determined that there are no such effects due to the lack of toxicity and allergenicity for StmALS. As a result, an additional margin of safety for the protection of infants and children is unnecessary.

Based upon its evaluation described above and in the Human Health Risk Assessment, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of StmALS protein in potatoes. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the mode-of-action, history of safe use of the highly similar ALS protein, and lack of toxicity and allergenicity for StmALS protein.

B. Analytical Enforcement Methodology

EPA has determined that an analytical method is not required for enforcement purposes since the Agency is establishing a temporary exemption from the requirement of a tolerance without any numerical limitation. Nonetheless, the petitioner has submitted an immunoblot assay for detection of StmALS with an antibody that is specific to the protein but does not show cross reactivity with native

potato ALS protein. The assay adequately detects StmALS in potato leaf and tuber tissues.

C. Conclusion

Based upon its evaluation in the Human Health Risk Assessment, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of StmALS protein in potatoes. Therefore, an exemption from the requirement of a tolerance is established for residues of StmALS protein in potato when used in accordance with label directions and good agricultural practices.

IV. Statutory and Executive Order Reviews

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

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, EPA has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

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

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 174

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

Dated: March 7, 2023.

Edward Messina,

Director, Office of Pesticide Programs.

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

PART 174—PROCEDURES AND REQUIREMENTS FOR PLANT-INCORPORATED PROTECTANTS

■ 1. The authority citation for part 174 continues to read as follows:

Authority: 7 U.S.C. 136–136y; 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 174.544 to subpart W to read as follows:

§ 174.544 Modified Potato Acetolactate Synthase (StmALS) in potato; exemption from the requirement of a tolerance.

Residues of modified potato acetolactate synthase (StmALS) in potato are exempt from the requirement of a tolerance when used as a plant-incorporated protectant inert ingredient.

[FR Doc. 2023–04979 Filed 3–14–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 410, 411, 414, 415, 423, 424, 425, and 455

[CMS–1770–F2]

RIN–0938–AU81

Medicare and Medicaid Programs, CY 2023 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Medicare Shared Savings Program Requirements; Implementing Requirements for Manufacturers of Certain Single-Dose Container or Single-Use Package Drugs To Provide Refunds With Respect to Discarded Amounts; and COVID–19 Interim Final Rules; Corrections

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

ACTION: Final rule; correction and correcting amendment.

SUMMARY: In the November 18, 2022 issue of the **Federal Register**, we published a final rule entitled ''Medicare and Medicaid Programs; CY 2023 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Medicare Shared Savings Program Requirements; Implementing Requirements for Manufacturers of Certain Single-dose Container or Single-use Package Drugs To Provide Refunds With Respect to Discarded Amounts; and COVID–19 Interim Final Rules'' (referred to hereafter as the ''CY 2023 PFS final rule''). The effective date was January 1, 2023. This document corrects a limited number of technical and typographical errors identified in the November 18, 2022 final rule.

DATES: This document is effective March 15, 2023, and is applicable beginning January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Terri Plumb, (410) 786–4481, Gaysha

Brooks (410) 786–9649 or Annette Brewer (410) 786–6580.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2022–23873 of November 18, 2022, the CY 2023 PFS final rule (87 FR 69404), there were technical errors that are identified and corrected in this correcting document. These corrections are applicable as if they had been included in the CY 2023 PFS final rule, which was effective January 1, 2023.

II. Summary of Errors

A. Summary of Errors in the Preamble

On page 69413, in the entry ''(6) Equipment Cost per Minute,'' we made a typographical error in the equipment cost per minute formula.

On pages 69596 and 69597, due to technical errors in the calculations of the time thresholds, there were errors in the description of times for reporting prolonged inpatient/observation services for code G0316.

On page 69614, in Table 24: Required Time Thresholds to Report Other E/M Prolonged Services, due to technical errors in the calculations of the time thresholds, there were errors in the description of times for reporting prolonged inpatient/observation services for code G0316.

On page 70032, the titles of two new neurological MVPs that read ''Optimal Care for Neurological Conditions'' and ''Supportive Care for Cognitive-Based Neurological Conditions'' contain typographical errors.

On page 70037, the titles of two new neurological MVPs that read ''Optimal Care for Neurological Conditions'' and ''Supportive Care for Cognitive-Based Neurological Conditions'' contain typographical errors.

On page 70083, Table 94: Exclusion Redistribution for Performance Period in CY 2023, we inadvertently included a typographical error in the number of measures.

On page 70204, we inadvertently omitted an appendix number and included typographical errors in the titles of two new neurological MVPs.

B. Summary of Errors in the Regulatory Text

On page 70227, we made a typographical error in the regulation text of § 414.940. We inadvertently labeled two paragraphs as paragraph (e).

On page 70228, in amendatory instruction 31.b, we inadvertently omitted language specifying that the revisions to § 414.1380(e)(6)(v) were related to the introductory text only of that section and not to paragraphs (e)(6)(v)(A) and (B) of that section.

C. Summary of Errors in the Appendix

On page 70653, we inadvertently included a reference to footnote ''7''.

III. Waiver of Proposed Rulemaking

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (the APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Social Security Act (the Act) requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in the effective date of a rule after issuance or publication. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions to the APA notice and comment requirement and the delay in the effective date requirement. In cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice requirement, the 60-day comment period requirement, and the delay in effective date requirement of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and includes a statement of the finding and the reasons for it in the rule. In addition, section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in the effective date of a rule where such delay is contrary to the public interest and the agency includes in the rule a statement of the finding and the reasons for it.

In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements. This document merely corrects technical errors in the CY 2023 PFS final rule. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were proposed, subject to notice and comment procedures, and adopted in the CY 2023 PFS final rule. As a result, the corrections made through this correcting document are intended to resolve inadvertent errors so that the rule accurately reflects the policies adopted in the final rule. Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the CY 2023 PFS final rule or delaying the effective date of the corrections would be contrary to the public interest because it is in the public interest to ensure that the rule accurately reflects our policies as of the date they take effect. Further, such procedures would be unnecessary because we are not making any substantive revisions to the final rule, but rather, we are simply correcting the **Federal Register** document to reflect the policies that we previously proposed, received public comment on, and subsequently finalized in the final rule. For these reasons, we believe there would be good cause to waive the requirements for notice and comment and delay in effective date, if notice and comment procedures and the delay in effective date were required at all.

IV. Correction of Errors

A. Correction of Errors in the Preamble

1. On page 69413, third full column, first paragraph, line 5, the line that reads ''((interest rate/(1 (1/((1 + interest'' is corrected to read ((interest rate/(1 − (1/((1 + interest''.

2. On page 69596, third column, the last line that reads ''for base code CPT code 99223 when 105'' is corrected to read ''for base code CPT code 99223 when 90''.

3. On page 69596, last column, last paragraph and continuing through the first column, second full paragraph on page 69597, the language that reads: ''Thus, a practitioner could bill G0316 for base code CPT code 99223 when 105 minutes is reached for an initial visit on the date of encounter. For the purposes of applying the proposed prolonged code, the CPT code 99223 total time is rounded to 75 minutes on the date of encounter. The prolonged service period would begin at 90 minutes, 15 minutes beyond 75 minutes. A practitioner would bill HCPCS code G0316 once the 15-minute increment for G0316 is completed, at minute 105.

A practitioner could bill G0316 for the base code CPT code 99233 when 80 minutes is reached for a subsequent visit on the date of encounter. For the purposes of applying the prolonged code, the CPT code 99233 total time is rounded to 50 minutes on the date of encounter. The prolonged service period would begin at 65 minutes, 15 minutes beyond 50 minutes. A practitioner would bill HCPCS code G0316 once the

15-mimute increment for G0316 is completed, at minute 80.

A practitioner could bill HCPCS code G0316 for base code CPT code 99236 at 125 minutes for same-day discharge. For the purposes of applying the prolonged code, the CPT code 99236 total time is rounded to 95 minutes completed within 3 calendar days of the encounter. The prolonged service period would begin at 110 minutes, 15 minutes beyond 95 minutes. A practitioner could bill HCPCS code G0316 once the 15-minute increment for G0316 is completed, at minute 125,'' is corrected to read: ''Thus, a practitioner could bill G0316 for base code CPT code 99223 when 90 minutes is furnished for an initial visit on the date of encounter. For the purposes of applying the proposed prolonged code, the CPT code 99223 total time is rounded to 75 minutes on the date of encounter. A single prolonged service period would end after 90 minutes, 15 minutes beyond 75 minutes. A practitioner would bill HCPCS code G0316 once the 15-minute increment for G0316 is completed, when 90 minutes has been furnished.

A practitioner could bill G0316 for the base code CPT code 99233 when 65 minutes is furnished for a subsequent visit on the date of encounter. For the purposes of applying the prolonged code, the CPT code 99233 total time is rounded to 50 minutes on the date of encounter. A single prolonged service period would end after 65 minutes, 15 minutes beyond 50 minutes. A practitioner would bill HCPCS code G0316 once the 15-minute increment for G0316 is completed, when 65 minutes has been furnished.

A practitioner could bill HCPCS code G0316 for base code CPT code 99236 at 110 minutes for same-day discharge. For the purposes of applying the prolonged code, the CPT code 99236 total time is rounded to 95 minutes completed within 3 calendar days of the encounter. A single prolonged service period would end after 110 minutes, 15 minutes beyond 95 minutes. A practitioner could bill HCPCS code G0316 once the 15-minute increment for G0316 is completed, when 110 minutes has been furnished.''

4. On page 69614, in Table 24: Required Time Thresholds to Report Other E/M Prolonged Services, the third column, rows 2, 3, and 4 that read:

Primary E/M service	Prolonged code *	Time threshold to report prolonged (minutes)	Count physician/NPP time spent within this timeframe (surveyed timeframe)
Initial IP/Obs. Visit (99223)	G0316	105	Date of visit.
Subsequent IP/Obs. Visit (99233)	G0316	80	Date of visit.
IP/Obs. Same-Day Admission/Discharge (99236)	G0316	125	Date of visit to 3 days after.

are corrected to read:

Primary E/M service	Prolonged code *	Time threshold to report prolonged (minutes)	Count physician/NPP time spent within this timeframe (surveyed timeframe)
Initial IP/Obs. Visit (99223)	G0316	90	Date of visit.
Subsequent IP/Obs. Visit (99233)	G0316	65	Date of visit.
IP/Obs. Same-Day Admission/Discharge (99236)	G0316	110	Date of visit to 3 days after.

5. On page 70032, third column, third full paragraph:

a. Lines 15 and 16, the bullet that reads ''Optimal Care for Neurological Conditions'' is corrected to read ''Optimal Care for Patients with Episodic Neurological Conditions''.

b. Lines 17 and 18, the bullet that reads ''Supportive Care for Cognitive-Based Neurological Conditions'' is corrected to read ''Supportive Care for Neurodegenerative Conditions''.

6. On page 70037, third column, third full paragraph:

a. Lines 11 and 12, the bullet that reads ''Optimal Care for Neurological Conditions'' is corrected to read ''Optimal Care for Patients with Episodic Neurological Conditions''.

b. Lines 13 and 14, the bullet that reads ''Supportive Care for Cognitive-Based Neurological Conditions'' is corrected to read ''Supportive Care for Neurodegenerative Conditions''.

7. On page 70083, Table 94: Exclusion Redistribution for Performance Period in CY 2023, second column; last row, that reads ''Report the following five measures:'' is corrected to read ''Report the following two measures:''

8. On page 70204:

a. Second column, last full paragraph, line 5 that reads ''the new MVPS in Appendix X of this'' is corrected to read ''the new MVPS in Appendix 3 of this''.

b. Third column, lines 2 and 3, the bullet that reads ''Optimal Care for Neurological Conditions'' is corrected to read ''Optimal Care for Patients with Episodic Neurological Conditions''.

c. Third column, lines 4 and 5, the bullet that reads ''Supportive Care for Cognitive-Based Neurological Conditions'' is corrected to read ''Supportive Care for Neurodegenerative Conditions.''

B. Correction of Errors in the Appendix

On page 70653, first full paragraph, line 2, the reference to footnote ''7'' is removed and replaced with the following link added in its place: *https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/02/fact-sheet-president-biden-reignites-cancer-moonshot-to-end-cancer-as-we-know-it/.*

List of Subjects in 42 CFR Part 414

Administrative practice and procedure, Biologics, Diseases, Drugs, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, CMS corrects 42 CFR part 414 by making the following correcting amendments:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

■ 1. The authority citation for part 414 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395hh, and 1395rr(b)(l).

■ 2. Amend § 414.940 by redesignating the second paragraph ''(e)'' as paragraph ''(f)''.

■ 3. Amend § 414.1380 by adding paragraphs (e)(6)(v)(A) and (B) to read as follows:

§ 414.1380 Scoring.

* * * * *

(e) * * *

(6) * * *

(v) * * *

(A) Other cost measures. MIPS eligible clinicians who are scored under facility-based measurement are not scored on cost measures described in paragraph (b)(2) of this section.

(B) [Reserved]

* * * * *

Elizabeth J. Gramling,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2023–04961 Filed 3–14–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2021–0029; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BF69

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Bog Buck Moth

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status under the Endangered Species Act of 1973 (Act), as amended, for the bog buck moth (*Hemileuca maia menyanthevora*) (=*H. iroquois*), a moth that occurs in Oswego County, New York, and Ontario, Canada. This rule adds the bog buck moth to the List of Endangered and Threatened Wildlife and applies the protections of the Act to this species. We have determined that designation of critical habitat for the bog buck moth is not prudent at this time.

DATES: This rule is effective April 14, 2023.

ADDRESSES: This final rule is available on the internet at *https://www.regulations.gov.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *https://www.regulations.gov* at Docket No. FWS–R5–ES–2021–0029.

FOR FURTHER INFORMATION CONTACT: Ian Drew, Acting Field Supervisor, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, NY 13045; telephone 607–753–9334. 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:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the bog buck moth meets the definition of an endangered species; therefore, we are listing it as such. We have determined that designating critical habitat is not prudent at this time. Listing a species as an endangered or threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This final rule adds the bog buck moth (*Hemileuca maia menyanthevora*) (=*H. iroquois*) to the List of Endangered and Threatened Wildlife.

The basis for our action. Under the Act, we may determine that a species is an endangered species or a threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the bog buck moth is endangered due to a combination of factors. Bog buck moth populations undergo boom and bust cycles and are highly vulnerable to threats during the bust phase (Factor E). All populations are isolated from one another (Factor E). All extant populations are experiencing some degree of habitat alteration from invasive plant species and habitat succession (Factor A). Flooding may drown various life stages of the bog buck moth or reduce suitable habitat either by directly making it unavailable (under water) or reducing survival and growth of bog buckbean, an important food source for the bog buck moth larvae (Factor A). Flooding has increased at one New York population over the past several years due to increased winter and spring precipitation from climate change and high Great Lakes water levels (Factor E). Water level management has altered or has the potential to alter several bog buck moth sites (Factor A). Additionally, the sedentary nature of the bog buck moth means that colonization of neighboring fens does not occur naturally, further limiting the species' ability to respond to stochastic changes (Factor E).

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. We have determined that designating critical habitat for the bog buck moth is not prudent because the moth co-occurs with another species that is highly collected and designating critical habitat for the moth would increase the risk of collection for the other species. In addition, the methods used to collect the co-occurring species can be expected to cause harm to the bog buck moth from disturbance and trampling of individuals (eggs, larvae, pupae) and to vegetation necessary as a host plant and for sheltering of all life stages. This disturbance can also be expected to damage vegetation necessary for any potential reintroductions of moths at the currently unoccupied site.

Previous Federal Actions

Please refer to the October 14, 2021, proposed listing rule (86 FR 57104) for a detailed description of previous Federal actions concerning the bog buck moth.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the bog buck moth. The SSA team, composed of Service biologists and a New York State Department of Environmental Conservation (NYSDEC) biologist, conducted the SSA in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of six appropriate specialists regarding the SSA report. We received four responses. The peer reviews can be found at *https://regulations.gov.* In preparing the proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which was the foundation for the proposed rule and this final rule.

Summary of Changes From the Proposed Rule

We reviewed the public comments we received during the comment period on the proposed rule (86 FR 57104; October 14, 2021) and relevant information that became available since the proposed rule published. Based on that review, we do not make any substantive changes to the proposed rule in this final rule; we make only minor clarifications and elaborate on our rationale for concluding that the designation of critical habitat is not prudent at this time for the bog buck moth.

I. Final Listing Determination

Background

The bog buck moth is a large diurnal moth native to fens (groundwater-fed wetlands) in Oswego County, New York (NY), and Ontario, Canada. A thorough review of the taxonomy, life history, and ecology of the bog buck moth is presented in the SSA report (Service 2021, pp. 6–25), which is available at *https://www.regulations.gov* at Docket No. FWS–R5–ES–2021–0029.

Taxonomy

The bog buck moth is a silk moth (family = Saturniidae) in the buck moth genus (*Hemileuca*). The bog buck moth was first identified as a variant of the *maia* species group within *Hemileuca* in 1977 by John Cryan and Robert Dirig from four sites (two populations) along the southeast shore of Lake Ontario in Oswego County, NY, but was not formally named at that time (Legge *et al.* 1996, p. 86; Pryor 1998, p. 126; Cryan and Dirig 2020, p. 3). Four additional sites (two populations) were discovered in 1977 in eastern Ontario (Committee on the Status of Endangered Wildlife in Canada [COSEWIC] 2009, p. 7). Multiple common names have been used since then (*e.g.,* bogbean buckmoth, Cryan's buckmoth, fen buck moth).

For many years, the bog buck moth's taxonomic status has been confusing and uncertain. The bog buck moth was classified as part of the *Hemileuca maia* complex, which is a broadly distributed group of closely related taxa including *H. maia, H. lucina, H. nevadensis,* among others (Tuskes *et al.* 1996, p. 111). Tuskes *et al.* (1996, pp. 120–121) further refined the description of populations of buck moths in the Great Lakes region, including the bog buck moth, as the *H. maia* complex of Great Lakes Region populations. Kruse (1998, p. 109) included *H. maia* and *H. nevadensis* as part of the Great Lakes complex; however, using genomewide single nucleotide polymorphisms (SNPs), Dupuis *et al.* (2018, p. 6) and Dupuis *et al.* (2020, p. 3) show that *H. nevadensis* is restricted to the west. The Annotated Taxonomic Checklist of the Lepidoptera of North America (Pohl *et al.* 2016, p. 735) included the Great Lakes populations of buck moths as part of *H. maia* (based on Tuskes *et al.* 1996), pending species-level taxonomic classification.

Recently, Dupuis *et al.* (2018, pp. 5–7) and Dupuis *et al.* (2020, pp. 2–3) used SNPs and found unambiguous results supporting the conclusion that both Ontario and Oswego County, NY, populations are part of the bog buck moth lineage that is divergent from *Hemileuca lucina, H. peigleri, H. slosseri,* and all other *H. maia.* They also found clear differentiation between the group formed by the Ontario and Oswego County, NY, populations and the group formed by the Wisconsin and Michigan populations (Dupuis *et al.* 2020, p. 3).

In 2020, Pavulaan (2020, entire) was first to formally describe the bog buck moth as *Hemileuca maia menyanthevora* and stated that it may actually represent a full species. Pavulaan (2020, pp. 8–14) considered host plant use and morphology for the designation and included the Oswego County (NY), Marquette and Ozaukee County (Wisconsin), and Ontario fens as part of the range. All specimens that Pavulaan used for describing morphology were from one location in Oswego County, NY, and he relied on host plant use discussed in Kruse (1998, entire) for inclusion of the two Wisconsin sites (Pavulaan pers. comm., 2020). Subsequently, Cryan and Dirig (2020, pp. 26–31) named the bog buck moth as *H. iroquois* and included only the Oswego County, NY, and Ontario populations in the designation. After reviewing the genetic information presented in Dupuis *et al.* 2020 (entire), we concluded that the Wisconsin sites are genetically distinct from the New York and Ontario sites. Official scientific naming follows the rule of publication priority under the International Code of Zoological Nomenclature; therefore, the official name of the bog buck moth is *H. maia menyanthevora* with the junior synonym of *H. iroquois.* We conclude that the bog buck moth is a valid taxon for consideration for listing under the Act (16 U.S.C. 1531 *et seq.*).

Based upon the strong evidence provided by Dupuis *et al.* (2018, entire; 2020, entire), we consider the current range of *Hemileuca maia menyanthevora* as Oswego County, NY, and Ontario, Canada. The historical range also included Jefferson County, NY (see below). We find this genetic evidence documented by Dupuis *et al.* markedly more persuasive than the host plant information that Pavulaan (2020, entire; pers. comm., 2020) relied upon when he included the Wisconsin sites in his designation without specimens from those sites. The Oswego County, NY, and Ontario range is consistent with the range described when the Service originally considered the bog buck moth (*Hemileuca* sp.) as a Category 2 candidate in 1991 (56 FR 58804, November 21, 1991). It is also consistent with the range described by NatureServe (2020, pp. 1–4), COSEWIC (2009, pp. 5, 7), and Cryan and Dirig (2020, entire).

Physical Description, Life History, and Range

Bog buck moth adults have black bodies and black/gray translucent wings with wide, white wing bands and an eyespot (COSEWIC 2009, p. 5; NatureServe 2015, p. 4). Bog buck moths have forewing lengths of 22 to 36 millimeters (mm) (0.9 to 1.4 inches (in)) (Tuskes *et al.* 1996, p. 121; Pavulaan 2020, p. 9). Males and females are generally similar in appearance with a few morphological differences. Similar to all saturniids, males have highly branched, feather-like antennae with receptors that respond to female pheromones (Tuskes *et al.* 1996, p. 14), and females have simple antennae. Males also have a red-tipped abdomen while females do not; males are also slightly smaller than females (COSEWIC 2009, p. 5). In addition, both male and female adults are larger than other *Hemileuca maia* and have similar highly translucent wings as *H. lucina.* White wing bands are much larger than other *H. maia* (Cryan and Dirig 2020, p. 26; Pavulaan 2020, p. 9).

Late instar larvae are dark with reddish orange branched urticating (stinging) spines dorsally, and a reddish-brown head capsule and prolegs (COSEWIC 2009, p. 6). Initially egg rings are light green (Cryan and Dirig 2020, p. 26) and fade to light brown or tan (Sime 2020, pers. comm.). Mature larvae are

usually predominantly black with small white dots and lack yellow markings compared to other *Hemileuca maia* (COSEWIC 2009, p. 6; NatureServe 2015, p. 4; Cryan and Dirig 2020, p. 26).

The bog buck moth is restricted to open, calcareous, low shrub fens containing large amounts of *Menyanthes trifoliata* (COSEWIC 2009, p. 10) (referred to herein as bog buckbean, but also known as bogbean or buckbean). Fens are classified along a gradient that ranges from rich fens to poor fens based on their water chemistry and plant community structure. Rich fens receive more mineral-rich groundwater than poor fens, which results in higher conductivity, pH, and calcium and magnesium ion concentrations (Vitt and Chee 1990, p. 97). The sites in New York are considered medium fens (New York Natural Heritage Program [NYNHP] 2020a, p. 3). Medium fens are fed by waters that are moderately mineralized, with pH values generally ranging from 4.5 to 6.5 (Olivero 2001, p. 15). Medium fens often occur as a narrow transition zone between a stream or lake and either a swamp or an upland community (Olivero 2001, p. 15). The dominant species in medium fens are usually woolly-fruit sedge (*Carex lasiocarpa*) and sweetgale (*Myrica gale*), with a variety of characteristic shrubs and herbs generally less than 5 meters (m) (16.4 feet (ft)) in height (NYNHP 2020b, pp. 5–11). Bog rosemary (*Andromeda glaucophylla*), leatherleaf (*Chamaedaphne calyculata*), cranberry (*Vaccinium macrocarpon*), spatulate-leaved sundew (*Drosera intermedia*), three-way sedge (*Dulichium arundinaceum* var. *arundinaceum*), and green arrow arum (*Peltandra virginica*) are characteristic only of medium fens, compared to any of the other calcareous fens found in New York (Olivero 2001, p. 14).

In Ontario, the bog buck moth is found in calcareous fens with bog buckbean. The fens are either low shrub dominated by sweetgale, bog birch (*Betula pumila*), bog willow (*Salix pedicellaris*) and other willows, but with patches of open fen dominated by sedges and water horsetail (*Equisetum fluviatile*), or primarily open fens dominated by sedges such as woolly-fruit sedge, smooth sawgrass (*Cladium mariscoides*), and American common reed (*Phragmites australis* ssp. *americanus*) surrounded by conifer swamp (COSEWIC 2009, p. 10).

The life cycle of a bog buck moth is similar to other *Hemileuca* species and generally completed within 1 year (Tuskes *et al.* 1996, p. 103). Nonfeeding adults emerge in the fall. Males and females differ in flight patterns, with males flying large, circular paths and females making short, low, direct frequent flights (Pryor 1998, p. 133). Adult males fly for longer periods as well, covering the open area of the fen for approximately 10 minutes compared to females flying short distances lasting a matter of seconds (Pryor 1998, p. 133). After mating, female buck moths lay one large cluster of eggs on sturdy stems of a variety of plant species. The eggs overwinter until the following spring when they hatch into larvae. While early instar larvae rely primarily on the host plant bog buckbean (Stanton 2000, p. 2), eggs are never laid on these plants as they die back each year rendering them unavailable for overwintering. Pupation occurs by mid-July, and the pupal stage lasts about 2 months. While not documented in bog buck moth, in other *Hemileuca* species (including *H. maia maia*), individual pupae may remain dormant until the following fall or possibly the fall after that (Cryan and Dirig 1977, p. 10; Tuskes *et al.* 1996, pp. 103, 114).

All populations are located within the beds of former glacial Lake Iroquois (Cryan and Dirig 2020, p. 27) and Champlain Sea (COSEWIC 2009, p. 9). The present distribution may be relict populations as a result of a postglacial expansion by *Hemileuca* from western North America, and subsequent isolation in fens and bogs as forests gradually reclaimed postglacial wetland habitats (Pryor 1998, p. 138). Glacial retreat left suitable habitat in disjointed patches (Gradish and Tonge 2011, p. 6). Based on genetic findings, bog buck moth populations may have been more historically widespread along the wetlands around Lake Ontario (Dupuis *et al.* 2020, p. 4).

While we do not have a full understanding of the historical distribution of the bog buck moth, there are records from three populations in New York and two in Ontario, Canada. Currently, there are four populations known. In Canada, the White Lake population comprises two sites or subpopulations (White Lake North and White Lake South). The Richmond Fen population comprises two sites or subpopulations (Richmond Fen North and Richmond Fen South). In the United States, the Lakeside population occurs along the eastern shore of Lake Ontario in Oswego County, NY, and comprises five sites or subpopulations (referred to as Lakeside 1 to Lakeside 5). To the southwest, the Oswego Inland Site population occurs in Oswego County, NY, and is a single site with two fen openings with metapopulation dynamics operating at a smaller scale. The fifth historically known population located in Jefferson County, NY, was identified based on specimens collected in the 1950s, but the site is no longer suitable for the bog buck moth. There are no other known populations of bog buck moth in New York State (Service 2021, pp. 27, 63–64). The bog buck moth is sedentary (nonmigratory) and therefore present within suitable habitat year-round with small movements of 0.5 kilometers (km) (0.3 miles (mi)) within suitable habitat described as ''common'' (NatureServe 2015, p. 5). While bog buck moth populations were previously described as individuals separated by areas of unsuitable habitat greater than 2 km (1.24 mi) or areas of suitable habitat greater than 10 km (6.2 mi) with some infrequent dispersal events at slightly longer distances between unsuitable patches (NatureServe 2015, p. 5), movements are now described as ''should be capable of flying several to many kilometers, but seldom leaves habitat'' NatureServe (2020, p. 5). In New York, some movement likely occurs between sites that are close together. Isolation of populations is likely increased by the short-lived adult stage (not much time for adults to fly far) (COSEWIC 2009, p. 15). Adult females that do make short flights are laden with hundreds of eggs.

Bog buck moth dispersal events have not been historically observed. However, adult bog buck moths have the potential to disperse with strong winds or powered flight if surrounding vegetation does not impede them (Pryor 1998, p. 138). More recently, three males were captured in unsuitable habitat located between the Lakeside 1 and Lakeside 2 sites in New York (Stanton 2004, p. 7), supporting the theory that some movement outside of suitable habitat can occur but well within the 2-km (1.24-mi) distance discussed above. We conclude that most movements are likely to be limited to the highly localized fen habitat but that infrequent male dispersal events of a few kilometers are possible. In addition, although we would expect most wind events to primarily disperse males due to their longer localized flights, even less frequent, but possibly longer, wind dispersal events of either sex may occur.

It is unlikely that other bog buck moth populations exist besides the ones mentioned above. Fairly extensive but unsuccessful searches for bog buck moths have been conducted at other potentially suitable wetland habitats in Ontario, and no new sites have been found (COSEWIC 2009, pp. 9–10). Given the degree of interest by naturalists in these natural areas and the diurnal habits of this large distinctive species, the probability of undiscovered Ontario

bog buck moth populations is low (COSEWIC 2009, p. 10).

The story is similar in New York State. Researchers sought out additional populations during years of exploring the bed of former glacial Lake Iroquois and its tributaries and outlets, and while they found some fens with bog buckbean, they found no additional sites with bog buck moths (Cryan and Dirig 2020, pp. 4–5). In addition, researchers have visited fens in New York for many years and likely would have observed the highly conspicuous larvae on bog buckbean or adult male moths, which are readily visible due to their lengthy, localized flight pattern, had they been present.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The regulations that are in effect and therefore applicable to this final rule are 50 CFR part 424, as amended by (a) revisions that we issued jointly with the National Marine Fisheries Service in 2019 regarding both the listing, delisting, and reclassification of endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019); and (b) revisions that we issued in 2019 eliminating for species listed as threatened species are September 26, 2019, the Service's general protective regulations that had automatically applied to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be listed as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess bog buck moth viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry,

warm or cold years), redundancy is the ability of the species to withstand catastrophic events (for example, drought, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these levels, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket FWS–R5–ES–2021–0029 on *https://www.regulations.gov*.

Summary of Biological Status and Threats

For this final rule, we reviewed the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Individual, Subpopulation, and Species Needs

The primary requirements for individual bog buck moths include suitable conditions that support fen ecosystems; perennial plants with bare sections of sturdy, small stems above substrate near bog buckbean to provide shelter for eggs; the presence of bog buckbean and other plants to provide shelter and food for larvae; and appropriate flying weather of warm fall days with periods of no rain and low winds during the adult life stage.

Bog buck moths require medium fens (Olivero 2001, p. 15) with a variety of shrubs and herbs, including the bog buckbean, that are generally less than 5 m (16.4 ft) in height (NYNHP 2020b, pp. 5–11). Bog buck moths also depend on shifting mosaics of early successional fen habitat created by regular disturbance (such as periodic flooding) (Cryan and Dirig 2020, p. 28). Without disturbances, as with other early successional habitats, vegetation succession will occur; however, in fens with intact hydrology, this succession occurs very slowly.

The bog buck moth is univoltine (single adult flight period). The flight period lasts 4 weeks, generally from mid-September to October (Pryor 1998, p. 134; Stanton 2000, p. 15; Schmidt 2020, pers. comm.). Adults are diurnal (fly during the day), avoiding cooler fall night temperatures (Tuskes *et al.* 1996, p. 12; Pryor 1998, p. 133). Bog buck moths fly when temperatures are generally above 68 degrees Fahrenheit (°F) (20 degrees Celsius (°C)) and when winds are less than 24 kilometers per hour (kmph) (15 miles per hour (mph)) (Stanton 1998, pp. 19–20, 29).

Female bog buck moths mate once and deposit eggs (Pryor 1998, p. 129; Stanton 1998, p. 8) around bare sections of rigid, vertical plant stems (Stanton 2000, p. 11). Unlike other *Hemileuca* species (Tuskes *et al.* 1996, p. 103), bog buck moths do not lay eggs on their primary larval host plants (Legge *et al.* 1996, p. 88; Stanton 2000, pp. 2, 11). Eggs overwinter and hatch into larvae in the spring.

Bog buck moth larvae require bog buckbean and other host plant species. During the early instars, bog buckbean is the primary food source for the larvae; however, later instars will feed on a larger variety of host plants. Overall, bog buckbean is essential, but other foodplants may be important, particularly in later larval stages. Please refer to the SSA report for a list of documented larval host plants and oviposition plants (Service 2021, pp. 13–14).

Healthy or highly resilient populations are those that are able to respond to and recover from stochastic events (*e.g.,* flooding, storms) and normal year-to-year environmental variation (*e.g.,* temperature, rainfall). Simply said, healthy populations are those able to sustain themselves through good and bad years. For the SSA, we defined viability as the ability of the species to sustain populations in the wild over time. The bog buck moth needs multiple healthy populations (resiliency). The more populations, and the wider the distribution of those populations (redundancy), the less likely that the species as a whole will be negatively impacted if an area of the species' range is negatively affected by a catastrophic event, and the more likely that natural gene flow and ecological processes will be maintained (Wolf *et al.* 2015, pp. 205–206). Species that are well distributed across their historical range are less susceptible to the risk of extinction as a result of a catastrophic event than species confined to smaller areas of their historical range.

Furthermore, diverse and widespread populations of bog buck moth may contribute to the adaptive diversity (representation) of the species if redundant populations are adapting to different conditions. In considering what may be important to capture in terms of representation for the bog buck moth, we identified two primary means of defining bog buck moth diversity: genetic differences and potential adaptation to variation in climatic conditions across latitudinal gradients.

Gene flow is influenced by the degree of connectivity and landscape permeability (Lankau *et al.* 2011, p. 320). Gene flow may be somewhat limited among bog buck moth populations due to their rare and patchy distributions and sedentary (nonmigratory) behavior. The Oswego Inland Site population is genetically distinct from the nearest of the Lakeside populations (which is about 30 km (18.6 mi) away), although there is or was likely some limited migration between them (Buckner *et al.* 2014, pp. 510–512). In addition, while an unambiguously close relationship was found between the bog buck moth specimens from

Ontario and the populations in Oswego County, NY, both of these populations formed distinct sister clusters (Dupuis *et al.* 2020, pp. 2–3). Maintaining populations in both Canada and New York is important to conserve this genetic diversity.

The bog buck moth has a fairly narrow distribution; however, Lake Ontario influences local climatic conditions, and, at more northern latitudes, the Canadian populations experience colder winters. In Ottawa, Canada, average monthly temperatures range from 5.4 to 21.6 °F (−14.8 to −5.8 °C) in January to 60 to 79.7 °F (15.5 to 26.5 °C) in July, and average yearly snowfall is 88 in (2.23 m). In Oswego, NY (directly on Lake Ontario), temperatures range from 18 to 30 °F (−7.8 to –1.1 °C) in January to 63 to 79 °F (17.2 to 26.1 °C) in July, and average yearly snowfall is 141 in (3.58 m). Adult males have been documented to fly 3 to 5 days earlier at the Oswego Inland Site compared to Lakeside 2, potentially due to the climate-tempering effects of Lake Ontario on the Lakeside 2 site (Stanton 1998, p. 26). Maintaining populations across historical latitudinal and climatic gradients increases the likelihood that the species will retain the potential for adaptation over time. Local adaptation to temperature, precipitation, host plants, and community interactions has been identified for butterflies and is anticipated for the bog buck moth (Aardema *et al.* 2011, pp. 295–297).

Risk Factors for the Bog Buck Moth

The primary factors currently influencing bog buck moth population health are inherent factors (*e.g.,* narrow habitat niche) and several external factors resulting in loss or alteration of habitat or directly influencing demographic rates. As discussed above, bog buck moths are found in medium fens. Medium fens are listed as imperiled or vulnerable in New York (NYNHP 2020b, p. 2). Threats to medium fens include hydrological change, habitat alteration in the adjacent landscape, development, and recreational overuse (NYNHP 2020b, p. 3). Fens are especially sensitive to relatively small changes in hydrology (van Diggelen *et al.* 2006, p. 159). Additionally, several medium fens where bog buck moths occur in New York are negatively impacted by invasive species, such as purple loosestrife (*Lythrum salicaria*), common reed (*Phragmites australis*), and buckthorn (*Rhamnus* spp.) (NYNHP 2020b, p. 3). In Canada, the most significant threat to the bog buck moth is habitat degradation either due to alteration of the water regime within the species' habitat or the invasion of habitat by nonnative plant species (COSEWIC 2009, p. 18; Environment Canada 2015, p. 7). Several sources of habitat alteration identified at bog buck moth sites are discussed below. We do not fully understand the cause of declines at bog buck moth sites, and so it is likely that additional factors (*e.g.,* predation, disease, pesticides) are important. For a comprehensive discussion of the primary factors as well as these other likely stressors, please refer to chapter 3 of the SSA report (Service 2021, pp. 26–50).

Change in Water Levels

Water level changes can directly kill individuals (*e.g.,* flooding of pupae) or result in changes in habitat suitability and availability. Flooding can result in reductions in suitable oviposition sites, larval food sources and shelter, or pupation sites. Below, we discuss water management as it pertains to the Canadian and U.S. populations.

Water Level Management—Canadian Populations

Both White Lake subpopulations are influenced by manipulation of the White Lake outlet dam in the town of White Lake (Schmidt 2020, pers. comm.), and large fluctuations may cause mortality (COSEWIC 2009, p. 18). Alteration of the water regime can be mitigated or avoided through appropriate water management policies, actions, and land stewardship techniques; however, there were no clear prescriptive actions provided (Environment Canada 2015, p. 7). The Strategy for the Bogbean Buckmoth in Ontario (Ontario Recovery Strategy) includes recovery actions to understand the specific hydrology of Richmond Fen wetlands and the White Lake wetlands and to work with stakeholders to mitigate impacts from land use change, particularly water level manipulation at White Lake (Gradish and Tonge 2011, pp. 12–13). We have no information to indicate these actions have been initiated to date, and Ontario's 5-year review of the bog buck moth (OMNRF 2017, pp. 11–17) does not mention anything about these specific actions. However, through regulation, Ontario formally designated ''habitat'' for the bog buck moth in 2014 (Environment Canada 2015, p. 9). Environment Canada then adopted the description of bog buck moth ''habitat'' as ''critical habitat'' in the Federal recovery strategy (Environment Canada 2015, p. 10). The designation includes a list of activities that alter the fen's water regime as those likely to destroy critical habitat for the bog buck moth (Environment Canada 2015, p. 17). We will discuss more information about Ontario and Canadian laws and regulations in *Conservation Measures,* below.

Water Level Management—U.S. Populations

Water level management resulted in the extirpation of a Jefferson County, NY, population in the 1970s (Bonanno and White 2011, p. 9) by flooding the fen habitat and creating a freshwater marsh. The site is currently being maintained by the New York State Office of Parks, Recreation and Historic Preservation as a marsh for flood control, septic system management, and New York State-listed endangered black tern (*Chlidonias niger*) habitat (Bonanno 2020, pers. comm.). However, it is no longer suitable habitat for the bog buck moth. The Lakeside population is currently influenced by water levels associated with management of Lake Ontario through regulation of the Moses-Saunders hydroelectric dam and precipitation events. The St. Lawrence River is located at the northeast end of Lake Ontario and is the natural outlet for the Great Lakes. Approximately 160 km (100 mi) downstream from Lake Ontario are the structures used to control the flow from Lake Ontario, most of which is used by the Moses-Saunders powerhouses (IJC 2014, p. 4). The International Joint Commission (IJC) and its International Lake Ontario–St. Lawrence River Board (Board) oversee management of these flows.

The Lake Ontario water level changes in response to the difference between the supply it receives and its outflow. The supply is uncontrolled, and the use of the Moses-Saunders Power Dam to change outflow provides some control over Lake Ontario water levels, but there are limits to the amount of water that can be released (IJC 2014, p. 5). Most of the episodic changes in Great Lakes water levels over the past century are attributable to corresponding changes in annual precipitation (Gronewold and Stow 2014, p. 1084). Prior to the construction of the dams on the St. Lawrence River, recorded lake levels of Lake Ontario from 1860 to 1960 show a pattern of variation with highs and lows captured within each decade or so (Wilcox *et al.* 2008, p. 302). The historical range of monthly average water levels was more than 1.8 m (6 ft) between low and high levels, and the IJC recommended regulating within a narrow 1.2-m (4-ft) target from April to November (IJC 2014, p. 8). This has resulted in compressing the range of Lake Ontario water levels to 0.7 m (2.3 ft) from 1.5 m (5 ft) (Wilcox *et al.* 2008,

p. 302). The IJC (2014, p. 43) found that regulation of Lake Ontario has restricted the natural fluctuation of its water levels, both in terms of reducing its extremes and year-to-year variability.

The existing shoreline vegetation of the Great Lakes depends on regular fluctuation in water levels (Keddy and Reznicek 1986, p. 35). Fluctuating water levels increase the area of shoreline vegetation and the diversity of vegetation types and plant species (Keddy and Reznicek 1986, p. 35). High lake levels periodically eliminate dense-canopy emergent plants, and low lake levels allow less competitive understory species to grow (Keddy and Reznicek 1986, entire; Wilcox *et al.* 2008, p. 301).

Stabilization of Lake Ontario water levels after the construction of the Moses-Saunders Power Dam may have subsequently increased cattail (*Typha* spp.) dominance (Rippke *et al.* 2010, p. 814). Specifically, lack of low lake levels shifted the competitive advantage to the taller cattails, resulting in loss of large expanses of sedge/grass meadows (Wilcox *et al.* 2008, p. 316). The IJC (2014, p. 43) found that the compressed lake level range has allowed trees and shrubs to grow closer to the water, and cattails and other emergent plants that tolerate persistent flooding to expand their range up the shoreline, reducing the sedge meadow plants that occurred in between. Increased cattails have been documented at Lakeside bog buck moth subpopulations including Lakeside 3 and Lakeside 4 (Bonanno 2020, pers. comm.; Sime 2019, p. 38). These changes in vegetation from *Carex* spp., sweet-gale, herbs, and shrubs to cattail marsh result in overall habitat loss through permanent reductions in the amount of suitable oviposition sites, larval food sources, and pupal habitat.

In addition to the changes in vegetation discussed above, water levels can directly impact survival of bog buck moth in various life stages. The Lakeside population includes sites that have been described as physically ''protected wetlands'' located behind sandbars and connected to Lake Ontario by intermittent or indirect surface water openings or ground water (Vaccaro *et al.* 2009, p. 1038). Water levels in these sites are greatly influenced by precipitation and highly variable depending on their unique connection to Lake Ontario (Vaccaro *et al.* 2009, p. 1045). Barrier beaches along Lake Ontario restrict flow out of the wetlands, causing water levels to rise sharply in response to local precipitation events in the ''protected wetlands'' (Vaccaro *et al.* 2009, p. 1045). These sharp rises can result in flooding events. Although flood events may be related to water level management, they are more strongly connected to precipitation events (Gronewold and Stow 2014, p. 1084) and are further discussed below under *Climate Change.*

In addition to the larger scale water level management of Lake Ontario, more localized water level management may influence bog buck moth sites. Water levels may be influenced by impoundments (human or beaver) or roads that restrict flow into or out of the fens. Restriction of flow into fens results in drying of sites and increases in shrubs. Taller shrubs shade out bog buckbean, reducing optimal larval host plants.

One example of localized water level influences is the impact of a road at the Lakeside 1 and Lakeside 2 sites. Historically connected, these two sites became separated due in part to the construction of a road in the mid-1950s and impoundment in an adjacent management area (Bonanno 2006, p. 8). Fen habitat contracted from 6 to 2 ha (15 to 5 ac) at the Lakeside 1 site and 32.4 to 24.7 ha (80 to 61 ac) at the Lakeside 2 site from 1998 to 2001 (Olivero 2001, p. 10). This was corroborated with personal observations by Bonanno (2014, p. 6), who found that vegetation in the Lakeside 1 site was succeeding to a black spruce-tamarack bog forest with deep sphagnum, taller shrubs, and scarce bog buckbean. At the Lakeside 2 site, succession is documented to the point where significant habitat restoration is required (Bonanno 2014, p. 5; 2015, p. 7; 2016, p. 8).

Water levels on Lake Ontario have no direct effect on the Oswego Inland Site population, and we are unaware of any smaller scale water level management at this site; however, temperature, precipitation, and evaporation potential will impact hydrology (Stanton 2004, p. 11) (see *Climate Change,* below).

Change in Vegetation

Both invasive species and succession can reduce the number of suitable oviposition plants and/or larval host plants that are available for the bog buck moth. Invasive species and later successional plants directly compete for space and nutrients or shade out bog buckbean. Changes in the quality or quantity of bog buckbean are a potential cause of documented declines in bog buck moths in New York (Stanton 2004, p. 11).

We evaluated the relative threats posed by invasive understory species and determined that *Typha* spp., common reed, and glossy buckthorn (*Frangula alnus*) are currently the primary species that could affect population-level dynamics of the bog buck moth. Common reed is abundant across the northern hemisphere, including most of the United States and the southern portions of Canada (Galatowitsch *et al.* 1999, pp. 739–741). Native fen plants like *Myrica gale* are reduced with the presence of common reed (Richburg *et al.* 2001, p. 253).

Glossy buckthorn is a shrub of Eurasian origin that is aggressive in bogs and fens. Drier portions or less frequently inundated sections of wetlands with available hummock surfaces are more readily invaded (Berg *et al.* 2016, p. 1370). Glossy buckthorn displaces or shades out native fen plant species (Fiedler and Landis 2012, pp. 41, 44, 51). Bog buckbean typically does not grow well in shade (Hewett 1964, p. 730), although it can be found in shaded areas of some fens (Helquist 2020, pers. comm.). Glossy buckthorn transpiration in mid-summer has been shown to lower the water table (Godwin 1943, p. 81), resulting in faster decomposition rates and reduction of hummocks in sites (Fiedler and Landis 2012, pp. 41, 44, 51). Sites with glossy buckthorn also have lower soil pH, although it is unclear whether buckthorn invaded these areas more frequently or created this change (Fiedler and Landis 2012, p. 51).

As stated above, in Canada, the primary threat to bog buck moth populations includes habitat degradation from cattails, common reed, and glossy buckthorn (COSEWIC 2009, p. 18; Gradish and Tonge 2011, pp. 6–7; Environment Canada 2015, p. 7). These plants occur in or adjacent to all Ontario sites and pose an ongoing and future threat of habitat reduction. While invasive plant species have been found within or near all four sites where the bog buck moth is known to occur in Ontario, the risk posed by these species can be assessed regularly through targeted monitoring, and, to the extent feasible, invasive plant control can be employed as appropriate and necessary to help mitigate this threat (Environment Canada 2015, p. 7). Invasive vegetation control would likely require long-term management.

These species are also documented at the New York sites. For example, glossy buckthorn makes up a substantial portion of the shrubby component at Lakeside 5 and is present at the Oswego Inland Site (Bonanno 2006, p. 7; 2013, p. 2). Cattail had been expanding at the Oswego Inland Site, and Bonanno (2013, p. 2) noted the only obvious change in potential drivers of vegetation was the large expansion of a subdivision along the lakeshore. Narrow-leaved cattail (*Typha angustifolia*) encroachment at the Oswego Inland Site

has been managed sporadically prior to 2016, and annually from 2016 to 2020 (Helquist 2020, pers. comm.). Other invasive species management projects have also been undertaken at the Oswego Inland Site and Lakeside 5; however, invasive plants remain at these sites. In addition, several clones of both the introduced and the native *Phragmites* spp. occur near bog buck moth habitat at Lakeside 3 (Bonanno 2004, p. 9).

There may be multiple sources of vegetation succession, including natural succession from early successional to late successional plant species, as well as human-induced or accelerated succession from sources such as increased nutrient input (enrichment) and altered wetland hydrology (discussed above under *Change in Water Levels*). Here, we provide some additional details about nutrient input.

Fens are characterized by a very low supply of nitrogen and phosphorous (Bedford and Godwin 2003, p. 614), and many fens in New York are degraded by altered hydrology or by nitrate moving in ground water, by phosphate adsorbed to sediment in runoff, or by altered water chemistry caused by development within fen watersheds (Drexler and Bedford 2002, p. 278; Bedford and Godwin 2003, p. 617). Nutrient loading of a fen in New York (not a bog buck moth site) resulted in reductions in species richness of both vascular plants and bryophytes and increases in monotypic stands of bluejoint grass (*Calamagrostis canadensis*), lake sedge (*Carex lacustris*), hairy willow herb (*Epilobium hirsutum*), and broadleaf cattail (*Typha latifolia*), especially in an area adjacent to a farm field (Drexler and Bedford 2002, pp. 276–278). Dense cover reduces fen biodiversity through direct space competition, or by reducing seedling growth from decreased available light and increased litter layer (Jensen and Meyer 2001, pp. 173–179).

Increased nutrient inputs have been documented at both the Lakeside and Oswego Inland Site populations (Service 2021, p. 36). The Lakeside 3 and 4 sites are adjacent to a recreational vehicle (RV) campground that may contribute to nutrient enrichment encouraging growth of the invasive common reed. The Lakeside 2 site is subject to surface water inputs from the adjacent pond, the Lakeside 1 site is surrounded by seasonal camps and an RV campground, and the Lakeside 5 site is abutted by a very large RV campground. The Oswego Inland Site has seen recent residential development along the lake shoreline.

Parasitoids

Parasitoids are small insects whose immature stages develop within or attached to their host insects. Unlike parasites, which typically feed upon hosts without killing them, parasitoids eventually kill their hosts. Most saturniids are attacked during the larval stage, and late instar larvae often suffer heavy losses (Tuskes *et al.* 1996, pp. 25–27). For the bog buck moth, parasitism of egg masses has been documented; while larval parasitoids have not been directly observed, they are also believed to be the cause of mortality (COSEWIC 2009, p. 17).

Nearly all of the bog buck moth egg masses found at the Lakeside 1 site since 1996 were parasitized by the native wasp *Anastatus furnissi* (Burks) (Stanton 2000, p. 4), and it is plausible that the wasp was the primary mortality factor at other Lakeside subpopulations (Stanton 2000, p. 13). Wasp parasitism of egg masses has also been documented at the Oswego Inland Site (Sime 2019, p. 15). The parasitism rates do not appear to be density-dependent, as parasitism levels have been consistent at the Lakeside and Oswego Inland Site populations at 25 to 30 percent of egg clusters affected per year since 2009, while bog buck moth populations have undergone dramatic fluctuations in that time period (Sime 2019, p. 15).

Larval parasitoids are common in *Hemileuca* species (Tuskes *et al.* 1996, p. 103). Parasitoids can include native and nonnative species, such as the native ichneumonid wasp *Hyposoter fugitivus* (Say) and tachinid fly *Leschenaultia fulvipes* (Bigot), and the introduced tachinid fly *Compsilura concinnata* (Meigen) for the control of gypsy moths (*Lymantria dispar*). Although *C. concinnata* is likely present at the Canadian sites, no evidence of parasitism of bog buck moth has been reported (Wood 2020, pers. comm., as cited in COSEWIC 2009, p. 14). Parasitism is assumed to be occurring at the Canadian populations (COSEWIC 2009, p. 17). Similarly, while not documented at the bog buck moth sites in the United States, we find the New York populations are likely to be susceptible to larval parasitism from the tachinid fly and other parasitoids and observed boom/bust cycles may be related to such parasitism. A 2016 report identified a crash of adult bog buck moths at the Oswego Inland Site after abundant larvae of all sizes were observed in May and June. The report suggested further investigation into larval or pupal parasitoids as a possible cause (Bonanno 2016, p. 5).

If bog buck moths are not killed by predators (*e.g.,* small mammals and other invertebrates) or parasitoids, larval behavior may still be affected by the presence of predators or parasitoids. Early instar larvae tend to stay together and defend themselves, while late instar larvae disperse, leading to increased subdivision of clusters (Cornell *et al.* 1987, p. 387). At sites with higher predator or parasitoid densities, bog buck moth larvae likely experience slower growth rates, prolonged development, and reduced body mass (Stamp and Bowers 1990, p. 1037) because they would be forced to forage closer to the center of plants where it is cooler and where older, lower quality leaves are present.

Climate Change

While there are many possible effects to bog buck moths from climate change into the future, here we focus on the effects to bog buck moths from observed changes in precipitation and temperature to date.

Lake Ontario water levels naturally fluctuate within and among years; however, record high water levels have recently occurred, resulting in impacts to bog buck moth sites. Between 1951 and 2017, the total precipitation with the Great Lakes Basin increased by approximately 14 percent with heavy precipitation events increasing by 35 percent (Great Lakes Integrated Sciences and Assessments Program 2019, entire). After 15 years of below-average water levels on Lake Superior and Lake Michigan-Huron, water levels of the upper Great Lakes started rising in 2013 and have been well above average for several years (Board 2020, p. 7). With all of the Great Lakes water levels above or near record-highs, the increase represented an unprecedented volume of water in the Great Lakes system funneled into Lake Ontario and out the St. Lawrence River (Board 2020, p. 7), resulting in the Lakeside population fens being vulnerable to flooding for an extended period of time. Flooding that negatively impacts bog buck moths can be described as longer duration flooding, as long-term flooding of bog buck moth fens submerges vegetation and makes the site unsuitable for most life stages and may directly kill individuals. In contrast, periodic flooding that is shorter in duration helps maintain habitat suitability. Furthermore, bog buck moth eggs can tolerate short-term submersion but are not viable after long-term flooding events (Service 2021, p. 34).

Two high-water events across the entire Great Lakes basin caused by above-normal precipitation (January to

May 2017, and November 2018 through May 2019) compounded the already high-water levels in the Great Lakes basin (Board 2020, pp. 6–9). These events resulted in long-term submersion of bog buck moth eggs and subsequent crashes in adult flights at Lakeside 5. In addition to changes in water levels, climate change has also brought about changes in temperature. The Ontario Ministry of the Environment (2011, p. 1) reported the average temperature in Ontario has gone up by as much as 2.5 °F (1.4 °C) since 1948. Similarly, between 1951 and 2017, the average annual temperature in the Great Lakes Region has increased by 2.3 °F (1.3 °C) (GLISA 2019, entire). We have no detailed studies to assess whether observed declines in bog buck moth counts of the U.S. populations are related to these increased annual temperatures. However, seasonal changes in temperature can influence the form of precipitation and snowpack in winter and shifts in phenology. For example, the timing of fall flights may be shifting to later in September. Bog buck moth monitoring windows have been September 12 to 26 at the Oswego Inland Site and September 18 to October 1 at the Lakeside sites since surveys began, and in recent years there has been little or no activity near the beginning of the survey window (Bonanno 2019, pp. 1–2).

Throughout the Great Lakes Basin, average winter minimum and maximum temperatures increased from 1960 to 2009 by 3.24 and 1.98 °F (1.8 and 1.1 °C), respectively (Suriano *et al.* 2019, pp. 6–8). Increased winter temperatures are associated with decreases in Great Lakes ice cover and increases in winter precipitation occurring as rain. Increased temperatures may also reduce snowpack, impacting bog buck moth food sources. During the first half of the 20th century, the Great Lakes basin experienced an increase in snowfall; however, snowfall has declined through the latter half of the 20th and early 21st centuries (Baijnath-Rodino *et al.* 2018, p. 3947). Similarly, snow depth in the Great Lakes Basin reduced approximately 25 percent from 1960 to 2009 (Suriano *et al.* 2019, p. 4). Trends during this timeframe are variable by subbasin, and there were no significant trends for the Lake Ontario subbasin (Suriano *et al.* 2019, p. 5). At a finer scale (1 degree latitude by 1 degree longitude grids), there were also no significant changes observed for snow depth or snowfall for the grid along Lake Ontario that includes the bog buck moth sites, but there was a significant increase of the number of ablation events (*i.e.,* snow mass loss from melt, sublimation, or evaporation) (Suriano *et al.* 2019, pp. 6–7). These events are associated with rapid snow melt and often lead to localized flooding.

Snowpack reductions lead to longer periods of frost, earlier disappearance of standing water, deeper frost levels, and reduced bog buckbean biomass (Benoy *et al.* 2007, pp. 505–508). Reduced bog buckbean will negatively affect bog buck moth larval growth and survival.

Reduced snowpack can also impact bog buck moths directly; however, limited research is available on the impacts to bog buck moth associated with the presence, depth, and duration of winter snow. The presence of a consistent seasonal snowpack can prevent freeze-thaw cycles. While bog buck moths overwinter in the egg stage, which is less vulnerable to freezing than other life stages, they may also periodically overwinter in the pupal stage, which would be vulnerable to these cycles. Their egg-clustering habit may decrease the amount of egg surface exposed to ambient conditions and reduce the possibility of desiccation (Stamp 1980, p. 369). However, eggs that are not covered by snowpack are exposed to increased risk of predation.

Increased temperatures in winter and early spring may lead to earlier egg hatch. As temperatures have increased, many insects have been emerging earlier (temperature-induced emergence) (Patterson *et al.* 2020, p. 2), resulting in phenological mismatch with host plants. For example, Karner blue butterfly (*Lycaeides melissa samuelis*) larvae have been known to hatch earlier than the host plant, wild blue lupine (*Lupinus perennis*), after unseasonably warm late-winter temperatures (Patterson *et al.* 2020, p. 6). Similar to the Karner blue butterfly, bog buck moth early instar larvae rely on specific host plants and are at greater risk of impacts from phenological mismatch than species with wide host plant usage. Earlier spring hatch followed by subsequent spring freezes also increases the risk of mortality of early instar larvae.

Overall, interacting changes in temperature and precipitation are highly influential in terms of flooding or drying out bog buck moth sites. There may be additional compounding effects from changes in temperature associated with shifts in phenology or reduced snowpack, but we lack sufficient information on those potential relationships.

Conservation Measures

New York Populations

The bog buck moth was listed as endangered by the State of New York in 1999 and is protected by New York's Environmental Conservation Law (Consolidated Laws of New York, chapter—Environmental Conservation, article 11, title 5, section 11–0535) and the New York Code of Rules and Regulations (NYCRR) in title 6, subchapter J, part 182. An incidental take permit is required for any proposed project that may result in a take of bog buck moths, including, but not limited to, actions that may kill or harm individual animals or result in the adverse modification, degradation, or destruction of habitat occupied by the bog buck moth. Additionally, the bog buck moth is a Species of Greatest Conservation Need in the NYSDEC's Comprehensive Wildlife Conservation Strategy (NYSDEC 2005, appendix 5, pp. 14–17; NYSDEC 2015, not numbered). NYSDEC has a draft recovery plan for the bog buck moth (Bonanno and White 2011, entire) that has not been finalized.

All known populations are in conservation ownership (*i.e.,* State or private lands managed for conservation) and are protected from direct negative impacts to their habitat (*e.g.,* wetland fill associated with roads or development). Habitat management has been conducted at a few of these sites, but invasive plants and/or vegetation succession have reduced the amount of available habitat at most sites and remain an ongoing threat. The State of New York provides protection for wetlands greater than 12.4 acres in size or of unusual local importance (NYSDEC 1997, p. 5). Regulated activities within the wetland or adjacent buffer require permits from the NYSDEC. In addition, in accordance with section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*), the U.S. Army Corps of Engineers has the authority to regulate discharge of dredged or fill material into waters of the United States, including wetlands of any size. In New York, placing fill into bogs and fens is not authorized under the Nationwide Permit Program.

Canadian Populations

The bog buck moth was recommended for listing as endangered by COSEWIC in 2009 (COSEWIC 2009, entire), listed as endangered under the Ontario Endangered Species Act in 2010, and listed as endangered on Schedule 1 of the Species at Risk Act (SARA) in 2012. These listings provided the bog buck moth protection from

being killed, harmed, harassed, captured, or taken in Canada.

The Ontario Ministry of Natural Resources and Forestry (Ministry) published a recovery strategy for the bog buck moth on December 7, 2011 (Gradish and Tonge 2011, entire). Major actions identified in the plan include improving monitoring standards for the bog buck moth, assessing the risk posed by invasive species, and evaluating the hydrology of the species' habitat. In 2017, the Ministry published a 5-year review of progress towards the protection and recovery of the bog buck moth (Ministry 2017, pp. 11–17). Initial progress has been made towards assessing the risk posed to the bog buck moth by invasive species and, where appropriate, implementing invasive species control within and adjacent to occupied fen ecosystems.

Bog buck moth habitat has generally been afforded protection from authorized damage or destruction in Canada since the species was listed in Ontario in 2010. Bog buck moth habitat is further protected through Ontario habitat regulation and Federal critical habitat protection. Section 41(1)(c) of SARA requires that recovery strategies include an identification of the species' ''critical habitat,'' to the extent possible, as well as examples of activities that are likely to result in its destruction (Environment Canada 2015, p. 9). Environment Canada (2015, p. 10) adopted the description of the bog buck moth ''habitat'' under section 24.1.1.1 of Ontario Regulation 242/08 as ''critical habitat'' in the Federal recovery strategy. The area defined under Ontario's habitat regulation contains the biophysical attributes required by the bog buck moth to carry out its life processes. To meet specific requirements of SARA, the biophysical attributes of critical habitat were further detailed in the Federal strategy (Environment Canada 2015, p. 11). However, under SARA, specific requirements and processes are set out regarding the finalization of protection of critical habitat and whether the prohibition against destruction of critical habitat is extended to any non-Federal land. Protection of critical habitat under SARA was to be assessed following publication of the final bog buck moth Federal recovery strategy (Environment Canada 2015, p. 10). There is no indication that this assessment has occurred to date.

Current Condition

Similar to other *Hemileuca* species, bog buck moth populations (and subpopulations) experience boom and bust cycles. Table 1 and figure 1, below, summarize male peak flight counts at four U.S. subpopulations. Three of the subpopulations have crashed and not recovered.

TABLE 1—BOG BUCK MOTH FALL FLIGHT INFORMATION FOR THE OSWEGO INLAND SITE AND THREE LAKESIDE SUBPOPULATIONS, NY, 22-YEAR RECORD

[Data are site mean of 5-minute counts on the peak date. Zero means a search was made, no moths seen. Empty cells indicate no data were collected at that site that year. Cells with counts higher than 100 are highlighted. Data from Bonanno (2018, p. 4; 2019, p. 4) and Bonanno and Rosenbaum (2020, p. 2).]

Date	Oswego inland site	Lakeside		
		Lakeside 5	Lakeside 3	Lakeside 2
1998	171.3			242.4
1999	49.6		10.6	109.4
2000	7.1		14.8	26.8
2001	16.4		18.6	4.8
2002	37.1		3.3	2.2
2003	46		22.5	6.3
2004	153.2	64.6	21.2	20.2
2005	87.3	51.1		14.4
2006	81.9	126.8		26.3
2007	93.7	65.9	212.0	50.0
2008	63	23.0	5.8	14.2
2009	70	48.7	0.7	14.3
2010				10.0
2011	20.2	141.1	0.1	9.4
2012	18.9	46.0	3.0	1.0
2013	21.4	1.0	0.3	0
2014	126.5	3.8	0	0
2015	98.7	6.7		0
2016	5.0	27.7	0	0
2017	0.7	53.3		
2018	0	30.7	[1] >0	0
2019	0	44.4	0	
2020	0			

[1] (2 total moths).

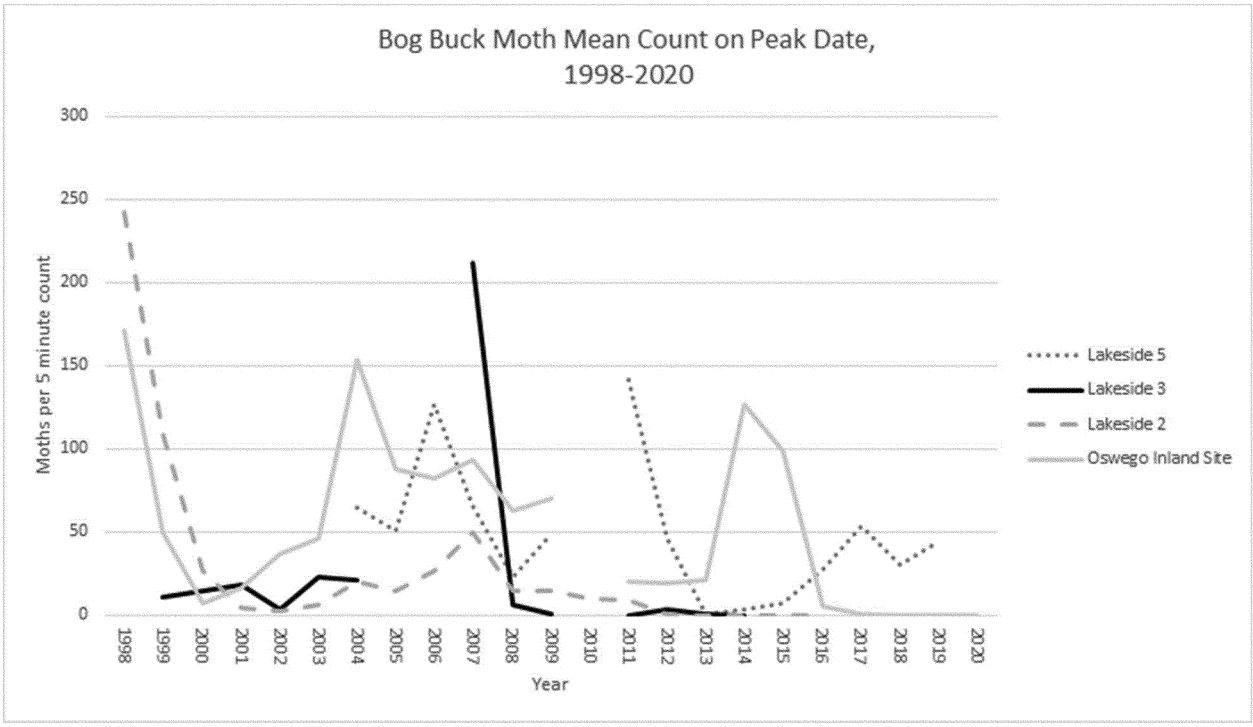


Figure 1. Mean male bog buck moth peak counts (1998–2020). Data from Bonanno (2018, p. 4; 2019, p. 4) and Bonanno and Rosenbaum (2020, p. 2).

In Canada, the status of many of the populations is unknown due to a lack of surveys. Of the four sites found in Canada, only two were recently surveyed. The subpopulation at Richmond Fen South was visited in 2019, when an estimated minimum of 1,500 early instar larvae were found in a small portion of core habitat. Another site visit to the same location in early July 2020 documented the presence of hundreds of mid-instar larvae. At White Lake North, more than 100 adult moths were observed in mid-September 2020. Prior to 2020, larval surveys were conducted, and larvae were last observed in 2016, with no surveys in 2017, and larvae were absent in 2018 and 2019. The status of the two other subpopulations in Canada (Richmond Fen North and White Lake South) is unknown because no surveys have been conducted at those sites.

It is unlikely that there are other bog buck moth populations besides the ones mentioned above. Fairly extensive but unsuccessful searches for bog buck moths have been conducted at other potentially suitable wetland habitat in Ontario, and no new sites have been found (COSEWIC 2009, pp. 9–10). COSEWIC (2009, p. 10) found that, given the degree of interest by naturalists in these natural areas and the diurnal habits of this large distinctive species, the probability of undiscovered Ontario buck moth populations is low.

The circumstances are similar in New York. Cryan and Dirig (2020, pp. 4–5) described several years of exploring the bed of former glacial Lake Iroquois and its tributaries and outlets, and while they found some fens with bog buckbean, they found no additional sites with bog buck moth. In addition, researchers had visited New York fens for many years and likely would have observed the highly conspicuous larvae on the bog buckbean or flying adult males had they been present. Bonanno and White (2011, p. 10) describe multiple visitations to possible habitat by NYNHP and researchers familiar with the bog buck moth without locating any individuals.

We evaluated the bog buck moth's current condition by assessing whether there were multiple, sufficiently resilient populations spread across its geographical extent to maintain its ecological and genetic diversity and withstand catastrophic events (see table 2, below). Information to date suggests that bog buck moths are genetically structured across their range, and we determined that the breadth of adaptive diversity can be captured by two representative units, Canadian and United States.

TABLE 2—ECOLOGICAL REQUIREMENTS FOR SPECIES-LEVEL VIABILITY

3Rs	Requisites	Metric
Resiliency (able to withstand stochastic events).	Healthy populations	Populations with: • Both sexes present. • Sufficient survival of all life stages. • Sufficient number of bog buck moths to survive bust portion of boom and bust cycles. • Stable to increasing trend over last 10 years (10 generations). • Multiple occupied suitable habitat patches within metapopulation. • Sufficient habitat size. • Sufficient habitat quality. • Intact hydrology and ecological processes.
Representation (to maintain evolutionary capacity).	Maintain adaptive diversity	Healthy populations distributed across areas of unique adaptive diversity (*e.g.,* across latitudinal gradients) with sufficient connectivity for periodic genetic exchange.
Redundancy (to withstand catastrophic events).	Sufficient distribution of healthy populations. Sufficient number of healthy populations.	Sufficient distribution to guard against catastrophic events significantly compromising the species' adaptive diversity. Adequate number of healthy populations to buffer against catastrophic losses of adaptive diversity.

We lacked specific demographic rates for most locations for most years; therefore, we used alternative metrics for assessing population resiliency (number of bog buck moth adult males observed, presence of bog buck moth at multiple subpopulations) and the condition of the supporting habitat (habitat quality) (see table 3, below).

TABLE 3—METRICS FOR SCORING BOG BUCK MOTH POPULATION CONDITION

Condition	Sufficient number	Connectivity	Suitable habitat
Unknown	Unknown	Unknown	Unknown.
Extirpated	Not applicable	Not applicable	Habitat is completely unsuitable due to alteration or loss.
Presumed Extirpated	No moths or any other life stage were observed during multiple subsequent surveys.	Not applicable	Habitat present and can be suitable or unsuitable given "sufficient N" results.
Poor	Negative trend over last 10 years	No subpopulations or if subpopulations are present each subpopulation did not have at least one >0 count within the last 5 years.	Insufficient suitable habitat for any of the life stages: • Insufficient bog buckbean (<4% areal coverage). • Relatively limited oviposition sites. • Lack of suitable pupation sites.
Good	Neutral or positive trend over last 10 years.	Multiple subpopulations and >0 count for each subpopulation within the last 5 years.	Sufficient suitable habitat for all life stages: • Sufficient bog buckbean (>4% areal coverage). • Relatively abundant oviposition sites. • Suitable pupation sites.

As discussed above, we are aware of five bog buck moth populations, two in Canada and three in New York. We are unaware of any changes to the distribution in Canada; however, we have information from only two of the four subpopulations. In New York, the Jefferson County site was converted to a marsh, having been impounded decades ago by beavers, then maintained by management for park flooding control, septic management, and black tern habitat (Bonanno 2020, pers. comm.). Of the Lakeside subpopulations, only the Lakeside 5 site remains extant. Lastly, the Oswego Inland Site population was recently presumed to be extirpated.

Using our ranking methods mentioned above, we find that for all the bog buck moth populations in the U.S. Representative Unit, one population has been extirpated since the 1970s, one is now presumed extirpated, and one is in poor condition (see table 4, below). The Lakeside population has experienced multiple sources of habitat loss and degradation, and remaining bog buck moths have faced high flood years. While these may or may not be the true cause of declines and site-level extirpations, they likely contributed to them. The cause of decline and the bog buck moth's inability to rebound at the Oswego Inland Site is unclear, as flooding has not been a concern at this site and seemingly suitable habitat remains. Similar declines at sites with apparently suitable habitat have been documented for another endangered fen species, the Poweshiek skipperling (*Oarisma poweshiek*), suggesting that other factors (*e.g.,* contaminants, climate change, disease, and low levels of genetic diversity) may be driving the current distribution and losses (Pogue *et al.* 2019, pp. 383–386).

In the Canadian Representative Unit, both populations are in unknown/likely good condition. This assessment has a high degree of uncertainty given that it is based on current knowledge from half of the associated Canadian Representative Unit subpopulations

(one out of the two subpopulations for each population). Most recently, Richmond Fen South had hundreds of mid-instar larvae in early July 2020, with ample suitable habitat. Richmond Fen North has not had any recent moth or larval surveys, but observations during a site visit in 2015 suggested that the habitat remains in good condition. At White Lake North, more than 100 bog buck moth adults were observed in September 2020. Prior to that, surveys were based on larvae, with larvae last observed in 2016 and none seen in 2018 or 2019. There is no information on White Lake South. Although both populations have been described as unknown/likely good, invasive species such as cattails, common reed, and glossy buckthorn have been identified in the habitat and are likely to have a negative effect and reduce the resiliency of these populations (COSEWIC 2009, p. 18; Gradish and Tonge 2011, pp. 6–7; Environment Canada 2015, p. 7).

Overall, three subpopulations (White Lake North, Richmond Fen South, and Lakeside 5) associated with three separate populations are known to have remaining bog buck moths. While some genetic diversity remains through the current existence of at least one subpopulation within each of the representative units, there is no redundancy of healthy populations in the U.S. Representative Unit, and there is uncertainty about the status of the Canadian Representative Unit.

TABLE 4—SUMMARY OF BOG BUCK MOTH'S CURRENT CONDITION

3Rs	Requisites	Metric	Current condition
Resiliency (able to withstand stochastic events).	Healthy populations	Populations with: • Both sexes present. • Sufficient survival of all life stages. • Sufficient number of bog buck moths to survive bust portion of boom and bust cycles. • Stable to increasing trend over last 10 years (10 generations). • Multiple occupied suitable habitat patches within metapopulation. • Sufficient habitat size. • Sufficient habitat quality. • Intact hydrology and ecological processes.	Poor. Of the five historically known populations: • one is extirpated; • one is presumed extirpated; • one is in poor condition; and • two are in unknown/likely good condition.
Representation (able to maintain evolutionary capacity).	Maintain adaptive diversity	Healthy populations distributed across areas of unique adaptive diversity (*e.g.,* across latitudinal gradients) with sufficient connectivity for periodic genetic exchange.	Poor. There are two potentially healthy populations in the Canadian Representative Unit and none in the U.S. Representative Unit.
Redundancy (able to withstand catastrophic events).	Sufficient distribution of healthy populations.	Sufficient distribution to guard against catastrophic events significantly compromising species adaptive diversity.	Poor. See above.
	Sufficient number of healthy populations.	Adequate number of healthy populations to buffer against catastrophic losses of adaptive diversity.	Poor. See above.

Future Condition

As part of the SSA, we developed two future condition scenarios to capture the range of uncertainties regarding future threats and the projected responses by the bog buck moth. Our scenarios assumed increased winter and spring precipitation, increased annual temperatures, and either continuation or increases in invasive plant species and succession. Because we have determined that the current condition of the bog buck moth is consistent with an endangered species (see Determination of Bog Buck Moth's Status, below), we are not presenting the results of the future scenarios in this rule; however, under both scenarios, the future condition is projected to worsen. Please refer to the SSA report (Service 2021, pp. 67–83) for the full analysis of future scenarios.

Summary of Comments and Recommendations

In the proposed rule published on October 14, 2021 (86 FR 57104), we requested that all interested parties submit written comments on the proposal by December 13, 2021. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. A newspaper notice inviting general public comment was published for multiple days in the Syracuse Post Standard (New York). We did not receive any requests for a public hearing. All substantive information regarding the listing of bog buck moth that was provided during peer reviews and the comment period has been incorporated directly into this final rule, as appropriate.

Peer Reviewer Comments

As discussed under Peer Review, above, we received responses from 4 peer reviewers and 11 partners, including Federal and State partners, Canadian partners, and scientists with expertise in fen ecology and bog buck moth biology. We reviewed all comments we received from the peer reviewers and partners for substantive issues and new information regarding the information contained in the SSA report. The peer reviewers and partners generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final SSA report.

Public Comments

Comment: Multiple commenters did not agree with our determination that a designation of critical habitat for the bog buck moth was not prudent, providing various reasons why they believed that we should designate critical habitat for the species. These reasons included the utility of critical habitat in addressing the threats to the species of limited range and local water regulation.

Commenters further suggested that critical habitat could be designated with limited detail and at a sufficiently high scale to minimize harm from precise identification of location.

Response: Based on these comments, we elaborate on our reasoning to better explain the decision for a not-prudent determination for the designation of critical habitat for the bog buck moth in this final rule. The bog buck moth currently occurs in Canada and New York State. However, critical habitat can only be designated in the United States (50 CFR 424.12(g)). Thus, our critical habitat assessment only considered the two New York populations. Since the publication of the proposed rule (86 FR 57104; October 14, 2021), the collection threats affecting the co-occurring species have not abated. The publication of detailed maps of the bog buck moth occurrences would facilitate unauthorized collection and trade of the co-occurring species. Because the bog buck moth is found in wetlands, if we designated critical habitat, we would not be able to avoid identifying the individual fens where the species occurs. In other words, it is not possible for us to meet the Act's requirements for designating critical habitat at a scale that would not reveal the location of occupied wetlands. Moreover, any increase in human activities, including collection, within the habitat for the two remaining New York populations can be expected to cause harm to the bog buck moth from disturbance and trampling of individuals (eggs, larvae, pupae) and to vegetation necessary as a host plant and for sheltering of all life stages.

Designation of critical habitat is just one of many tools available for bog buck moth conservation. Other tools include the listing decision itself, habitat management and restoration by the Service and our partners (*e.g.,* Federal agencies, nongovernmental organizations, and the NYSDEC), research, and possibly captive management. As of the effective date of this rule (*see* **DATES**, above), any Federal actions that impact any of the subpopulations of the occupied Lakeside population will undergo section 7 consultation regardless of critical habitat designation. The Lakeside population is made up of sites currently under State or nongovernmental organization protection and management. The Oswego Inland Site population (presumed extirpated) is protected by a nongovernmental organization, and we do not anticipate frequent Federal actions in adjacent uplands that would result in a nexus for consultation, even if the site were to be designated as critical habitat. Moreover, we would anticipate that any activities with Federal involvement (*e.g.,* restoring habitat for future possible reintroduction of the bog buck moth) would benefit the site rather than result in adverse effects to the habitat. Lastly, State and Federal wetlands protections are in place for all of the sites, and no section 404 Clean Water Act permits are authorized in bogs and fens in New York (refer to *Conservation Measures,* above, for further analysis). Accordingly, our reasoning for a not-prudent finding in our proposed rule continues to be applicable to this final rule.

One commenter mentioned the limited distribution and concentration of bog buck moth habitat and the potential effects of water level regulation on Lake Ontario on the species. While we recognize the restricted range of the species, limited range alone is not sufficient for designating critical habitat where we have determined that such designation is not prudent on other grounds. We agree that flooding of sites can impact bog buck moths. However, periodic flooding is important to reset vegetation succession at these sites. Past management of Lake Ontario has prevented these periodic flushing events. In recent years, the major drivers of water level in these sites include heavy precipitation events causing flooding or alteration of fens resulting in drying and vegetation succession. See *Change in Water* Levels, above, for more information. As discussed above, any Federal actions that may affect the Lakeside population will be subject to consultation under section 7 of the Act due to the presence of the species.

Determination of Bog Buck Moth's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we have determined that the bog buck moth is at risk of extinction now throughout its range due to a combination of factors. Bog buck moth populations undergo boom and bust cycles and are highly vulnerable to stochastic events or threats during the bust phase (Factor E). All populations are isolated from one another and cannot repopulate extirpated sites (Factor E). We find that past and ongoing stressors, including habitat alteration due to water level management on Lakeside sites, vegetative succession and invasive plant species (Factor A), and death of individuals due to flooding (Factor E), have caused and are highly likely to continue to cause a decline in the species' viability through reduction of resilience, redundancy, and representation to such a degree that the species is particularly vulnerable to extinction presently and is highly likely to become more vulnerable to extinction. We do not fully understand the cause of declines at bog buck moth sites, and so it is likely that additional factors are important, such as inherent factors (*e.g.,* narrow habitat niche) (Factor E), parasitoids (Factor E), predation (Factor C), disease (Factor C), and pesticides (Factor E).

Of the three historical U.S. populations, two have been extirpated or are presumed extirpated. The Jefferson County population was extirpated due to habitat conversion in the 1970s. The reason for the extirpation of the Oswego Inland Site population is unclear, as the habitat still appears suitable. For the remaining U.S. population, the Lakeside population, the overall condition is poor with four of the five sites (Lakeside 1–4) presumed extirpated. Lakeside 5 is the last site with a confirmed moth population as of 2019. However, even this site is considered to be in poor condition with severe habitat degradation.

The Canadian populations comprise two potentially healthy populations. However, there is high uncertainty about their status. Unlike the New York populations, no standardized transect counts are available to assess long-term trends. In addition, we have information

on just two of the four subpopulations associated with these populations. While there are bog buck moths known at two of these subpopulations and suitable habitat remains, invasive plant species are present at these sites and active management is not underway.

All of the extant bog buck moth populations are currently facing a multitude of threats including water level changes, succession, and invasive species. Additionally, other factors, including parasitoids, predation, disease, and pesticides, as well as the species' limited dispersal range and small numbers, likely play a role in its decline. As studies in the New York population have shown, attempts at managing and controlling the spread of invasive plants or woody plants from succession in fens have proven to be extremely labor intensive and have limited effect. We find that the magnitude and imminence of threats facing the bog buck moth place the species in danger of extinction now, and therefore we find that threatened status is not appropriate. Thus, after assessing the best available information, we determine that the bog buck moth is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the bog buck moth is in danger of extinction throughout all of its range, and accordingly did not undertake an analysis of any significant portion of its range. Because the bog buck moth warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), which vacated the provision of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (Final Policy) (79 FR 37578, July 1, 2014) providing that if the Services determine that a species is threatened throughout all of its range, the Services will not analyze whether the species is endangered in a significant portion of its range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the bog buck moth meets the Act's definition of an endangered species. Therefore, we are listing the bog buck moth as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline, and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*https://www.fws.gov/program/endangered-species*), or from our New York Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their ranges may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Once this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of New York will be eligible for Federal funds to implement management actions that promote the protection or recovery of the bog buck moth. Section 8(a) of the Act (16 U.S.C. 1537(a)) authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered or threatened species in foreign countries. Sections 8(b) and 8(c) of the Act (16 U.S.C. 1537(b) and (c)) also authorize the Secretary to encourage conservation programs for listed species found outside the United States, and to provide assistance for such programs, in the form of personnel and the training of personnel. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Please let us know if you are interested in participating in recovery efforts for the bog buck moth. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery

planning purposes (*see* **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

Federal agency actions that may require conference or consultation or both (as described above) include management and any other landscape-altering activities on lands near bog buck moth subpopulations.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a final listing on proposed and ongoing activities within the range of the listed species. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive: Normal recreational hunting, fishing, or boating activities that are carried out in accordance with all existing hunting, fishing, and boating regulations and that follow reasonable practices and standards.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the bog buck moth, including import or export across State lines and international boundaries, except for properly documented antique specimens of the taxon at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Unauthorized modification, removal, or destruction of the wetland vegetation, soils, or hydrology in which the bog buck moth is known to occur;

(3) Unauthorized discharge of chemicals or fill material into any wetlands in which the bog buck moth is known to occur; and

(4) Unauthorized release of biological control agents that attack any life stage of the bog buck moth, including parasitoids, herbicides, pesticides, or other chemicals, in habitats in which the bog buck moth is known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the New York Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

II. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

- The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features
  - Essential to the conservation of the species, and
  - Which may require special management considerations or protection; and
- Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation also does not allow the government or public to access private lands, and designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to

conclude that the proposed activity would likely result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. On August 27, 2019, we revised our regulations at 50 CFR part 424 to further clarify when designation of critical habitat may not be prudent (84 FR 45020; August 27, 2019) (the 2019 Revisions). The 2019 Revisions (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

- The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;
- The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;
- Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;
- No areas meet the definition of critical habitat; or
- The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

In the proposed listing rule (86 FR 57104; October 14, 2021), we preliminarily determined that designation of critical habitat for bog buck moth would not be prudent (see 86 FR 57121). We invited public comment and requested information on the threats of taking or other human activity on bog buck moth and its habitat, and on the extent to which critical habitat designation might increase those threats. During the comment period, we received comments that identified the need to provide additional rationale for the not-prudent determination. After review and consideration of the comments we received, we restate our determination that the designation of critical habitat for the bog buck moth is not prudent, in accordance with 50 CFR 424.12(a)(1). Our rationale for this determination is that within the New York populations, the bog buck moth co-occurs with another federally listed species that was listed, in part, due to collection pressure, which has not abated and has been documented recently in New York. Additionally, at the time the other species was listed, collection pressure resulted in a determination that designating critical habitat was not prudent. Designating critical habitat for the bog buck moth would undermine the not-prudent determination that was previously made for the other co-occurring listed species. Designation of critical habitat requires the publication of a narrative description of specific critical habitat areas and maps in the **Federal Register** and in the Code of Federal Regulations. Any critical habitat maps developed for the species would have to be sufficiently detailed to show the specific habitat where the bog buck moth is found and the vicinity in which the fen is found. This degree of specificity would be such that someone specifically looking for the area would be able to find the particular fen using widely available mapping software and imagery. We find that the publication of maps and descriptions outlining the locations of bog buck moth would provide heretofore unavailable precise location information for the co-occurring species and likely lead to additional unauthorized collection and, therefore, an increase in the illegal trade of the co-occurring species. Moreover, we find that providing information that increases the collection risk of the co-occurring species would result in degradation of habitat for both the co-occurring species and the bog buck moth. There have been past cases of illegal collection in New York State of the co-occurring species that contributed to habitat degradation (*e.g.,* trampling of vegetation). If pursuit and collection of the co-occurring species occurs in bog buck moth habitat, that activity can be expected to cause harm to the bog buck moth from disturbance and trampling of individuals (eggs, larvae, pupae) and to vegetation necessary as a host plant and for sheltering of all life stages.

Accordingly, we have determined that the designation of critical habitat for the bog buck moth would provide a heretofore unavailable link to the precise locations of a co-occurring listed species and would result in increased collection risk to the co-occurring species; therefore, the designation of critical habitat for the bog buck moth would reasonably be expected to increase the degree of threats from human activity to the co-occurring species and to the bog buck moth and its habitat. Therefore, we find that the designation of critical habitat is not prudent for the bog buck moth, in accordance with 50 CFR 424.12(a)(1)(i) and (v).

Required Determinations

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

There are no known Tribal lands with bog buck moth populations.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the New York Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Service's Species Assessment Team and the New York Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, 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), by adding an entry for ''Moth, bog buck'' to the List of Endangered and Threatened Wildlife in alphabetical order under Insects to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
INSECTS				
*	*	*	*	*
Moth, bog buck	*Hemileuca maia menyanthevora* (=*H. iroquois*)	Wherever found.	E	88 FR [Insert **Federal Register** page where the document begins], March 15, 2023.
*	*	*	*	*

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–05012 Filed 3–14–23; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 88, No. 50
Wednesday, March 15, 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.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket Number USCG–2023–0073]

RIN 1625–AA00

Safety Zone; South Fork Wind Farm Project Area, Outer Continental Shelf, Lease OCS–A 0517, Offshore Rhode Island, Atlantic Ocean; Corrections

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

ACTION: Notice of proposed rulemaking; corrections.

SUMMARY: On March 6, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) to establish 13 temporary 500-meter safety zones in the South Fork Wind Farm project area. That proposed rule contained four labeling plot location errors and one error of the coordinates describing a labeling plot location. This document corrects those errors in the NPRM.

DATES: Comments to the NPRM published at 88 FR 13745 on March 6, 2023, and related material must be received by the Coast Guard on or before April 5, 2023. This correction will not cause any delay of the originally established comment period for the NPRM.

FOR FURTHER INFORMATION CONTACT: If you have questions about the proposed rulemaking, call or email Mr. Craig Lapiejko, Waterways Management, at Coast Guard First District, telephone 617–223–8351, email *craig.d.lapiejko@uscg.mil.*

SUPPLEMENTARY INFORMATION: On March 6, 2023, the Coast Guard published a NPRM titled ''Safety Zone; South Fork Wind Farm Project Area, Outer Continental Shelf, Lease OCS–A 0517, Offshore Rhode Island, Atlantic Ocean'' (88 FR 13745). In this NPRM we discussed a proposal to establish 13 safety zones to ensure the safety of life, property, and the environment within a 500-meter radius of each of the 13 facilities during their construction. Four of the names for labeling plot locations in addition to the coordinates of one labeling plot location were discovered to be erroneous and require correction.

The positions of each individual safety zone in our proposed rule were referred to using a unique alpha-numeric naming convention outlined in the ''Rhode Island and Massachusetts Structure Labeling Plot (West)''.[1] This document corrects both tables and a chartlet discussed in our proposed rule by correcting the four labeling plot location errors with replacing AN07, AM09, AN10, and AP10 with AM05, AN05, AP05, and AN08, and correcting the coordinates describing AN06.

In accordance with 33 CFR 147.15, the proposed safety zones would include the area within 500-meters of the center point of the positions provided in the corrected table expressed in Decimal Degrees based on North American Datum 1983 (NAD 83).

The corrected chartlet showing positions of each proposed safety zone using unique alpha-numeric naming convention is also set out.

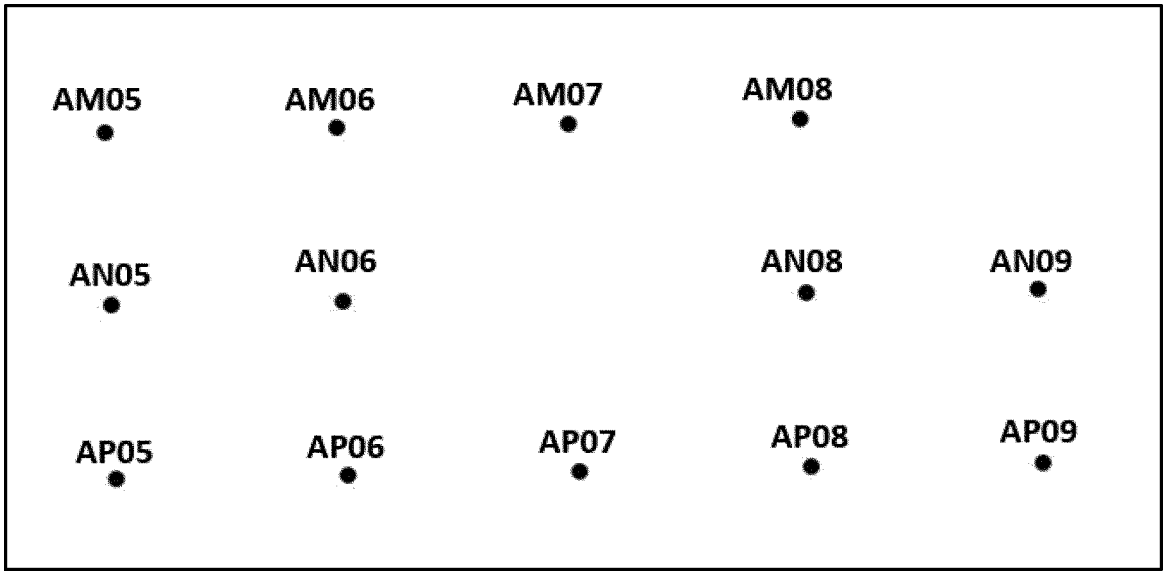
Corrections

1. On page 13746, the table is corrected to read as follows:

Name	Facility type	Latitude	Longitude
AM05	WTG	N 41.10879493	W −71.19110374
AM06	WTG	N 41.10921219	W −71.16906236
AM07	WTG	N 41.10962524	W −71.14702052
AM08	WTG	N 41.11003408	W −71.12497822
AN05	WTG	N 41.09212418	W −71.19054951
AN06	WTG	N 41.09195639	W −71.16788437
AN08	WTG	N 41.09336261	W −71.12444068
AN09	WTG	N 41.093767	W −71.1024035
AP05	WTG	N 41.07545338	W −71.18999573
AP06	OSS	N 41.07587016	W −71.16796548
AP07	WTG	N 41.07628273	W −71.14593476
AP08	WTG	N 41.07669109	W −71.12390359
AP09	WTG	N 41.07709524	W −71.10187197

2. On page 13748, the chartlet is corrected to read as follows:

[1] The Rhode Island and Massachusetts Structure Labeling Plot (West) is an attachment to the Conditions of Construction and Operations Plan Approval Lease Number OCS–A 0517 (*boem.gov*) and can be found at *https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/SFWF-COP-Terms-and-Conditions.pdf.*



This document is published under the authority of 5 U.S.C. 552(a).

Dated: March 13, 2023.

J.W. Mauger,

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

[FR Doc. 2023–05380 Filed 3–14–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA–HQ–OAR–2018–0279; FRL–9545–04–OAR]

Release of Draft Policy Assessment for the Reconsideration of the Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Draft policy assessment; notice of availability.

SUMMARY: On or about March 1, 2023, the Environmental Protection Agency (EPA) is making available to the public a revised draft document titled, *Policy Assessment for the Reconsideration of the Ozone National Ambient Air Quality Standards, External Review Draft Version 2* (Draft PA). This draft document was prepared as a part of the current reconsideration of the 2020 final decision on the national ambient air quality standards (NAAQS) for ozone (O_3). When final, the PA is intended to ''bridge the gap'' between the scientific and technical information assessed in the 2020 Integrated Science Assessment for Ozone and Related Photochemical Oxidants (2020 ISA), as well as any air quality, exposure and risk analyses available in the reconsideration, and the judgments required of the Administrator. The primary and secondary O_3 NAAQS are set to protect the public health and the public welfare from O_3 and other photochemical oxidants in ambient air.

DATES: Comments must be received on or before April 14, 2023.

ADDRESSES: You may send comments on the draft PA, identified by Docket ID No. EPA–HQ–OAR–2018–0279, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this notice. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments, see the **SUPPLEMENTARY INFORMATION** section of this document. The draft document described here will be available on the EPA's website at *https://www.epa.gov/naaqs/ozone-o3-air-quality-standards.* The documents will be accessible under ''Policy Assessments'' for the current review.

FOR FURTHER INFORMATION CONTACT: Leigh Meyer, Office of Air Quality Planning and Standards, (Mail Code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–5587, fax number: 919–541–0237; or email: *meyer.leigh@epa.gov,* or Mary Hutson, Office of Air Quality Planning and Standards, (Mail Code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–0715, fax number: 919–541–0237; or email: *hutson.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2018–0279, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), 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). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

II. Information About the Documents

Two sections of the Clean Air Act (CAA or the Act) govern the establishment and revision of the NAAQS. Section 108 directs the Administrator to identify and list certain air pollutants and then issue ''air quality criteria'' for those pollutants. The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air . . .'' (CAA section 108(a)(2)). Under section 109 of the Act, the EPA is then to establish primary (health-based) and secondary (welfare-based) NAAQS for each pollutant for which the EPA has issued air quality criteria. Section 109(d)(1) of the Act requires periodic review and, if appropriate, revision of existing air quality criteria. Revised air quality criteria are to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. Under the same provision, the EPA is also to periodically review and, if appropriate, revise the NAAQS, based on the revised air quality criteria.

The Act additionally requires appointment of an independent scientific review committee that is to periodically review the existing air quality criteria and NAAQS and to recommend any new standards and revisions of existing criteria and standards as may be appropriate (CAA section 109(d)(2)(A)–(B)). Since the early 1980s, the requirement for an independent scientific review committee has been fulfilled by the Clean Air Scientific Advisory Committee (CASAC).

In December 2020, the EPA announced its decision to retain the primary and secondary O_3 standards, without revision (85 FR 87256, December 31, 2020). On October 29, 2021, the Agency announced its decision to reconsider the 2020 O_3 NAAQS final action.[1] In its announcement of the reconsideration, the Agency explained that it would reconsider the 2020 decision to retain 2015 standards based on the existing scientific record. In support of the reconsideration, the EPA is developing an updated PA. The PA, when final, serves to ''bridge the gap'' between the scientific and technical information in the 2020 ISA and any air quality, exposure and risk analyses available in the reconsideration, and the judgements required of the Administrator.

In April 2022, the EPA made available to the public and to the CASAC Ozone Review Panel a prior version of this draft PA. After receiving a briefing from the EPA on the draft document (87 FR 19501, April 4, 2022), the Panel issued a memo indicating that the Panel would pause its review to deliberate on whether a fuller discussion of the science was needed prior to its review of the draft PA.[2] Following that deliberation, the Panel engaged in a fuller discussion of the scientific information at a number of public meetings (87 FR 41309, July 12, 2022; 87 FR 60394, October 5, 2022). Based on this discussion, the CASAC determined ''that the existing scientific evidence summarized in the 2020 ISA provides a scientifically sound foundation for the Agency's reconsideration of the 2020 Ozone NAAQS decision'' and that it was not recommending that the 2020 ISA be reopened or revised.[3] The CASAC's letter to the Agency regarding its review of the 2020 ISA included comments that referenced the PA. Consideration of those comments led to the development of this second version of the draft PA for the reconsideration, which is announced in this notice of availability. The draft PA largely builds upon the information presented in the 2020 ISA, the 2020 PA and additional analyses that informed the 2020 decision. This draft PA will be available on or about March 1, 2023, on the EPA's website at *https://www.epa.gov/naaqs/ozone-o3-air-quality-standards.* The EPA is soliciting advice and recommendations from the CASAC by means of a review of this draft document in an upcoming public meeting of the CASAC. Information about this public meeting, including the dates and location, was published as a separate notice in the **Federal Register** on February 13, 2023 (88 FR 9275). Following the CASAC meeting, the EPA will consider comments received from the CASAC and the public in preparing the final PA.

The draft document briefly described above does not represent and should not be construed to represent any final EPA policy, viewpoint, or determination. The EPA will consider any public comments submitted in response to this notice when revising the document.

Panagiotis Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2023–05237 Filed 3–14–23; 8:45 am]

BILLING CODE 6560–50–P

[1] The press release for this announcement is available at *https://www.epa.gov/ground-level-ozone-pollution/epa-reconsider-previous-administrations-decision-retain-2015-ozone.*

[2] May 13, 2022, letter from Elizabeth A. Sheppard, Chair, Clean Air Scientific Advisory Committee, to CASAC Ozone Review Panel Members. Re: CASAC Ozone Review Panel Meeting. Available at: *https://casac.epa.gov/ords/sab/f?p=105:19:17341438189034:::19:P19_ID:972#materials.*

[3] November 22, 2022, letter from Elizabeth A. Sheppard, Chair, Clean Air Scientific Advisory Committee, to Administrator Michael S. Regan. Re: CASAC Review of the EPA's Integrated Science Assessment (ISA) for Ozone and Related Photochemical Oxidants (Final Report—April 2020). EPA–CASAC–23–001. Available at: *https://casac.epa.gov/ords/sab/f?p=105:18:8476900499267:::RP,18:P18_ID:2614.*

GENERAL SERVICES ADMINISTRATION

48 CFR Part 538

[GSAR Case 2022–G514; Docket No. GSA–GSAR–2023–0009; Sequence No. 1]

RIN 3090–AK58

General Services Administration Acquisition Regulation; Standardizing Federal Supply Schedule Clause and Provision Prescriptions

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

ACTION: Proposed rule.

SUMMARY: The General Services Administration is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to clarify when GSAR clauses apply to Federal Supply Schedule contracts.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before May 15, 2023 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to GSAR Case 2022–G514 to: *https://www.regulations.gov* via the Federal eRulemaking portal by searching for ''GSAR Case 2022–G514''. Select the link ''Comment Now'' that corresponds with GSAR Case 2022–G514. Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''GSAR Case 2022–G514'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or

email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite GSAR Case 2022–G514, in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Adina Torberntsson, Procurement Analyst, at *gsarpolicy@gsa.gov* or (720) 475–0568. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at *gsaregsec@gsa.gov* or 202–501–4755. Please cite GSAR Case 2022–G514.

SUPPLEMENTARY INFORMATION:

I. Background

The General Services Administration (GSA) conducts routine reviews of its acquisition regulations. Routine review of the GSAR, as well as feedback from GSA's operational offices, prompted this change. The review indicated a need for improved communication to address when the GSAR clauses apply to Federal Supply Schedule contracts established by a delegated agency.

The GSA Schedule, also known as Federal Supply Schedule (FSS), and Multiple Award Schedule (MAS), is a long-term governmentwide contract with commercial companies that provide access to millions of commercial products and services at fair and reasonable prices to the Federal Government. GSA may delegate certain responsibilities to other agencies (*e.g.,* GSA has delegated authority to the Department of Veterans Affairs (VA) to procure medical supplies under the VA Federal Supply Schedules Program).

Such delegation provides the authorized agency autonomy over their resulting contract. The contract is published on the Federal Supply Schedule website, and often looks like every other available FSS contract apart from the naming convention. Contracts administered solely by GSA have a ''GS'' naming convention.

This change will streamline the prescription language. Prescription language is the language that instructs when a clause is to be applied, when establishing a Schedule contract.

II. Discussion and Analysis

This rule proposes to clarify when the GSAR clauses apply to Federal Supply Schedule contracts including those awarded under a GSA delegation. The only current delegation is to the Department of Veteran Affairs (VA). GSA may delegate authority when requested to by an external agency, with the delegation being approved by the Administrator of GSA. Currently the only agency who has such delegation is the Department of Veterans Affairs. In accordance with 40 U.S.C. 121(d), the operation and management of health care related Federal Supply Schedule Contracts pursuant to 40 U.S.C. 501, are currently delegated by GSA to the Department of Veterans Affairs.

FAR 38.000 identifies that the FSS program is owned and managed by GSA. GSA authorizes the VA to award Schedule contracts as described in FAR 38.101(d). Although GSA delegates the VA to create and maintain schedules to assist with their programs, the VA is required to adhere to GSA policy in maintaining these Schedules. This is further described within the authorization letter provided to the VA.

This rule provides streamlined language for the prescription of Federal Supply Schedule clauses at GSAR 538.273. This rule also clarifies the steps that need to be taken if an outside agency wants to deviate from those clauses at GSAR 538.201.

III. Expected Impact of the Rule

GSA believes that the existing GSAR clauses are currently being used correctly. This change will have no impact on the approximately 13,000 FSS contractors already using the existing clauses. The changes do not alter the manner in which the contractors conduct business.

However, there is an identified need to clarify the delegation information, as well as the Federal Supply Schedule prescription language. The proposed changes will only impact delegated Government agencies (currently only VA) to better clarify how the delegation works, how to document the contract file, and how to request a deviation if needed.

IV. Executive Orders 12866 and 13563

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

V. Regulatory Flexibility Act

GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the described changes clarify the language and only slightly modify the current text. The meaning behind the changed text remains the same, and therefore any burden would have been identified previously. However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared consistent with 5 U.S.C. 603. The analysis is summarized as follows:

The objective of the rule is to improve the understanding of delegation and coordination expectations of FSS policies for delegated agencies.

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors. In addition, 41 U.S.C. 152 provides GSA authority over the FSS program.

The rule applies to large and small businesses, which are awarded FSS contracts. Information generated from the System for Award Management (SAM), for Fiscal Year 2022 has been used as the basis for estimating the number of contractors that may be involved. Specifically, FSS contracts for delegated agencies (*i.e.,* Department of Veteran Affairs) were analyzed. Examination of this data revealed 1,700 applicable FSS contracts were awarded. Of these 1,700 new awards, 1,417 (83 percent) contract awards were to small business entities.

The rule does not change reporting, recordkeeping, or other compliance requirements for FSS contracts. The rule merely clarifies requirements currently in use in FSS solicitations and contracts, and does not implement new or changed requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives to this rule which would accomplish the stated objectives. This rule does not initiate or impose any new administrative or performance requirements on small business contractors because the policies are already being followed. The rule merely clarifies language in the GSAR to make it more accessible to the reader by removing references to outdated clauses or excessive language.

The Regulatory Secretariat Division will be submitting a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. GSA

invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (GSAR Case 2022–G514) in correspondence.

VI. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 538

Government procurement.

Jeffrey A. Koses,

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

Therefore, GSA proposes to amend 48 CFR part 538 as set forth below:

■ 1. The authority citation for 48 CFR part 538 continues to read as follows:

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

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

■ 2. Add sections 538.000 and 538.001 to read as follows:

538.000 Scope of part.

(a) This part prescribes policies and procedures for contracting for supplies and services under the Federal Supply Schedule (FSS) program. GSA may delegate certain responsibilities for other agency acquisition programs as they relate to the establishment of individual federal supply schedules.

(b) The authority of other agencies to award FSS contracts can only be accomplished through delegation from GSA. An agency delegated authority by GSA to award contracts under the FSS program is responsible for complying with GSA regulations and policies that apply to the FSS program, unless an exception is approved by GSA (see 538.001).

538.001 General.

If a policy, regulation, or clause is identified as not applicable or in conflict to what is delegated by GSA, the delegated agency shall submit a determination and finding supporting the rationale as to why it does not apply, or is in conflict, in accordance with the delegation that was already received from GSA. The determination and finding must be approved by the GSA Senior Procurement Executive, the FAS Commissioner of the Federal Acquisition Service (FAS) or a designee.

■ 3. Revise section 538.273 to read as follows:

538.273 FSS solicitation provisions and contract clauses.

The following clauses and provisions apply to FSS solicitations and contracts, unless otherwise excepted (see 538.001) or as otherwise stated below. For example, if only used in solicitations, the prescription will clearly state this. If the language does not specify ''solicitations'' then the clause applies to both FSS solicitations and contracts.

(a) Insert the following provisions in FSS solicitations:

(1) 552.238–70, Cover Page for Worldwide Federal Supply Schedules. Use in all FSS solicitations.

(2) 552.238–71, Notice of Total Small Business Set-Aside. Use in FSS solicitations containing special item numbers (SINs) that are set aside for small business.

(3) 552.238–72, Information Collection Requirements. Use in all FSS solicitations.

(b) Insert the following clauses and provisions in FSS solicitations and contracts as an addendum to FAR 52.212–1, Instructions to Offerors—Commercial Products and Commercial Services:

(1) 552.238–73, Identification of Electronic Office Equipment Providing Accessibility for Individuals with Disabilities.

(2) 552.238–74, Introduction of New Supplies/Services (INSS). Only for those solicitations allowing the introduction of new supplies/services. Note: GSA Form 1649, Notification of Federal Supply Schedule Improvement, may be required if revising a Special Item Number (SIN).

(c) Insert the following provisions in FSS solicitations as an addendum to FAR 52.212–2, Evaluation—Commercial Products and Commercial Services:

(1) 552.238–75, Evaluation—Commercial Products and Commercial Services (Federal Supply Schedule).

(2) 552.238–76, Use of Non-Government Employees to Review Offers. Use only in FSS solicitations when non-government employees may be utilized to review solicitation responses.

(d) Insert the following clauses in FSS solicitations and contracts as an addendum to FAR 52.212–4, Contract Terms and Conditions—Commercial Products and Commercial Services:

(1) 552.238–77, Submission and Distribution of Authorized Federal Supply Schedule Price Lists.

(2) 552.238–78, Identification of Products that have Environmental Attributes. Use only in solicitations and contracts that contemplate products with environmental attributes.

(3) 552.238–79, Cancellation.

(4) 552.238–80, Industrial Funding Fee and Sales Reporting. Use Alternate I for FSS with Transactional Data Reporting requirements.

(5) 552.238–81, Price Reductions. Use Alternate I for FSS with Transactional Data Reporting requirements.

(6) 552.238–82, Modifications (Federal Supply Schedules).

(i) Use Alternate I for FSS that only accept eMod.

(ii) Use Alternate II for FSS with Transactional Data Reporting requirements.

(7) 552.238–83, Examination of Records by GSA (Federal Supply Schedules).

(8) 552.238–84, Discounts for Prompt Payment.

(9) 552.238–85, Contractor's Billing Responsibilities.

(10) 552.238–86, Delivery Schedule. Use only for supplies.

(11) 552.238–87, Delivery Prices.

(12) 552.238–88, GSA Advantage!®. This clause is not required for the Department of Veterans Affairs Federal Supply Schedules.

(13) 552.238–89, Deliveries to the U.S. Postal Service. Use only for mailable articles when delivery to a U.S. Postal Service (USPS) facility is contemplated.

(14) 552.238–90, Characteristics of Electric Current. Use only when the supply of equipment which uses electrical current is contemplated.

(15) 552.238–91, Marking and Documentation Requirements for Shipping. Use only for supplies when the need for outlining the minimum information and documentation required for shipping is contemplated.

(16) 552.238–92, Vendor Managed Inventory (VMI) Program. Use only for supplies when a VMI Program is contemplated.

(17) 552.238–93, Order Acknowledgement. Use only for supplies.

(18) 552.238–94, Accelerated Delivery Requirements. Use only for supplies.

(19) 552.238–95, Separate Charge for Performance Oriented Packaging (POP). Use only for products defined as hazardous under Federal Standard No. 313.

(20) 552.238–96, Separate Charge for Delivery within Consignee's Premises. Use only for supplies when allowing offerors to propose separate charges for deliveries within the consignee's premises.

(21) 552.238–97, Parts and Service.

(22) 552.238–98, Clauses for Overseas Coverage. Use only when overseas acquisition is contemplated. Choose the most appropriate clause(s) to the contract scenario. For example there are multiple free on board (F.o.b.) clauses. Select those that apply best to what is being procured. The following clauses and provisions shall also be inserted in full text, when applicable.

(i) FAR 52.214–34 Submission of Offers in the English Language.

(ii) FAR 52.214–35 Submission of Offers in U.S. Currency.

(iii) 552.238–90 Characteristics of Electric Current.

(iv) 552.238–91 Marking and Documentation Requirements for Shipping.

(v) 552.238–97 Parts and Service.

(vi) 552.238–99 Delivery Prices Overseas.

(vii) 552.238–100 Transshipments.

(viii) 552.238–101 Foreign Taxes and Duties.

(ix) FAR 52.247–29 F.o.b Origin.

(x) FAR 52.247–34 F.o.b. Destination.

(xi) FAR 52.247–48 F.o.b. Destination-Evidence of Shipment.

(23) 552.238–99, Delivery Prices Overseas. Use only when overseas acquisition is contemplated.

(24) 552.238–100, Transshipments. Use only when overseas acquisition is contemplated.

(25) 552.238–101, Foreign Taxes and Duties. Use only when overseas acquisition is contemplated.

(26) 552.238–102, English Language and U.S. Dollar Requirements.

(27) 552.238–103, Electronic Commerce. This clause is not required for Department of Veterans Affairs Federal Supply Schedules.

(28) 552.238–104, Dissemination of Information by Contractor.

(29) 552.238–105, Deliveries Beyond the Contractual Period-Placing of Orders.

(30) 552.238–106, Interpretation of Contract Requirements.

(31) 552.238–107, Export Traffic Release (Supplies). Use in FSS solicitations and contracts for supplies. This clause is not required for vehicles.

(32) 552.238–108, Spare Parts Kit. Use only for products requiring spare part kits. This information is to be specified at the order level.

(33) 552.238–109, Authentication Supplies and Services. Use only for information technology associated with the Homeland Security Presidential Directive 12 (HSPD–12).

(34) 552.238–110, Commercial Satellite Communication (COMSATCOM) Services. Use only for COMSATCOM services.

(35) 552.238–111, Environmental Protection Agency Registration Requirement. Use only when products may require registration with the Environmental Protection Agency.

(36) 552.238–116, Option to Extend the Term of the FSS Contract. Use when appropriate.

(e) Insert the following fill-in information within the blank of paragraph (d) of FAR clause 52.216–22, Indefinite Quantity: ''the completion of customer order, including options, 60 months following the expiration of the FSS contract ordering period''.

[FR Doc. 2023–04733 Filed 3–14–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 230309–0071; RTID 0648–XC579]

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Approval of 2023 and 2024 Sector Operations Plans and Allocation of 2023 Northeast Multispecies Annual Catch Entitlements

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

ACTION: Proposed rule; request for comments.

SUMMARY: We propose to approve sector operations plans and contracts, grant regulatory exemptions for fishing years 2023 and 2024, and propose Northeast multispecies allocations of annual catch entitlements to approved groundfish sectors for fishing year 2023. Approval of sector operations plans and contracts is necessary for sectors to operate and receive allocations of annual catch entitlements. This action is intended to allow limited access permit holders to continue to operate or form sectors, as authorized under the Northeast Multispecies Fishery Management Plan, and to exempt sectors from certain effort control regulations to improve the efficiency and economics of sector vessels.

DATES: Comments must be received on or before March 30, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0009 by the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2023–0009 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

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

Copies of each sector's operations plan and contract from fishing years 2021–2022; the Sector Operations Plan Guide for Fishing Years 2023–2024, which includes NMFS recommended changes for final sector operations plans for fishing years 2023–2024, as well as the programmatic environmental assessment for sectors operations in fishing years 2015 to 2020; and other supporting documents are available from the NMFS Greater Atlantic Regional Fisheries Office (GARFO): Contact Samantha Tolken at *Samantha.Tolken@noaa.gov.* These documents are also accessible via the Federal eRulemaking Portal: *http://www.regulations.gov.*

To review **Federal Register** documents referenced in this rule, you can visit: *https://www.fisheries.noaa.gov/management-plan/northeast-multispecies-management-plan.*

FOR FURTHER INFORMATION CONTACT: Samantha Tolken, Fishery Management Specialist, (978) 675–2176.

SUPPLEMENTARY INFORMATION:

Background

The Northeast Multispecies Fishery Management Plan (FMP) defines a sector as ''a group of persons holding limited access Northeast multispecies permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [sic] in order to achieve objectives consistent with applicable FMP goals and objectives.'' A sector must be comprised of at least three Northeast multispecies permits issued to at least three different persons, none

of whom have any common ownership interest in the permits, vessels, or businesses associated with the permits issued to the other two or more persons in that sector. As long as at least three persons issued a Northeast multispecies permit meet these requirements, permit owners may have common ownership interests in other permits, vessels, or businesses associated with such permits. Sectors are self-selecting, meaning participation is voluntary, and each sector can choose its members.

The Northeast multispecies sector management system annually allocates a portion of the Northeast multispecies stocks to each approved sector. These annual sector allocations are known as annual catch entitlements (ACE) and are based on the collective fishing history of a sector's members. Sectors may receive allocations of large-mesh Northeast multispecies stocks with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and ocean pout, which are non-allocated species managed under separate effort controls. ACEs are portions of a stock's annual catch limit (ACL) available to commercial Northeast multispecies vessels. A sector determines how to harvest its ACE.

Because sectors elect to receive an allocation under a quota-based system, the FMP grants sector vessels several universal exemptions from the FMP's effort controls. These universal exemptions apply to: Trip limits on allocated stocks; portions of the Gulf of Maine (GOM) Cod Protection Closures; Northeast multispecies days-at-sea (DAS) restrictions; the requirement to use a 6.5-inch (16.5-cm) mesh codend when fishing with selective gear on Georges Bank (GB); and the minimum codend mesh size restrictions for trawl gear when fishing in compliance with the provisions of the Redfish Exemption Program. The FMP allows the Council to add universal exemptions using the framework adjustment procedure. Sectors may request additional exemptions annually as part of their sector operations plans to increase flexibility and fishing opportunities. Sectors are prohibited from requesting exemptions from permitting restrictions, gear restrictions designed to minimize habitat impacts, and most reporting requirements.

In addition to the sectors, there are several state-operated permit banks that each receive an allocation based on the fishing history of permits they hold. The final rule implementing Amendment 17 to the FMP (77 FR 16942; March 23, 2012) allowed a state-operated permit bank to receive an allocation without needing to comply with sector administrative and procedural requirements. Instead, permit banks are required to submit a list of permits to NMFS, as specified in the permit bank's Memorandum of Agreement between NMFS and the state. These permits are not assigned to active vessels; instead, the allocations associated with the permits may be leased to vessels enrolled in sectors. State-operated permit banks contribute to the total allocation under the sector system.

We previously approved 16 sectors to operate in fishing years 2021 and 2022, and also approved 18 requested exemptions for sectors (87 FR 24875; April 27, 2022). Copies of the operations plans and contracts from fishing years 2021–2022, the Sector Operations Plan Guide for Fishing Years 2023–2024, which includes NMFS recommended changes for final sector operations plans for fishing years 2023–2024, the environmental assessment (EA), and other supporting documents are available at: *https://www.fisheries.noaa.gov/species/northeast-multispecies* and from NMFS (see **ADDRESSES**). This action proposes to approve sector operations plans and contracts, and grant regulatory exemptions for fishing years 2023 and 2024. This action also proposes 2023 allocations to the proposed approved sectors based on the specifications proposed by the New England Fishery Management Council in Framework Adjustment 65 to the FMP. NMFS will consider Framework Adjustment 65 in a separate rulemaking.

Operations Plan Submissions and Changes

Annually, we solicit operations plan submissions for consideration for approval. Twenty-two groundfish sectors are approved to receive catch allocations, 16 of which submitted operations plans and were approved to operate, received allocations, and were active in fishing year 2022. Two approved sectors did not submit operations plans in fishing year 2022. Additionally, four states are approved to operate permit banks and two, New Hampshire and Maine, did so in fishing year 2022. We received 16 sector operations plans for approval for fishing years 2023 and 2024, all of which were approved in previous fishing years. We did not receive any new operations plans for approval for fishing year 2023. As a result, we are not proposing to approve any additional sectors to operate in fishing year 2023 beyond those previously approved.

Although no new operations plans were submitted, we did receive several requests to modify existing sector operations plans that we propose to approve. Sectors may request changes to operations plans as needed to implement changes to their operations. Several sectors have requested changes related to at-sea monitoring (ASM) and electronic monitoring (EM), including adding revised NMFS-recommended language for the ASM, audit model EM, and maximized retention EM programs to their existing operations plans. Several sectors have requested changes to the list of previously-approved sector exemptions by removing their sector-specific Redfish exemption, which is now an approved universal sector exemption under Framework Adjustment 61 to the Northeast Multispecies FMP. We propose to approve these changes to existing sector operations plans for fishing years 2023 and 2024. We are publishing the fishing year 2021–2022 operations plans for review with this action, because final operations plans for fishing year 2023–2024 have not yet been submitted. The sectors' initial operations plans for fishing year 2023- 2024 request updates to NMFS-recommended language and minor administrative modifications. Due to the timing of sector operations plans submissions, they do not contain NMFS-recommended language for changes implemented in Northeast Multispecies FMP Amendment 23, however, these changes are expected to be made prior to any approval in a final rule. We are making the Sector Operations Plan Guide for Fishing Years 2023–2024 (2023–2024 Guide) available to the public as a supplemental document for review with this action. The 2023–2024 Guide includes the NMFS-recommended language for inclusion in the final operations plans. The changes in the recommended language comport with Amendment 23 requirements. The initial fishing years 2023–2024 operations plans submitted by sectors do not request substantial changes from fishing years 2021–2022 final operations plans.

Sector Allocations for Fishing Year 2023

This rule proposes 2023 ACE allocations to all sectors based on their 2022 sector rosters and the Council-recommended 2023 ACL for each stock in Framework Adjustment 65 to the Northeast Multispecies FMP. Framework Adjustment 65 is subject to Regional Administrator review and public comment separate from this rulemaking. If approved, NMFS expects to implement Framework Adjustment 65 and the 2023 ACLs early in the 2023 fishing year. If Framework Adjustment 65 is not implemented by May 1, 2023, we would allocate ACE based on default

specifications and catch limits set by Framework Adjustments 61 and 63.

Sectors have not yet submitted 2023 sector rosters. Therefore, the 2022 sector rosters are the best available information to provide industry with ACE allocation estimates at this time. For fishing year 2023, the deadline for sectors to submit preliminary sector rosters for fishing year 2023 is three weeks after NMFS's announcement of the ASM coverage target, which we expect to announce sometime in March. Sectors may set a more restrictive enrollment deadline for their members. NMFS will use preliminary 2023 roster submissions to establish rosters and allocations in the final rule for this action. Any changes in sector rosters will be reflected in ACE allocations in the final rule. Roster changes may result in significant changes in sector allocations, but we note that significant changes have not typically occurred from year to year. Rosters published in the final rule may still not reflect the final ACE allocation for fishing year 2023 because all permits enrolled in a sector, and the vessels associated with those permits, have until April 30, 2023, to withdraw from a sector and fish in the common pool for fishing year 2023. Any changes to sector rosters after the final rule has published are expected to be minor and are not expected to lead to substantial changes in allocations.

We calculate the sector's allocation for each stock by summing its members' potential sector contributions (PSC) for a stock and then multiplying that total percentage by the available commercial sub-ACL for that stock. Table 1 shows the preliminary projected total PSC for each sector, by stock, for fishing year 2023. Tables 2 and 3 show estimates of the preliminary allocations that each sector will be allocated, in pounds and metric tons, respectively, for fishing year 2023, based on their fishing year 2022 rosters. We provide the final allocations, to the nearest pound, to each sector based on their final May 1 rosters. We use these final allocations, along with later adjustments including ACE transfers, reductions for overages, or increases for carryover, to monitor sector catch. The common pool sub-ACLs are also included in each of these tables. The common pool sub-ACLs are managed separately from sectors and do not contribute to available ACE for leasing or harvest by sector vessels.

We do not assign a permit separate PSCs for the Eastern GB cod or Eastern GB haddock; instead, we assign each permit a PSC for the GB cod stock and GB haddock stock. Each sector's GB cod and GB haddock allocations are then divided into an Eastern ACE and a Western ACE, based on each sector's percentage of the GB cod and GB haddock ACLs. For example, if a sector is allocated 4 percent of the GB cod ACL, the sector is allocated 4 percent of the commercial Eastern U.S./Canada Area GB cod total allowable catch (TAC) as its Eastern GB cod. The Eastern GB haddock allocations are determined in the same way. These amounts are then subtracted from the sector's overall GB cod and haddock allocations to determine its Western GB cod and haddock ACEs. A sector may only harvest its Eastern GB cod and haddock ACEs in the Eastern U.S./Canada Area. A sector may also ''convert,'' or transfer, its Eastern GB cod or haddock allocation into Western GB allocation and fish that converted ACE outside the Eastern GB area.

We expect to finalize 2022 catch information for sectors in summer 2023. If there are fishing year 2022 overages, we will allow sectors to trade fishing year 2022 ACE for 2 weeks upon our completion of year-end catch accounting to reduce or eliminate any fishing year 2022 overages. If necessary, we will reduce any sector's fishing year 2023 allocation to account for a remaining overage in fishing year 2022. Each year we notify the Council and sector managers of this deadline and announce this decision on our website at: *https://www.fisheries.noaa.gov/species/northeast-multispecies.*

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Table 1 -- Cumulative PSC (Percentage) Each Sector Would Receive by Stock for Fishing Year 2023*

Sector Name	MRI Count	GB Cod	GOM Cod	GB Haddock	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
Fixed Gear Sector	64	11.57437434	0.70089617	1.55519582	0.18102677	0.01097362	0.19081548	1.71017673	0.50290396	1.09923355	0.02017438	8.03466759	0.99095592	0.53639676	1.04444409	3.10432913
Maine Coast Community Sector	108	2.15981094	15.96272261	3.05040299	12.26623521	1.65881234	2.43176803	6.42304059	15.55482796	12.32711923	0.75080575	7.96502545	1.83038959	8.91076473	13.77820055	12.62891583
Maine Permit Bank	11	0.13420443	1.15723293	0.04447830	1.12476158	0.01383913	0.03193513	0.31910182	1.16557943	0.72761271	0.00021871	0.42712661	0.01808815	0.82192224	1.65450461	1.69560998
Mooncusser Sector	48	12.01246812	6.23497319	3.84352772	3.68933703	1.22858724	0.85891785	3.02327800	0.85900641	1.81413333	0.95225711	2.85065686	2.47136026	4.74544471	10.66355140	10.53173805
NEFS 1	0	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
NEFS 2	113	6.42201775	23.91782213	10.59877827	20.60072774	1.63512775	1.23146092	22.74113334	9.56948964	12.91933231	3.21922867	21.70754111	4.09675919	14.90208675	8.16040158	13.76997503
NEFS 3	0	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
NEFS 4	58	7.43563310	11.16605718	5.83717898	8.87641414	2.17153621	2.27336558	6.41190111	9.52747738	8.86565245	0.69751694	7.43888383	1.00213039	6.67306380	8.27041162	6.86770790
NEFS 5	20	0.47560552	0.32230808	0.81001507	0.11416047	1.26971817	17.64422540	0.95098526	0.43624697	0.61815715	0.43005854	0.84495369	10.42838830	0.01835670	0.09207645	0.04502427
NEFS 6	23	3.12782423	2.92650355	3.59851426	4.39743319	3.31836153	5.13539140	4.19995133	4.55719164	6.01292714	1.73420349	4.75759934	1.92732147	6.81096482	4.52319801	3.66608439
NEFS 7	8	0.46511153	0.02295198	0.39870508	0.01682869	1.30597646	1.04216498	0.05141221	0.25101541	0.25426560	0.30404575	0.05435503	0.19115862	0.15784343	0.07885382	0.18131273
NEFS 8	53	10.13299723	2.49983686	9.79484471	5.66831751	22.77507456	7.59008019	6.97195047	7.82492823	6.62788366	30.20976493	3.97159976	10.28725145	5.67756224	4.75673535	4.17257288
NEFS 9	0	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
NEFS 10	30	0.53019689	2.61458523	0.17733240	1.32984406	0.00115364	0.56810314	4.45627686	1.21947025	2.12396902	0.01090896	9.43507929	0.61343625	0.33681854	0.65808782	0.77242016
NEFS 11	42	0.39805525	11.34830591	0.03480859	2.78497443	0.00149043	0.00955308	2.28711030	1.56460487	1.55723626	0.00308144	2.00460513	0.02143804	1.87817602	4.30447165	8.77105183
NEFS 12	21	0.63215855	3.12919672	0.09107804	1.08979160	0.00043163	0.03437315	8.61359418	0.79827496	0.62437747	0.00044212	10.30223232	0.26160710	0.22794467	0.29619013	0.77836927
NEFS 13	69	12.54290661	0.64374598	21.32289563	0.90390551	36.46192362	24.12518771	6.45002441	8.56341139	9.05151733	19.52786616	1.78331523	17.60715282	4.39852834	2.22895185	2.68258729
New Hampshire Permit Bank	4	0.00082581	1.14746151	0.00003417	0.03235447	0.00002035	0.00001795	0.02188704	0.02851462	0.00616587	0.00000326	0.06077592	0.00003670	0.01940283	0.08137015	0.11138837
Sustainable Harvest Sector 1	41	7.37399596	4.75721282	9.58374023	13.21279184	5.57672392	1.93185297	4.91323377	13.86812558	12.08322143	11.57749726	3.37733183	5.81877850	13.83149559	16.57067620	10.19928896
Sustainable Harvest Sector 2	28	5.06336818	1.50908222	2.14763455	1.43830630	5.11110904	4.57576219	5.67509896	2.50453932	2.24113631	8.73243092	4.19271236	8.46085022	1.11393369	1.66621635	1.45140966
Sustainable Harvest Sector 3	59	16.93732864	6.67798255	25.77220574	20.27554749	14.34082650	8.34577346	10.26110959	18.77191045	18.02199479	19.68751795	3.10984537	20.76120966	27.89687122	20.16078203	17.75892150
Common Pool	487	2.58111692	3.26112237	1.33562945	1.99724198	3.11831389	21.97925140	4.51573373	2.43248153	3.02406440	2.14197767	7.68169328	13.21168739	1.04242293	1.01087634	0.81129276
All Sectors	800	97.42	96.74	98.66	98.00	96.88	78.02	95.48	97.57	96.98	97.86	92.32	86.79	98.96	98.99	99.19

* This table is based on fishing year 2022 sector rosters and will be based on preliminary 2023 sector rosters in the final rule.

Table 2 -- Estimated ACE (in 1,000 lb), by Stock, for Each Sector for Fishing Year 2023*#^

Sector Name	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	34	61	4	52	328	5	0	0	37	59	28	1	108	10	112	40	898
MCCS	6	11	98	102	643	311	3	2	139	1,838	311	27	107	18	1,860	527	3,654
MPB	0	1	7	1	9	28	0	0	7	138	18	0	6	0	172	63	491
Mooneusser	36	64	38	129	810	93	2	1	66	102	46	34	38	24	991	408	3,047
NEFS 2	19	34	147	355	2,234	522	3	1	494	1,131	326	116	291	40	3,111	312	3,984
NEFS 4	22	39	68	196	1,230	225	4	2	139	1,126	224	25	100	10	1,393	316	1,987
NEFS 5	1	3	2	27	171	3	2	13	21	52	16	15	11	101	4	4	13
NEFS 6	9	17	18	121	758	111	6	4	91	539	152	62	64	19	1,422	173	1,061
NEFS 7	1	2	0	13	84	0	2	1	1	30	6	11	1	2	33	3	52
NEFS 8	30	54	15	328	2,064	144	42	6	151	925	167	1,089	53	100	1,185	182	1,207
NEFS 10	2	3	16	6	37	34	0	0	97	144	54	0	126	6	70	25	223
NEFS 11	1	2	70	1	7	71	0	0	50	185	39	0	27	0	392	165	2,538
NEFS 12	2	3	19	3	20	28	0	0	187	94	16	0	138	3	48	11	225
NEFS 13	37	66	4	715	4,494	23	68	18	140	1,012	229	704	24	171	918	85	776
NIPB	0	0	7	0	0	1	0	0	0	3	0	0	1	0	4	3	32
SHS 1	22	39	29	321	2,020	335	10	1	107	1,639	305	417	45	57	2,887	634	2,951
SHS 2	15	27	9	72	453	36	9	3	123	296	57	315	56	82	233	64	420
SHS 3	50	90	41	864	5,432	513	27	6	223	2,218	455	709	42	202	5,823	771	5,138
Common Pool	8	14	20	45	281	51	6	16	98	287	76	77	103	128	218	39	235
Sector Total	290	515	593	3,306	20,794	2,482	180	57	2,074	11,529	2,449	3,526	1,236	843	20,657	3,787	28,699

*This table is based on fishing year 2022 sector rosters and 2023 catch limits recommended by the Council in Framework 65.

#Numbers are rounded to the nearest thousand pounds. In some cases, this table shows an allocation of 0, but that sector may be allocated a small amount of that stock in tens or hundreds pounds.

^ The data in the table represent potential allocations for each sector.

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Table 3 -- Estimated ACE (in metric tons), by Stock, for Each Sector for Fishing Year 2023*#^

Sector Name	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	16	28	2	24	149	2	0	0	17	27	13	0	49	4	51	18	407
MCCS	3	5	44	46	292	141	1	1	63	834	141	12	48	8	844	239	1,657
MPB	0	0	3	1	4	13	0	0	3	62	8	0	3	0	78	29	223
Mooncusser	16	29	17	58	367	42	1	0	30	46	21	16	17	11	449	185	1,382
NEFS 2	9	15	67	161	1,013	237	1	0	224	513	148	53	132	18	1,411	142	1,807
NEFS 4	10	18	31	89	558	102	2	1	63	511	102	11	45	4	632	144	901
NEFS 5	1	1	1	12	77	1	1	6	9	23	7	7	5	46	2	2	6
NEFS 6	4	8	8	55	344	51	3	2	41	244	69	28	29	8	645	78	481
NEFS 7	1	1	0	6	38	0	1	0	1	13	3	5	0	1	15	1	24
NEFS 8	14	24	7	149	936	65	19	3	69	419	76	494	24	45	538	83	548
NEFS 10	1	1	7	3	17	15	0	0	44	65	24	0	57	3	32	11	101
NEFS 11	1	1	32	1	3	32	0	0	23	84	18	0	12	0	178	75	1,151
NEFS 12	1	2	9	1	9	13	0	0	85	43	7	0	63	1	22	5	102
NEFS 13	17	30	2	324	2,038	10	31	8	64	459	104	319	11	78	416	39	352
NHPB	0	0	3	0	0	0	0	0	0	2	0	0	0	0	2	1	15
SHS 1	10	18	13	146	916	152	5	1	48	743	138	189	21	26	1,310	288	1,339
SHS 2	7	12	4	33	205	17	4	2	56	134	26	143	25	37	105	29	190
SHS 3	23	41	19	392	2,464	233	12	3	101	1,006	206	322	19	91	2,641	350	2,331
Common Pool	3	6	9	20	128	23	3	7	44	130	35	35	47	58	99	18	106
Sector Total	132	234	269	1,500	9,432	1,126	82	26	941	5,230	1,111	1,599	561	382	9,370	1,718	13,018

*This table is based on fishing year 2022 sector rosters and 2023 catch limits recommended by the Council in Framework 65.

#Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 metric tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent potential allocations for each sector.

Exemptions Previously Granted for Fishing Years 2021 and 2022

Previously Granted Exemptions for Fishing Years 2021 and 2022 (1–18)

We propose to grant exemptions from the following requirements for fishing years 2023 and 2024, all of which have been requested and granted in previous years: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) 20-day spawning block out of the fishery required for all vessels; (3) limits on the number of gillnets for Day gillnet vessels outside the GOM; (4) prohibition on a vessel hauling another vessel's gillnet gear; (5) limits on the number of gillnets that may be hauled on GB when fishing under a Northeast multispecies/monkfish DAS; (6) limits on the number of hooks that may be fished; (7) DAS Leasing Program length and horsepower restrictions; (8) prohibition on discarding; (9) gear requirements in the Eastern U.S./Canada Management Area; (10) prohibition on a vessel hauling another vessel's hook gear; (11) the requirement to declare an intent to fish in the Eastern U.S./Canada Special Access Program (SAP) and the Closed Area (CA) II Yellowtail Flounder/Haddock SAP prior to leaving the dock; (12) seasonal restrictions for the Eastern U.S./Canada Haddock SAP; (13) seasonal restrictions for the CA II Yellowtail Flounder/Haddock SAP; (14) sampling exemption; (15) prohibition on combining small-mesh exempted fishery and sector trips in southern New England (SNE); (16) extra-large mesh requirement to target dogfish on trips excluded from at-sea monitoring (ASM) in SNE and Inshore GB; (17) requirement that Handgear A vessels carry a Vessel Monitoring System (VMS) unit when fishing in a single broad stock area; and (18) limits on the number of gillnets for Day gillnet vessels in the GOM. We also approved an exemption from the 6.5-inch (16.5-cm) minimum mesh size requirement for trawl nets to allow a 5.5-inch (14.0-cm) codend on directed redfish trips, however, that exemption was eliminated in 2021 when we approved a new universal sector exemption for redfish as part of Framework Adjustment 61 (86 FR 40353; July 28, 2021). A detailed description of the previously granted exemptions and supporting rationale can be found in the applicable final rules identified in Table 4 below.

TABLE 4—EXEMPTIONS PREVIOUSLY GRANTED FOR FISHING YEARS 2021 AND 2022

Exemptions	Rulemaking	Date of publication	Citation
1–2, 4–9	Fishing Year 2011 Sector Operations Final Rule	April 25, 2011	76 FR 23076.
10–11	Fishing Year 2012 Sector Operations Final Rule	May 2, 2012	77 FR 26129.
12–14	Fishing Year 2013 Sector Operations Interim Final Rule.	May 2, 2013	78 FR 25591.
3, 15	Fishing Years 2015–2016 Sector Operations Final Rule.	May 1, 2015	80 FR 25143.
16	Framework 55 Final Rule	May 2, 2016	81 FR 26412.
17	Amendment 18 Final Rule	April 21, 2017	82 FR 18706.
18	Fishing Year 2018 Sector Operations Final Rule	May 1, 2018	83 FR 18965.

Northeast Multispecies **Federal Register** documents can be found at *http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/multispecies/.*

Exemption Requests in Fishing Year 2023

For fishing year 2023, sectors did not request any novel exemptions.

Classification

NMFS is issuing this rule pursuant to section 305(d) of the Magnuson-Stevens Act. Consistent with MSA section 305(d), this action is necessary to carry out the Northeast Multispecies FMP in accordance with the FMP's implementing regulations. These regulations require NMFS approval of operations plans for sectors to receive their ACE for specific groundfish stocks. The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed action is exempt from review under Executive Order 12866 because it contains no implementing regulations.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

NMFS finds that a 15-day comment period provides a reasonable opportunity for public participation in this action pursuant to Administrative Procedure Act section 553(c) (5 U.S.C. 553(c)), while also ensuring that the final rule is in place for the start of the groundfish fishing year on May 1, 2023. Because sectors would not be approved to operate or receive allocations in this fishery until this final rule is in place, stakeholder and industry groups expect this rule to be implemented prior to May. This is an annual allocation process established under the FMP, and, as such, it does not raise novel concerns for stakeholders. A prolonged comment period and subsequent potential delay in implementation past the start of the 2023 fishing year would be both unnecessary and contrary to the public interest.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed rule would approve sector operations plans for fishing years 2023 and 2024 and allocate ACE to the proposed approved sectors for fishing year 2023 (May 1, 2023, through April 30, 2024). Approved sectors are exempt from certain common pool effort control regulations (such as trip limits and days-at-sea), and instead fish under the sector provisions of the Northeast Multispecies FMP and their sector's harvest rules. As described below, this action is expected to have positive impacts on fishing vessels and permit holders.

For Regulatory Flexibility Act purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts less than $11 million for all its affiliated operations worldwide. The determination of whether the entity is

large or small is based on the average annual revenue for the most recent three years for which data are available (from 2019 through 2021).

To participate in the Northeast Multispecies Sector Program, vessels must possess a limited access multispecies permit and operate as a member of a sector. Therefore, entities holding one or more limited access multispecies permits are the entities that have the potential to be directly impacted by this action. Ownership data collected from permit holders indicates that there are 552 distinct business entities that hold at least one permit impacted by the proposed action. Of these, 544 are categorized as small entities and 8 are categorized as large entities, per NMFS guidelines.

This rule proposes to approve sector operations plans and contracts and grant regulatory exemptions for fishing years 2023 and 2024. This rule also proposes allocations of ACE to approved sectors for fishing year 2023 consistent with the FMP. The approval of sector operations plans for fishing years 2023 and 2024 and allocation of fishing year 2023 ACE to sectors will have a positive impact on all 552 entities (including the 544 small entities), as it will provide additional flexibility afforded by participating in the sector program, rather than fishing under the common pool effort control regulations. Sectors are not required to fish in accordance with requirements in the common pool effort control regulations, such as limits on days-at-sea, trip limits, gear restrictions, and closures intended to control overall fishing mortality, all of which also would be subject to in-season modifications and fishery closures based on industry-wide landings. This additional flexibility is expected to improve the efficiency and economic opportunities of vessels in the sector program.

For the reasons stated above, this proposed rule would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

Dated: March 10, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2023–05283 Filed 3–14–23; 8:45 am]

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Notices

Federal Register
Vol. 88, No. 50
Wednesday, March 15, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notices by the Pacific Northwest Region; Oregon, Washington, and Parts of California

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by the Ranger Districts, Forests and Regional Office of the Pacific Northwest Region to publish legal notices required under Agency regulations. The intended effect of this action is to inform interested members of the public which newspapers the Forest Service will use to publish notices of proposed actions and notices of decision. This will provide the public with constructive notice of Forest Service proposals and decisions, provide information on the procedures to comment, object, or appeal, and establish the date that the Forest Service will use to determine if comments, appeals, or objection were timely.

DATES: Publication of legal notices in the listed newspapers begins on the date of this publication in the **Federal Register**. This list of newspapers will remain in effect until a new list is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sue Dixon, Regional Environmental Coordinator, Pacific Northwest Region, 1220 Southwest Third Avenue, Portland, OR 97204 and by email at *Susan.Dixon@usda.gov* or by phone at 503–808–2276.

SUPPLEMENTARY INFORMATION: The administrative procedures at 36 CFR 218 and 219 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR 218 and 219. In general, the notices will identify: the decision or project by title or subject matter; the name and title of the official making the decision; how to obtain additional information; and where and how to file comments or appeals/objection. The date the notice is published will be used to establish the official date for the beginning of the comment, appeal, or objection period.

Pacific Northwest Regional Office

Regional Forester

Notices for Comment and Decisions and Objections affecting Oregon Forests: ''*The Oregonian*'', Portland, Oregon, for National Forest System lands in the State of Oregon for any projects of Region-wide impact or for any projects affecting more than one National Forest or National Grassland in Oregon.

Notices for Comment and Decisions and Objections affecting Washington Forests: ''*The Seattle Times*'', Seattle, Washington, for National Forest System lands in the State of Washington for any projects of Region-wide impact or for any projects affecting more than one National Forest or National Grassland in Washington.

Columbia River Gorge National Scenic Area

Notices for Comment and Decisions and Objections by the Area Manager/Forest Supervisor are published in: ''*Columbia Gorge News*'', Hood River, Oregon.

Oregon National Forests and Grassland

Deschutes National Forest

Notices for Comments, Decisions, and Objections by Forest Supervisor, Bend/Fort Rock District Ranger, Crescent District Ranger, Redmond Air Center Manager, and Sisters District Ranger are published in: ''*The Bulletin*'', Bend, Oregon.

Fremont-Winema National Forests

Notices for Comments, Decisions, and Objections by Forest Supervisor, Bly District Ranger, Lakeview District Ranger, Paisley District Ranger, Silver Lake District Ranger, Chemult District Ranger, and Chiloquin District Ranger, Klamath District Ranger are published in: ''*Herald and News*'', Klamath Falls, Oregon.

Malheur National Forest

Notices for Comments, Decisions, and Objections by Forest Supervisor, Blue Mountain District Ranger, and Prairie City District Ranger are published in: ''*Blue Mountain Eagle*'', John Day, Oregon.

Notices for Comments, Decisions, and Objections by Emigrant Creek District Ranger are published in: ''*Burns Times Herald*'', Burns, Oregon.

Mt. Hood National Forest

Notices for Comments, Decisions, and Objections by Forest Supervisor, Clackamas River District Ranger, Zigzag District Ranger, Hood River District Ranger, and Barlow District Ranger are published in: ''*The Oregonian*'', Portland, Oregon.

Ochoco National Forest and Crooked River National Grassland

Notices for Comments, Decisions, and Objections by Forest Supervisor, Crooked River National Grassland Area Manager, Lookout Mountain District Ranger, and Paulina District Ranger are published in: ''*The Bulletin*'', Bend, Oregon.

Rogue River-Siskiyou National Forests

Notices for Comments, Decisions, and Objections by Forest Supervisor, High Cascades District Ranger, J. Herbert Stone Nursery Manager, Siskiyou Mountains District Ranger, and Wild Rivers District Ranger are published in: ''*Grants Pass Daily Courier*'', Grants Pass, Oregon.

Notices for Comments, Decisions, and Objections by Gold Beach District Ranger are published in: ''*Curry County Reporter*'', Gold Beach, Oregon.

Notices for Comments, Decisions, and Objections by Powers District Ranger are published in: ''*The World*'', Coos Bay, Oregon.

Siuslaw National Forest

Notices for Comments, Decisions, and Objections by Forest Supervisor are published in: ''*Corvallis Gazette-Times*'', Corvallis, Oregon.

Notices for Comments, Decisions, and Objections by Central Coast Ranger—Oregon Dunes National Recreation Area District Ranger are published in: ''*The Register-Guard*'', Eugene, Oregon.

Notices for Comments, Decisions, and Objections by Hebo District Ranger are published in: ''*Tillamook Headlight Herald*'', Tillamook, Oregon.

Umatilla National Forest

Notices for Comments, Decisions, and Objections by Forest Supervisor, North Fork John Day District Ranger, Heppner District Ranger, Pomeroy District Ranger, and Walla Walla District Ranger are published in: ''*East Oregonian*'', Pendleton, Oregon.

Umpqua National Forest

Notices for Comments, Decisions, and Objections by Forest Supervisor, Cottage Grove District Ranger, Diamond Lake District Ranger, North Umpqua District Ranger, Tiller District Ranger, and Dorena Genetic Resource Center Manager are published in: ''*The News-Review*'', Roseburg, Oregon.

Wallowa-Whitman National Forest

Notices for Comments, Decisions, and Objections by Forest Supervisor, Whitman District Ranger are published in: ''*Baker City Herald*'', Baker City, Oregon

Notices for Comments, Decisions, and Objections by La Grande District Ranger are published in: ''*The Observer*'', La Grande, Oregon.

Notices for Comments, Decisions, and Objections by Hells Canyon National Recreation Area Manager, Eagle Cap District Ranger, and Wallowa Valley District Ranger are published in: ''*Wallowa County Chieftain*'', Enterprise, Oregon.

Willamette National Forest

Notices for Comments, Decisions, and Objections by Forest Supervisor, Middle Fork District Ranger, McKenzie River District Ranger, and Sweet Home District Ranger are published in: ''*The Register-Guard*'', Eugene, Oregon.

Notices for Comments, Decisions, and Objections by Detroit District Ranger are published in: ''*Statesman Journal*'', Salem, Oregon.

Washington National Forests

Colville National Forest

Notices for Comments, Decisions, and Objections by Forest Supervisor and Three Rivers District Ranger are published in: ''*Statesman-Examiner*'', Colville, Washington.

Notices for Comments, Decisions, and Objections by Tonasket Ranger District Ranger are published in: ''*The Omak-Okanogan County Chronicle*'', Omack, WA.

Notices for Comments, Decisions, and Objections by Sullivan Lake District Ranger and Newport District Ranger are published in: ''*The Newport Miner*'', Newport, Washington.

Notices for Comments, Decisions, and Objections by Republic District Ranger are published in: ''*Ferry County View*'', Republic, Washington.

Gifford Pinchot National Forest

Notices for Comments, Decisions, and Objections by Forest Supervisor, Mount Adams District Ranger, and Mount St. Helens National Volcanic Monument Manager are published in: ''*The Columbian*'', Vancouver, Washington.

Notices for Comments, Decisions, and Objections by Cowlitz Valley District Ranger are published in: ''*The Chronicle*'', Chehalis, Washington.

Mt. Baker-Snoqualmie National Forest

Notices for Comments, Decisions, and Objections by Forest Supervisor, Darrington District Ranger, and Skykomish District Ranger are published in: ''*Everett Herald*'', Everett, Washington.

Notices for Comments, Decisions, and Objections by Mt. Baker District Ranger are published in: ''*Skagit Valley Herald*'', Mt. Vernon, Washington (south half of the district) and ''*Bellingham Herald*'', Bellingham, Washington (north half of the district).

Notices for Comments, Decisions, and Objections by Snoqualmie District Ranger are published in: ''*Snoqualmie Valley Record*'', North Bend, Washington (north half of district) and ''*Enumclaw Courier Herald*'', Enumclaw, Washington (south half of district).

Okanogon-Wenatchee National Forests

Notices for Comments, Decisions, and Objections by Forest Supervisor, Chelan District Ranger, Entiat District Ranger, and Wenatchee River District Ranger are published in: ''*The Wenatchee World*'', Wenatchee, Washington.

Notices for Comments, Decisions, and Objections by Naches District Ranger are published in: ''*Yakima Herald*'', Yakima, Washington.

Notices for Comments, Decisions, and Objections by Methow Valley District Ranger are published in: ''*Methow Valley News*'', Twisp, Washington.

Notices for Comments, Decisions, and Objections by Cle Elum District Ranger are published in: ''*Ellensburg Daily Record*'', Ellensburg, Washington.

Olympic National Forest

Notices for Comments, Decisions, and Objections by Forest Supervisor are published in: ''*The Olympian*'', Olympia, Washington.

Dated: March 9, 2023.

Troy Heithecker,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023–05317 Filed 3–14–23; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Pennsylvania Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a Zoom meeting on Wednesday March 22, 2023 from 12:00 p.m.–1:00 p.m. Eastern time. The purpose of the meeting is for the Committee to discuss the current draft of its upcoming report on fair housing.

DATES: Friday March 22, 2023 from 12 p.m.–1 p.m. Eastern time.

ADDRESSES:

Registration (Audio/Visual): https://www.zoomgov.com/j/1618168476

Telephone (Audio Only): (833) 435–1820 Toll Free; Meeting ID: 161 816 8476

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to these discussions. Committee meetings are available to the public through the above listed online registration link (audio/visual) or teleconference phone line (audio only). An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided. Indivudals with disabilities requiring other accommodations may contact Corrine Sanders at *csanders@usccr.gov* 10 days prior to the meeting to make their request.

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 *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 618–4158.

Records generated from this meeting may be inspected and reproduced 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, Pennsylvania 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 Unit at the above email address.

Agenda

Welcome and Roll Call
Discussion: Draft report: Fair Housing and Zoning Practices in Pennsylvania
Public Comment
Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of report completion timeline.

Dated: March 9, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–05217 Filed 3–14–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the U.S. Virgin Islands Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the U.S. Virgin Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a business meeting via web conference. The purpose of the meeting is to discuss and plan on matters related to the Committee's inaugural civil rights project.

DATES: Thursday, April 6, 2023, from 12 p.m.–1 p.m. AT.

ADDRESSES: The meeting will be held via Zoom.

Meeting Link (Audio/Visual): https://tinyurl.com/yc7yphvc.

Join by Phone (Audio Only): Dial: 1–833–435–1820 USA Toll Free; Meeting ID: 160 993 0227#.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or 1–202–656–8937.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the meeting link or telephone number listed 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. 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. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference details found through the web link above. To request additional accommodations, please email *svillanueva@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at 1–202–769–2843.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, U.S. Virgin Islands 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 email.

Agenda

I. Welcome & Roll Call
II. Discussion: Civil Rights Topic & Briefing Planning
III. Other Business
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: March 9, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–05236 Filed 3–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–21–2023]

Foreign-Trade Zone 28; Application for Subzone Expansion; Acushnet Company; Lakeville, Massachusetts

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of New Bedford, grantee of FTZ 28, requesting an expansion of Subzone 28F on behalf of Acushnet Company (Acushnet), located in Lakeville, Massachusetts. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on March 9, 2023.

Subzone 28F currently consists of the following site: Site 4 (53.1 acres), 333 Bridge Street, Fairhaven. The proposed expansion would add an additional site to the subzone: Proposed Site 6 (18.42 acres), 175–190 Kenneth W. Welch Drive, Lakeville, Plymouth County. No authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Juanita Chen of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is April 24, 2023. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 9, 2023.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov.*

Dated: March 9, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–05272 Filed 3–14–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–50–2022]

Foreign-Trade Zone (FTZ) 196; Authorization of Production Activity; Prairie Industries Holdings, Inc. DBA Truvant; (Construction Toy Sets); Haslet, Texas

On November 10, 2022, Prairie Industries Holdings, Inc. DBA Truvant submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 196, in Haslet, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (87 FR 69251, November 18, 2022). On March 10, 2023, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: March 10, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–05312 Filed 3–14–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–826, A–469–816, A–475–836, A–489–831, A–520–808, A–580–891, A–791–823, A–821–824, A–822–806, A–823–816]

Carbon and Certain Alloy Steel Wire Rod From Belarus, Italy, the Republic of Korea, the Russian Federation, the Republic of South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Final Results of Expedited First Sunset Reviews of Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these expedited sunset reviews, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on carbon and certain alloy steel wire rod (steel wire rod) from Belarus, Italy, the Republic of Korea (Korea), the Russian Federation (Russia), the Republic of South Africa (South Africa), Spain, the Republic of Turkey (Turkey), Ukraine, the United Arab Emirates (UAE), and the United Kingdom would be likely to lead to the continuation or recurrence of dumping at the dumping margins identified in the ''Final Results of Reviews'' section of this notice.

DATES: Applicable March 15, 2023.

FOR FURTHER INFORMATION CONTACT: Macey Mayes, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4473.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2022, Commerce published the notice of initiation of the first sunset reviews of the AD orders on steel wire rod from Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, the UAE, and the United Kingdom pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[1] On December 14 and 15, 2022, Charter Steel, Commercial Metals Company, Liberty Steel USA, Nucor Corporation, and Optimus Steel LLC (collectively, the domestic interested parties), notified Commerce of their intent to participate within the 15-day period specified in 19 CFR 351.218(d)(1)(i).[2] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as producers of the domestic like product in the United States.

Commerce received complete substantive responses to the *Notice of Initiation* with respect to the *Orders* from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[3] Commerce received no substantive responses from respondent interested parties. As a result, pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited (120-day) sunset reviews of the *Orders.*

Scope of the Orders

The scope of the *Orders* is carbon and certain alloy steel wire rod from Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, the UAE, and the United Kingdom. The merchandise subject to the *Orders* is classified in the HTSUS at subheadings: 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093; 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings

[1] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 73757 (December 1, 2022) (*Notice of Initiation*); *see also Carbon and Alloy Steel Wire Rod from Belarus, the Russian Federation, and the United Arab Emirates: Antidumping Duty Orders,* 83 FR 3297 (January 24, 2018), as corrected in *Carbon and Alloy Steel Wire Rod from Belarus, the Russian Federation, and the United Arab Emirates: Notice of Correction to Antidumping Duty Orders,* 83 FR 5402 (February 7, 2018) (correcting one of the Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the scope); *Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, Spain, the Republic of Turkey, and the United Kingdom: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determinations for Spain and the Republic of Turkey,* 83 FR 23417 (May 21, 2018); and *Carbon and Alloy Steel Wire Rod from the Republic of South Africa and Ukraine: Antidumping Duty Orders,* 83 FR 11175 (March 14, 2018) (collectively, *Orders*).

[2] *See* Domestic Interested Parties' Letter, ''Domestic Interested Parties' Notice of Intent to Participate,'' dated December 14, 2022 (Belarus); Domestic Interested Parties' Letter, ''Domestic Interested Parties' Notice of Intent to Participate,'' dated December 15, 2022 (Italy); Domestic Interested Parties' Letter, ''Domestic Interested Parties' Notice of Intent to Participate,'' dated December 15, 2022 (Korea); Domestic Interested Parties' Letter, ''Domestic Interested Parties' Notice of Intent to Participate,'' dated December 14, 2022 (Russia); Domestic Interested Parties' Letter, ''Domestic Interested Parties' Notice of Intent to Participate,'' dated December 14, 2022 (South Africa); Domestic Interested Parties' Letter, ''Domestic Interested Parties' Notice of Intent to Participate,'' dated December 14, 2022 (Spain); Domestic Interested Parties' Letter, ''Domestic Interested Parties' Notice of Intent to Participate,'' dated December 14, 2022 (Turkey); Domestic Interested Parties' Letter, ''Domestic Interested Parties' Notice of Intent to Participate,'' dated December 14, 2022 (Ukraine); Domestic Interested Parties' Letter, ''Domestic Interested Parties' Notice of Intent to Participate,'' dated December 14, 2022 (the UAE); and Domestic Interested Parties' Letter, ''Domestic Interested Parties' Notice of Intent to Participate,'' dated December 15, 2022 (United Kingdom).

[3] *See* Domestic Interested Parties' Letter, ''Domestic Interested Parties' Substantive Response,'' dated December 29, 2022 (Belarus Substantive Response); Domestic Interested Parties' Letter, ''Domestic Interested Parties' Substantive Response,'' dated January 3, 2023 (Italy Substantive Response); Domestic Interested Parties' Letter, ''Domestic Interested Parties' Substantive Response,'' dated December 29, 2022 (Korea Substantive Response); Domestic Interested Parties' Letter, ''Domestic Interested Parties' Substantive Response,'' dated December 29, 2022 (Russia Substantive Response); Domestic Interested Parties' Letter, ''Domestic Interested Parties' Substantive Response,'' dated December 30, 2022 (South Africa Substantive Response); Domestic Interested Parties' Letter, ''Domestic Interested Parties' Substantive Response,'' dated December 30, 2022 (Spain Substantive Response); Domestic Interested Parties' Letter, ''Domestic Interested Parties' Substantive Response,'' dated December 30, 2022 (Turkey Substantive Response); Domestic Interested Parties' Letter, ''Domestic Interested Parties' Substantive Response,'' dated December 30, 2022 (Ukraine Substantive Response); Domestic Interested Parties' Letter, ''Domestic Interested Parties' Substantive Response,'' dated December 29, 2022 (UAE Substantive Response); and Domestic Interested Parties' Letter, ''Domestic Interested Parties' Substantive Response,'' dated December 29, 2022 (United Kingdom Substantive Response).

7213.99.0090 and 7227.90.6090 of the HTSUS also may be included in this scope if they meet the physical description of subject merchandise. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description remains dispositive.

For a full description of the scope of the *Orders, see* the Issues and Decision Memorandum.[4]

Analysis of Comments Received

A complete discussion of all issues raised in these sunset reviews is provided in the Issues and Decision Memorandum, including the likelihood of the continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail if the *Orders* were revoked. A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of the Sunset Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping and that the magnitude of the dumping margins likely to prevail would be up to 280.02 percent for Belarus, 18.89 percent for Italy, 41.10 percent for Korea, 756.93 percent for Russia, 142.26 percent for South Africa, 32.64 percent for Spain, 4.44 percent for Turkey, 44.03 percent for Ukraine, 84.10 percent for the UAE, and 147.63 percent for the United Kingdom.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.221(c)(5)(ii).

Dated: March 8, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–05273 Filed 3–14–23; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders on Carbon and Certain Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, the Republic of South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB988]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Pile Driving Training Exercises at Naval Base Ventura County, Port Hueneme

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the United States Navy (Navy) for authorization to take marine mammals incidental to pile driving training exercises at Naval Base Ventura County, Port Hueneme (NBVC). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1 year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision. The Navy's activities are considered (a) military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act for Fiscal Year 2004 (2004 NDAA).

DATES: Comments and information must be received no later than April 14, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.tyson.moore@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Reny Tyson Moore, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not

intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The 2004 NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as applied to a ''military readiness activity.'' The NDAA also amended the process as it relates to military readiness activities and the incidental take authorization process such that ''least practicable impact'' on such species or stock shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the Secretary shall consult with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. The activity for which incidental take of marine mammals is being requested addressed here qualifies as a military readiness activity. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

NMFS received a request from the U.S. Navy on August 18, 2021, for an IHA to take marine mammals incidental to pile driving training exercises at NBVC. NMFS provided comments on the application and the Navy resubmitted a revised application on May 11, 2022. On May 25, 2022, the Navy notified NMFS of the need to update the application to include additional activities. NMFS received the updated application on October 26, 2022. NMFS provided comments on the updated application and received a revised application from the Navy on December 5, 2022. NMFS provided additional comments on the application on December 8, 2022, and received an update application on January 6, 2023, which was deemed adequate and complete on January 12, 2023. The Navy's request is for take of California sea lions (*Zalophus californius*) and harbor seals (*Phoca vitulina richardii*) by Level B harassment only. Neither the Navy nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The primary mission of NBVC is to provide a home port and to furnish training, administrative, and logistical support for the Naval Construction Battalions. Naval Construction Group ONE (NCG–1) is proposing to execute pile driving training exercises at NBVC that are essential to construction battalion personnel prior to deployment. The proposed work would include vibratory and impact pile driving, temporary pier construction, and subsequent removal of all installed materials. Training would occur at either Wharf 4 or Wharf D. These are military readiness activities, as defined under the National 7 Defense Authorization Act (NDAA) of Fiscal Year 2004 (Pub. L. 108–136).

Up to four training exercises would take place during the proposed authorization period. Each training exercise would last up to 24 days and would include pile installation and removal of a sheet pile wall and round pile pier. The sheet pile wall and pier construction/removal would occur during the same training evolution, but would not occur at the same time. The U.S. Navy is requesting an IHA for Level B harassment of California sea lions and harbor seals related to these activities. Level A harassment is not anticipated or requested. The IHA would be valid for one year after issuance.

Dates and Duration

The total annual days of active in-water pile installation and removal would be 96 days. These days would be spread over four annual training exercises, each of which would include 12 days for in-water pile installation and 12 days for in-water pile removal (*i.e.,* each training exercise would last 24 days). Each workday would occur during daylight hours, and would last approximately eight hours, but pile driving/removal would not occur for the entire eight hours. Due to the availability of resources, requirements by NBVC for port use, and battalion training needs, it is not possible to predict the precise dates of training activities; however, no more than four separate training events would occur over the duration of the proposed 1 year IHA.

Geographic Region

Port Hueneme is located approximately 102 kilometers (km) (55 nautical miles) northeast of Los Angeles. The port is adjacent to the Santa Barbara Channel, between the California coast and the offshore Channel Islands. Port Hueneme does not fall within the Study Area for any other Navy at-sea Environmental Impact Statements/ Overseas Environmental Impact Statements in the region, as it is also north of the Navy's Hawaii-Southern California Training and Testing (HSTT) Study Area, and east of the Navy's Point Mugu Sea Range Study Area.

Port Hueneme Harbor encompasses NBVC Port Hueneme and a commercial port. The entrance channel is 2,300 ft (701 m) long with the narrowest width of the channel entrance at 330 ft (101 m). The average depth of the harbor is 34.5 ft (10.5 m) at Mean Lower Low Water. Port operations comprise

approximately 200 acres at the southern end of NBVC Port Hueneme. The substrate is primarily mud, with occasional rock debris at the base of the inlet jetties. Marine subtidal habitat at NBVC Port Hueneme consists of communities associated with sand, mud, and rock substrates. Shoreline features in the harbor around Wharf 4 and Wharf D include riprap, quay walls, and wharf pilings.

Each training event would occur at either Wharf 4 or Wharf D at NBVC. Wharf 4 contains two potential pile driving sites. The Wharf 4 South site is located directly in front of the Naval Facilities Engineering and Expeditionary Warfare Center Dive Locker, while the Wharf 4 East site is located along the side of the Naval Facilities Engineering and Expeditionary Warfare Center Dive Locker (Figure 1). The Wharf D site is located near the mouth of the harbor (Figure 2). The Wharf 4 locations are open to the majority of the harbor, whereas the Wharf D location is almost entirely self-contained, with only one access point from the channel leading to the harbor itself. No part of the proposed training exercises would occur outside of Port Hueneme Harbor in the Pacific Ocean.

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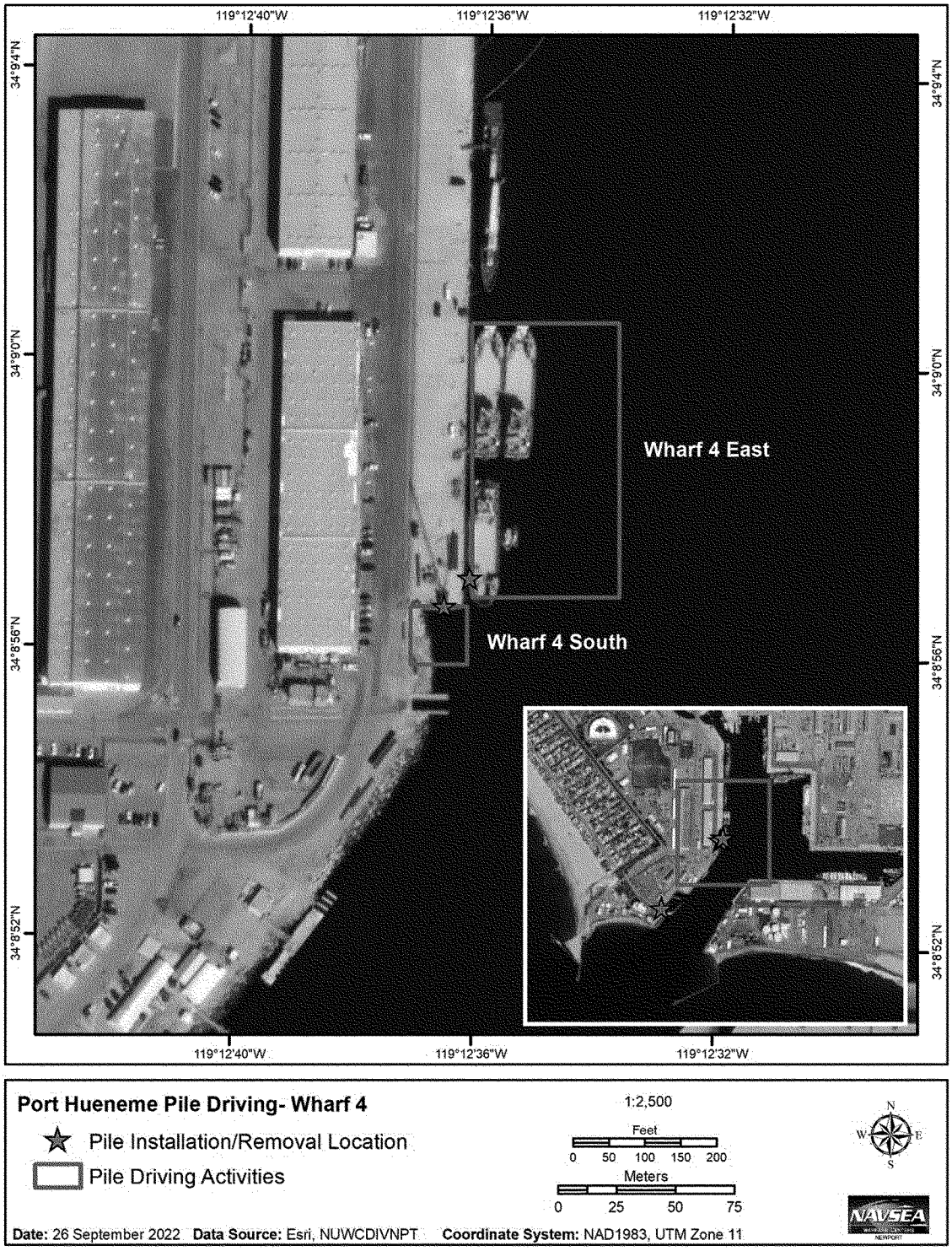

Figure 1. Proposed action area for pile driving exercises at Wharf 4

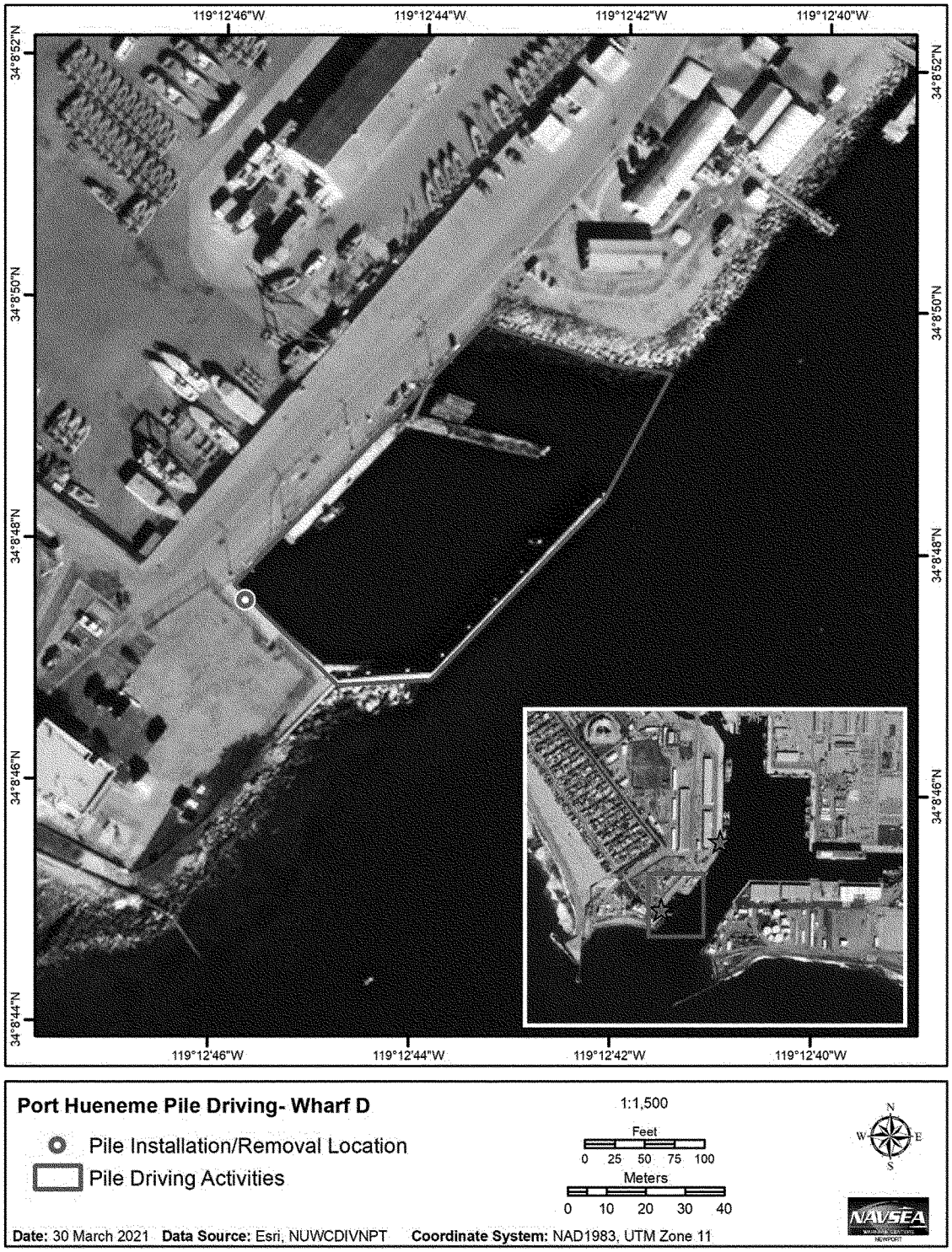

Figure 2. Proposed action area for pile driving exercises at Wharf D

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Detailed Description of Specific Activity

The specific components of each exercise may vary based on the specific training requirements for each battalion, but could include steel sheet pile driving and round pile driving. Therefore, the proposed action laid out herein is based on the components that would result in the most piles being driven through the duration of the exercise. For all pile driving efforts, a 50-ton crane would be placed on either the southernmost or easternmost end of Wharf 4, or along the western wall of Wharf D, and would be used for both installation and removal of the piles. Impact pile driving would use a DELMAG D12–32 (or similar) diesel hammer, while vibratory pile driving would use a vibratory hammer. Various

moveable floats, or potentially a small boat, would be used to provide in-, or near,-water support for the pile installation and/or removal. Only one hammer would be used at any given point in time; there would not be any instances where multiple piles would be driven simultaneously. All piles would be removed using a vibratory hammer.

Steel Sheet Pile Driving

The sheet pile wall would be constructed in one of two ways: either as a continuous wall or as a set of up six sheet piles repeatedly driven in the same location to reach a certain number of piles in a smaller space. In this case, up to six piles would be driven, then all but one removed before the process would begin again.

Steel sheet piles are ''Z'' shaped and made of corrugated steel. Each sheet pile would be 24-inches wide, ¾-inch thick and with a height of 16.14 inches. The total footprint of the disturbed area due to each sheet pile would be approximately 2.7 square feet (ft) (0.25 square meters (m)). Once the first sheet pile is driven, each subsequent sheet pile would be interlocked with the pile next to it. The crane would slide a pile into the locking channel of the adjacent pile, then into the water. Once the undriven pile is stable, the crane would release the pile, swing the vibratory hammer over and attach it to the pile. Vibratory pile driving would be the only means of driving sheet piles. Each pile would be driven to a depth of approximately 30 ft (9 meters (m)) into the seafloor. Installation of each sheet pile would take approximately 1.5 hours to complete, with up to ten minutes of driving during that timeframe. Removal of each sheet pile would take approximately 20 minutes.

Three sheet piles would typically be driven into place during each operating day. Each workday is anticipated to last approximately eight hours, which would include pile driving and supporting pierside activities. Up to 5 days of steel sheet pile installation and 5 days of steel sheet removal would occur per training exercise.

Two 14-inch steel H-beam piles would be driven per exercise in order to support templates for placing steel sheets. These H-beam piles would typically be driven using a vibratory hammer, but there is potential that they could be driven via impact hammer. Installation and removal of the two H-beam piles would take one day, respectively. This exercise is summarized in Table 1.

TABLE 1—SUMMARY OF PILE DETAILS AND ESTIMATED EFFORT REQUIRED FOR PILE INSTALLATION AND REMOVAL

Pile type/shape	Size (inches)	Number of sheets/piles	Vibratory installation/ removal duration per pile/sheet (minutes)	Potential impact strikes per pile, if needed	Production rate (piles/day)		Days of installation	Days of removal
					Installation	Removal		
Steel Sheet	24	15	10/20	NA	3	3	5	5
Timber Pile	16	10	20/30	1,800	2	2	5	5
H-Beam	14	4	20/30	1,800	2	2	2	2
Project Totals		29	7.17 hours/12 hours				12	12

Round Pile Driving

Round timber piles would also be driven using either vibratory or impact pile driving methods. The Navy anticipates that installation and removal of round piles would take 5 days, respectively. Additional details regarding installation and removal rates are included in Table 1.

An example of the type of training exercise using round timber piles is the construction of a round pile pier. The constructed round pile pier would consist of up to ten, but typically six, 16-inch round pier piles spaced approximately 13 ft (4 m) apart and a pre-fabricated pier affixed to the piles above the waterline. After completion of site feasibility and a survey to ensure no obstructions at the seafloor, a guide system would be put in place (approximately 10 to 15 ft [3 to 4.5 m] into the seafloor) in order to ensure piles are driven in the correct location and straight into the seafloor. The guide system would minimize the movement of a pile once the driving has commenced, and would utilize two steel H-beam piles to hold a template place. The piles would be lifted into place using the crane and the pile driver would be used to embed each pile to a depth of 30 to 35 ft (9 to 11 m) into the seafloor. It is expected that each timber pile would take approximately four hours to be installed into the seafloor, and that two piles per day would be installed; therefore, each day of pile installation would last for eight hours. Active pile installation time for each pile would be approximately 20 minutes. H-beam piles would typically be driven using a vibratory hammer, but there is potential that they could be driven via impact hammer. Installation of each H-beam pile is anticipated to take 20 minutes, and up to two H-beam piles would be installed in one day. This exercise is summarized in Table 1.

Once the pile driving is complete, the guide system (*i.e.,* the H–beam piles) would be removed and the U.S. Naval Mobile Construction Battalion personnel (known as Seabees) would build the decking system pier-side on Wharf 4 or Wharf D. The decking system would then be lifted by the crane onto the round piles, and the Seabees would secure the deck to the piles. At this point, the pier installation would be complete, and the decking would be detached from the piles and lifted back to land by the crane. The piles would be removed from the sediment one-by-one with the vibratory hammer and placed onto the wharf. The Navy anticipates each timber pile would take approximately 30 minutes to remove via a vibratory hammer and that up to 2 timber piles would be removed each day. They further anticipate that each H-beam pile would take approximately 30 minutes to remove via a vibratory hammer and that up to 2 H-beam piles would be removed each day.

All piles used for this exercise would be washed thoroughly at the NBVC Wash Rack area, which is a self-contained system that ensures the runoff from pile washing would have no environmental impact. The piles would be staged at the NCG–1 staging yard.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding

population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific SARs (*e.g.,* Carretta *et al.,* 2022). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2021 SARs (Carretta *et al.,* 2022) (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	MMPA stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance Nbest, (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S	-,-, N	257,606 (N.A.; 233,515; 2014)	14,011	>320
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina richardii*	California	-,-, N	30,968 (N.A.; 27,348; 2012)	1,641	43

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable (N.A.).

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, the 2 species (with 2 managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur.

California Sea Lion

California sea lions occur in the eastern North Pacific from Puerto Vallarta, Mexico, through the Gulf of California and north along the west coast of North America to the Gulf of Alaska (Jefferson *et al.,* 2015; Maniscalco *et al.,* 2004). International agreements between the U.S., Mexico, and Canada for joint management of California sea lions do not exist; therefore, California sea lions observed at rookeries north of the U.S./Mexico border are considered part of the U.S. stock. California sea lions are the most abundant pinniped found along the California coast.

During the summer, California sea lions typically congregate near rookery islands and specific open-water areas. The primary rookeries off the coast of the U.S. are on San Nicolas, San Miguel, Santa Barbara, and San Clemente Islands (Lowry *et al.,* 2008; Lowry and Forney, 2005; Lowry *et al.,* 2017). Sea lions breed on the offshore islands of southern and central California from May through July (Heath and Perrin, 2009). During the non-breeding season, adult and subadult males and juveniles migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island (Jefferson *et al.,* 1993). They return south the following spring (Heath and Perrin, 2008, Lowry and Forney, 2005). Females and some juveniles tend to remain closer to rookeries (Antonelis *et al.,* 1990; Melin *et al.,* 2008). Pupping occurs primarily on the California Channel Islands from late May until the end of June (Peterson and Bartholomew, 1967). Weaning and mating occur in late spring and summer during the peak upwelling period (Bograd *et al.,* 2009). After the mating season, adult males migrate northward to feeding areas as far away as the Gulf of Alaska (Lowry *et al.,* 1992), and they remain away until spring (March-May), when they migrate back to the breeding colonies. Adult females generally remain south of Monterey Bay, California throughout the year, feeding in coastal waters in the summer and offshore waters in the winter, alternating between foraging and nursing their pups on shore until the next pupping/breeding season (Melin and DeLong, 2000; Melin *et al.,* 2008).

California sea lions are known to feed in both benthic and open-water habitats, and have a broad diet range, feeding on a variety of fish and cephalopod species depending on the environment. Common prey items include salmon, Pacific sardines (*Sardinops sagax*), northern anchovy (*Engraulis mordax*), mackerel, Pacific whiting (*Merluccius productus*), rockfish, market squid (*Loligo opalescens*), bass, cutlassfish, cusk eels, greenlings, dogfish, perch, and various flatfish (Lowry and Forney, 2005; Orr *et al.,* 2011,; Orr *et al.,* 2012), midshipmen and lanternfish (Lowry and Forney, 2005; Orr *et al.,* 2011; Orr *et al.,* 2012). Dive durations range from 1.4 to 5 minutes, with longer dives during El Niño events; sea lions dive about 32 to

47 percent of the time at sea (Feldkamp *et al.,* 1989; Kuhn and Costa, 2014; Melin and DeLong, 2000; Melin *et al.,* 2008). Adult females alternate between nursing their pup on shore and foraging at sea, spending approximately 67 to 77 percent of time at sea (Kuhn and Costa, 2014; Melin and DeLong, 2000).

From January 2013 through September 2016, a greater than expected number of young malnourished California sea lions stranded along the coast of California. This event was classified as an unusual mortality event (UME) as defined under Section 410(6) of the MMPA as it was a stranding that was unexpected; involved a significant die-off of a marine mammal population, and demanded immediate response. Sea lions stranding from an early age (6–8 months old) through two years of age (hereafter referred to as juveniles) were consistently underweight without other disease processes detected. Of the 8,122 stranded juveniles attributed to the UME, 93 percent stranded alive (n = 7,587, with 3,418 of these released after rehabilitation) and 7 percent (n = 531) stranded dead. Several factors are hypothesized to have impacted the ability of nursing females and young sea lions to acquire adequate nutrition for successful pup rearing and juvenile growth. In late 2012, decreased anchovy and sardine recruitment (CalCOFI data, July 2013) may have led to nutritionally stressed adult females. Biotoxins were present at various times throughout the UME, and while they were not detected in the stranded juvenile sea lions (whose stomachs were empty at the time of stranding), biotoxins may have impacted the adult females' ability to support their dependent pups by affecting their cognitive function (*e.g.,* navigation, behavior towards their offspring). Therefore, the role of biotoxins in this UME, via its possible impact on adult females' ability to support their pups, is unclear. The proposed primary cause of the UME was malnutrition of sea lion pups and yearlings due to ecological factors. These factors included shifts in distribution, abundance and/or quality of sea lion prey items around the Channel Island rookeries during critical sea lion life history events (nursing by adult females, and transitioning from milk to prey by young sea lions). These prey shifts were most likely driven by unusual oceanographic conditions at the time due to the event known as the ''Warm Water Blob'' and El Niño. This investigation closed on May 6, 2020. Please refer to: *https://www.fisheries.noaa.gov/national/marine-life-distress/2013-2016-california-sea-lion-unusual-mortality-event-california* for more information on this UME.

California sea lions in the U.S. are not listed as ''endangered'' or ''threatened'' under the ESA or as ''depleted'' under the MMPA. They are also not considered ''strategic'' under the MMPA because human-caused mortality is less than the PBR. The fishery mortality and serious injury rate (197 animals/year) for this stock is less than 10 percent of the calculated PBR and, therefore, is considered to be insignificant and approaching a zero mortality and serious injury rate (Laake *et al.,* 2018). Expanding pinniped populations though have resulted in increased human-caused serious injury and mortality, due to shootings, entrainment in power plants, interactions with hook and line fisheries, separation of mothers and pups due to human disturbance, dog bites, and vessel and vehicle strikes (Carretta *et al.,* 2021). Other threats to California sea lions include exposure to anthropogenic sound, algal neurotoxins, and increasing sea-surface temperatures in the California Current (Carretta *et al.,* 2021).

California sea lions are prone to invade human-modified coastal sites that provide good hauling out substrate, such as marina docks and floats, buoys, bait barges, small boats, and rip-rap tidal and wave protection structures. They are known to be present on these structures within the proposed action area, occasionally in large numbers. The primary sea lion haulout at NBVC is on and around the floating docks at Wharf D, though other areas are occasionally used. California sea lions were also frequently encountered swimming near the channel markers, and their presence within the proposed action area is considered ''regular'' according to the NBVC Integrated Natural Resources Management Plan (Department of the Navy, 2019).

Harbor Seal

Harbor seals are widely distributed in the North Atlantic and North Pacific. Two subspecies exist in the Pacific: *P. v. stejnegeri* in the western North Pacific, near Japan, and *P. v. richardii* in the eastern North Pacific (Burns, 2002; Jefferson *et al.,* 2008). Of the two subspecies, only the eastern North Pacific subspecies would be found in the proposed action area. This subspecies inhabits near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. Previous assessments of the status of harbor seals have recognized three stocks along the west coast of the continental U.S.: (1) California, (2) Oregon and Washington outer coast waters, and (3) inland waters of Washington (Carretta *et al.,* 2022). Harbor seals observed in the proposed action area are considered members of the California stock.

Harbor seals are rarely found more than 20 km (11 nautical miles) from shore (Baird, 2001) and are generally non-migratory (Burns, 2002; Jefferson *et al.,* 2008) and solitary at sea, with local movements associated with such factors as tides, weather, season, food availability, and reproduction (Bigg, 1969, 1981; Boveng *et al.,* 2012; Fisher, 1952; Hastings *et al.,* 2004; Lowry *et al,.* 2001; Rehberg and Small, 2001; Scheffer and Slipp, 1944; Small *et al,.* 2005; Small *et al.,* 2003; Swain *et al.,* 1996). While primarily aquatic, harbor seals also use the coastal terrestrial environment, where they haul out of the water periodically on to rocks, reefs, beaches, and anthropogenic structures to regulate their body temperature, molt, interact with other seals, give birth, and raise their pups. Pupping occurs from March through May in central California (Codde and Allen, 2020). Pups are weaned in four weeks, most by mid-June (Codde and Allen, 2020). Harbor seals breed between late March and June. Harbor seals molt from May through June. Peak numbers of harbor seals haul out during late May to July, which coincides with the peak molt. During both pupping and molting seasons, the number of seals and the length of time hauled out per day increase, from an average of 7 hours per day to 10–12 hours (Harvey and Goley, 2011; Huber *et al.,* 2001; Stewart and Yochem, 1994). They haul out in groups to avoid predators, with groups spending less time being watchful for predators than individuals that haul out alone.

Harbor seals feed in marine, estuarine, and occasionally fresh water environments. They tend to forage at night and haul out during the day with a peak in the afternoon between 1 p.m. and 4 p.m. (Grigg *et al.,* 2012; Stewart and Yochem, 1994; Yochem *et al.,* 1987). Tide levels affect the maximum number of seals hauled out, with the largest number of seals hauled out at low tide, but time of day and season have the greatest influence on haul out behavior (Manugian *et al.,* 2017; Patterson and Acevedo-Gutiérrez, 2008; Stewart and Yochem, 1994).

Diving behavior analyses of harbor seals in shallow estuarine environments indicated that they spent more than 80 percent of their time diving in the upper portion of the water column at or above 185 ft (56 m), but exhibited relatively long duration dives (4.4 to 5.2 minutes) (Eguchi, 1998; Womble *et al.* 2014).

Since the proposed action area is very shallow, with an average depth of 34.5 ft (10.5 m) at mean low water, it is likely that harbor seals, when present, would always be at or near the surface (Tetra Tech, 2012).

California harbor seals are not listed as ''endangered'' or ''threatened'' under the ESA, nor are they designated as ''depleted'' under the MMPA. Annual human-caused mortality does not exceed Potential Biological Removal (PBR) threshold for this stock, and they are not considered a ''strategic'' stock under the MMPA (Carretta *et al.,* 2022). Despite this, expanding pinniped populations in general have resulted in increased human-caused serious injury and mortality, due to shootings, entrainment in power plants, interactions with recreational hook and line fisheries, separation of mothers and pups due to human disturbance, dog bites, and vessel and vehicle strikes (Carretta *et al.* 2022).

Small numbers of harbor seals are found hauled out on coastal and island sites and forage in the nearshore waters of Southern California, but are found in only moderate numbers compared to sea lions and elephant seals. In California, approximately 400–600 harbor seal haulout sites are widely distributed along the mainland and on offshore islands, including intertidal sandbars, rocky shores and beaches (Hanan, 1996; Lowry e*t al.,* 2008). The harbor seal haul-out sites include several areas along the coast of La Jolla in San Diego County and most of the Channel Islands (Lowry *et al.,* 2008; Lowry *et al.,* 2017). Harbor seals have been reported hauling out on the beach just outside the mouth of Port Hueneme Harbor, but the Integrated Natural Resources Management Plan for NBVC categorizes their presence on the beach as ''rare'' (Department of the Navy, 2019). Pacific harbor seals are also considered rare in Port Hueneme and no harbor seal haul-outs are present in the action area.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activity can occur from impact and vibratory pile driving. The effects of underwater noise from the Navy's proposed activities have the potential to result in Level B harassment of marine mammals in the action area.

Description of Sound Sources

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, and amplitude. Frequency

is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the dB. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (µPa)), and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level represents the SPL referenced at a distance of 1 m from the source (referenced to 1 µPa), while the received level is the SPL at the listener's position (referenced to 1 µPa). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1 µPa and all airborne sound levels in this document are referenced to a pressure of 20 µPa.

Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB referenced to 1 µPa squared per second (re 1 µPa2–s)) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL (SELcum) represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the RMS sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for sound produced by the construction activities considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (American National Standards Institute standards (ANSI), 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kilohertz (kHz) (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

No direct data on ambient noise levels within Port Hueneme are available; however, in-water ambient noise levels are considered comparable to similar ports and harbors. McKenna *et al.* (2013) observed as many as 18 container ships per day transiting through or past Port Hueneme in the Santa Barbara Channel, with sound level per ship varying with vessel speed, but ranging from 175 to 195 dB re 1 µPa2 at 1 m with frequencies ranging from 20 to 1,000 Hz. Though this is outside the proposed action area, it illustrates the high vessel volume in the region. Similarly, Kipple and Gabriel (2004) found that ship noise was characterized by a broad frequency range (roughly 0.1 to 35 kHz), with peak noise at higher frequency for smaller vessels. Similar broad-spectrum (10 Hz to more than 1 kHz) noise has been reported for a variety of categories of ships (National Research Council, 2003). Port Hueneme Harbor is co-owned by NBVC, Port Hueneme, and the Oxnard Harbor District, and the commercial port sees 8 billion dollars annually in goods movement, with multiple berths for large cargo ships (Port of Hueneme, 2019). Maintenance of the port for accommodation of those large cargo ships includes dredging, which also increases the soundscape underwater.

Ambient noise levels in ports and harbors vary by location, but generally exceed the Level B harassment threshold for continuous noise of 120 dB RMS in heavily trafficked locations. For example, from 2014 to 2015, ambient noise data was collected in the northern portion of the San Diego Bay during ten separate deployments of 3 days each. During those deployments, ambient noise levels ranged from 126 to 146 dB RMS, with typical ambient levels around 129 to 130 dB RMS (Naval Facilities Engineering Command Southwest; NAVFAC SW, 2020). More recent ambient data collected in the south-central San Diego Bay (an area with less vessel traffic than the north San Diego Bay), showed ambient SPLs ranging from 121 to 131 dB RMS, and an average ambient SPL at 126 dB RMS (Dahl and Dall'Osto, 2019). Similar ports with large container ship transits also had ambient levels that were higher than the regulatory 120 dB RMS threshold, with ambient SPLs at different locations in Puget Sound measured at 128 dB RMS (Washington State Department of Transportation,

2012) and between 132 and 143 dB RMS (Strategic Environmental Consulting, 2005), while in San Francisco Bay ambient SPLs were measured at 133 dB RMS (Laughlin, 2006).

While no ambient data is available for the specific proposed project area, it is assumed that, due to both the Navy's and commercial use of Port Hueneme, ambient SPLs will be higher than the 120 dB RMS regulatory threshold for continuous noise. However, absent specific values for the project location, all acoustical analyses for continuous noise sources (*i.e.,* vibratory pile driving) will be assessed relative to the 120 dB RMS Level B harassment threshold.

Two types of hammers would be used on this project: impact and vibratory. The sounds produced by these hammers fall into one of two general sound types: impulsive and non-impulsive (defined below). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Impulsive sound sources (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986; Harris, 1998; National Institute for Occupational Safety and Health (NIOSH), 1998; International Organization for Standardization (ISO) 2003; ANSI 2005) and occur either as isolated events or repeated in some succession. Impulsive sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-impulsive sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-impulsive sounds can be transient signals of short duration but without the essential properties of impulses (*e.g.,* rapid rise time). Examples of non-impulsive sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Impact hammers operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak Sound Pressure Levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

The likely or possible impacts of the Navy's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal is the primary means by which marine mammals may be harassed from the Navy's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007; 2019). In general, exposure to pile driving noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007, Ellison *et al.,* 2012, and Southall *et al.,* 2021). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral). When analyzing the auditory effects of noise exposure, it is often helpful to broadly categorize sound as either impulsive or non-impulsive. When considering auditory effects, vibratory pile driving is considered a non-impulsive source while impact pile is treated as an impulsive source.

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving

anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with SELcum in an accelerating fashion: at low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40–dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6–dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.,* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulsive sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and six species of pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal, ring seal (*Pusa hispida*), spotted seal (*Phoca largha*), bearded seal (*Erignathus barbatus*), and California sea lion) that were exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise with limited number of exposure to impulsive sources such as seismic airguns or impact pile driving) in laboratory settings (Southall *et al.,* 2019). No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.,* (2019), and NMFS (2018).

Installing piles requires a combination of impact pile driving and vibratory pile driving. For the project, these activities will not occur at the same time and there will be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the project area and not remaining for extended periods of time, the potential for TTS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Disturbance may result in changing durations of surfacing and dives, changing direction and/or speed; reducing/increasing vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); eliciting a visible startle response or aggressive behavior (such as tail/fin slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010, Ellison *et al.,* 2019; Southall *et al.,* 2021). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Richardson *et al.* (1995), Nowacek *et al.* (2007), Southall *et al.* (2007), Gomez et al. (2015), Southall *et al.* (2019), and Southall *et al.* (2021) for a review of responses of marine mammals to anthropogenic sounds. Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,*

2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure.

As noted above, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a,b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al,.* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales (*Eubalaena glacialis*) have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales (*Eschrictius robustus*) are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996; Bowers *et al.,* 2018). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause

population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a 5 day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar construction projects.

Auditory Masking—Acoustic masking is when other noises such as from human sources interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Since many marine mammals rely on sound to find prey, moderate social interactions, and facilitate mating (Tyack, 2008), noise from anthropogenic sound sources can interfere with these functions, but only if the noise spectrum overlaps with the hearing sensitivity of the marine mammal and the sounds being used (Southall *et al.,* 2007; Clark *et al.,* 2009; Hatch *et al.,* 2012). Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.,* 2009). The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, but rather changes in behavioral patterns resulting from lost opportunities (*e.g.,* communication, feeding), it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Marine mammals in Port Hueneme are continuously exposed to anthropogenic noise which may lead to some habituation, but is also a source of masking. Vocalization changes may result from a need to compete with an increase in background noise and include increasing the source level, modifying the frequency, increasing the call repetition rate of vocalizations, or ceasing to vocalize in the presence of increased noise (Hotchkin and Parks, 2013). Pinnipeds may be at risk for vocal masking.

Masking is more likely to occur in the presence of broadband, relatively continuous noise sources. Energy distribution of pile driving covers a broad frequency spectrum, and sound from pile driving would be within the audible range of California sea lions and harbor seals present in the proposed action area. While some pile driving during Navy training activities may mask some acoustic signals that are relevant to the daily behavior of pinnipeds, the short-term duration and limited areas affected make it very unlikely that the fitness or survival of any individuals would be affected.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from these activities. Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Potential Effects on Marine Mammal Habitat

The Navy's proposed activities at the project area would not result in permanent negative impacts to habitats used directly by marine mammals, but may have potential short-term impacts to food sources such as forage fish and invertebrates and may affect acoustic habitat (see masking discussion above). Physical alteration of the water column or bottom topography, as a result of pile driving training exercises would be of limited duration and intermittent spatial and temporal scale. Considering that all piles would be removed after each training exercise is completed, long term or permanent impacts would be unlikely. Pile driving would likely result in localized turbidity increases, which would not be expected to decrease water quality due to the existing high use of Port Hueneme Harbor by the Navy and Oxnard Harbor District. Port Hueneme Harbor moves over 8 billion dollars annually, and is the only commercial deep-water port between Los Angeles and San Francisco (Port of Hueneme, 2019). Additionally, the U.S. Army Corps of Engineers completed a port deepening project in 2021, dredging the commercial harbor to reach a depth of 12 m (40 ft) for berthings (Port of Hueneme, 2021). Given the highly industrial nature of the proposed action area, and likely existing elevated turbidity due to run-off, hardened shorelines, and vessel traffic, the incremental increase in turbidity resulting from the proposed training exercises would not have a measurable impact on physical habitat. No permanent structures would be installed in the proposed action area. No permanent impacts to habitat are proposed for, or would occur as a result of, these proposed training exercises. Therefore, Navy training activities are not likely to have more than a localized and short-term effect on marine mammal habitat in the proposed action area.

There are no known foraging hotspots or other ocean bottom structure of significant biological importance to marine mammals present in the marine waters of the project area. The Navy's training exercises in NBCV could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During impact and vibratory pile driving or removal, elevated levels of underwater noise would ensonify a portion of NBVC and nearby waters where both fishes and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound.

Pile installation/removal may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. In general, turbidity associated with pile installation is localized to about a 7.6-m (25-ft) radius around the pile (Everitt *et al.,* 1980). Cetaceans are not expected to be close enough to the project pile driving areas to experience effects of turbidity, and pinnipeds could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to minimal for marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

Potential Pile Driving Effects on Prey—Pile driving produces continuous, non-impulsive sounds (*i.e.,* vibratory pile driving) and intermittent, pulsed sounds (*i.e.* impact driving). Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Marine invertebrates in the proposed action area encompass a diverse range of species, including mollusks, crabs, shrimp, snails, sponges, sea fans, isopods, and a diverse assemblage of polychaete worms (Chess and Hobson, 1997; Dugan *et al.,* 2000; Proctor *et al.,* 1980; Talley *et al.,* 2000; Thompson *et al.,* 1993). Marine invertebrates are important food sources that support the base of the regional food chain (Linacre, 2004; Perry, 2003) and provide food for both harbor seals, which feed on crustaceans and shellfish, as well as California sea lions, which feed on squid. The benthic habitat within the proposed action area is predominantly soft bottomed, and heavily impacted by

anthropogenic use (*e.g.,* by maintenance dredging).

Very little is known about sound detection by aquatic invertebrates (Hawkins and Popper, 2017; Lovell *et al.,* 2005; Popper, 2008). While data are limited, studies do suggest that most major invertebrates do not hear well, and crustaceans and cephalopods likely hear only low frequency sounds (Hanlon, 1987; Hill, 2009; Mooney *et al.,* 2010; Offutt, 1970; Roberts and Breithaupt, 2016). Acoustic signals produced by crustaceans range from low-frequency rumbles (20 to 60 Hz) to high-frequency signals 20 to 55 kHz (Edmonds *et al.,* 2016; Henninger and Watson, 2005; Patek and Caldwell, 2006; Roberts and Breithaupt, 2016; Staaterman, 2016). In general, organisms may detect sound by sensing either the particle motion or pressure component of sound, or both. However, because any acoustic sensory capabilities of invertebrates (if present at all) are limited to detecting water motion, and water particle motion near a sound source falls off rapidly with distance, aquatic invertebrates are likely limited to detecting nearby low-frequency sound sources rather than sound caused by pressure waves from distant sources unknown (Hawkins and Popper, 2017; Lovell *et al.,* 2005; Popper, 2008). Recent research suggests that both behavioral and physiological impacts may be possible when crustaceans are exposed to repeated high levels of low frequency, high amplitude anthropogenic noise (Celi *et al.,* 2015; Edmonds *et al.,* 2016; Filiciotto *et al.,* 2014; Roberts and Breithaupt, 2016). With respect specifically to pile driving, the substrate borne vibrations can elicit alarm responses in mobile benthic epifauna such as crabs, while particle motion in the water column elicits a similar response in squid. While benthic invertebrates of many types would be expected in the proposed action area, squid would not be common (Jones *et al.,* 2020; Roberts *et al.,* 2016).

It is expected that most marine invertebrates would be sensitive to the low frequency, high amplitude sources, particularly impact pile driving, associated with the proposed training exercises, as alarm response to simulated pile driving has been observed in mollusks, crustaceans, and cephalopods (Jones *et al.,* 2020; Roberts *et al.,* 2016). Any marine invertebrate capable of sensing sound may alter its behavior if exposed to sufficiently high levels of sound. Although individuals may be briefly exposed to pile driving noise associated with the proposed training exercises, intermittent exposures to pile driving noise are not expected to impact survival, growth, recruitment, or reproduction of widespread marine invertebrate populations, particularly given that invertebrate populations living within this highly industrialized environment are likely acclimated to fairly high levels of background noise. Therefore, impacts to invertebrates are expected to be minor and temporary.

The nearshore areas of Port Hueneme are highly industrialized, and thus, represent relatively low quality fish habitat. Nevertheless, this area is inhabited by a range of pelagic and demersal fish species, many of which represent important forage species (Allen *et al.,* 2006; Cross and Allen, 1993; Mueter, 2004). Small coastal pelagic fishes, such as the pacific sardine and northern anchovy, are important forage species for marine mammals, as are larger piscivorous species including mackerel, kelp bass (*Paralabrax clathratus*), and rockfish, which are also preyed upon by marine mammals (Koslow *et al.,* 2015; Miller and Lea, 1972; Roedel, 1953).

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick and Mann, 1999; Fay, 2009). All fishes have two sensory systems that can detect sound in the water: the inner ear, which functions similarly to the inner ear in other vertebrates, and the lateral line, which consists of a series of receptors along the body of a fish (Popper and Hawkins, 2018; Popper and Schilt, 2008). The lateral line detects particle motion at low frequencies from below 1 Hz up to at least 400 Hz (Coombs and Montgomery, 1999; Hastings and Popper, 2005; Higgs and Radford, 2013; Webb *et al.,* 2008). The inner ear of fish generally detects relatively higher frequency sounds. The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

All known fish species would be able to detect low-frequency noise associated with the proposed training exercises. Although hearing capability data only exist for fewer than 100 fish species, current data suggest that most fish detect sounds from 50 to 1,000 Hz (Hawkins and Popper, 2017; Popper, 2008; Popper *et al.,* 2003; Popper *et al.,* 2014). It is believed that most fish have their best hearing sensitivity from 100 to 400 Hz (Hawkins and Popper, 2017; Popper, 2008).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality (summarized in Popper *et al.,* 2014). However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. As a consequence, any hearing loss in fish may be as temporary as the timeframe required to repair or replace the sensory cells that were damaged or destroyed (Smith *et al.,* 2006). Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013). PTS has not been documented in fish.

Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish; several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan 2001, 2002; Popper and Hastings 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.* 1992; Skalski *et al.* 1992; Santulli *et al.* 1999; Paxton *et al.* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.* 2013; Wardle *et al.* 2001; Jorgenson and Gyselman, 2009; Cott *et al.* 2012).

Since the proposed action area is a relatively enclosed environment, sound would not propagate outside of Port Hueneme Harbor. Furthermore, only a limited number of fish may be exposed to loud sound, while most would be far enough from the sources for the sound level to have attenuated considerably. During a period of disrupted hearing,

fish would potentially be less sensitive to sounds produced by predators or prey, or to other acoustic information about their environment. Fish use sounds to detect both predators and prey, as well as for schooling, mating, and navigating (Hawkins and Popper, 2017; Popper *et al.,* 2003). Masking can impede the flight response of fish from predators or may not allow fish to detect potential prey in the area. Long-term consequences to fish species are not expected, as any masking would be localized and short term.

Behavioral responses to loud noise could include a startle response, such as the fish swimming away from the source, the fish ''freezing'' and staying in place, or scattering (Popper, 2008). It is not anticipated that temporary behavioral reactions (*e.g.,* temporary cessation of feeding or avoidance response) would affect the individual fitness of a fish, or a population as individuals are expected to resume normal behavior following the sound exposure. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe of the project.

In summary, given the short daily duration of sound associated with individual pile driving and the small area being affected relative to available nearby habitat, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species or other prey. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. For this military readiness activity, the MMPA defines ''harassment'' as (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where the behavioral patterns are abandoned or significantly altered (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns and/or TTS for individual marine mammals resulting from exposure to the pile driving activities. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown measures) discussed in detail below in the Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

The Navy's proposed training activities includes the use of continuous (vibratory pile installation/removal) and impulsive (impact pile installation) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μPa are applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Navy's training exercises includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving/removal) sources.

These thresholds are provided in Table 4. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{p,0\text{-pk,flat}}$: 219 dB; $L_{E,p,\ LF,24h}$: 1183 dB	*Cell 2:* $L_{E,p,\ LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{p,0\text{-pk,flat}}$: 230 dB; $L_{E,p,\ MF,24h}$: 1185 dB	*Cell 4:* $L_{E,p,\ MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{p,0\text{-pk,flat}}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB	*Cell 6:* $L_{E,p,\ HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{p,0\text{-pk,flat}}$: 218 dB; $L_{E,p,PW,24h}$: 1185 dB	*Cell 8:* $L_{E,p,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{p,0\text{-pk,flat}}$: 232 dB $L_{E,p,OW,24h}$: 203 dB	*Cell 10:* $L_{E,p,OW,24h}$: 219 dB.

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0\text{-pk}}$) has a reference value of 1 µPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO 2017). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

Sound Source Levels of Proposed Training Exercises—The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. The Navy evaluated sound source level measurements available for certain pile types and sizes from similar environments to determine reasonable source levels likely to result from the proposed pile driving activities. The Navy determined that data from CALTRANS (2020) and NAVFAC SW (2020) provided the most applicable acoustic source data to use as proxy source levels for this proposed action. The Navy proposed, and NFMS agrees, that source level data from NAVFAC SW (2020) be used as proxy source levels for vibratory driving of 24-inch sheet piles because this reference provided noise data from the site of the proposed training exercise (*i.e.,* data were recorded from Wharf 4 at NBVC). The Navy proposes, and NMFS agrees, that source level data from CALTRANS (2020) be used for all other pile sizes and installation methods as this reference provided data for the same or similar pile sizes and installation techniques, despite source levels having been recorded at different locations than the proposed training exercises (Table 5). Details are described below. Note that the source levels discussed here and provided in Table 5 represent the SPL referenced at a distance of 10 m from the source unless otherwise specified. Further, the Navy and NMFS assume that source levels attributed to vibratory removal of piles are equivalent or less than source levels attributed to the vibratory installation of pile.

Vibratory or impact data is not available for 16-inch timber piles. Therefore, the Navy proposed, and NMFS agrees, that source levels for impact driving of 14-inch timber piles at the Ballena Bay in Alameda, California be used as a proxy values for impact driving 16-inch timber piles (CALTRANS, 2020) (Table 5). For vibratory driving of 16-inch timber piles, the Navy proposed, and NMFS concurs, to use source level data from vibratory driving of unknown sized timber piles used at the Norfolk Naval Station in Norfolk, Virginia (CALTRANS, 2020; Illingworth & Rodkin, 2015) as proxy values for the proposed training exercises (Table 5).

Source level data for the installation and removal of 14-inch steel H-beam piles is limited. The Navy proposed, and NMFS agrees, that source levels for 15-inch steel H- been piles installed at Ballena Isle Marina in Alameda, California be used as proxy values for 14-inch steel H-beam piles during impact driving. This decision is based upon the piles similar size, the use of a vertical hammer placement (as opposed to battering at an angle), and the similarity in water depths at the action sites (Table 5). The Navy also proposed, and NMFS agrees, that source levels for 10-inch steel H-beam piles installed during the San Rafeal Canal project in San Rafeal, California (CALTRANS, 2020) be used as proxy values for vibratory driving of 14-inch steel H beam piles during vibratory driving (Table 5).

TABLE 5—SUMMARY OF UNATTENUATED IN-WATER PILE DRIVING SOURCE LEVELS

Pile driving method	Pile description	Peak SPL (dB re 1 µPa)	RMS SPL (dB re 1 µPa)	SEL_{ss} (dB re 1 µPa^2 sec)
Impact	Timber (16-in)	180	170	160
	Steel H beam (14-in)	195	180	170
Vibratory (installation and removal)	Timber (16-in)	.....	162	.....
	Steel sheet (24-in)	.....	[1] 159	.....
	Steel H beam (14-in)	.....	147	.....

[1] The RMS SPL for vibratory installation of 24-inch steel sheets was recorded 11 m from the source.

Level B Harassment Zones—Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

TL = B * log10 (R1/R2),

Where:

B = transmission loss coefficient (assumed to be 15)

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for the Navy's proposed training exercises in the absence of specific modelling.

All Level B harassment isopleths are reported in Table 7 considering RMS SSLs for impact and vibratory pile driving, respectively. It should be noted that based on the geography of the NBVC and the surrounding land masses, port infrastructure, and the shoreline, the Level B harassment isopleths would reach a maximum of 790 m (2,592 ft) for Wharf 4 South, 795 m (2,601 ft) for Wharf 4 East, and 655 m (2,149 ft) for Wharf D (See Figure 6–1, 6–2, and 6–3 in the Navy's application). Although it is known that there can be leakage or diffraction around such barriers, the assumption herein is that any impervious barriers would contain all pile driving noise associated with the Proposed Action.

Level A Harassment Zones—The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources, such as vibratory and impact pile driving, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the optional User Spreadsheet tool are reported in Table 6, and the resulting estimated isopleths are reported in Table 7.

TABLE 6—NMFS USER SPREADSHEET INPUTS

	Vibratory pile driving			Impact pile driving	
	16-inch timber piles	14-inch steel H beam	24-inch steel sheet	16-inch timber piles	14-inch steel H beam
Spreadsheet Tab Used	A.1) Non-Impul, Stat, Cont.	A.1) Non-Impul, Stat, Cont.	A.1) Non-Impul, Stat, Cont.	E.1) Impact pile driving	E.1) Impact pile driving
Source Level (SPL)	162 dB RMS	147 dB RMS	159 dB RMS	160 dB SEL	170 dB SEL
Transmission Loss Coefficient.	15	15	15	15	15
Weighting Factor Adjustment (kHz).	2.5	2.5	2.5	2	2
Time to install/remove single pile (minutes).	30	30	20		
Number of strikes per pile				1,800	1,800
Piles to install/remove per day.	2	2	3	2	2
Distance of sound pressure level measurement (m).	10	10	11	10	10

TABLE 7—DISTANCES TO LEVEL A HARASSMENT, BY HEARING GROUP, AND LEVEL B HARASSMENT THRESHOLDS PER PILE TYPE AND PILE DRIVING METHOD

Activity	Pile description	Piles per day	Level A harassment distance (m)		Level A harassment areas (km^2) for all hearing groups [1]	Level B harassment distance (m) all hearing groups	Level B harassment areas (km^2) for all hearing groups [1]
			PW	OW			
Vibratory Installation/Removal	16-inch Timber Piles	3	4.8	0.3	<0.1	[2] 6,310	<0.3
	14-inch Steel H Beam	2	0.5	0	<0.1	631	<0.3
	24-inch Steel Sheet	3	3.4	0.2	<0.1	[2] 4,379	<0.3
Impact Installation/Removal	16-inch Timber Piles	3	36.8	2.7	<0.1	47	<0.1
	14-inch Steel H-Beam	2	170.6	12.4	<0.1	216	<0.1

[1] Harassment areas have been truncated where appropriate to account for land masses.

[2] The maximum harassment distances are approximately 790 m (2,592 ft) for Wharf 4 South, 795 m (2,601 ft) for Wharf 4 East, and 655 m (2,149 ft) for Wharf D.

Marine Mammal Occurrence and Take Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations. Here we also describe how the occurrence information provided is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

California Sea Lion

No density or abundance numbers exist for California sea lions in the proposed action area. Therefore, to quantitatively assess exposure of marine mammals to noise from pile driving conducted as part of the Navy's training exercises, the Navy used estimates derived from recent monitoring efforts to determine the number of animals potentially exposed in the Level A and Level B harassment zones in any one day of pile driving or extraction.

NBVC biologists have been conducting opportunistic surveys of California sea lions hauled out at Wharf D somewhat regularly since 2010. California sea lions have been observed regularly hauling out on structures (*i.e.,* docks, barges, and boats) near Wharf D, sometimes in large numbers. They often crowd onto these structures, making it difficult for observers to determine the total number of sea lions present. Some of the counts at Wharf D include pinnipeds present in the water, which could also include harbor seals. California sea lions are the predominant pinniped species at Port Hueneme Harbor, so the assumption is that nearly all animals present would be California sea lions. The number of California sea lions present in the proposed action area at Wharf D is variable by month and by year. The maximum number of California sea lions counted at Wharf D during an individual survey day was 342 (1/15/2021). No other pinniped species have been observed at Wharf D during these surveys. While these count data provide a snapshot of pinniped presence in the action area, they do not provide rate of turnover over time of different pinnipeds present in the proposed action area; nor do they provide long-term sea lion presence patterns.

Since the fall of 2020, there have also been efforts to count pinnipeds in the water near Wharf 4; however, these monitoring efforts have been sporadic, taking place for an hour at a time from a boat launch just south of Wharf 4. Monitoring efforts have observed anywhere from zero to 85 sea lions in an hour (see Figure 6–4 in the Navy's application). Additionally, the same individuals may have been observed multiple times within the survey period. Therefore, the number of California sea lions assumed to be present in the proposed action area at Wharf 4 is variable.

Based on these data, the Navy conservatively estimates that 342 California sea lions (*i.e.,* the maximum number of California sea lions observed in the proposed action area on a single day) may be present in the proposed action area each day and be behaviorally harassed during the 96 days of pile driving proposed as part of the Navy's training exercises. Therefore, the Navy requests, and NMFS proposes to authorize, 36,960 instances of take by Level B harassment for California Sea Lions. No take Level A harassment is anticipated or proposed to be authorized for California sea lions due to the small Level A harassment zones (Table 7) and implementation of shutdown zones, which would be larger than Level A harassment isopleths, as described below in the Proposed Mitigation section.

Harbor Seals

No density or abundance numbers exist for harbor seals in the proposed action area. Harbor seals have only been observed by NBVC biologists near Wharf 4; no harbor seals have been detected at Wharf D. The maximum number of harbor seals seen over the course of an hour of observation was 5 seals. This was 5.88% of the maximum number of California sea lions observed at Wharf D (N = 85). Therefore, to account for the potential for harbor seals in the proposed action area, the Navy assumes that 5.88 percent of the maximum number of California sea lions observed animals at Wharf D (5.88 percent of 342, or 20.1 [rounded up to 21] animals per day) are harbor seals.

Based on these data, the Navy conservatively estimates that 21 harbor seals may be present in the proposed action area each day and be behaviorally harassed during the 96 days of pile driving proposed as part of the Navy's training exercises. Therefore, the Navy requests, and NMFS proposes to authorize, 2,016 instances of take by Level B harassment for harbor seals. No take by Level A harassment is anticipated or proposed to be authorized for harbor seals. While the Level A harassment zone for impact pile driving 14-inch steel H-beams is 170.6 m, harbor seals are considered rare in the proposed action area (Department of the Navy, 2019) minimizing the likelihood of Level A harassment take. In addition, measures described below in the Proposed Mitigation section, including shutdown measures and the implementation of lookouts at stations where the entire Level B zones are observable, will minimize the likelihood that harbor seals will be in this larger zone during impact driving of steel H-beams and that they would incur PTS before pile driving activities could be shut down. Therefore NMFS agrees with the Navy and is not proposing to authorize any takes by Level A harassment takes for harbor seals during the Navy's proposed training exercises.

In summary, the total amount of Level A harassment and Level B harassment proposed to be authorized for each marine mammal stock is presented in Table 8.

TABLE 8—PROPOSED AMOUNT OF TAKE AS A PERCENTAGE OF STOCK ABUNDANCE, BY STOCK AND HARASSMENT TYPE

Species	Stock	Proposed authorized take			Percent of stock
		Level A	Level B	Total	
California Sea Lion	U.S	0	36,960	36,960	14.3
Harbor Seal	California	0	2,016	2,016	6.51

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include

information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The Navy must employ the following standard mitigation measures, as included in the proposed IHA:

- Conduct briefings between construction supervisors and crews, the marine mammal monitoring team, and Navy staff prior to the start of all in-water pile driving activity, and when new personnel join the work, to ensure that responsibilities, communication procedures, marine mammal monitoring protocols, and operational procedures are clearly understood.
- During all in-water work other than pile driving (*e.g.,* pile placement, boat use), in order to prevent injury from physical interaction with construction equipment, a shutdown zone of 10 m (33 ft) will be implemented. If a marine mammal comes within 10 m (33 ft), operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. If human safety is at risk, the in-water activity will be allowed to continue until it is safe to stop.
- The Navy must establish shutdown zones for all for in-water pile driving activities. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the type of pile installation/removal activity (See Table 9). Here, shutdown zones are larger than the calculated Level A harassment isopleths shown in Table 7. The placement of lookouts during all pile driving activities (described in detail in the Proposed Monitoring and Reporting Section) will ensure that the entirety of all shutdown zones and Level A harassment zones are visible during pile installation and removal.

TABLE 9—SHUTDOWN ZONES DURING IN-WATER PILE DRIVING ACTIVITIES

Activity	Pile description	Distance (m)	
		PW	OW
Vibratory Installation/Removal	16-inch Timber Piles	15	15
	14-inch Steel H Beam	15	15
	24-inch Steel Sheet	15	15
Impact Installation/Removal	16-inch Timber Piles	40	40
	14-inch Steel H Beam	175	175

- The Navy must delay or shutdown all in-water pile driving activities should an animal approach or enter the appropriate shutdown zone. The Navy may resume in-water pile driving activities after one of the following conditions have been met: (1) the animal is observed exiting the shutdown zone; (2) the animal is thought to have exited the shutdown zone based on a determination of its course, speed, and movement relative to the pile driving location; or (3) the shutdown zone has been clear from any additional sightings for 15 minutes.
- The Navy shall employ lookouts trained in marine mammal identification and behaviors to monitor marine mammal presence in the action area. Requirements for numbers and locations of observers will be based on hammer type, pile material, and Seabees training location as described in Section 5 of the IHA. Lookouts must track marine mammals observed anywhere within their visual range relative to in-water construction activities, and estimate the amount of time a marine mammal spends within the Level A or Level B harassment zones while pile driving activities are underway. The Navy must monitor the project area, including the Level B harassment zones, to the maximum extent possible based on the required number of lookouts, required monitoring locations, and environmental conditions. For all pile driving and removal activities, at least one lookout must be used.
- The placement of the lookouts during all pile driving and removal activities must ensure that the entire applicable shutdown zones are visible during all in-water pile installation and removal. One observer must be placed in a position to implement shutdown/delay procedures, when applicable, by notifying the hammer operator of a need for a shutdown of pile driving or removal.
- Prior to the start of pile driving or removal, the shutdown zone(s) must be monitored for a minimum of 30 minutes to ensure that they are clear of marine mammals (*i.e.,* pre-clearance monitoring). Pile driving will only commence once observers have declared the shutdown zone(s) are clear of marine mammals. Monitoring must also take place for 30 minutes post-completion of pile driving;
- If in-water work ceases for more than 30 minutes, the Navy must conduct pre-clearance monitoring of both the Level B harassment zone and shutdown zone;
- Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead lookout to determine that the shutdown zones indicated in Table 9 are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the

shutdown zones are clear of marine mammals;

• The Navy must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30 second waiting period, then two subsequent reduced energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft starts will not be used for vibratory pile installation and removal. Lookouts shall begin observing for marine mammals 30 minutes before ''soft start'' or in-water pile installation or removal begins.

• For any marine mammal species for which take by Level B harassment has not been requested or authorized, in-water pile installation/removal will shut down immediately when the animals are sighted;

• If take by Level B harassment reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take of them.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,

• Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring must be conducted by qualified lookouts with support from Navy biologists, in accordance with the following:

• Navy biologists will train and certify lookouts in accordance with the mitigation, monitoring and reporting requirements of the issued IHA;

• NMFS will approve resumes of the Navy biologists who provide the training to the lookouts;

• Lead lookouts will be selected by Navy biologists among the best performing lookouts;

• All lookouts will maintain contact via either handheld communication devices or flags to signal sightings and shutdowns;

• Lookouts shall be placed at vantage points to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator;

• The Lead lookout will be located within auditory range of the pile driving team and will have primary responsibility for calling activity shutdowns;

• Lookouts shall use a hand-held GPS device, rangefinder or marker buoy to verify the required monitoring distance from the project site;

• Monitoring shall occur in all-weather until training has concluded for the day;

• Lookouts must scan the waters within the Level A harassment and Level B harassment zones using binoculars (10x42 or similar) and or the naked eye and make visual observations of marine mammals present; and

• Lookouts must record all observations of marine mammals as described in the Section 5 of the IHA, regardless of distance from the pile being driven. Lookouts shall document any behavioral reactions in concert with distance from piles being driven or removed;

Lookouts must have the following additional qualifications:

• Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Reporting

The Navy must submit a draft marine mammal monitoring report to NMFS within 90 days after the completion of pile driving training activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. NMFS would provide comments within 30 days after receiving the draft report, and the Navy would address the comments and submit revisions within 30 days of receipt. If no comments are received from NMFS within 30 days, the draft report would be considered as final.

The draft and final marine mammal monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.tyson.moore@noaa.gov.* The reports shall include an overall description of work completed, a narrative regarding marine mammal

sightings, and associated data sheets. Specifically, the reports must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact or vibratory) and the total equipment duration for vibratory installation and removal for each pile or total number of strikes for each pile for impact driving;
- Lookout locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of lookout shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Description of any deviation from initial proposal in pile numbers, pile types, average driving times, etc.;
- Brief description of any impediments to obtaining reliable observations during training periods; and
- Description of any impediments to complying with the aforementioned mitigation measures.

Lookouts must record all incidents of marine mammal occurrence in the area in which take is anticipated regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Specifically, lookouts must record the following:

- Name of lookout who sighted the animal(s) and lookout location and activity at time of sighting;
- Time of sighting;
- Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), lookout confidence in identification, and the composition of the group if there is a mix of species;
- Distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting);
- Estimated number of animals (min/max/best estimate);
- Estimated number of animals by cohort (adults, juveniles, neonates, group composition, sex class, etc.);
- Animal's closest point of approach and estimated time spent within the harassment zone;
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the harassment zones and shutdown zones, by species; and
- Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov; itp.tysonmoore@noaa.gov*) and to the West Coast Regional Stranding Coordinator (1–866–767–6114) as soon as feasible. The incident report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

If the death or injury was clearly caused by the specified activity, the Navy must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the proposed IHA. The Navy must not resume their activities until notified by NMFS that they can continue.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to both California sea lions and harbor seals, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

NMFS has identified key factors which may be employed to assess the level of analysis necessary to conclude whether potential impacts associated with a specified activity should be considered negligible. These include (but are not limited to) the type and magnitude of taking, the amount and importance of the available habitat for the species or stock that is affected, the duration of the anticipated effect to the species or stock, and the status of the species or stock.

NMFS does not anticipate that serious injury or mortality would occur as a result of the Navy's planned activity given the nature of the activity, even in the absence of required mitigation. Pile driving activities associated with the Navy's pile driving training exercises, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment, incidental to underwater sounds generated from pile driving. Potential takes could occur if individuals are present in zones

ensonified above the thresholds for Level B harassment, identified above, while activities are underway. Level A harassment is not anticipated or proposed to be authorized, as described in the Estimated Take section, given the construction method and the implementation of the planned mitigation measures, including soft start measures during impact pile driving and shutdown zones.

Vibratory and impact hammers will be the primary methods of installation. Vibratory pile driving produces lower SPLs than impact pile driving and will be the predominant construction method used during training (Table 1). The rise time of the sound produced by vibratory pile driving is slower, reducing the probability and severity of injury. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. When impact pile driving is used, implementation of soft start and shutdown zones will significantly reduce any possibility of injury. Given sufficient ''notice'' through use of soft starts (for impact driving), marine mammals are expected to move away from a sound source prior to it becoming potentially injurious. The Navy will use at least one lookout stationed strategically to increase detectability of marine mammals, enabling a high rate of success in implementation of shutdowns to avoid injury.

Exposures to elevated sound levels produced during pile driving and removal in NBVC may cause behavioral disturbance of some individuals, however behavioral responses of marine mammals are expected to be mild, short term, and temporary. The Navy's proposed activities and associated impacts will occur within a limited, confined area of the stocks' range. The project area is concentrated within two wharfs and the Level B harassment zones would be truncated by land. Given that pile driving and removal would occur for only short durations (*i.e.,* 4 training sessions lasting up to 24 days each) on nonconsecutive days, any harassment occurring would be temporary. Pinnipeds swim, dive, mill, and haul out in and around Port Hueneme, but there is no data regarding the rate of turnover over time of different pinnipeds present in the proposed action are. Further there is no information regarding long-term pinniped presence patterns. Due to the nature of the proposed training exercise, we can presume that some individual harbor seals and California sea lions will be repeatedly taken. Repeated, sequential exposure to pile driving noise over a long duration could result in more severe impacts to individuals that could affect a population; however, the number of non-consecutive pile driving days for this project means that these types of impacts are not anticipated.

Effects on individuals that are taken by Level B harassment, as enumerated in the Estimated Take section, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006). Marine mammals within the Level B harassment zones may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in Southern California, which have taken place with no known long-term adverse consequences from behavioral harassment (*e.g.,* December 27, 2021, 86 FR 73257; October 31, 2022, 87 FR 65578). Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While both California sea lions and harbor seals have been observed in the NVBC, they are frequently observed along the nearshore waters of Southern California and have been observed hauling outside the mouth of Port Hueneme Harbor (Department of the Navy, 2019) suggesting they have available habitat outside of the NBVC to use while the proposed activity is occurring. While vibratory pile driving associated with the proposed project may produce sounds above ambient noise, the project site itself is located in an industrialized port, the entire ensonified area is within in the NBVC, and sounds produced by the proposed activities are anticipated to quickly become indistinguishable from other background noise in port as they attenuate to near ambient SPLs moving away from the project site. Therefore, we expect that animals disturbed by project sound would simply avoid the area and use more-preferred habitats.

Additionally, and as noted previously, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. Because of the small degree anticipated, though, any TTS potentially incurred here would not be expected to adversely impact individual fitness, let alone annual rates of recruitment or survival.

More generally, there are no known calving or rookery grounds within the project area. Because the Navy's activities could occur during any season, takes may occur during important feeding times. However, the project area represents a small portion of available foraging habitat and impacts on marine mammal feeding for all species should be minimal.

The project also is not expected to have significant adverse effects on affected marine mammal habitat. The project activities would not modify existing marine mammal habitat for a significant amount of time. Impacts to the immediate substrate are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time but which would not be expected to have any effects on individual marine mammals. Any impacts on marine mammal prey that would occur during the Navy's planned activity would have, at most, short-term effects on foraging of individual marine mammals, and likely no effect on the populations of marine mammals as a whole. The activities may cause some fish to temporarily leave the area of disturbance, thus temporarily impacting marine mammal foraging opportunities in a limited portion of the foraging range. However, because of the short duration of the activities and the small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Indirect effects on marine mammal prey during the construction are expected to be minor, and these effects are unlikely to cause substantial effects on marine mammals at the individual level, with no expected effect on annual rates of recruitment or survival. Overall, the area impacted by the project is very small compared to the available surrounding habitat, and does not include habitat of particular importance.

It is unlikely that minor noise effects in a small, localized area of habitat

would have any effect on the stocks' annual rates of recruitment or survival. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities would have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and would, therefore, not result in population-level impacts.

In summary and as described above, the following factors primarily support negligible impact determinations for the affected stocks of California sea lions and harbor seals that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or proposed for authorization;
- Take by Level A harassment of California sea lions and harbor seals is not anticipated or proposed for authorization;
- The Navy would implement mitigation measures including soft-starts for impact pile driving and shutdown zones to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment does not occur.
- The anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior or TTS that would not result in fitness impacts to individuals;
- The specified activity and ensonification area is very small relative to the overall habitat ranges of all species and does not include habitat areas of special significance (Biologically Important Areas or ESA-designated critical habitat);
- The intensity of anticipated takes by Level B harassment is relatively low for all stocks and would not be of a duration or intensity expected to result in impacts on reproduction or survival; and
- The presumed efficacy of the proposed mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the Navy for conducting up to four pile driving training exercises at NBVC for a year after the date of issuance of the IHA, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed action. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1 year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: March 9, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–05242 Filed 3–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC836]

Marine Mammals; File No. 27066

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 NMFS Northeast Fisheries Science Center, 166 Water Street, Woods Hole, Massachusetts 02543 (Responsible Party: Jon Hare), 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 April 14, 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. 27066 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. 27066 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 research permit to determine the abundance, distribution, movement patterns, dive behavior, demographic parameters, trends in recruitment, and stock structure of cetaceans in U.S. waters of the western North Atlantic from Florida to Maine, and Canadian waters in the Bay of Fundy and Scotian Shelf. Up to 38 species of cetaceans may be taken during research including the following endangered species: blue (*Balaenoptera musculus*), bowhead (*Balaena mysticetus*), fin (*Balaenoptera physalus*), gray (Western North Pacific; *Eschrichtius robustus*), North Atlantic right (*Eubalaena glacialis*), sei (*Balaenoptera borealis*), and sperm (*Physeter macrocephalus*) whales. Research methods during vessel and aerial (manned and unmanned) surveys will include counts, photo-identification, video recording, photogrammetry, passive acoustic recording, observations, thermal imaging, biological sampling (skin and blubber biopsy, sloughed skin, feces, and exhaled air), and tagging (suction-cup and dart tags). Dart tags may include short Type C tags that anchor in the blubber of large whales. Receipt, import, and export of marine mammal parts would also be authorized for research purposes. Four species of non-ESA listed pinnipeds may be unintentional harassed and opportunistically studied during cetacean research. See the application for complete numbers of animals requested by species, life stage, 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: March 8, 2023.

Amy Sloan,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–05262 Filed 3–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Request for Information; U.S. Global Change Research Program (USGCRP)

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of request for information from the public on the structure, topics and content of an updated Climate Literacy Guide.

SUMMARY: The United States Global Change Research Program (USGCRP) requests input from the public to guide an update of the 2009 ''Climate Literacy: Essential Principles of Climate Science''. This request for information (RFI) will inform USGCRP as it updates the Guide to include current climate and social science, and a focus on justice and capacity to implement solutions.

DATES: Comments should be submitted via *https://contribute.globalchange.gov* and must be received by May 31, 2023.

ADDRESSES: ''Climate Literacy: The Essential Principles of Climate Science'' can be accessed at *https://www.globalchange.gov/browse/reports/climate-literacy-essential-principles-climate-science-high-resolution-booklet* and also through the USGCRP Open Notices Page (*https://www.globalchange.gov/notices*).

Instructions: To submit comments, respondents will need to register in the Public Contribution system. Comments may be submitted only via this online mechanism. Registration details can be found on the *https://contribute.globalchange.gov* home page, and review instructions are accessible once a registered user has logged into the system. All comments received through this process will be considered by the updated guide's authors without knowledge of the commenters' identities. No information submitted by a commenter as part of the registration process (such as an email address) will be disclosed publicly. Comments will be considered by USGCRP in the development of updated guidance.

Response to this RFI is voluntary. Respondents need not reply to all questions listed. Each individual or institution is requested to submit only one response. Please identify your answers by responding to a specific question or topic. Respondents may answer as many or as few questions as they wish. Comments of seven pages or fewer (3,500 words or equivalent) are strongly recommended. Links to resources, images, and videos may be submitted for consideration.

USGCRP seeks to create a Climate Literacy Guide that is broadly relevant and provides useful information to all people living or residing in the United States. In that spirit, we encourage all members of the public who are interested in this initiative to submit their comments. Those interested may include any member of the public of any age, culture, background, level of education or career stage. There may also be interested organizations, such as Tribal Nations or Indigenous Peoples, scientific research or practitioner organizations, any state, local or territorial governments, any non-profit

organizations, any private companies, any philanthropic organizations, and any others. USGCRP is interested in personal narrative and experience; Indigenous Knowledge; local knowledge and lived experience; and technical, legal, and scientific content or research from any discipline. Comments from active or past users of the 2009 version of the guide, from the education and related sectors, from workforce development organizations, and from environmental justice communities are particularly welcome.

This RFI is not accepting applications for financial assistance or financial incentives. Comments submitted in response to this notice are subject to the Freedom of Information Act (FOIA). Responses to this RFI may be posted without change online. USGCRP therefore requests that no proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI. Please note that the United States Government will not pay for response preparation, or for the use of any information contained in a response. In accordance with FAR 15–202(3), responses to this notice are not offers and cannot be accepted by the U.S. Government to form a binding contract.

FOR FURTHER INFORMATION CONTACT: Haley Crim, *haley.crim@noaa.gov;* Phone Number: (301) 734–1200, NOAA Office of Oceanic and Atmospheric Research, Climate Program Office Communication, Education, and Engagement Division.

SUPPLEMENTARY INFORMATION: ''Climate Literacy: The Essential Principles of Climate Science'' was released in 2009 as part of USGCRP's mission to provide authoritative science and resources to help people and organizations across the country manage risks and respond to changing environmental conditions. This document has informed educators, policymakers, and scientists for over a decade across the United States and internationally.

An interagency team is working to create an updated version of ''Climate Literacy: Essential Principles of Climate Science'' based on the 2009 Guide. The intention of the update is to ensure the Guide reflects current climate science, engagement, and education methods and includes a focus on informed climate decisions. Feedback is solicited on the following questions:

1. How should the updated document be structured?
2. What topics should be included?
3. How should topics be weighted and ordered within the document?
4. Are there pieces that are missing from the 2009 Guide?
5. Are there pieces of the 2009 Guide that aren't relevant anymore?
6. What audiences do you think should use the guide?
7. How do you see yourself or your community using this guide?

Specific dates and locations for all public engagement during development and upon final release will be provided on *www.globalchange.gov/notices* as they are determined. Members of the public may also sign up to receive updates through USGCRP's bimonthly newsletter at *www.globalchange.gov/newsletter-signup.*

The U.S. Global Change Research Program (USGCRP) intends to release the updated guide at the end of 2023.

The USGCRP is a federal program mandated by Congress to coordinate federal research and investments in understanding the forces shaping the global environment, both human and natural, their impacts on society, and inform responses at local to international scales.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–05322 Filed 3–14–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC786]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Navy Construction at Portsmouth Naval Shipyard, Kittery, Maine

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

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization.

SUMMARY: NMFS received a request from the U.S. Navy (Navy) for the renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to construction activities associated with the multifunctional expansion of Dry Dock 1 project at Portsmouth Naval Shipyard in Kittery, Maine. These activities are identical to those covered by the current authorization, and consist of a subset of activities that will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than March 30, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to *ITP.tyson.moore@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection*-act without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Reny Tyson Moore, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain

exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA);

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take);
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.* Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has preliminarily determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

History of Request

On April 1, 2022, NMFS issued an IHA to the Navy to take marine mammals incidental to construction activities associated with the multifunctional expansion of Dry Dock 1 project (also referred to as P–381) at Portsmouth Naval Shipyard in Kittery, Maine (April 6, 2022; 87 FR 19886), effective from April 1, 2022 through March 31, 2022. On January 31, 2023, NMFS received an application for the renewal of that initial IHA. NMFS received a revised application for the renewal IHA on February 24, 2023. As described in the application for renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

Multifunctional Expansion of Dry Dock 1 (P–381) is 1 of 3 projects that support the overall expansion and modification of Dry Dock 1, located in the western extent of the Portsmouth Naval Shipyard. The 2 additional projects, construction of a super flood basin (P–310) and extension of portal crane rail and utilities (P–1074), are currently under construction. In-water work associated with these projects was

completed under separate IHAs issued by NMFS in 2019 (84 FR 24476; May 28, 2019), and in a renewal of the 2019 IHA (86 FR 14598; March 17, 2021). The projects have been phased to support Navy mission schedules. P–381 will be constructed within the same footprint of the super flood basin over an approximate 7-year period, during which 5 years of in-water work will occur. The initial IHA authorized takes for marine mammals during the first year of in-water construction for P–381 occurring from April 2022 through March 2023. All work beyond year 1 has been addressed in proposed incidental take regulations (January 18, 2023; 88 FR 3146).

The purpose of the proposed project, Multifunctional Expansion of Dry Dock 1 (P–381), is to modify the super flood basin to create two additional dry docking positions (Dry Dock 1 North and Dry Dock 1 West) in front of the existing Dry Dock 1 East. The super flood basin provides the starting point for the P–381 work (see Figure 1–2 of the Navy's application for the initial IHA). This renewal request is to cover a subset of the activities covered in the initial IHA that will not be completed during the effective IHA period due to project delays (see Detailed Description of the Activity for specific activities to be covered in the proposed renewal IHA). This includes the preparation of the walls and floors of the super flood basin to support the placement of the monoliths and the construction of the two dry dock positions.

Construction activities that could affect marine mammals are limited to in-water pile driving and removal activities, rock hammering, rotary drilling, and down-the-hole (DTH) hammering. Under the initial IHA, Level A harassment and Level B harassment was authorized for harbor porpoises (*Phocoena phocoena*), harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harp seals *(Pagophilus groenlandicus*) and hooded seals (*Cystophora cristata*). Neither the Navy nor NMFS expects serious injury or mortality to result from this activity and, therefore, a renewal IHA is appropriate.

The following documents are referenced in this notification and include important supporting information:

- Initial 2022 final IHA (April 6, 2022, 87 FR 19886);
- Initial 2022 proposed IHA (March 3, 2022, 87 FR 11860);
- Initial IHA application and References (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-construction-portsmouth-naval-shipyard-kittery-maine*); and
- Application Addendum Memo (October 31, 2022; available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-construction-portsmouth-naval-shipyard-kittery-maine-0*).

Detailed Description of the Activity

A detailed description of the construction activities for which take is proposed here may be found in the notices of the proposed (March 3, 2022, 87 FR 11860) and final (April 6, 2022, 87 FR 19886) IHAs for the initial authorization as well as in the Application Addendum Memo (submitted to NMFS on October 31, 2023), which described project modifications and shifting Fleet submarine schedules. As previously mentioned, this request is for a subset of the activities authorized in the initial IHA that would not be completed prior to its expiration due to project delays. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. Table 1 describes the status of all activities covered under the initial IHA as well as the amount of activities proposed to be covered under the renewal IHA. The proposed renewal would be effective for a period not exceeding one year from the date of expiration of the initial IHA.

TABLE 1—STATUS OF PILE DRIVING AND DRILLING ACTIVITIES

Activity	Total amount	Activity component	Method	Daily production rate	Number installed under initial IHA	Number remaining to be installed under renewal IHA	Total production days	Number of production days under renewal IHA
Center Wall—Install Foundation Support Piles.	20 drilled shafts [1] ..	Install 102-inch diameter outer casing.	Rotary Drill	1 shaft/day; 1 hour/day.	14	6	20	6
		Pre-drill 102-inch diameter socket.	Rotary Drill	1 shaft/day; 9 hours/day.	14	6	20	6
		Remove 102-inch outer casing.	Rotary Drill	1 casing/day; 15 minutes/casing.	10	10	20	10
		Drill 78-inch diameter shaft.	Cluster drill DTH ...	6.5 days/shaft; 10 hours/day.	2	18	130	117
Center Wall—Install Diving Board Shafts [2].	18 drilled shafts	Install 102-inch diameter outer casing.	Rotary Drill	1 shaft/day; 1 hour/day.	0	0	18	0
		Pre-drill 102-inch diameter socket.	Rotary Drill	1 shaft/day; 9 hours/day.	0	0	18	0
		Remove 102-inch outer casing.	Rotary Drill	1 casing/day; 15 minutes/casing.	0	0	18	0
		Drill 78-inch diameter shaft.	Cluster drill DTH ...	7.5 days/shaft; 10 hours/day.	0	0	135	0
Center Wall—Access Platform Support [3].	38 drilled shafts	Install 102-inch diameter outer casing.	Rotary Drill	1 shaft/day; 1 hour/day.	0	0	38	0
		Pre-drill 102-inch diameter socket.	Rotary Drill	1 shaft/day; 9 hours/day.	0	0	38	0
		Remove 102-inch outer casing.	Rotary Drill	1 casing/day; 15 minutes/casing.	0	0	38	0
		Drill 78-inch diameter shaft.	Cluster drill DTH ...	3.5 days/shaft; 10 hours/day.	0	0	38	0
Center Wall—Temporary Launching Piles.	6 drilled shafts	42-inch diameter shaft.	Mono-hammer DTH.	1 shaft/day; 10 hours/day.	6	0	6	0
Center Wall Tie Downs [3].	Install 36 rock anchors.	9-inch diameter holes.	Mono-hammer DTH.	2 holes/day; 5 hours/hole.	0	0	18	0

TABLE 1—STATUS OF PILE DRIVING AND DRILLING ACTIVITIES—Continued

Activity	Total amount	Activity component	Method	Daily production rate	Number installed under initial IHA	Number remaining to be installed under renewal IHA	Total production days	Number of production days under renewal IHA
Center Wall—Access Platform Tie Downs [3].	Install 18 rock anchors.	9-inch diameter holes.	Mono-hammer DTH.	2 holes/day; 5 hours/hole.	0	0	9	0
Center Wall—Install Tie-In to Existing West Closure Wall.	16 sheet piles	28-inch wide Z-shaped sheets.	Impact with initial vibratory set.	4 piles/day; 5 minutes and 300 blows/pile.	0	16	4	4
Berth 11 End Wall—Install Secant Pile Guide Wall.	60 sheet piles	28-inch wide Z-shaped sheets.	Impact with initial vibratory set.	8 piles/day; 5 minutes and 300 blows/pile.	60	0	8	0
Berth 1—Remove Granite Block Quay Wall [4].	610 cy	Granite block demolition.	Hydraulic rock hammering.	2.5 hours/day	0	0	NA	0
P–310 West Closure Wall—Remove Closure Wall.	238 sheet piles	18-inch wide flat-sheets.	Vibratory extraction.	4 piles/day; 5 minutes/pile.	0	238	60	60
P–310 West Closure Wall—Mechanical Rock Excavation.	985 cy	Excavate bedrock	Hydraulic rock hammering.	9 hours/day	0	985	77	77
P–310 West Closure Wall—Mechanical Rock Excavation.	Drill 500 relief holes.	4–6 inch holes	Mono-hammer DTH.	25 holes/day; 24 minutes/hole.	0	500	20	20
	Drill 46 rock borings (50 cy).	42-inch diameter casing.	Mono-hammer DTH.	2 borings/day; 5 hours/boring.	46	0	[5] 24	0
West closure wall—Berth 11 Abutment—Install Piles.	Drill 28 shafts	42-inch diameter casing.	Mono-hammer DTH.	1 shaft/day ..... 10 hours/day	0	28	28	28
Berth 11—Remove Shutter Panels.	112 panels	Demolish shutter panels.	Hydraulic rock hammering.	5 hours/day	92	20	56	10
Berth 11 Face—Mechanical Rock Removal at Basin Floor.	3,500 cy	Excavate Bedrock	Hydraulic rock hammering.	12 hours/day	700	2800	100	80
	Drill 1,277 relief holes [1].	4–6 inch holes	Mono-hammer DTH.	27 holes/day; 22.2 minutes/hole.	300	977	48	37
Berth 11 Face—Mechanical Rock at Abutment.	Drill 365 rock borings (1,220 cy).	42-inch diameter casing.	Mono-hammer DTH.	2 borings/day; 5 hours/boring.	0	365	183	183
Dry Dock 1 North Entrance—Drill Tremie Tie Downs.	Drill 50 rock anchors [1].	9-inch holes	Mono-hammer DTH.	2 holes/day; 2 hours/hole.	0	25	25	25
Dry Dock 1 North Entrance—Install Temporary Cofferdam.	Install 48 sheet piles [1].	28-inch wide Z-shaped sheets.	Impact with initial vibratory set.	8 sheets/day; 5 minutes and 300 blows/pile.	0	48	6	6
Berth 1—Remove Sheet Piles.	Remove 12 sheet piles.	25-inch wide Z-shaped sheets.	Hydraulic rock hammering.	6 hours/day	0	12	3	3
Berth 1 Top of Wall—Demolition For Waler Installation [6].	30 lf	Mechanical concrete demolition.	Hydraulic rock hammering.	10 hours/day	NA	NA	NA	NA
Berth 1 Mechanical Rock Removal at Basin Floor [7].	200 cy	Excavate Bedrock	Hydraulic rock hammering.	13 cy/day; 12 hours/day.	0	200	39	39
Removal of Berth 1 Emergency Repair Sheets [7].	108 sheet piles	25-inch wide Z-shaped sheets.	Vibratory extraction.	6 piles/day; 5 minutes/pile.	0	108	18	18
Removal of Berth 1 Emergency Repair Tremie Concrete [7].	500 cy	Mechanical concrete demolition.	Hydraulic rock hammering.	4 hours/day	0	500	15	15
Totals	.....	.....	.....	.....	1,244	6,862	1,278	744

[1] The amount of this activity was adjusted in a memo describing project modifications and shifting Fleet submarine schedules that was submitted to NMFS on October 31, 2022. The memo can be found at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-construction-portsmouth-naval-shipyard-kittery-maine-0.*

[2] The schedule for this work shifted as described in the aforementioned memo submitted to NMFS on October 31, 2022. This activity is now addressed in the proposed rulemaking/LOA (January 18, 2023; 88 FR 3146).

[3] These activities are no longer needed.

[4] This activity is complete; it was performed above the water line. The underwater portion of this activity is addressed in the proposed rulemaking/LOA (January 18, 2023; 88 FR 3146).

[5] An additional day was added to account for equipment repositioning.

[6] This activity is complete; it was performed above the water line.
[7] This activity was added to the initial IHA in the aforementioned memo submitted to NMFS on October 31, 2022.

Description of Marine Mammals in the Area of Specified Activities

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the Notice of the Proposed IHA for the initial authorization (March 3, 2022, 87 FR 11860). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which the authorization of take is proposed here may be found in the Notice of the Proposed IHA for the initial authorization (March 3, 2022, 87 FR 11860). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the Notices of the Proposed (March 3, 2022, 87 FR 11860) and Final (April 6, 2022, 87 FR 19886) IHAs for the initial authorization. Specifically, the marine mammal density and occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken and types of take remain unchanged from the previously issued IHA.

Since the initial IHA was issued, NMFS' updated its recommendations on source pressure levels (SPL) to use when evaluating DTH systems (see *https://media.fisheries.noaa.gov/2022-11/PUBLIC%20DTH%20Basic%20Guidance_November%202022.pdf;* NMFS, 2022). NMFS suggests that the root mean square (RMS) SPLs should increase from 167 dB to 174 decibels (dB) for DTH cluster hammering of 78-inch piles, and that the RMS SPLs should decrease for DTH mono-hammering of 4- to 6-inch piles from 167 dB to 156 dB. These changes would increase the Level B harassment distances from 13,594 meters (m) (44,600 feet (ft)) to 39,811 m (130,614 ft) for cluster hammering of 78-inch piles, and from 13,594 m (44,600 ft) to 2,512 m (8,241 ft) for mono-hammering of 4- to 6-inch piles. However, because the region of influence (ROI) for this project is very small due to land masses in the proposed action area that preclude sound from travelling more than approximately 870 m (3,000 ft) from the source (see Figure 2 in the Notice of the Proposed IHA for the initial authorization; March 3, 2022, 87 FR 11860), the area of the Level B harassment isopleth remains unchanged (*i.e.,* 0.417 kilometers squared (km^2), 0.161 miles squared (mi^2)).

NMFS has also reevaluated the data available on rock hammering activities since the initial IHA was issued, and has proposed that the RMS SPL increase from 184 dB to 186 dB and that the single strike Sound Exposure Level (SELss) decrease from 175 dB to 171 dB (January 18, 2023, 88 FR 3146). The proposed RMS values increase the Level B harassment distance and area for rock hammering activities from 398 m (1,306 ft) and 0.165 km^2 to 541 m (1,775 ft) and 0.278 km^2, respectively. The Level A harassment zone remains unchanged (0.417 km^2, 0.161 mi^2) due to the size of the ROI and influence of land truncating sound near the proposed action area. Given the Level A harassment zone is larger than the Level B harassment zone, no additional takes by Level B harassment are proposed as they are already proposed as takes by Level A harassment.

Tables 2, 3, and 4 provide the calculated proposed take by Level A and Level B harassment for harbor porpoises, harbor seals, and grey seals, respectively. Given that a subset of the initially covered activities would be occurring, the number of days of operation, and thus number of takes, has been reduced for each species. Note that the final take numbers differ slightly from those provided in the Navy's request for renewal of the IHA based on rounding errors found in the request. Further, in the initial IHA that was issued, takes by Level B harassment for harbor seals and grey seals were increased to more accurately reflect the number of seal sightings reported in recent monitoring reports. However, this adjustment has not been requested or made for the proposed renewal IHA based on the reduction in the number of construction days. The take calculation for hooded and harp seals remains the same from the initial IHA (see the Notices of the Proposed (March 3, 2022, 87 FR 11860) and Final (April 6, 2022, 87 FR 19886) IHAs for the initial authorization for more information).

TABLE 2—CALCULATED TAKE BY LEVEL A AND LEVEL B HARASSMENT OF HARBOR PORPOISE BY PROJECT ACTIVITY FOR THE PROPOSED RENEWAL IHA

Activity	Total amount	Method	Number of production days under renewal IHA	Density	Level A harassment zone (km^2)	Takes by Level A harassment	Level B harassment zone (km^2)	Take by Level B harassment
Center Wall—Install Foundation Support Piles.	20 drilled shafts	Rotary Drill	6	0.4	0.00001	0	0.41742	0
		Rotary Drill	6	0.4	0.00025	0	0.41742	0
		Rotary Drill	10	0.4	0.00000	0	0.41742	0
		Cluster drill DTH	117	0.4	0.41742	2	0.41742	0
Center Wall—Install Tie-In to Existing West Closure Wall.	16 sheet piles	Initial vibratory set	4	0.4	0.00045	0	0.41742	0
		Impact	4	0.4	0.40341	0	0.41742	0
P–310 West Closure Wall—Remove Closure Wall.	238 sheet piles	Vibratory extraction	60	0.4	0.00014	0	0.41742	1

TABLE 2—CALCULATED TAKE BY LEVEL A AND LEVEL B HARASSMENT OF HARBOR PORPOISE BY PROJECT ACTIVITY FOR THE PROPOSED RENEWAL IHA—Continued

Activity	Total amount	Method	Number of production days under renewal IHA	Density	Level A harassment zone (km^2)	Takes by Level A harassment	Level B harassment zone (km^2)	Take by Level B harassment
P–310 West Closure Wall—Mechanical Rock Excavation.	985 cy	Hydraulic rock hammering.	77	0.4	0.41742	1	0.277858	0
P–310 West Closure Wall—Mechanical Rock Excavation.	Drill 500 relief holes	Mono-hammer DTH	20	0.4	0.04811	0	0.41742	0
West closure wall—Berth 11 Abutment—Install Piles.	Drill 28 shafts	Mono-hammer DTH	28	0.4	0.41742	0	0.41742	0
Berth 11—Remove Shutter Panels.	112 panels	Hydraulic rock hammering.	10	0.4	0.41742	0	0.277858	0
Berth 11 Face—Mechanical Rock Removal at Basin Floor.	3,500 cy	Hydraulic rock hammering.	80	0.4	0.41742	1	0.277858	0
	Drill 1,277 relief holes	Mono-hammer DTH	37	0.4	0.04811	0	0.41742	1
Berth 11 Face—Mechanical Rock at Abutment.	Drill 365 rock borings (1,220 cy).	Mono-hammer DTH	183	0.4	0.41742	3	0.41742	0
Dry Dock 1 North Entrance—Drill Tremie Tie Downs.	Drill 50 rock anchors	Mono-hammer DTH	25	0.4	0.03036	0	0.41742	0
Dry Dock 1 North Entrance—Install Temporary Cofferdam.	Install 48 sheet piles	Initial vibratory set	6	0.4	0.00104	0	0.41742	0
		Impact	6	0.4	0.41742	0	0.41742	0
Berth 1—Remove Sheet Piles.	Remove 12 sheet piles.	Hydraulic rock hammering.	3	0.4	0.41742	0	0.277858	0
Berth 1 Mechanical Rock Removal at Basin Floor.	200 cy	Hydraulic rock hammering.	39	0.4	0.41742	1	0.277858	0
Removal of Berth 1 Emergency Repair Sheets.	108 sheet piles	Vibratory extraction	18	0.4	0.00073	0	0.41742	0
Removal of Berth 1 Emergency Repair Tremie Concrete.	500 cy	Hydraulic rock hammering.	15	0.4	0.41742	0	0.277858	0
Total Estimated Take						10		2

TABLE 3—CALCULATED TAKE BY LEVEL A AND LEVEL B HARASSMENT OF HARBOR SEAL BY PROJECT ACTIVITY FOR THE PROPOSED RENEWAL IHA

Activity	Total amount	Method	Number of production days under renewal IHA	Density	Level A harassment zone (km^2)	Takes by Level A harassment	Level B harassment zone (km^2)	Take by Level B harassment
Center Wall—Install Foundation Support Piles.	20 drilled shafts	Rotary Drill	6	3	0.00001	0	0.41742	8
		Rotary Drill	6	3	0.00009	0	0.41742	8
		Rotary Drill	10	3	0.00000	0	0.41742	13
		Cluster drill DTH	117	3	0.41742	146	0.41742	0
Center Wall—Install Tie-In to Existing West Closure Wall.	16 sheet piles	Initial vibratory set	4	3	0.00008	0	0.41742	5
		Impact	4	3	0.20116	2	0.41742	3
P–310 West Closure Wall—Remove Closure Wall.	238 sheet piles	Vibratory extraction	60	3	0.00002	0	0.41742	75
P–310 West Closure Wall—Mechanical Rock Excavation.	985 cy	Hydraulic rock hammering.	77	3	0.41742	96	0.277858	0
P–310 West Closure Wall—Mechanical Rock Excavation.	Drill 500 relief holes	Mono-hammer DTH	20	3	0.01455	1	0.41742	24
West closure wall—Berth 11 Abutment—Install Piles.	Drill 28 shafts	Mono-hammer DTH	28	3	0.41742	35	0.41742	0
Berth 11—Remove Shutter Panels.	112 panels	Hydraulic rock hammering.	10	3	0.41742	13	0.277858	0
Berth 11 Face—Mechanical Rock Removal at Basin Floor.	3,500 cy	Hydraulic rock hammering.	80	3	0.41742	100	0.277858	0
	Drill 1,277 relief holes	Mono-hammer DTH	37	3	0.01455	2	0.41742	45
Berth 11 Face—Mechanical Rock at Abutment.	Drill 365 rock borings (1,220 cy).	Mono-hammer DTH	183	3	0.41742	229	0.41742	0
Dry Dock 1 North Entrance—Drill Tremie Tie Downs.	Drill 50 rock anchors	Mono-hammer DTH	25	3	0.00903	1	0.41742	31
Dry Dock 1 North Entrance—Install Temporary Cofferdam.	Install 48 sheet piles	Initial vibratory set	6	3	0.00104	8	0.41742	0
		Impact	6	3	0.36495	7	1.50227	1

TABLE 3—CALCULATED TAKE BY LEVEL A AND LEVEL B HARASSMENT OF HARBOR SEAL BY PROJECT ACTIVITY FOR THE PROPOSED RENEWAL IHA—Continued

Activity	Total amount	Method	Number of production days under renewal IHA	Density	Level A harassment zone (km^2)	Takes by Level A harassment	Level B harassment zone (km^2)	Take by Level B harassment
Berth 1—Remove Sheet Piles.	Remove 12 sheet piles.	Hydraulic rock hammering.	3	3	0.41742	4	0.277858	0
Berth 1 Mechanical Rock Removal at Basin Floor.	200 cy	Hydraulic rock hammering.	39	3	0.41742	49	0.277858	0
Removal of Berth 1 Emergency Repair Sheets.	108 sheet piles	Vibratory extraction	18	3	0.00014	0	0.41742	23
Removal of Berth 1 Emergency Repair Tremie Concrete.	500 cy	Hydraulic rock hammering.	15	3	0.41742	19	0.277858	0
Total Estimated Take						704		244

TABLE 4—CALCULATED TAKE BY LEVEL A AND LEVEL B HARASSMENT OF GREY SEAL BY PROJECT ACTIVITY FOR THE PROPOSED RENEWAL IHA

Activity	Total amount	Method	Number of production days under renewal IHA	Density	Level A harassment zone (km^2)	Takes by Level A harassment	Level B harassment zone (km^2)	Take by Level B harassment
Center Wall—Install Foundation Support Piles.	20 drilled shafts	Rotary Drill	6	0.02	0.00001	0	0.41742	1
		Rotary Drill	6	0.02	0.00009	0	0.41742	1
		Rotary Drill	10	0.02	0.00000	0	0.41742	1
		Cluster drill DTH	117	0.02	0.41742	10	0.41742	0
Center Wall—Install Tie-In to Existing West Closure Wall.	16 sheet piles	Initial vibratory set.	4	0.02	0.00008	0	0.41742	0
		Impact	4	0.02	0.20116	0	0.41742	0
P–310 West Closure Wall—Remove Closure Wall.	238 sheet piles	Vibratory extraction.	60	0.02	0.00002	0	0.41742	5
P–310 West Closure Wall—Mechanical Rock Excavation.	985 cy	Hydraulic rock hammering.	77	0.02	0.41742	6	0.277858	0
P–310 West Closure Wall—Mechanical Rock Excavation.	Drill 500 relief holes.	Mono-hammer DTH.	20	0.02	0.01455	0	0.41742	2
West closure wall—Berth 11 Abutment—Install Piles.	Drill 28 shafts	Mono-hammer DTH.	28	0.02	0.41742	2	0.41742	0
Berth 11—Remove Shutter Panels.	112 panels	Hydraulic rock hammering.	10	0.02	0.41742	1	0.277858	0
Berth 11 Face—Mechanical Rock Removal at Basin Floor.	3,500 cy	Hydraulic rock hammering.	80	0.02	0.41742	7	0.277858	0
Removal at Basin Floor.	Drill 1,277 relief holes.	Mono-hammer DTH.	37	0.02	0.01455	0	0.41742	3
Berth 11 Face—Mechanical Rock at Abutment.	Drill 365 rock borings (1,220 cy).	Mono-hammer DTH.	183	0.02	0.41742	15	0.41742	0
Dry Dock 1 North Entrance—Drill Tremie Tie Downs.	Drill 50 rock anchors.	Mono-hammer DTH.	25	0.02	0.00903	0	0.41742	2
Dry Dock 1 North Entrance—Install Temporary Cofferdam.	Install 48 sheet piles.	Initial vibratory set.	6	0.02	0.00104	0	0.41742	1
		Impact	6	0.02	0.36495	0	0.277858	0

TABLE 4—CALCULATED TAKE BY LEVEL A AND LEVEL B HARASSMENT OF GREY SEAL BY PROJECT ACTIVITY FOR THE PROPOSED RENEWAL IHA—Continued

Activity	Total amount	Method	Number of production days under renewal IHA	Density	Level A harassment zone (km^2)	Takes by Level A harassment	Level B harassment zone (km^2)	Take by Level B harassment
Berth 1—Remove Sheet Piles.	Remove 12 sheet piles.	Hydraulic rock hammering.	3	0.02	0.41742	0	0.277858	0
Berth 1 Mechanical Rock Removal at Basin Floor.	200 cy	Hydraulic rock hammering.	39	0.02	0.41742	3	0.277858	0
Removal of Berth 1 Emergency Repair Sheets.	108 sheet piles	Vibratory extraction.	18	0.02	0.00014	0	0.41742	2
Removal of Berth 1 Emergency Repair Tremie Concrete.	500 cy	Hydraulic rock hammering.	15	0.02	0.41742	1	0.277858	0
Total Estimated Take.						45		18

Table 5 summarizes the proposed take for authorization for all species described as a percentage of stock abundance.

TABLE 5—PROPOSED TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock (N_{EST})	Proposed Level A harassment	Proposed Level B harassment	Percent of stock
Harbor porpoise	Gulf of Maine/Bay of Fundy (95,543)	10	2	<0.1
Harbor seal	Western North Atlantic (61,336)	695	240	<0.1
Gray seal	Western North Atlantic (27,300)	45	18	<0.1
Hooded seal	Western North Atlantic (593,500)	0	5	<0.1
Harp seal	Western North Atlantic (7.6 million)	0	5	<0.1

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the FR Notice announcing the issuance of the initial IHA (April 6, 2022, 87 FR 19886), and the discussion of the least practicable adverse impact included in that document remains accurate. The same measures are proposed for this renewal and are summarized here:

- The Navy must delay pile driving activities should poor environmental conditions restrict full visibility of the applicable shutdown zones;
- The Navy must ensure that all construction supervisors and crews, the monitoring team, and relevant Navy staff are trained prior to commencing work;
- The Navy must implement a 10 m shutdown zone around construction activities to avoid direct physical interaction with marine mammals;
- The Navy must establish and implement shutdown and monitoring zones for all pile driving activities based on the activity type and marine mammal hearing group (see Table 13 in the FR Notice announcing the issuance of the initial IHA (April 6, 2022, 87 FR 19886) for the proposed shutdown and monitoring zones);
- The Navy must implement soft start techniques while impact driving whereby hammer energy is gradually ramped up;
- The Navy must install a bubble curtain across any openings at the entrance of super flood basin to attenuate sound for the sound sources that encompass the entire ROI, which include during DTH excavation (DTH mono-hammer and cluster drill), hydraulic rock hammering, and impact pile driving of sheet piles;
- The Navy must employ at least three protected species observers (PSOs) to monitor the shutdown and monitoring zones;
- The Navy must monitor for the presence of marine mammals 30 minutes prior to the initial pile-driving activity (*i.e.,* pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity. If a marine mammal is observed entering or within the shutdown zones, pile driving will be delayed or halted;
- The Navy will delay or halt pile driving activities upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone;
- The Navy will conduct a sound source verification study for rotary drilling, DTH excavation (DTH mono-hammer and cluster drill), and rock hammering activities for any remaining piles required to be monitored following their acoustic monitoring plan as

described in the FR Notice announcing the issuance of the initial IHA (April 6, 2022, 87 FR 19886);

- The Navy must submit a draft report detailing all monitoring within ninety calendar days of the completion of marine mammal monitoring or sixty days prior to the issuance of any subsequent IHA for this project, whichever comes first;
- The Navy must prepare and submit final report within thirty days following resolution of comments on the draft report from NMFS;
- The Navy must submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above); and
- The Navy must report injured or dead marine mammals.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (March 3, 2022, 87 FR 11860) and solicited public comments on both our proposal to issue the initial IHA for the Navy's construction activities and on the potential for a renewal IHA, should certain requirements be met. During the 30-day public comment period, NMFS received no comments on either the proposal to issue the initial IHA for the Navy's construction activities or on the potential for a renewal IHA.

Preliminary Determinations

The proposed renewal request consists of a subset of activities analyzed through the initial authorization described above. In analyzing the effects of the activities for the initial IHA, NMFS determined that the Navy's activities would have a negligible impact on the affected species or stocks and that authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third the abundance of all stocks). Although new SPL information became available for DTH and rock hammering, none of this new information affects NMFS' determinations supporting issuance of the initial IHA. The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to the Navy for construction activities associated with the multifunctional expansion of Dry Dock 1 project at Portsmouth Naval Shipyard in Kittery, from the date of issuance through March 31, 2024, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: March 9, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–05263 Filed 3–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Technical Information Service

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Limited Access Death Master File (LADMF) Accredited Conformity Assessment Body Application for Firewalled Status Form

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on December 27, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Technical Information Service, Commerce.

Title: Limited Access Death Master File Accredited Conformity Assessment Body Application for Firewalled Status Form.

OMB Control Number: 0692–0015.

Form Number(s): NTIS FM101.

Type of Request: Regular submission. Extension of currently approved collection.

Number of Respondents: 65.

Average Hours per Response: 1 hour.

Burden Hours: 65.

Needs and Uses: NTIS issued a final rule establishing a program through which persons may become eligible to obtain access to Death Master File (DMF) information about an individual within three years of that individual's death. The final rule was promulgated under Section 203 of the Bipartisan Budget Act of 2013, Public Law 113–67 (Act). The Act prohibits the Secretary of Commerce (Secretary) from disclosing DMF information during the three-year period following an individual's death (Limited Access DMF), unless the person requesting the information has been certified to access the Limited Access DMF pursuant to certain criteria in a program that the Secretary establishes. The Secretary delegated the authority to carry out Section 203 to the Director of NTIS.

The final rule requires that, in order to become certified, a Person must submit a written attestation from an ''Accredited Conformity Assessment Body'' (ACAB), as defined in the final rule, that such Person has systems, facilities, and procedures in place to protect the security of the Limited Access DMF, as required under 15 CFR 1110.102(a). A Certified Person also must provide a new written attestation periodically for renewal of its certification as specified in the final rule. The ACAB must be independent of the Person or Certified Person seeking certification, unless it is a conformity assessment body that qualifies for

''firewalled status'' pursuant to 15 CFR 1110.502.

The Firewalled Status Application Form collects information that NTIS will use to evaluate whether the respondent qualifies for ''firewalled status'' under the regulations, and, therefore, can provide a written attestation in lieu of an independent ACAB's attestation. This information includes specific requirements of 15 CFR 1110.502(b), which the responding ACAB must certify are satisfied, and the provision of specific information by the responding ACAB, such as the identity of the Person or Certified Person that would be the subject of the attestation and the basis upon which the certifications were made.

Affected Public: Accredited Conformity Assessment Bodies seeking firewalled status under 15 CFR 1110.502 because they are ''owned, managed, or controlled by [the] Person or Certified Person that is the subject of attestation or audit by the Accredited Conformity Assessment Body applying the characteristics set forth under section 1110.501(a)(1).''

Frequency: Once a year.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0692–0015.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2023–05320 Filed 3–14–23; 8:45 am]

BILLING CODE 3510–04–P

DEPARTMENT OF COMMERCE

National Technical Information Service

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Limited Access Death Master File (LADMF) Certification Form

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on December 27, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Technical Information Service, Commerce.

Title: Limited Access Death Master File Certification Form.

OMB Control Number: 0692–0013.

Form Number(s): NTIS FM161.

Type of Request: Regular submission. Renewal of currently approved collection.

Number of Respondents: 260.

Average Hours per Response: 3 hours.

Burden Hours: 780.

Needs and Uses: NTIS issued a final rule establishing a program through which persons may become eligible to obtain access to Death Master File (DMF) information about an individual within three years of that individual's death. The final rule was promulgated under section 203 of the Bipartisan Budget Act of 2013, Public Law 113–67 (Act). The Act prohibits the Secretary of Commerce (Secretary) from disclosing DMF information during the three-year period following an individual's death (Limited Access DMF), unless the person requesting the information has been certified to access the Limited Access DMF pursuant to certain criteria in a program that the Secretary establishes. The Secretary delegated the authority to carry out Section 203 to the Director of NTIS.

The final rule requires that a Person seeking access to the Limited Access DMF establish a legitimate fraud prevention interest or legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty. The Certification Application Form collects information that NTIS will use to evaluate whether the respondent qualifies to receive the Limited Access Death Master File under the rule.

Affected Public: Anyone seeking access to the Limited Access Death Master File.

Frequency: Once a year.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0692–0013.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2023–05319 Filed 3–14–23; 8:45 am]

BILLING CODE 3510–04–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 1:00 p.m. EDT, Tuesday, March 21, 2023.

PLACE: Virtual meeting.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Examinations and enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.cftc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

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

Dated: March 10, 2023.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2023–05348 Filed 3–13–23; 11:15 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Renewal of Community Bank Advisory Council

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice.

SUMMARY: The Consumer Financial Protection Bureau (Bureau), after consultation with the Committee Management Secretariat of the General Services Administration, will renew the

Community Bank Advisory Council (the committee or the CBAC) effective on March 15, 2023. The CBAC was established to consult with the Bureau in the exercise of its functions under the Federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less.

FOR FURTHER INFORMATION CONTACT: Kimberley Medrano, Acting Staff Director, Advisory Board and Councils Section, Office of Stakeholder Management, Consumer Education and External Affairs Division, at 202–590–6736, or *Kimberley.Medrano@cfpb.gov*. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. 10), the Bureau hereby gives notice of renewal of the Community Bank Advisory Council, effective immediately. The CBAC is a discretionary committee being renewed for the purposes of compliance with FACA and applicable statutes. This committee is being renewed concurrently with the publication of this notice by filing a charter with the Director of the Bureau, the Committee Management Secretariat of the General Services Administration, the Library of Congress, the Committee on Banking, Housing, and Urban Affairs of the United States Senate, and the Committee on Financial Services of the United States House of Representatives. The charter will also be posted on the Bureau's website at *www.consumerfinance.gov*. This charter will expire two years after the filing date unless renewed by appropriate action.

The purpose of the CBAC is to advise the Bureau in the exercise of its functions under the Federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less. The Bureau's supervisory process provides an opportunity for learning and insight into the operations of financial institutions; having no corollary for small depository financial institutions, the Bureau created this committee to facilitate a similar opportunity for community banks to share insights regarding operational and technical considerations, community banking industry business practices, and the unique needs of their customers and communities. This group also provides timely and pertinent information on how Bureau policies impact community banks.

The duties of the CBAC are solely advisory and shall extend only to its submission of advice and recommendations to the Bureau relating to the activities and operations of community banks, which shall be non-binding on the Bureau. Statements made by members of the committee shall not constitute official agency policy or guidance. To ensure understanding of compliance and regulatory challenges faced by community banks, inclusion on the CBAC will be limited to community bank employees. No determination of fact or policy will be made by the committee. The CBAC will have no formal decision-making role and no access to confidential supervisory or other confidential information.

In appointing members to the committee, the Director shall seek to assemble members with diverse points of view, institution asset sizes, and geographical backgrounds. Only bank or thrift employees (CEOs, compliance officers, government relations officials, etc.) will be considered for membership. Membership is limited to employees of banks and thrifts with total assets of $10 billion or less that are not affiliates of depository institutions or community banks with total assets of more than $10 billion.

The CBAC shall consist of at least eight members. All members appointed by the Director shall serve at the pleasure of the Director. The committee will be composed exclusively of representatives of the community banking industry as described above. No Special Government Employees and no Regular Government Employees are expected to serve on the committee. The CBAC will be composed of Representative members. Equal opportunity practices in accordance with the Bureau's policies shall be followed in all appointments to the committee.

Emily Ross,

Acting Deputy Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2023–05183 Filed 3–14–23; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Renewal of Credit Union Advisory Council

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice.

SUMMARY: The Consumer Financial Protection Bureau (Bureau), after consultation with the Committee Management Secretariat of the General Services Administration, will renew the Credit Union Advisory Council (the committee or the CUAC) effective on March 15, 2023. The CUAC was established to consult with the Bureau in the exercise of its functions under the Federal consumer financial laws as they pertain to credit unions with total assets of $10 billion or less.

FOR FURTHER INFORMATION CONTACT: Kimberley Medrano, Acting Staff Director, Advisory Board and Councils Section, Office of Stakeholder Management, Consumer Education and External Affairs Division, at 202–590–6736, or *Kimberley.Medrano@cfpb.gov*. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. 10), the Bureau hereby gives notice of re-establishment of the Credit Union Advisory Council, effective immediately. The CUAC is a discretionary committee being renewed for the purposes of compliance with FACA and applicable statutes. This committee is being renewed concurrently with the publication of this notice by filing a charter with the Director of the Bureau, the Committee Management Secretariat of the General Services Administration, the Library of Congress, the Committee on Banking, Housing, and Urban Affairs of the United States Senate, and the Committee on Financial Services of the United States House of Representatives. The charter will also be posted on the Bureau's website at *www.consumerfinance.gov*. This charter will expire two years after the filing date unless renewed by appropriate action.

The purpose of the CUAC is to advise the Bureau in the exercise of its functions under the Federal consumer financial laws as they pertain to credit unions with total assets of $10 billion or less. The Bureau's supervisory process provides an opportunity for learning and insight into the operations of financial institutions; having no corollary for small depository financial institutions, the Bureau created this committee to facilitate a similar opportunity for credit unions to share insights regarding operational and technical considerations, credit union business practices, and the unique needs of their customers and community. This group also provides timely and pertinent information about how Bureau policies impact the credit union industry.

The duties of the CUAC are solely advisory and shall extend only to its submission of advice and

recommendations to the Bureau relating to the activities and operations of credit unions, which shall be non-binding on the Bureau. Statements made by members of the committee shall not constitute official agency policy or guidance. To ensure understanding of compliance and regulatory challenges faced by credit unions, inclusion on the CUAC will be limited to credit union employees. No determination of fact or policy will be made by the committee. The CUAC will have no formal decision-making role and no access to confidential supervisory or other confidential information.

In appointing members to the committee, the Director shall seek to assemble members with diverse points of view, institution asset sizes, and geographical backgrounds. Only credit union employees (*e.g.,* CEOs, compliance officers, government relations officials, etc.) will be considered for membership. Membership is limited to employees of credit unions with total assets of $10 billion or less that are not affiliates of depository institutions or credit unions with total assets of more than $10 billion.

The CUAC shall consist of at least eight members. All members appointed by the Director shall serve at the pleasure of the Director. The committee will be composed exclusively of representatives of the credit union industry as described above. The CUAC will be composed of Representative members. Equal opportunity practices in accordance with the Bureau's policies shall be followed in all appointments to the CUAC.

Emily Ross,

Acting Deputy Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2023–05184 Filed 3–14–23; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Renewal of Academic Research Council

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice.

SUMMARY: The Consumer Financial Protection Bureau (Bureau), after consultation with the Committee Management Secretariat of the General Services Administration, will renew the Academic Research Council (the committee or the ARC) effective on March 15, 2023. The ARC will provide the Bureau with advice about its strategic research planning process and research agenda, including views on the research that the Bureau should conduct relating to consumer financial products or services, consumer behavior, cost-benefit analysis, or other topics to enable the agency to further its statutory purposes and objectives; provide the Office of Research with technical advice and feedback on research methodologies, data collection strategies, and methods of analysis, including methodologies and strategies for quantifying the costs and benefits of regulatory actions; and serve as peer reviewers of policy-determinative research conducted by the Bureau.

FOR FURTHER INFORMATION CONTACT: Kimberley Medrano, Acting Staff Director, Advisory Board and Councils Section, Office of Stakeholder Management, Consumer Education and External Affairs Division, at 202–590–6736, or *Kimberley.Medrano@cfpb.gov*. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. 10), the Bureau hereby gives notice of renewal of the Academic Research Council, effective immediately. The ARC is a discretionary committee being renewed for the purposes of compliance with FACA. This committee is being renewed concurrently with the publication of this notice by filing a charter with the Director of the Bureau, the Committee Management Secretariat of the General Services Administration, the Library of Congress, the Committee on Banking, Housing, and Urban Affairs of the United States Senate, and the Committee on Financial Services of the United States House of Representatives. The charter will also be posted on the Bureau's website at *www.consumerfinance.gov*. This charter will expire two years after the filing date unless renewed by appropriate action.

The ARC will (1) provide the Bureau with advice about its strategic research planning process and research agenda, including views on the research that the Bureau should conduct relating to consumer financial products or services, consumer behavior, cost-benefit analysis, or other topics to enable the agency to further its statutory purposes and objectives; (2) provide the Office of Research with technical advice and feedback on research methodologies, data collection strategies, and methods of analysis, including methodologies and strategies for quantifying the costs and benefits of regulatory actions; and, (3) serve as peer reviewers of policy-determinative research conducted by the Bureau.

The duties of the ARC are solely advisory and shall extend only to its submission of advice and recommendations to the Bureau. Statements made by members of the committee shall not constitute official agency policy or guidance. No determination of fact or policy will be made by the committee, and the committee will have no formal decision-making role.

In appointing members to the committee, the Director shall seek to assemble members who are economic experts and academics with diverse points of view such as experienced economists with a strong research and publishing or practitioner background, and a record of involvement in research and public policy, including public or academic service. Additionally, members should be prominent experts who are recognized for their professional achievements and rigorous economic analysis including those specializing in household finance, finance, financial education, labor economics, industrial organization, public economics, and law and economics; and experts from related social sciences related to the Bureau's mission. In particular, the Director will seek to identify academics with strong methodological and technical expertise in structural or reduced form econometrics; modeling of consumer decision-making; survey and random controlled trial methods; cost-benefit analysis; welfare economics and program evaluation; or marketing.

The ARC shall consist of at least seven members. All members appointed by the Director shall serve at the pleasure of the Director. Committee members will be designated as Special Government Employees. Equal opportunity practices in accordance with the Bureau's policies shall be followed in all appointments to the committee.

Emily Ross,

Acting Deputy Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2023–05178 Filed 3–14–23; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Renewal of Consumer Advisory Board

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice.

SUMMARY: The Consumer Financial Protection Bureau (Bureau), after consultation with the Committee Management Secretariat of the General Services Administration, will renew the Consumer Advisory Board (the committee or the CAB) effective on March 15, 2023. The CAB will ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information'' as outlined in the Dodd-Frank Wall Street Reform and Consumer Protection Act.

FOR FURTHER INFORMATION CONTACT: Kimberley Medrano, Acting Staff Director, Advisory Board and Councils Section, Office of Stakeholder Management, Consumer Education and External Affairs Division, at 202–590–6736, or *Kimberley.Medrano@cfpb.gov*. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. 10), the Bureau hereby gives notice of renewal of the Consumer Advisory Board, effective immediately. The CAB is a continuing committee being renewed for the purposes of compliance with FACA and applicable statutes. This committee is being renewed concurrently with the publication of this notice by filing a charter with the Director of the Bureau, the Committee Management Secretariat of the General Services Administration, the Library of Congress, the Committee on Banking, Housing, and Urban Affairs of the United States Senate, and the Committee on Financial Services of the United States House of Representatives. The charter will also be posted on the Bureau's website at *www.consumerfinance.gov*. This charter will expire two years after the filing date unless renewed by appropriate action.

The CAB's purpose is outlined in section 1014(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which states that the committee shall ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.''

To carry out the CAB's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the Bureau. The CAB will generally serve as a vehicle for trends and themes in the consumer finance marketplace for the Bureau. Its objectives will include identifying and assessing the impact on consumers and other market participants of new, emerging, and changing products, practices, or services.

The duties of the CAB are solely advisory and shall extend only to its submission of advice and recommendations to the Bureau. Statements made by members of the committee shall not constitute official agency policy or guidance. The committee members will advise and consult with the Director and the Bureau on matters related to the committee's functions under the Dodd-Frank Act through committee and subcommittee meeting attendance and participation, fact and information exchange, submission of individual advice, and other preparatory and administrative work. The CAB will have no formal decision-making role and no access to nonpublic Bureau information, to include confidential supervisory or other confidential information.

The committee shall consist of at least ten members. To ensure regional diversity and to meet the requirements set forth in the Dodd-Frank Act, membership in the CAB will be drawn from a pool of candidates recommended by Presidents of the Federal Reserve Banks. The Director may also appoint additional members, as appropriate. Selection of CAB members shall not constitute an endorsement by the Bureau of the member's organization or other affiliation. All members appointed by the Director shall serve at the pleasure of the Director. The CAB will be composed of Representative members. Equal opportunity practices in accordance with the Bureau's policies shall be followed in all appointments to the committee.

Emily Ross,

Acting Deputy Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2023–05179 Filed 3–14–23; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[ARY–220824A–JA]

Notice of Intent To Grant Joint Ownership With Exclusive License Agreement

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to enter into a joint ownership with exclusive license agreement in the field of infrared electromagnetic radiation detection and/or novel photoconductive infrared detectors made with novel donor-acceptor conjugated polymers, where the polymer is attached/coated and applied to electrical circuits to The University of Southern Mississippi, a nonprofit having a place of business at 118 College Drive, Hattiesburg, MS 39406–0001.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

ADDRESSES: Submit written objections to Robert Barnes, AFRL/RYO, 2241 Avionics Cir., Wright-Patterson AFB, OH 45433; or Email: *afrl.ry.orta@us.af.mil.* Include Docket No. ARY–220824A–JA in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Robert Barnes, AFRL/RYO, 2241 Avionics Cir., Wright-Patterson AFB, OH 45433; 937–713–8511 or Email: *afrl.ry.orta@us.af.mil.*

Abstract of Patent Application

A photoconductive infrared detector comprising a substrate, an electrode geometry, and a layer of intrinsically conductive or photoconductive donor-acceptor conjugated polymer.

Intellectual Property

U.S. Application Serial No. 17/390,277, filed July 30, 2021 and PCT Application No. PCTUS2021–043986 by Jason D. Azoulay et al. and entitled *Infrared Detection with Intrinsically Conductive Conjugated Polymers.*

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed

in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Authority: 35 U.S.C. 209; 37 CFR 404.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2023–05008 Filed 3–14–23; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Impact Aid Discretionary Construction Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2023 for the Impact Aid Discretionary Construction Grant Program, Assistance Listing Number 84.041C. This notice relates to the approved information collection under OMB control number 1810–0657.

DATES:

Applications Available: March 15, 2023.

Date of Pre-Application Webinar: The Department will hold a pre-application meeting via webinar for prospective applicants on March 22, 2023.

Deadline for Transmittal of Applications: May 15, 2023.

Deadline for Intergovernmental Review: July 13, 2023.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Jacqueline Edwards, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue SW, Room 3C137, Washington, DC 20202–6244. Telephone: 202–260–3858. Email: *Jacqueline.Edwards@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Impact Aid Discretionary Construction Grant Program provides grants for emergency repairs and modernization of school facilities to certain local educational agencies (LEAs) that receive Impact Aid formula funds.

Background: The Impact Aid Discretionary Construction Grant Program provides grants to eligible Impact Aid LEAs to assist in addressing their school facility emergency and modernization needs. The eligible Impact Aid LEAs have a limited ability to raise local revenue for capital improvements because they have large areas of Federal land within their boundaries. As a result, these districts face difficulties in responding when their school facilities are in need of emergency repairs.

The Department recognizes that students, and the school districts that support them, need safe facilities to learn. School facility emergencies that are consistent with 34 CFR 222.172(a) and 222.173 may be proposed. Funded Impact Aid emergency repair grants will be used to repair, renovate, or alter a public elementary or secondary school facility to ensure the health, safety, and well-being of students and school personnel.

Priority: In accordance with 34 CFR 75.105(b)(2)(ii) and (iv), this priority is from section 7007(b)(2)(A) of the Elementary and Secondary Education Act of 1965, as amended (Act) (20 U.S.C. 7707(b)), and the regulations for this program in 34 CFR 222.177.

Absolute Priority: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority and otherwise follow the applicable funding provisions in 34 CFR 222.189.

This priority is:

Emergency Repair Grants.

An LEA is eligible to be considered for an emergency grant under this priority if it—

(a) Is eligible to receive formula construction funds for the fiscal year under section 7007(a) of the Act (20 U.S.C. 7707(a));

(b) (1) Has no practical capacity to issue bonds;

(2) Has minimal capacity to issue bonds and has used at least 75 percent of its bond limit; or

(3) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 7003(b)(2) of the Act (20 U.S.C. 7707(b)(2)); and

(c) Has a school facility emergency that the Secretary has determined, consistent with 34 CFR 222.172(a) and 222.173, poses a health or safety hazard to students and school personnel.

Program Authority: 20 U.S.C. 7707(b).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for 34 CFR 75.600 through 75.617), 77, 79, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 222.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $18,406,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $60,000–$6,000,000.

Estimated Average Size of Awards: $2,300,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months. We will determine each project period based on the nature of the project proposed and the time needed to complete it. We will specify this period in the Grant Award Notification (GAN).

III. Eligibility Information

1. *Eligible Applicants:* An LEA is eligible to apply for an emergency grant under the absolute priority if it—

(a) Is eligible to receive formula construction funds for the fiscal year under section 7007(a) of the Act (20 U.S.C. 7707(a)) because it enrolls a high percentage (at least 50 percent) of federally connected children in average daily attendance (ADA) who either reside on Indian lands or who have a parent on active duty in the U.S. uniformed services;

(b) (1) Has no practical capacity to issue bonds (as defined in 34 CFR 222.176);

(2) Has minimal capacity to issue bonds (as defined in 34 CFR 222.176) and has used at least 75 percent of its bond limit; or

(3) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 7003(b)(2) of the Act (20 U.S.C. 7703(b)(2)); and

(c) Has a school facility emergency that the Secretary has determined, consistent with 34 CFR 222.172(a) and 222.173, poses a health or safety hazard to students and school personnel.

2. a. *Cost Sharing or Matching:* In reviewing proposed awards, the Secretary considers the funds available to the grantee from other sources, including local, State, and other Federal funds. See 20 U.S.C. 7707(b)(5)(A)(iii) and 34 CFR 222.174 and 222.191 through 222.193. Consistent with 34 CFR 222.192, an applicant will be required to submit its most recently available audited financial reports for 3 consecutive fiscal years, showing closing balances for all school funds. If significant balances (as detailed in 34 CFR 222.192) are available at the close of the applicant's FY 2023, or its most recently audited year, that are not obligated for other purposes, those funds will be considered available for the proposed emergency repair project. Available balances may reduce the amount of funds that may be awarded or eliminate the applicant's eligibility for an emergency grant award under this competition.

b. *Supplement-Not-Supplant:* This competition involves supplement-not-supplant funding requirements. As outlined in 34 CFR 222.174, grant funds under this competition may not be used to supplant or replace other available non-Federal construction money.

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Build America, Buy America Act:* This program is subject to the Build America, Buy America Act (Pub. L. 117–58) domestic sourcing requirements. Accordingly, under this program, grantees and contractors may not use their grant funds for infrastructure projects or activities (*e.g.,* construction, remodeling, and broadband infrastructure) unless—

(a) All iron and steel used in the infrastructure project or activity are produced in the United States;

(b) All manufactured products used in the infrastructure project or activity are produced in the United States; and

(c) All construction materials are manufactured in the United States.

Grantees may request waivers to these requirements by submitting a Build America, Buy America Act Waiver Request Form. For more information, including a link to the Waiver Request Form, see the Department's Build America Buy America Waiver website at: *https://www2.ed.gov/policy/fund/guid/buy-america/index.html.*

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* Except for applicants with no practical capacity to issue bonds, as defined in 34 CFR 222.176, an eligible applicant's award amount may not be more than 50 percent of the total cost of an approved project and the total amount of grant funds may not exceed $4 million during any 4-year period. See 34 CFR 222.193. For example, an LEA that is awarded $4 million in the first year may not receive any additional funds for the following 3 years. Applicants may submit only one application for one educational facility as provided by 34 CFR 222.183. If an applicant submits more than one application, the Department will consider only the last submission, as determined by the *Grants.gov* system, unless an applicant contacts the Department prior to the closing date to indicate a different submission should be the single submission considered for that entity. Grant recipients must, in accordance with Federal, State, and local laws, use emergency grants for permissible construction activities at public elementary and secondary school facilities. The scope of the project for a selected facility will be identified as part of the final grant award conditions. A grantee must also ensure that its construction expenditures under this program meet the requirements of 34 CFR 222.172 (allowable program activities) and 34 CFR 222.173 (prohibited activities).

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

V. Application Review Information

1. *Selection Criteria:* Consistent with 34 CFR 75.209, the selection criteria for this competition are from the applicable statutory and regulatory provisions as indicated after each criterion. The maximum score for each criterion is indicated in parentheses. Within each criterion, the Secretary evaluates each factor equally, unless otherwise specified. The maximum score that an application may receive is 100 points.

(a) Severity of the school facility problem to be addressed by the proposed project (34 CFR 222.189(a)(1)) (Up to 30 points).

(i) Justification that the proposed emergency project will address a deficiency that poses a health or safety hazard to occupants of the facility, and consistency of the emergency description and the proposed project with the certifying local official's statement (34 CFR 222.185(a) and (c)) (Up to 15 points).

(ii) Impact of the emergency condition on the health and safety of the building occupants and how free public education program delivery in the instructional school facility is adversely affected (34 CFR 222.172, 222.173, 222.176, and 222.185(b)). Applicants should describe: the systems or areas of

the facility involved (*e.g.,* HVAC, roof, floor, windows; the type of space affected, such as instructional, resource, food service, recreational, general support, or other areas); the percentage of building occupants affected by the emergency; and the importance of the facility or affected area to the instructional program (Up to 15 points).

(b) Project urgency (Up to 28 points).

(i) Risk to occupants if the facility condition is not addressed (34 CFR 222.176, definition of ''emergency''). Applicants should describe: projected increased future costs; the anticipated effect of the proposed project on the useful life of the facility or the need for major construction; and the age and condition of the facility and date of last renovation of affected areas (Up to 14 points).

(ii) The justification for rebuilding, if proposed (34 CFR 222.172(c)) (Up to 14 points).

(c) Effects of Federal presence (section 7007(b)(4)(B) and (C) of the Act and 34 CFR 222.184(b)) (Up to 30 points).

(i) Amount of non-taxable Federal property in the applicant LEA (percentage of Federal property divided by 10) (Up to 10 points).

(ii) The number of federally connected children identified in section 7003(a)(1)(A), (B), (C), and (D) of the Act in the LEA (percentage of identified children in LEA divided by 10) (Up to 10 points).

(iii) The number of federally connected children identified in section 7003(a)(1)(A), (B), (C), and (D) of the Act in the school facility (percentage of identified children in school facility divided by 10) (Up to 10 points).

(d) Ability to respond or pay (section 7007(b)(4)(A) of the Act) (Up to 12 points).

(i) The percentage of its bonding capacity used by the LEA. Four points will be distributed based on this percentage, such that: 4 points will be given to an LEA that has used 75 percent or more of its bonding capacity; 3 points will be given to an LEA that has used 50 percent to 74 percent of its bonding capacity; 2 points will be given to an LEA that has used 25 percent to 49 percent of its bonding capacity; and 1 point will be given to an LEA that has used less than 25 percent of its bond limit. LEAs that do not have limits on bonded indebtedness established by their States will be evaluated by assuming that their bond limit is 10 percent of the assessed value of real property in the LEA. LEAs deemed to have no practical capacity to issue bonds will receive all 4 points (Up to 4 points).

(ii) Assessed value of real property per student (applicant LEA's total assessed valuation of real property per pupil as a percentile ranking of all LEAs in the State). Points will be distributed by providing all 4 points to LEAs in the State's poorest quartile and only 1 point to LEAs in the State's wealthiest quartile (Up to 4 points).

(iii) Total tax rate for capital or school purposes (applicant LEA's tax rate for capital or school purposes as a percentile ranking of all LEAs in the State). If the State authorizes a tax rate for capital expenditures, then these data must be used; otherwise, data on the total tax rate for school purposes are used. Points will be distributed by providing all 4 points to LEAs in the State's highest-taxing quartile and only 1 point to LEAs in the State's lowest-taxing quartile (Up to 4 points).

2. *Review and Selection Process:* (a) We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

(b) Upon receipt, Impact Aid program staff will screen all applications to eliminate any applications that do not meet the eligibility standards, are incomplete, or are late. Applications that do not include a signed independent emergency certification on the application deadline are considered incomplete and will not be considered for funding. Program staff will also calculate the scores for each application under criteria (c) and (d). Panel reviewers will assess the applications under criteria (a) and (b).

(c) Applications are ranked based on the total number of points received during the review process. Those with the highest scores will be at the top of the funding slate.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize

use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a GAN; or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Department has established the following performance measure for this program: an increasing percentage of LEAs receiving Impact Aid Construction funds will report that the overall condition of their school buildings is adequate year over year. Data for this measure will be reported to the Department on the application for Impact Aid Section 7003 Basic Support Payments.

6. *Feasibility Study:* For applicants that request funding for new construction and that are selected for funding, the Department will require a feasibility of construction study. This independent third-party study must demonstrate that the chosen construction site is viable and the infrastructure will be able to sustain the new facility or addition.

7. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package 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.

James F. Lane,

Senior Advisor, Office of the Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2023–05235 Filed 3–14–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP23–88–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C., Kinder Morgan Tejas Pipeline LLC, Kinder Morgan Border Pipeline LLC.

Description: Tennessee Gas Pipeline Company, L.L.C., et al. submits Application for Abandonment of Capacity Lease Agreement.

Filed Date: 3/7/23.

Accession Number: 20230307–5177.

Comment Date: 5 p.m. ET 3/28/23.

Docket Numbers: RP23–562–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: Compliance filing: TPC 2023–03–08 Penalty Revenues Refund Report to be effective N/A.

Filed Date: 3/8/23.

Accession Number: 20230308–5120.

Comment Date: 5 p.m. ET 3/20/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 9, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–05302 Filed 3–14–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD23–4–000]

Review of Cost Submittals by Other Federal Agencies for Administering Part I of the Federal Power Act; Notice of Technical Conference

In an order issued on October 8, 2004, the Commission set forth a guideline for Other Federal Agencies (OFAs) to submit their costs related to Administering Part I of the Federal Power Act. *Order On Rehearing Consolidating Administrative Annual Charges Bill Appeals And Modifying Annual Charges Billing Procedures,* 109 FERC ¶ 61,040 (2004) (October 8 Order). The Commission required OFAs to submit their costs using the OFA Cost Submission Form. The October 8 Order also announced that a technical conference would be held for the purpose of reviewing the submitted cost forms and detailed supporting documentation.

The Commission will hold a technical conference, via conference call, at the time identified below. The technical conference will address the accepted costs submitted by the OFAs. The purpose of the conference will be for OFAs and licensees to discuss costs reported in the forms and any other supporting documentation or analyses.

The technical conference will also be transcribed. Those interested in obtaining a copy of the transcript immediately for a fee should contact the Ace-Federal Reporters, Inc., at 202–347–3700, or 1–800–336–6646. Two weeks after the post-forum meeting, the transcript will be available for free on the Commission's e-library system. Anyone without access to the Commission's website or who has questions about the technical conference should contact Raven A. Rodriguez at (202) 502–6276 or via email at *annualcharges@ferc.gov.*

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice), (202) 208–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Technical Conference Call

Date: Thursday, March 23, 2023.

Time: 2:00 p.m.–3:30 p.m. (EST).

Conference Call-In Information

Microsoft Teams Meeting, Meeting ID: 290 157 091 027, Passcode: 7QWYw2.

Or call in (audio only), +1 202–984–3352, 190590210# United States, Washington, DC, Phone Conference ID: 190 590 210#.

Dated: March 9, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–05304 Filed 3–14–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF23–3–000]

Western Area Power Administration; Notice of Filing

Take notice that on March 6, 2023, Western Area Power Administration submits tariff filing: DSW_WALC_WAPA208–20230306 to be effective 4/5/2023.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 5, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–05303 Filed 3–14–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–85–000]

Bison Pipeline LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on March 3, 2023, Bison Pipeline LLC (Bison), 700 Louisiana Street, Suite 1300, Houston, Texas 77002, filed in the above referenced docket, a prior notice pursuant to Sections 157.205, 157.210, and 157.216(b)(2)(iii) of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act and the blanket certificate issued by the Commission in Docket No. CP09–161–000,[1] seeking authorization to modify the operation of its natural gas pipeline mainline system to reduce the Maximum Allowable Operating Pressure (MAOP) and to abandon the associated system design capacity located in Campbell County, Wyoming and Morton County, North Dakota.

Specifically, Bison seeks authorization to reduce, from 1,440 pounds per square inch gauge (psig) to 1,296 psig, the MAOP of its entire natural gas pipeline mainline system from the Buffalo Meter Station, located in Campbell County, Wyoming, to the Kurtz Meter Station, located in Morton County, North Dakota, in compliance with U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration's regulations to ensure continued system integrity and safe operations. Additionally, Bison requests authorization to abandon approximately 30.5 million cubic feet per day of associated system design capacity, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application should be directed to David A. Alonzo, Manager, Project Authorizations, Bison Pipeline LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002, by phone at (832) 320–477; or by email to *david_alonzo@tcenergy.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on May 8, 2023. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is May 8, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is May 8, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before May 8, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–85–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the

[1] *Bison Pipeline LLC.,* 131 FERC ¶ 61,013 (2010).

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing.'' The Commission's eFiling staff are available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

(2) You can file a paper copy of your submission. Your submission must reference the Project docket number CP23–85–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: David A. Alonzo, Manager, Project Authorizations, Bison Pipeline LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002, by phone at (832) 320–477; or by email to *david_alonzo@tcenergy.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: March 9, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–05286 Filed 3–14–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4639–033]

Ampersand Christine Falls Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 4639–033.

c. *Date filed:* September 29, 2021.

d. *Applicant:* Ampersand Christine Falls Hydro, LLC (Ampersand).

e. *Name of Project:* Christine Falls Hydroelectric Project (Christine Falls Project or project).

f. *Location:* On the Sacandaga River near the Village of Speculator, Hamilton County, New York. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Sayad Moudachirou, Licensing Manager, Ampersand Christine Falls Hydro LLC, 717 Atlantic Avenue, Suite 1A, Boston, MA 02111, Phone: 617–933–7206, Email: *sayad@ampersandenergy.com;* and Mr. Jason Huang, Asset Manager, Ampersand Christine Falls Hydro LLC, 717 Atlantic Avenue, Suite 1A, Boston, MA 02111, Phone: 773–919–0923, Email: *jasonh@ampersandenergy.com.*

i. *FERC Contact:* Andy Bernick at (202) 502–8660, or *andrew.bernick@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Christine Falls Hydroelectric Project (P–4639–033).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted but is not ready for environmental analysis.

l. *The Christine Falls Project consists of the following existing facilities:* (1) a 15-foot-high, 152.6-foot-long concrete gravity dam (includes both abutments), with 3-foot-high wooden flashboards installed along the crest of the 135-foot-long spillway; (2) a reservoir with a surface area of 1.1 acres and a storage capacity of 4-acre feet at a normal water surface elevation of 1,699.7 feet National Geodetic Vertical Datum of 1929 (NGVD29); (3) an intake structure; (4) a 613-foot-long steel penstock with a diameter of 6 feet that bifurcates into 3-foot-diameter, 45-foot-long and 4-foot-diameter, 32-foot-long penstocks; (5) a brick and concrete powerhouse containing two turbine-generator units (*i.e.,* one 275-kilowatt (kW) unit and one 575-kW unit) with a total capacity of 850 kW; (7) a tailrace with a depth of 21 feet; (8) a 610-foot-long bypassed reach; (9) a 185-foot-long underground transmission line connecting the generating units to a 1,000-kilovolt-ampere step-up transformer; (10) a 9,315-foot-long, 4.16/13.2-kilovolt underground transmission line from the transformer to a point of interconnection; and (11) appurtenant facilities.

The Christine Falls Project is operated in a run-of-river mode, with a minimum flow of 25 cubic feet per second (cfs) into the bypassed reach during the months of March, April, and May, and a minimum flow of 10 cfs during the remainder of the year. The project has an average annual generation of 2,478 megawatt-hours.

Ampersand proposes to operate the project in a strict run-of-river mode with an impoundment level fluctuation limit of 3 inches from the dam crest or flashboards when in place. As described

in its October 11, 2022, settlement agreement with the U.S. Fish and Wildlife Service, New York State Department of Environmental Conservation, American Whitewater, and the New York State Council of Trout Unlimited, Ampersand proposes the following changes to project operation and facilities: (1) providing two seasonal minimum flow regimes over the spillway and through the bypass gate: (a) a 15 cubic feet per second (cfs) minimum flow or inflow, whichever is less, from June 1 to October 31, and (b) a 35 cfs minimum flow or inflow, whichever is less, from November 1 to May 31; (2) installing trash racks with 1-inch clear spacing or the equivalent (*e.g.,* an overlay-type system) whereby approach velocities are less than or equal to 2 feet per second, as measured 1 foot in front of the trash racks; and (3) installing and maintaining a year-round downstream fish passage structure. Ampersand also proposes to remove the existing 9,315-foot-long transmission line from the project, stating that the line also provides power to the project from the grid and thus should not be considered a primary transmission line.

m. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested individuals an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. At this time, the Commission has suspended access to the Commission's Public Access Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document 1 for comments.	March 2023.
Scoping Document 1 comments due.	April 2023.
Issue Scoping Document 2 (if necessary).	May 2023.
Issue Notice of Ready for Environmental Analysis.	May 2023.

Dated: March 9, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–05289 Filed 3–14–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD23–7–000]

Emrgy Inc.; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On February 28, 2023, Emrgy Inc., filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA). The proposed Oakdale Hydrokinetic 1 Project would have an installed capacity of 30 kilowatts (kW) and would be located within the Oakdale Lower South Main Canal near Oakdale, Stanislaus County, California.

Applicant Contact: Eric Fleckten, Emrgy Inc., 75 5th Street NW, Suite 3160, Atlanta, GA, 30308, 855–459–1818, *eric@emrgy.com*.

FERC Contact: Christopher Chaney, 202–502–6778, *christopher.chaney@ferc.gov*.

Qualifying Conduit Hydropower Facility Description: The project would consist of: (1) four 7.5-kW hydrokinetic units spaced approximately 250 feet apart and (2) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 24–39 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A)	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i)	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii)	The facility has an installed capacity that does not exceed 40 megawatts	Y
FPA 30(a)(3)(C)(iii)	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed Oakdale Hydrokinetic 1 Project will not alter the primary purpose of the conduit, which is for irrigation. Therefore, based upon the above criteria, Commission staff preliminarily determines that the operation of the project described above satisfies the requirements for a

qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 30 days from the issuance date of this notice. Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may send a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Locations of Notice of Intent: The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (*i.e.,* CD23–7) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Copies of the notice of intent can be obtained directly from the applicant. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659.

Dated: March 9, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–05290 Filed 3–14–23; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–2005 (2021).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–61–000.
Applicants: Eligo Energy LLC, Phoenix Energy Group, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Phoenix Energy Group, LLC, et al.
Filed Date: 3/8/23.
Accession Number: 20230308–5165.
Comment Date: 5 p.m. ET 3/29/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2721–013.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company submits Notice of Change in Status to Reflect Participation in California Independent System Operator Corporation's Energy Imbalance Market.
Filed Date: 9/9/22.
Accession Number: 20220909–5175.
Comment Date: 5 p.m. ET 3/23/23.
Docket Numbers: ER23–397–002.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to ISA and ICSA, SA Nos. 5564 and 5565; Queue No. AA2–161 (amend) to be effective 1/9/2023.
Filed Date: 3/9/23.
Accession Number: 20230309–5042.
Comment Date: 5 p.m. ET 3/30/23.
Docket Numbers: ER23–1272–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Replacement Generation OATT Revisions to be effective 5/9/2023.
Filed Date: 3/9/23.
Accession Number: 20230309–5043.
Comment Date: 5 p.m. ET 3/30/23.
Docket Numbers: ER23–1273–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2023–03–09_SA 4002 Ameren IL-Moraine Sands Wind FSA (GIA) (J1453) to be effective 5/9/2023.
Filed Date: 3/9/23.
Accession Number: 20230309–5072.
Comment Date: 5 p.m. ET 3/30/23.
Docket Numbers: ER23–1274–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Chilatchee 44 LGIA Filing to be effective 2/23/2023.
Filed Date: 3/9/23.
Accession Number: 20230309–5085.
Comment Date:. 5 p.m. ET 3/30/23.
Docket Numbers: ER23–1275–000.
Applicants: Aron Energy Prepay 21 LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 5/9/2023.
Filed Date: 3/9/23.
Accession Number: 20230309–5088.
Comment Date: 5 p.m. ET 3/30/23.
Docket Numbers: ER23–1276–000.
Applicants: Aron Energy Prepay 22 LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 5/9/2023.
Filed Date: 3/9/23.
Accession Number: 20230309–5091.
Comment Date: 5 p.m. ET 3/30/23.
Docket Numbers: ER23–1277–000.
Applicants: Aron Energy Prepay 23 LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 5/9/2023.
Filed Date: 3/9/23.
Accession Number: 20230309–5092.
Comment Date: 5 p.m. ET 3/30/23.
Docket Numbers: ER23–1278–000.
Applicants: Eastern Power & Gas LLC.
Description: Baseline eTariff Filing: Market-Based Rate Tariff Application to be effective 3/10/2023.
Filed Date: 3/9/23.
Accession Number: 20230309–5113.
Comment Date: 5 p.m. ET 3/30/23.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–37–000.

Applicants: New Hampshire Transmission, LLC.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of New Hampshire Transmission, LLC.

Filed Date: 3/8/23.

Accession Number: 20230308–5168.

Comment Date: 5 p.m. ET 3/29/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 9, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–05301 Filed 3–14–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–OAR–2023–0139; FRL–10755–01–R7]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Cargill, Inc., Blair Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Order on Petition for objection to Clean Air Act title V operating permit.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order dated February 16, 2023, granting in part and denying in part a Petition dated August 8, 2022 from Cargill, Inc. The Petition requested that the EPA object to a Clean Air Act (CAA) title V operating permit issued by the Nebraska Department of Environment and Energy (NDEE) to Cargill, Incorporated—Blair Facility for its corn wet milling facility located in Blair, Washington County, Nebraska.

ADDRESSES: The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, the Petition, and other supporting information. You may review copies of the final Order, the Petition, and other supporting information at the EPA Region 7 Office, 11201 Renner Boulevard, Lenexa, Kansas 66219. You may view the hard copies Monday through Friday, from 9 a.m. to 3 p.m., excluding federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before the visiting day. Additionally, the final Order and Petition are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

FOR FURTHER INFORMATION CONTACT: Ward Burns, EPA Region 7, telephone number: (913) 551–7960, email address: *burns.ward@epa.gov*.

SUPPLEMENTARY INFORMATION: The CAA affords the EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issues arose after this period.

The EPA received the Petition from Adam M. Kushner, Partner, Hogan Lovells US, LLP, on behalf of Cargill, Incorporated dated August 8, 2022, requesting that the EPA object to the issuance of operating permit no. OP96S1–001, issued by NDEE to Cargill, Incorporated—Blair Facility in Blair, Washington County, Nebraska. The Petition alleged that:

Claim A: The Permit is not in compliance with the CAA because NDEE exceeds its authority under the CAA and with 40 CFR part 70 in imposing new scrubber liquid temperature control and monitoring requirements that are not necessary to assure compliance;

Claim B: The permit is not in compliance with title V because NDEE exceeds its authority under the CAA and part 70 in imposing new substantive requirements in the form of scrubber liquid temperature control requirements, and NDEE's decision to do so is arbitrary and capricious and unsupported in the record;

Claim C: The permit is not in compliance with the title V because NDEE exceeds its authority under the CAA in imposing new substantive requirements in the form of ''alternative'' VOC/HAPs inlet testing and compliance demonstration requirements, and NDEE's decision to do so is arbitrary and capricious and unsupported in the record;

Claim D: NDEE's rationales for imposing additional requirements despite the terms agreed-upon in the consent decree are arbitrary and capricious and lack support in the record;

Claim E: NDEE fails to identify sources of authority that would justify the imposition of new substantive requirements and NDEE does not satisfy the threshold requirement for imposing supplemental monitoring requirements;

Claim F: NDEE improperly seeks to use the title V permitting process to circumvent rulemaking requirements;

Claim G: NDEE improperly relies on 'guidance' that is procedurally and substantively flawed;

Claim H: NDEE's procedure for issuing the permit was flawed because NDEE fails to respond to all significant comments and thus did not comply with title V or its regulations;

Claim I: Errata: NDEE's inconsistent language regarding Compliance Assurance Monitoring (''CAM'') plans creates regulatory uncertainty;

Claim J: EPA's review of the permit in response to the Petition is . . . Distinct From its Prior Review During the Comment Period.

On February 16, 2023, the EPA Administrator issued an Order granting in part and denying in part the Petition. The Order explains the basis for the EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than May 15, 2023.

Dated: March 9, 2023.

Meghan A. McCollister,

Regional Administrator, Region 7.

[FR Doc. 2023–05276 Filed 3–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–07–2023–0005; FRL–10752–01–R7]

Proposed CERCLA Settlement Agreement for the Newton County Mine Tailings Superfund Site, Newton County, Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region 7, of a proposed settlement agreement (''Agreement'') with Environmental Quality Management, Inc. (''EQM'') for the Newton County Mine Tailings Superfund Site (''Site''), Newton County, Missouri.

DATES: Comments must be received on or before April 14, 2023.

ADDRESSES: You may send comments by email to Kate Curl at *curl.kate@epa.gov* or by mail to Kate Curl, U.S. EPA, Office of Regional Counsel, 11201 Renner Boulevard, Lenexa, Kansas 66219. Comments should reference the Newton County Mine Tailings Superfund Site, CERCLA Section 122(h) Settlement Agreement, Docket No. CERCLA–07–2023–0005.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement may be obtained from Kate Curl, Attorney, Office of Regional Counsel, U.S. EPA Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7745; email address: *curl.kate@epa.gov.*

SUPPLEMENTARY INFORMATION: Under the proposed CERCLA section 122(h) settlement agreement, Environmental Quality Management, Inc. agrees to reimburse EPA for $1,678,330.40 plus an additional sum of interest on that amount calculated from May 12, 2022, through the date of payment for past response costs incurred in connection with EQM's disposal of lead-contaminated backfill soil in Granby City Park in September and October 2016 as part of its work as a contractor to remediate areas of the Newton County Mine Tailings Superfund Site. EQM's placement of contaminated backfill in Granby City Park required EPA, between July 2020 and March 2021, to re-remediate approximately 43% of the Granby City Park area that EQM had already remediated causing EPA to incur additional response costs.

For thirty (30) days following the date of publication of this document, EPA will receive written comments relating to the proposed agreement. EPA will consider all comments received and may modify or withdraw its consent to the proposed agreement if comments received disclose facts or considerations that indicate that the proposed agreement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the EPA Region 7 Office, located at, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Robert D. Jurgens,

Director, Superfund & Emergency Management Division, U.S. Environmental Protection Agency, Region 7.

[FR Doc. 2023–05202 Filed 3–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10768–01–R6]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Georgia-Pacific Consumer Operations LLC, Crossett Paper Operations, Ashley County, Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Order on Petition for objection to Clean Air Act title V operating permit.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order dated February 22, 2023, granting in part and denying in part two Petitions dated February 19, 2018 and October 30, 2019 (collectively the Petitions) from Crossett Concerned Citizens for Environmental Justice (the Petitioners). The Petitions requested that the EPA Administrator object to a Clean Air Act (CAA) title V operating permit issued by the Arkansas Department of Environmental Quality (ADEQ) to Georgia-Pacific Consumer Operations LLC (Georgia-Pacific) for its Crossett Paper Operations located in Ashley County, Arkansas.

ADDRESSES: The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, the Petition, and other supporting information. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed below if you need alternative access to the final Order and Petition, which are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

FOR FURTHER INFORMATION CONTACT: Jonathan Ehrhart, EPA Region 6 Office, Air Permits Section, (214) 665–2295, *ehrhart.jonathan@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issue arose after this period.

The EPA received two petitions from Crossett Concerned Citizens for Environmental Justice dated February 19, 2018 and October 30, 2019 (collectively the Petitions), requesting that the EPA Administrator object to the issuance of operating permit No. 0597–AOP–R19, issued by ADEQ to the Georgia-Pacific Consumer Operations, LLC for its Crossett Paper Operations located in Ashley County, Arkansas. The Petitions claim that the ADEQ unlawfully circumvented the public's right to a full 60-day petition period, that ADEQ's permit does not comply with the CAA's substantive requirements, and that the permit fails to incorporate a compliance schedule as the CAA requires.

On February 22, 2023, the EPA Administrator issued an Order granting in part and denying in part the Petitions. The Order explains the basis for EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than May 15, 2023.

Dated: March 8, 2023.

David Garcia,

Director, Air and Radiation Division, Region 6.

[FR Doc. 2023–05261 Filed 3–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10789–01–OA; EPA–HQ–OEJECR–2023–0099]

White House Environmental Justice Advisory Council; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has determined that, in accordance with the provisions of the Federal Advisory Committee Act (FACA), the White House Environmental Justice Advisory Council (WHEJAC) is necessary and in the public interest in connection with the performance of duties imposed on the agency by law. Accordingly, WHEJAC will be renewed for an additional two-year period. The purpose of the WHEJAC is to provide independent advice and recommendations to the Chair of the Council on Environmental Quality (CEQ) and to the White House Environmental Justice Interagency Council (IAC) on how to increase the Federal Government's efforts to address current and historic environmental injustice. The WHEJAC will provide advice and recommendations about broad cross-cutting issues related, but not limited, to issues of environmental justice and pollution reduction, energy, climate change mitigation and resiliency, environmental health, and racial inequity. The WHEJAC's efforts will include a broad range of strategic, scientific, technological, regulatory, community engagement, and economic issues related to environmental justice.

FOR FURTHER INFORMATION CONTACT: Inquiries may be directed to Karen L. Martin, WHEJAC Designated Federal Officer, U.S. EPA, 1200 Pennsylvania Avenue NW, Washington, DC 20460; by telephone at 202–564–0203; via email at *whejac@epa.gov*.

Matthew Tejada,

Deputy Assistant Administrator for Environmental Justice, Office of Environmental Justice and External Civil Rights.

[FR Doc. 2023–05318 Filed 3–14–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 22–162; DA 22–5149; FR ID 130443]

TEGNA Inc., SGCI Holdings III LLC, and CMG Media Operating Company, LLC, Applications for Transfer of Control and Assignment of Certain Subsidiaries

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document commences a hearing in connection with a series of applications filed by TEGNA Inc. (TEGNA), SGCI Holdings III LLC (SGCI Holdings), and CMG Media Operating Company, LLC (CMG) seeking Commission consent to the transfer of control and/or assignment of broadcast television station licenses. By this document, the Media Bureau has designated two discrete substantial and material questions of fact for hearing, namely: (1) are the Transactions structured in a way that is likely to trigger a rate increase harmful to consumers, as a result of contractual clauses that take immediate effect after the consummation of the Transactions, and (2) will the Transactions reduce or impair localism, including whether they will result in labor reductions at local stations.

DATES: Persons desiring to participate as parties in the hearing shall file a petition for leave to intervene no later than April 14, 2023.

ADDRESSES: File documents with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, with a copy mailed to each party to the proceeding. Each document that is filed in this proceeding must display on the front page the docket number of this hearing, ''MB Docket No. 22–162.''

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, Media Bureau, at (202) 418–1507 or *jeremy.miller@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Hearing Designation Order (Order), MB Docket No. 22–162, MB 22–149, adopted and released on February 24, 2023. The complete text of this document, including attachments and any related document, is available on the Commission's website at *https://www.fcc.gov/transaction/standard-general-tegna* or by using the search function on the Commission's Electronic Comment Filing System (ECFS) web page at *www.fcc.gov/ecfs.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Hearing Designation Order

In four sets of applications initially filed on March 18, 2022 and last amended on April 1, 2022, TEGNA Inc. (TEGNA), SGCI Holdings III LLC (SGCI Holdings), and CMG Media Operating Company, LLC (CMG) (collectively, the Applicants) sought consent to transfer control of TEGNA to SGCI Holdings, as well as three other sets of applications filed contemporaneously seeking consent for a series of related transactions: (1) the transfer of control of the four full power television stations of Community News Media LLC (CNM) to a wholly-owned subsidiary of CMG; (2) the transfer of control of Teton Parent Corp. (TPC), the parent company of licensee WFXT(TV), Boston, Massachusetts, from a wholly-owned subsidiary of CMG to SGCI Holdings; and (3) immediately upon consummation of the merger of TEGNA with TPC, the assignment of the licenses of four full-power television stations from subsidiaries of post-merger TEGNA to indirect, wholly-owned subsidiaries of CMG (collectively, the Transactions).

In addition, the Applicants and affiliated entities filed letters with the Commission putting forth certain commitments, including (1) a December 16, 2022 letter from SGCI Holdings and Standard General, L.P. addressing ''the applicability of retransmission consent agreements to the TEGNA stations that will be controlled by Standard General L.P. and SGCI Holdings . . . following the [Transactions],'' Letter from Soohyung Kim, SGCI Holdings and Standard General, L.P., to Marlene H. Dortch, FCC, Dkt. No. 22–162 (filed Dec. 16, 2022) (SG Waiver Letter); and (2) a December 22, 2022 letter from SGCI Holdings and Standard General, L.P. addressing concerns raised regarding reduction of local jobs after consummation of the Transactions, Letter from Soohyung Kim, SGCI Holdings and Standard General, L.P., to Marlene H. Dortch, FCC, Dkt. No. 22–162 (filed Dec. 22, 2022) (SG Staffing Letter)).

Multiple parties filed petitions and other formal pleadings seeking, among other things, to dismiss or deny the Transactions. These parties' arguments include objections that the structure of the Transactions would unfairly harm subscribers through increased multichannel video programming distributors (MVPD) subscription prices resulting from the triggering of after-

acquired clauses in retransmission contracts. More specifically, some parties raise concerns with the structure and sequencing of the Transactions and the perceived exploitation of contractual provisions in the retransmission consent agreements held by the stations, which they allege would result in the imposition of higher retransmission fees in a manner inconsistent with a functioning, competitive marketplace. Opponents also argue that the Transactions undermine localism by reducing the amount and scope of local news coverage because the Applicants' business intentions and commitments include reporter layoffs.

Section 310(d) of the Act, 47 U.S.C. 310(d), provides that no station license shall be transferred or assigned unless the Commission, on application, determines that the public interest, convenience, and necessity will be served thereby. If the transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes. Under Section 309(d) of the Act, ''[i]f a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent [with the public interest, convenience, and necessity],'' it must formally designate the application for a hearing in accordance with Section 309(e) of the Act. 47 U.S.C. 309(d) and (e). Courts have stated that, in reviewing the record, the Commission must designate an application for hearing if ''the totality of the evidence arouses a sufficient doubt'' as to whether grant of the application would serve the public interest. *Serafyn* v. *FCC,* 149 F.3d 1213, 1216 (D.C. Cir. 1998) (quoting *Citizens for Jazz on WRVR Inc.* v. *FCC,* 775 F.2d 392, 395 (D.C. Cir. 1985)).

Potential Public Interest Harm from Increased Retransmission Consent Fees. Pursuant to section 325 of the Communications Act, 47 U.S.C. 325(b), MVPDs may retransmit the signal of a local broadcast television station on a cable or satellite television system only with the station's permission. To facilitate the carriage of local stations, the Act permits licensees of commercial television stations to elect to either require the MVPDs to carry their signals automatically but without compensation, or to negotiate with MVPDs for the right to retransmit the station's signal in exchange for remuneration. If a station elects transmission consent, the station and MVPD negotiate a carriage agreement, known as retransmission consent agreement, which typically involves a fee paid to the local broadcast station calculated on a per-subscriber, per-month basis. *Communications Marketplace Report,* GN Docket No. 22–203, FCC 22–103, Report, at 167, paragraph 275 (2022). If the parties are unable to negotiate such a carriage agreement, the MVPD must stop retransmitting the station's broadcast signal and viewers lose access to the station on the MVPD's cable or satellite television system in what is known as a blackout.

Commission caselaw makes clear that increases in retransmission consent rates can constitute a public interest harm if such increases are not simply the product of a properly functioning competitive marketplace. In particular, evidence that anticompetitive practices or other wrongdoing could distinguish what would perhaps constitute a market-driven rate increase from one that is anti-competitive, unwarranted, and harmful to consumers and the public interest. In the instant matter, we find that there is a substantial and material question of fact as to whether any increase in retransmission fees as a result of this transaction is the result of a properly functioning, competitive marketplace, or, alternatively, whether such rate increases would be the result of: (1) the unique structure of the Transactions in which the various assignments and/or transfers of control are closed sequentially in order to take advantage of after-acquired station clauses and maximize retransmission revenue, or (2) some other anticompetitive practices or other wrongdoing, and accordingly, the impact of any such rate increases on the viewing public, including MVPD subscribers.

Based on the record before us, we are unable to find, due to the unique structure of the Transactions in which the various assignments and/or transfers of control are closed sequentially in order to take advantage of after-acquired station clauses and maximize retransmission revenue, that rates to MVPD subscribers would not rise beyond that which would occur in a properly functioning competitive market. In addition, especially given questions about the intended scope of the commitments relating to enforcement of such clauses, we are unable to find that the commitments offered by the Applicants would adequately mitigate such a result. Accordingly, we designate the Applications for a hearing to determine: whether the sequencing of the Transactions was intended primarily to increase retransmission fees; whether consummation of the Transactions will likely cause an increase in rates for the retail subscribers of the MVPDs that currently hold, or will in the future negotiate, retransmission agreements with the Applicants; whether the sequencing of the Transactions constitutes anticompetitive activity; what the extent of harm to viewers and the public interest would be as a result, whether any such harm would be adequately mitigated by the commitments offered by the Applicants in the SG Waiver Letter; and/or whether any of the Applicants violated any Commission rules or committed other wrongdoing in constructing the Transactions.

Potential Public Interest Harm to Localism, Including Due to Labor Reductions. Localism, along with competition and diversity, is a longstanding core Commission broadcast policy objective, which together forms the cornerstone of broadcasting. 2*002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13643–13644, paras. 73 through76 (2003) (subsequent history omitted) (*2002 Biennial Review*); B*roadcast Localism,* Notice of Inquiry, 19 FCC Rcd 12425 at paragraph 1 (2004) (*Broadcast Localism NOI*) The Commission has consistently interpreted the localism obligation to require that broadcasters air material that is responsive to the needs and interests of the communities that their stations are licensed to serve, including local news, information, and public affairs programming. *See, e.g., Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees,* Memorandum Opinion and Order, 26 FCC Rcd. 4238, 4320, paragraph 197 (2011) (*Comcast/NBCU Order*) (citation omitted). As the Supreme Court recently recognized, ''[t]he FCC has long explained that the ownership rules seek to promote competition, localism, and viewpoint diversity by ensuring that a small number of entities do not dominate a particular media market.'' *Fed. Commc'ns Comm'n* v. *Prometheus Radio Project,* 141 S.Ct. 1150, 1155 (2021).

We recognize that local journalism is the heart of local news and community-responsive programming, and in that context we take seriously concerns that

a diminution in the employment of local journalists and other local staff poses a threat to localism.

Plans and Commitments Regarding Jobs. The conflicting evidence on the record before us about SGCI Holdings' intentions and commitments with regard to local staffing at the TEGNA stations, leaves us with substantial and material questions of fact, unresolved by Applicants' filings, that require further investigation to determine the ultimate effects on localism. Central to this determination would be reconciling the accuracy and legitimacy of the Applicants' explanations for the documents seeming to indicate intent and commitments to reduce station-level staff, including whether the ''synergies'' of job cuts have already taken place; evaluation of SGCI Holdings' explanations that station-level savings have already been achieved and that the financial model is distinguishable from a financial plan; identification of any such jobs that would likely be cut as a result of the proposed transaction and their impact on the Commission's localism policies; and resolution of apparent timeline inconsistencies about representations on staffing.

The Applicants have offered certain commitments regarding staffing at the TEGNA stations if the Commission were to approve the Transactions. However, the specific deficiencies highlighted by some of the opponents of the Transactions, including the practicality and sufficiency of the SG Staffing Letter, remain unaddressed and unresolved, leaving substantial and material questions of fact as to whether and how station-level staffing might be reduced and the effect of any such reduction on localism.

Structure of Ownership. The record also indicates that two aspects of the ultimate ownership proposed for New TEGNA also warrant further investigation in order to determine the potential impact on localism. First, the parties present sharply divergent cases as to whether the organizational form of SGCI Holdings as an investment fund benefits or harms the ability of the TEGNA Stations to provide local service going forward. A material question remains whether the specific change in ownership in this transaction from a publicly traded corporation to a private company owned by an investment fund would promote, hinder, or indeed, have no effect on localism. Second, any assessment of localism would also benefit from a determination of the role of Standard General L.P. in the past as a station owner and, more importantly, its role going forward. Although the Applicants, on occasion, refer to the role of Standard General L.P. going forward in an apparent ownership or control capacity, most notably in the recent commitment letters filed in December, it is not clear that this entity is involved in the Transactions. There is a material question how relevant the experience under different, unidentified Standard General L.P. ownership would be compared to that of SGCI Holdings.

Programming Production. We also find two issues related to the production of community-responsive programming to raise substantial and material questions of fact as to whether SGCI Holdings' acquisition of the TEGNA stations will harm localism. First, questions have been raised in the record regarding how New TEGNA's creation and use of a Washington, DC, news bureau will impact localism, and, in particular, whether it would increase or reduce the Stations' local journalism and coverage of local issues. Second, questions have been raised in the record regarding whether SGCI Holding's apparent intent to provide local news services remotely will promote or harm localism. In order to assess the impact of SGCI Holdings' planned operations on the TEGNA Stations' ability to serve the needs and interests of their local communities, further examination of New TEGNA's evident plans to gather and broadcast local news remotely is necessary.

Accordingly, *it is ordered*, That, pursuant to Sections 309(e) of the Act, 47 U.S.C. 309(e), and section 1.254 of the Commission's rules, 47 CFR 1.254, the above-captioned applications *are designated for hearing* to be held at a time and location specified in a subsequent Order by the Administrative Law Judge, upon the following questions:

(a) Whether, in light of the record presented, retransmission consent fees will rise as a result of the Transactions, and if so, whether such an increase is the result of a properly functioning, competitive marketplace, or, alternatively, whether such rate increases would be the result of the unique structure of the Transactions in which the various assignments and/or transfers of control are closed sequentially in order to take advantage of after-acquired station clauses and maximize retransmission revenue, and further, whether such a result would be mitigated by the commitments offered by the Applicants; and

(b) Whether, and to what extent, in light of the record presented, local content and programming in the affected communities would be adversely affected due to the proposed plans and commitments of SGCI Holdings for station-level staff; its intentions for investments in the stations; the potential financial pressures connected with the acquisition and ownership structure; and the potential effectiveness of the commitments offered by the Applicants.

It is further ordered, That, pursuant to Section 309(e) of the Act, 47 U.S.C. 309(e), and section 1.254 of the Commission's rules, 47 CFR 1.254, both the *burden of proceeding* with the introduction of evidence and the *burden of proof* with respect to issues specified above shall be upon SGCI Holdings, CNM, CMG, TEGNA, and TPC. We are assigning the burdens in this manner because SGCI Holdings, CNM, CMG, TEGNA, and TPC have the particular knowledge of the specific facts at issue in this proceeding, as well as the statutory obligation to demonstrate that grant of the Transaction is in the public interest.

It is further ordered, That to avail itself of the opportunity to be heard, SGCI Holdings, CNM, CMG, TEGNA, and TPC pursuant to Section 1.221(c) and 1.221(e) of the Commission's Rules, 47 CFR 1.221(c) and 1.221(e), in person or by their respective attorneys, *shall file a written appearance*, stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in the Order. Such written appearance shall be filed within 20 days of the mailing of this Order. Pursuant to Section 1.221(c) of the Commission's rules, if the applicants fail to file an appearance within the specified time period, or have not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the assignment application will be dismissed with prejudice for failure to prosecute.

It is further ordered, that, having filed petitions to deny, TNG–CWA and the National Association of Broadcast Employees and Technicians-CWA (NABET–CWA) (collectively, CWA) and Common Cause and United Church of Christ, OC, Inc. (collectively, Common Cause/UCC) are made parties to the proceeding pursuant to Section 1.221(d) of the Commission's rules, 47 CFR 1.221(d). To avail themselves of the opportunity to be heard, pursuant to Sections 1.221(e) of the Commission's rules, each of these parties, in person or by its attorneys, *shall file,* a *written appearance,* stating its intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Such written

appearance shall be filed within 20 days of the mailing of this Order. If any of these parties fails to file an appearance within the time specified, it shall, unless good cause for such failure is shown, forfeit its hearing rights.

It is further ordered, That the Chief, Enforcement Bureau, shall be made a party to this proceeding without the need to file a written appearance.

It is further ordered, That a copy of each document filed in this proceeding subsequent to the date of adoption of this document *shall be served* on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations & Hearings Division of the Enforcement Bureau at (202) 418–1420. Such service copy *shall be addressed* to the named counsel of record, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

It is further ordered, That SGCI Holdings, pursuant to Section 311(a)(2) of the Act, 47 U.S.C. 311(a)(2), and Section 73.3594 of the Commission's Rules, 47 CFR 73.3594, *shall give notice* of the hearing within the time and in the manner prescribed in such Rules, and *shall advise* the Commission of the publication of such notice as required by Section 73.3594(b) of the Rules, 47 CFR 73.3594(b).

It is further ordered, That a copy of this document, or a summary thereof, shall be published in the **Federal Register**.

It is further ordered, That, within fifteen (15) days of the date that *written appearances* are due, the Administrative Law Judge shall issue a Scheduling Order that includes a set date for resolution.

It is further ordered, That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center *shall send* a copy of this Order by certified mail/return receipt requested to:

TEGNA, Inc.
Michael Beder, TEGNA Inc., 8350 Broad Street, Suite 2000, Tysons, VA 22102
Jennifer A. Johnson, Covington & Burling LLP, One CityCenter, 850 Tenth Street NW, Washington, DC 20001

SGCI Holdings III LLC/Community News Media LLC
Soohyung Kim, SGCI Holdings III LLC, 767 Fifth Avenue, 12th Floor, New York, NY 10153
Scott R. Flick, Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth Street NW, Washington, DC 20036

CMG Media Corporation/Teton Parent Corp.
CMG Legal Dept., 1601 W Peachtree Street NE, Atlanta, GA 30309, United States
Michael Basile, Cooley LLP, 1299 Pennsylvania Avenue NW, Suite 700, Washington, DC 20004

Common Cause
Yosef Getachew, Common Cause, 805 15th Street NW, Suite 800, Washington, DC 20005

United Church of Christ Media Justice Ministry
Cheryl A. Leanza, United Church of Christ Media Justice Ministry, 100 Maryland Avenue NE, Washington, DC 20002

The Newsguild—CWA/National Association of Broadcast Employees and Technicians—CWA
Andrew Jay Schwartzman, 1341 G Street NW, Fifth Floor, Washington, DC 20005
David R. Goodfriend, The Goodfriend Group, 208 I Street NE, Washington, DC 20002

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Attachment

TEGNA MERGER APPLICATIONS

Call sign	Community of license	Application file Nos.	Licensee	Facility ID
WUPL(TV)	Slidell, LA	0000186355	Belo TV, Inc	13938
WBXN–CD	New Orleans, LA	0000186356	Belo TV, Inc	70419
KTHV(TV)	Little Rock, AR	0000186358	Cape Publications, Inc	2787
KFSM–TV	Fort Smith, AR	0000186359	Cape Publications, Inc	66469
WZZM(TV)	Grand Rapids, MI	0000186369	Combined Communications of Oklahoma, LLC.	49713
KENS(TV)	San Antonio, TX	0000186371	KENS–TV, Inc	26304
KFMB–TV	San Diego, CA	0000186372	KFMB–TV, LLC	42122
KING–TV	Seattle, WA	0000186389	KING Broadcasting Company	34847
KREM(TV)	Spokane, WA	0000186391	KING Broadcasting Company	34868
KTVB(TV)	Boise, ID	0000186394	KING Broadcasting Company	34858
K15IO–D	McCall & New Meadows, ID	0000186397	KING Broadcasting Company	34869
K16JE–D	Glenns Ferry, ID	0000186393	KING Broadcasting Company	188132
K17KF–D	Cambridge, ID	0000186392	KING Broadcasting Company	188131
K21CC–D	Lewiston, ID	0000186390	KING Broadcasting Company	50532
K23KY–D	Council, ID	0000186399	KING Broadcasting Company	11446
K29NB–D	Cascade, ID	0000186396	KING Broadcasting Company	34884
K30QA–D	Coeur D'Alene, ID	0000186398	KING Broadcasting Company	34861
KTFT–LD	Twin Falls, ID	0000186395	KING Broadcasting Company	167056
KONG(TV)	Everett , WA	0000186373	KONG–TV, Inc	35396
KSKN(TV)	Spokane, WA	0000186387	KSKN Television, Inc	35606
KTTU(TV)	Tucson, AZ	0000186400	KTTU–TV, Inc	11908
KWES–TV	Odessa, TX	0000186401	KWES Television, LLC	42007
KXTV(TV)	Sacramento, CA	0000186403	KXTV, LLC	25048
KBMT(TV)	Beaumont, TX	0000186374	LSB Broadcasting, Inc	10150
KCEN–TV	Temple, TX	0000186384	LSB Broadcasting, Inc	10245
KIDY(TV)	San Angelo, TX	0000186376	LSB Broadcasting, Inc	58560
KIII(TV)	Corpus Christi, TX	0000186379	LSB Broadcasting, Inc	10188
KXVA(TV)	Abilene, TX	0000186377	LSB Broadcasting, Inc	62293
KYTX(TV)	Nacogdoches, TX	0000186385	LSB Broadcasting, Inc	55644
KUIL–D	Beaumont, TX	0000186380	LSB Broadcasting, Inc	168234
KAGS–LD	Bryan, TX	0000186378	LSB Broadcasting, Inc	10246
KIDB–LD	Sweetwater, TX	0000186375	LSB Broadcasting, Inc	53545

TEGNA MERGER APPLICATIONS—Continued

Call sign	Community of license	Application file Nos.	Licensee	Facility ID
KIDU–LD	Brownwood, TX	0000186383	LSB Broadcasting, Inc	58559
KIDV–LD	Albany, TX	0000186381	LSB Broadcasting, Inc	58571
KVHP–LD	Jasper, TX	0000186382	LSB Broadcasting, Inc	168235
WGRZ(TV)	Buffalo, NY	0000186402	Multimedia Entertainment, LLC	64547
KARE(TV)	Minneapolis, MN	0000186415	Multimedia Holdings Corporation	23079
KNAZ–TV	Flagstaff, AZ	0000186416	Multimedia Holdings Corporation	24749
KPNX(TV)	Mesa, AZ	0000186424	Multimedia Holdings Corporation	35486
K06AE–D	Prescott, AZ	0000186422	Multimedia Holdings Corporation	35274
K26OD–D	Globe, AZ	0000186421	Multimedia Holdings Corporation	35487
KPSN–LD	Payson, AZ	0000186417	Multimedia Holdings Corporation	63396
KTVD(TV)	Denver, CO	0000186423	Multimedia Holdings Corporation	68581
KUSA(TV)	Denver, CO	0000186419	Multimedia Holdings Corporation	23074
WJXX(TV)	Orange Park, FL	0000186420	Multimedia Holdings Corporation	11893
WTLV(TV)	Jacksonville, FL	0000186418	Multimedia Holdings Corporation	65046
KSDK(TV)	St. Louis, MO	0000186404	Multimedia KSDK, LLC	46981
WATL(TV)	Atlanta, GA	0000186406	Pacific and Southern, LLC	22819
WLTX(TV)	Columbia, SC	0000186407	Pacific and Southern, LLC	37176
WMAZ–TV	Macon, GA	0000186409	Pacific and Southern, LLC	46991
WXIA–TV	Atlanta, GA	0000186408	Pacific and Southern, LLC	51163
WBNS(AM)	Columbus, OH	0000186364	RadiOhio, Incorporated	54901
WBNS–FM	Columbus, OH	0000186363	RadiOhio, Incorporated	54701
WHAS–TV	Louisville, KY	0000186405	Sander Operating Co. I LLC D/B/A WHAS Television.	32327
KGW(TV)	Portland, OR	0000186444	Sander Operating Co. III LLC D/B/A KGW Television.	34874
K16ML–D	Corvallis, OR	0000186450	Sander Operating Co. III LLC D/B/A KGW Television.	34851
K17HA–D	Astoria, OR	0000186449	Sander Operating Co. III LLC D/B/A KGW Television.	130923
K19LT–D	Prineville, etc., OR	0000186445	Sander Operating Co. III LLC D/B/A KGW Television.	34864
K25KS–D	The Dalles, OR	0000186452	Sander Operating Co. III LLC D/B/A KGW Television.	34844
K28MJ–D	Tillamook, OR	0000186446	Sander Operating Co. III LLC D/B/A KGW Television.	189303
K29AZ–D	Newport, OR	0000186448	Sander Operating Co. III LLC D/B/A KGW Television.	34865
K35HU–D	Grays River, WA	0000186451	Sander Operating Co. III LLC D/B/A KGW Television.	34870
KGWZ–LD	Portland, OR	0000186447	Sander Operating Co. III LLC D/B/A KGW Television.	30810
KMSB(TV)	Tucson, AZ	0000186388	Sander Operating Co. V LLC D/B/A KMSB Television.	44052
KCWI–TV	Ames, IA	0000186425	TEGNA Broadcast Holdings, LLC	51502
WCCT–TV	Waterbury, CT	0000186430	TEGNA Broadcast Holdings, LLC	14050
WNEP–TV	Scranton, PA	0000186427	TEGNA Broadcast Holdings, LLC	73318
WOI–DT	Ames, IA	0000186435	TEGNA Broadcast Holdings, LLC	8661
WPMT	York, PA	0000186439	TEGNA Broadcast Holdings, LLC	10213
WQAD–TV	Moline, IL	0000186438	TEGNA Broadcast Holdings, LLC	73319
WTIC–TV	Hartford, CT	0000186428	TEGNA Broadcast Holdings, LLC	147
WZDX(TV)	Huntsville, AL	0000186429	TEGNA Broadcast Holdings, LLC	28119
W07DC–D	Allentown/Bethlehem, PA	0000186437	TEGNA Broadcast Holdings, LLC	73325
W10CP–D	Towanda, PA	0000186431	TEGNA Broadcast Holdings, LLC	73320
W14CO–D	Clarks Summit, etc., PA	0000186432	TEGNA Broadcast Holdings, LLC	73326
W15CO–D	Towanda, PA	0000186436	TEGNA Broadcast Holdings, LLC	73324
W20AD–D	Williamsport, PA	0000186433	TEGNA Broadcast Holdings, LLC	73321
W26CV–D	Mansfield, PA	0000186426	TEGNA Broadcast Holdings, LLC	129499
W29FQ–D	Pottsville, PA	0000186434	TEGNA Broadcast Holdings, LLC	73327
WTSP(TV)	St. Petersburg, FL	0000186365	Tegna East Coast Broadcasting, LLC	11290
WLBZ(TV)	Bangor, ME	0000186368	Tegna East Coast Broadcasting, LLC	39644
WCSH(TV)	Portland, ME	0000186366	Tegna East Coast Broadcasting, LLC	39664
WGCI–LD	Skowhegan, ME	0000186367	Tegna East Coast Broadcasting, LLC	39642
WATN–TV	Memphis, TN	0000186411	TEGNA Memphis Broadcasting, Inc	11907
WLMT(TV)	Memphis, TN	0000186412	TEGNA Memphis Broadcasting, Inc	68518
WTHR(TV)	Indianapolis, IN	0000186414	VideoIndiana, Inc	70162
WALV–CD	Indianapolis, IN	0000186413	VideOhio, Inc	70161
WBIR–TV	Knoxville, TN	0000186443	WBIR–TV, LLC	46984
WBNS–TV	Columbus, OH	0000186362	WBNS–TV, Inc	71217
WCNC–TV	Charlotte, NC	0000186440	WCNC–TV, Inc	32326
W17EE–D	Lilesville/Wadesboro, NC	0000186441	WCNC–TV, Inc	32316
W36FB–D	Briscoe, NC	0000186442	WCNC–TV, Inc	32317

TEGNA MERGER APPLICATIONS—Continued

Call sign	Community of license	Application file Nos.	Licensee	Facility ID
WFAA(TV)	Dallas, TX	0000186453	WFAA–TV, Inc	72054
WFMY–TV	Greensboro, NC	0000186454	WFMY Television, LLC	72064
WKYC(TV)	Cleveland, OH	0000186455	WKYC–TV, LLC	73195
WTOL(TV)	Toledo, OH	0000186456	WTOL Television, LLC	13992
WUSA(TV)	Washington, D.C	0000186457	WUSA–TV, Inc	65593
WVEC(TV)	Hampton, VA	0000186459	WVEC Television, LLC	74167
WJHJ–LP	Newport News, Etc., VA		WVEC Television, LLC	35137
WYSJ–CD	Yorktown, VA		WVEC Television, LLC	35134
WWL–TV	New Orleans, LA	0000186352	WWL–TV, Inc	74192

TEXAS STATIONS TO BE ACQUIRED BY CMG

Call sign	Community of license	Application file Nos.	Licensee	Facility ID
KHOU(TV)	Houston, TX	0000186461	KHOU–TV, Inc	34529
KTBU(TV)	Conroe, TX	0000186460	KHOU–TV, Inc	28324
KMPX(TV)	Decatur, TX	0000186462	WFAA–TV, Inc	73701
KVUE(TV)	Austin, TX	0000186458	KVUE Television, Inc	35867

COMMUNITY NEWS MEDIA TRANSFERS

Call sign	Community of license	Application file Nos.	Licensee	Facility ID
KLKN(TV)	Lincoln, NE	0000186354	KLKN Lincoln License LLC	11264
WLNE–TV	New Bedford, MA	0000186357	WLNE Providence License LLC	22591
WDKA(TV)	Paducah, KY	0000186361	Paducah Television License LLC	39561
KBSI(TV)	Cape Girardeau, MO	0000186360	Paducah Television License LLC	19593

WFXT SALE

Call sign	Community of license	Application file Nos.	Licensee	Facility ID
WFXT(TV)	Boston, MA	0000186353	Teton Opco Corp	6463

[FR Doc. 2023–05226 Filed 3–14–23; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

TIME AND DATE: 5:02 p.m. on Sunday, March 12, 2023.

PLACE: The meeting was held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Board of Directors of the Federal Deposit Insurance Corporation met to consider matters related to the Corporation's supervision, corporate, and resolution activities. In calling the meeting, the Board determined, on motion of Director Rohit Chopra (Director, Consumer Financial Protection Bureau), seconded by Director Michael J. Hsu (Acting Comptroller of the Currency), and concurred in by Vice Chairman Travis J. Hill, Director Jonathan P. McKernan, and Chairman Martin J. Gruenberg, that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Executive Secretary of the Corporation, at 202–898–8748.

Dated this the 12th day of March, 2023.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–05351 Filed 3–13–23; 11:15 am]
BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

National Shipper Advisory Committee March 2023 Meeting

AGENCY: Federal Maritime Commission.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: Notice is hereby given of a meeting of the National Shipper Advisory Commission (NSAC) pursuant to the Federal Advisory Committee Act.

DATES: The Committee will meet in-person at the Miami-Dade Beacon Council, in Miami, FL, on March 30, 2023, from 1 until 4 p.m. Eastern Time and also available to view streamed live via a link on *www.fmc.gov*. Please note that this meeting may adjourn early if the Committee has completed its business.

ADDRESSES: The meeting will be held at the Miami-Dade Beacon Council located at 80 SW 8th Street, Suite 2400, Miami, FL 33130. Requests to register should be submitted to *nsac@fmc.gov* and contain

''REGISTER FOR NSAC MEETING'' in the subject line. The deadline for members of the public to register to attend the meeting in-person is Friday, March 24, at 5 p.m. Eastern Time. Members of the public are encouraged to submit registration requests via email in advance of the deadline, as space is limited and will be available on a first-come, first-served basis for those who register in advance. We will note when the limit of in-person attendees has been reached. The meeting will also stream live virtually, and a link will be distributed in advance of the meeting to registrants and also on the Federal Maritime Commission's website, *www.fmc.gov.* Please note in the registration request if you would like to attend in person or virtually.

FOR FURTHER INFORMATION CONTACT: Mr. Dylan Richmond, Designated Federal Officer of the National Shipper Advisory Committee, phone: (202) 523–5810; email: *drichmond@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The National Shipper Advisory Committee is a federal advisory committee. It operates under the provisions of the Federal Advisory Committee Act, 5 U.S.C. App., and 46 U.S.C. chapter 425. The Committee was established on January 1, 2021, when the National Defense Authorization Act for Fiscal Year 2021 became law. Public Law 116–283, section 8604, 134 Stat. 3388 (2021). The Committee provides information, insight, and expertise pertaining to conditions in the ocean freight delivery system to the Commission. Specifically, the Committee advises the Federal Maritime Commission on policies relating to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system. 46 U.S.C. 42502(b).

The Committee's agenda items will include the election of a Chair and Vice Chair. The Committee will also receive an update from Commissioner Carl Bentzel and from each of its subcommittees. The Committee may receive proposals for recommendations to the Federal Maritime Commission and may vote on these recommendations. Any proposed recommendations will be available for the public to view in advance of the meeting on the NSAC's website, *https://www.fmc.gov/industry-oversight/national-shipper-advisory-committee/.*

Public Comments: Members of the public may submit written comments to NSAC at any time. Comments should be addressed to NSAC, c/o Dylan Richmond, Federal Maritime Commission, 800 North Capitol St. NW, Washington, DC 20573 or *nsac@fmc.gov.*

The Committee will also take public comment at its meeting. If attending the meeting and providing comments, please note that in the registration request. Comments are most helpful if they address the Committee's objectives or their proposed recommendations. Comments at the meeting will be limited to 3 minutes each.

A copy of all meeting documentation, including meeting minutes, will be available at *www.fmc.gov* following the meeting.

By the Commission.

Dated: March 10, 2023.

William Cody,

Secretary.

[FR Doc. 2023–05313 Filed 3–14–23; 8:45 am]

BILLING CODE 6730–02–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 March 30, 2023.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President); 1 Memorial Drive, Kansas City, Missouri 64198:

1. *Caroline Berry; the Brooklyn Bass Berry 2019 Irrevocable Trust; the Hannah D. Berry 2019 Irrevocable Trust; the Kaylee Doiron Berry 2019 Irrevocable Trust; William L. Berry Jr. and Stacey Berry, as co-trustees of the three preceding trusts; the James Arthur Dilley, Jr. 2019 Irrevocable Trust; the Jarret Blake Dilley 2019 Irrevocable Trust; and Jennifer Berry Dilley and James A. Dilley, as co-trustees of the two preceding trusts, all of Sapulpa, Oklahoma;* to join the Berry Family Group, a group acting in concert, to retain voting shares of American Bancorporation, Inc., and thereby indirectly retain voting shares of American Heritage Bank, both of Sapulpa, Oklahoma.

In addition, The Caroline Celen Berry Revocable Trust, Caroline Berry, as trustee, and The Elizabeth Berry Thompson Revocable Trust, Elizabeth Thompson, as trustee, all of Sapulpa, Oklahoma; to join the Berry Family Group, a group acting in concert, to acquire additional voting shares of American Bancorporation, Inc., and thereby indirectly acquire additional voting shares of American Heritage Bank.

Board of Governors of the Federal Reserve System.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2023–05309 Filed 3–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of Single-Source Cooperative Agreements To Fund Amhara Regional Health Bureau (ARHB), Ethiopia; Uganda Virus Research Institute (UVRI), Uganda; Hanoi Medical University (HMU), Vietnam; The Cambodian National Institute for Public Health (NIPH), Cambodia; and United Nations Office for Project Services (UNOPS)/The Stop TB Partnership (Stop TB), Headquarters (HQ)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), announces the award of approximately $20,000,000 for Year 1 funding to ARHB, Ethiopia; approximately $15,000,000 for Year 1 to UVRI, Uganda; approximately

$2,000,000 for Year 1 funding to HMU, Vietnam; approximately $800,000 for Year 1 funding to NIPH, Cambodia; and approximately $750,000 for Year 1 funding to UNOPS/Stop TB, HQ. These awards will support implementing a comprehensive combination of HIV prevention, monitoring, diagnosis, and treatment systems; emergency preparedness and response; and reduce infectious disease burden in Ethiopia, Uganda, Vietnam, Cambodia and HQ. Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this award will be September 30, 2023, through September 29, 2028.

FOR FURTHER INFORMATION CONTACT:

Ethiopia: Caroline Ryan, Center for Global Health, Centers for Disease Control and Prevention, P.O. Box 1014, Addis Ababa, Ethiopia, Telephone: 202–663–2684, Email: *cgr8@cdc.gov.*

Uganda: Ms. Mary Naluguza, Center for Global Health, Centers for Disease Control and Prevention, U.S. Embassy, Plot 1577 Ggaba Road, P.O. Box 7007, Kampala, Uganda, Telephone: +256–772139151, Email: *yrs0@cdc.gov.*

Vietnam: Amy Bailey, Center for Global Health, Centers for Disease Control and Prevention, 5th/Floor Tung Shing Building, No. 2, Ngo Quyen Street, Hoan Kiem District Hanoi, Vietnam, Telephone: 84–2439352692, Email: *fue8@cdc.gov.*

Cambodia: Joyce Neal, Center for Global Health, Centers for Disease Control and Prevention, #80, Samdach Pen Nut Blvd., (289) Sangkat Boeung Kak II, Khan Tuol Kork, Phnom Penh, Cambodia, Telephone: 404–433–0184, Email: *jxn4@cdc.gov.*

HQ: Rebekah Marshall, Center for Global Health, Centers for Disease Control and Prevention, 1600 Clifton Road, MS US1–1, Atlanta, GA 30329, Telephone: (404) 718–1126, Email: *vvn2@cdc.gov.*

SUPPLEMENTARY INFORMATION:

- *ARHB, Ethiopia:* The single-source award will continue supporting the ARHB in delivering comprehensive HIV/AIDS services to reach HIV epidemic control and other public health priorities.

The ARHB is in a unique position to conduct this work, as it is a government entity established by law with a legal authority and mandated to plan, manage, administer, and coordinate all health-related activities in the Amhara region. It is the uniquely qualified and sole agent of the Ethiopian Government with this mandate and responsibility in the Region.

- *UVRI, Uganda:* The single-source award will support the Ministry of Health (MOH) with the diagnosis of viral pathogens of public health concern.

UVRI is in a unique position to conduct this work, as it a MOH institution with the mandate to solely provide HIV-related quality assurance and diagnosis of viral pathogens of public health concern for the country.

- *HMU, Vietnam:* The single-source award will support HMU to implement innovations and generate evidence-based models for the National HIV Program and other public health programs by institutionalizing best practices through support for innovation implementation, evaluations, surveillance, and health information systems.

HMU is in a unique position to conduct this work, as it is a parastatal university affiliated to and mandated by the Ministry of Health as Vietnam's primary health workforce training and research institution in the health sector. HMU is the only institution capable of fulfilling the purpose of this NOFO due to its unique position as the sole institution in Vietnam to lead a national network of medical universities, colleges, and secondary medical schools.

- *NIPH, Cambodia:* The single-source award will continue supporting NIPH to fulfill their essential roles to help Cambodia reach and sustain the UNAIDS 95–95–95 goals.

NIPH is in a unique position to conduct this work, as it is the only recognized national reference laboratory authorized by the MOH under Sub-decree 67 ANKr.BK.

- *UNOPS/Stop, HQ:* The single-source award will continue supporting a multi-sectoral approach to re-imagine TB care.

UNOPS/STOP is in a unique position to conduct this work, as it the only organization that has been charged by the World Health Assembly, through Resolution WHA 67.1, to work with the World Health Organization to develop a global investment plan to guide the implementation of the global strategy and targets for TB prevention, care, and control after 2015, that was approved and adopted by all member states.

Summary of the Awards

Recipients: Amhara Regional Health Bureau (ARHB), Ethiopia; Uganda Virus Research Institute (UVRI), Uganda; Hanoi Medical University (HMU), Vietnam; The Cambodian National Institute for Public Health (NIPH), Cambodia; and United Nations Office for Project Services (UNOPS)/The Stop TB Partnership (Stop TB), Headquarters (HQ).

Purpose of the Awards: The purpose of these awards is to support implementing a comprehensive combination of HIV prevention, monitoring, diagnosis, and treatment systems; emergency preparedness and response; and reduce infectious disease burden in Ethiopia, Uganda, Vietnam, Cambodia and HQ.

Amount of the Awards: For ARHB, the approximate year 1 award funding amount is $20,000,000 in Federal Fiscal Year (FYY) 2023, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation. For UVRI, the approximate year 1 award funding amount is $15,000,000 in Federal Fiscal Year (FYY) 2023, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation. For HMU, the approximate year 1 award funding amount is $2,000,000 in Federal Fiscal Year (FYY) 2023, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation. For NIPH, the approximate year 1 award funding amount is $800,000 in Federal Fiscal Year (FYY) 2023, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation. For UNOPS/Stop, the approximate year 1 award funding amount is $750,000 in Federal Fiscal Year (FYY) 2023, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation.

Authorities: Some of these programs are authorized under Public Law 108–25 (the United States Leadership Against HIV AIDS, Tuberculosis and Malaria Act of 2003).

Additionally, for Hanoi Medical University (HMU), Vietnam, and The Cambodian National Institute for Public Health (NIPH), Cambodia are also authorized under sections 301(a) and 307 of the Public Health Service Act, as amended [42 U.S.C. 241(a) and 2421].

Additionally, United Nations Office for Project Services (UNOPS)/The Stop TB Partnership (Stop TB), Headquarters (HQ) does not include 93.067 funds. This program is solely funded under Assistance Listing 93.494 Global Tuberculosis; Statutory Authority: This program is authorized under Section 307 of the Public Health Service Act [42 U.S.C. 242l], as amended and Section 301(a) of the Public Health Service Act [42 U.S.C. 241(a)], as amended.

Period of Performance: September 30, 2023 through September 29, 2028.

Dated: March 9, 2023.

Terrance Perry,

Chief Grants Management Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–05256 Filed 3–14–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—GH23–003, Conducting Public Health Research With Universities in Thailand; Amended Notice of Closed Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—GH23–003, Conducting Public Health Research with Universities in Thailand; April 12, 2023, 9 a.m.–2:30 p.m., EDT, teleconference, in the original **Federal Register** Notice. The meeting was published in the **Federal Register** on March 2, 2023, Volume 88, Number 41, page 13121.

The meeting is being amended to add a Notice of Funding Opportunity number and should read as follows:

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—GH20–002, Malaria Operations Research to Improve Malaria Control and Reduce Morbidity and Mortality in Western Kenya; and GH23–003, Conducting Public Health Research with Universities in Thailand.

The meeting is closed to the public.

FOR FURTHER INFORMATION CONTACT: Hylan Shoob, Ph.D., Scientific Review Officer, Center for Global Health, CDC, 1600 Clifton Road NE, Mailstop H21–9, Atlanta, Georgia 30329–4027; Telephone: (404) 639–4796; Email: *HShoob@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–05297 Filed 3–14–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with regulatory provisions, the Centers for Disease Control and Prevention (CDC) announces the following meeting for the Clinical Laboratory Improvement Advisory Committee (CLIAC). This meeting is open to the public, limited only by the number of webcast lines available. Time will be available for public comment.

DATES: The meeting will be held on April 12, 2023, from 11 a.m. to 5:30 p.m., EDT, and April 13, 2023, from 11 a.m. to 5 p.m., EDT.

ADDRESSES: This is a virtual meeting. Meeting times are tentative and subject to change. The confirmed meeting times, agenda items, and meeting materials, including instructions for accessing the live meeting broadcast, will be available on the CLIAC website at *https://www.cdc.gov/cliac.* Check the website on the day of the meeting for the web conference link.

FOR FURTHER INFORMATION CONTACT: Heather Stang, MS, Senior Advisor for Clinical Laboratories, Division of Laboratory Systems, Office of Laboratory Science and Safety, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop V24–3, Atlanta, Georgia 30329–4027. Telephone: (404) 498–2769; Email: *HStang@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Clinical Laboratory Improvement Advisory Committee (CLIAC) is charged with providing scientific and technical advice and guidance to the Secretary, HHS; the Assistant Secretary for Health; the Director, CDC; the Commissioner, Food and Drug Administration (FDA); and the Administrator, Centers for Medicare & Medicaid Services (CMS). The advice and guidance pertain to general issues related to improvement in clinical laboratory quality and laboratory medicine and specific questions related to possible revision of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) standards. Examples include providing guidance on studies designed to improve quality, safety, effectiveness, efficiency, timeliness, equity, and patient-centeredness of laboratory services; revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards on medical and laboratory practice; and the modification of the standards and provision of non-regulatory guidelines to accommodate technological advances, such as new test methods, the electronic transmission of laboratory information, and mechanisms to improve the integration of public health and clinical laboratory practices.

Matters To Be Considered: The agenda will include agency updates from CDC, CMS, and FDA. Presentations and CLIAC discussions will focus on reports from two CLIAC workgroups: the CLIA Regulations Assessment Workgroup and the CLIA Certificate of Waiver and Certificate for Provider-performed Microscopy Procedures Workgroup, and on the laboratory's role in advancing health equity. Agenda items are subject to change as priorities dictate.

Public Participation

It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments pertinent to agenda items.

Oral Public Comment: Public comment periods for each agenda item are scheduled immediately prior to the Committee discussion period for that item. In general, each individual or group requesting to present an oral comment will be limited to a total time of five minutes (unless otherwise indicated). Speakers should email *CLIAC@cdc.gov* or notify the contact person above (see **FOR FURTHER INFORMATION CONTACT**) at least five business days prior to the meeting date.

Written Public Comment: CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, it is requested that comments be submitted at least five business days prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments should be submitted by email to *CLIAC@cdc.gov* or to the contact person above. All written comments will be

included in the meeting minutes posted on the CLIAC website.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–05294 Filed 3–14–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single-Source Cooperative Agreement To Fund the Haitian Ministry of Health and Population

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), in the Department of Health and Human Services (HHS), announces the award of approximately $15,000,000, for Year 1 funding to the Haitian Ministry of Health and Population (MSPP). The award will strengthen the public health system in Haiti by building the capacity of MSPP and partners to sustain governance of public health programs and, laboratory quality systems, monitor and evaluate programs, conduct surveillance for priority diseases and conditions (including, but not limited to, HIV, TB, cholera, VPDs, malaria, AFP, LF, rabies, COVID), and provide high quality health services. Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this award will be September 30, 2023, through September 29, 2028.

FOR FURTHER INFORMATION CONTACT: Chen Chung, Center for Global Health, Centers for Disease Control and Prevention, Boulevard 15 Octobre, Tabarre 41 Port-au-Prince, Haiti, Telephone: (509) 3170–3493, Email: *htt0@cdc.gov.*

SUPPLEMENTARY INFORMATION: The single-source award will strengthen public health systems in Haiti to maximize the positive impact of the MSPP on the HIV and TB response, disease surveillance, emergency preparedness, workforce development, immunization, and other programs to achieve and sustain epidemic control as well as prevent or mitigate future outbreaks.

The MSPP is in a unique position to conduct this work, as it has the statutory authority to develop and oversee the information and surveillance system related to all diseases and is the only line ministry having the presence in the 10 geographical departments of the country and as such maintains 10 directorates equipped with both technical and administrative capacity.

Summary of the Award

Recipient: The Haitian Ministry of Health and Population (MSPP).

Purpose of the Award: The purpose of this award is to strengthen the public health system in Haiti by building the capacity of MSPP and partners to sustain governance of public health programs and, laboratory quality systems, monitor and evaluate programs, conduct surveillance for priority diseases and conditions (including, but not limited to, HIV, TB, cholera, VPDs, malaria, AFP, LF, rabies, COVID), and provide high quality health services.

Amount of Award: The approximate year 1 funding amount will be $15,000,000 in Federal Fiscal Year (FYY) 2023 funds, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation.

Authority: This program is authorized under Public Law 108–25 (the United States Leadership Against HIV AIDS, Tuberculosis and Malaria Act of 2003).

Non-PEPFAR Funding

Additionally, this program is authorized under sections 301(a) and 307 of the Public Health Service Act, as amended [42 U.S.C. 241(a) and 2421].

Period of Performance: September 30,2023 through September 29, 2028.

Dated: March 9, 2023.

Terrance Perry,

Chief Grants Management Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–05248 Filed 3–14–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single-Source Cooperative Agreement To Fund the National Institute of Health (INS) in Mozambique

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately $4,000,000, for Year 1 funding to the INS. The award will strengthen and support the INS in Mozambique to improve INS's operational capacity in laboratory systems and testing, disease surveillance, M&E, and human resources. Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this award will be September 30, 2023, through September 29, 2028.

FOR FURTHER INFORMATION CONTACT: Rachel Murray, Center for Global Health, Centers for Disease Control and Prevention, Avenida Marginal nr 5467 Sommerschield, Distrito Municipal de KaMpfumo Caixa Postal 783 CEP 0101–11 Maputo, Moçambique, Telephone: +258 84 310 8384, Email: *kve0@cdc.gov.*

SUPPLEMENTARY INFORMATION: The single-source award will strengthen the capacity of the national laboratory network to provide quality diagnostic testing and public health laboratory services.

The INS is in a unique position to conduct this work, as it is mandated to manage, regulate, and supervise activities related to the generation of scientific evidence in the field of health to ensure better health and well-being for the population of Mozambique.

Summary of the Award

Recipient: National Institute of Health (INS) in Mozambique.

Purpose of the Award: The purpose of this award is to strengthen and support the INS in Mozambique to improve INS's operational capacity in laboratory systems and testing, disease surveillance, M&E, and human resources.

Amount of Award: The approximate year 1 funding amount will be $4,000,000 in Federal Fiscal Year (FYY) 2023 funds, subject to the availability of

funds. Funding amounts for years 2–5 will be set at continuation.

Authority: This program is authorized under Public Law 108–25 (the United States Leadership Against HIV AIDS, Tuberculosis and Malaria Act of 2003).

Period of Performance: September 30, 2023 through September 29, 2028.

Dated: March 9, 2023.

Terrance Perry,

Chief Grants Management Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–05254 Filed 3–14–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single-Source Cooperative Agreement To Fund the Tanzanian Ministry of Health

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately $5,000,000, for Year 1 funding to the Tanzania Ministry of Health (MOH). The award will strengthen capacity and maximize the efficiency in achieving HIV epidemic control and sustaining the MOH response to the HIV epidemic in the United Republic of Tanzania. Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this award will be September 30, 2023, through September 29, 2028.

FOR FURTHER INFORMATION CONTACT: Gbolahan Cole, Center for Global Health, Centers for Disease Control and Prevention, 2448 Albert Luthuli Rd., NIMR Complex | P.O. Box 9123, Dar es Salaam, Tanzania, Telephone: 012–424–9000, Email: *yka7@cdc.gov.*

SUPPLEMENTARY INFORMATION: The single-source award will support the Tanzanian MOH to ensure a comprehensive, coordinated, and strategic approach to the HIV response by organizing policies and interventions: along the continuum of HIV prevention, identification, treatment, and support; focusing on specific vulnerable populations; supported by reliable epidemiologic and program data.

The MOH is in a unique position to conduct this work, as it is currently the only appropriate and qualified entity to conduct a specific set of activities supportive of the CDC and PEPFAR goals for enhancing HIV prevention, care, and treatment services.

Summary of the Award

Recipient: Tanzanian Ministry of Health (MOH).

Purpose of the Award: The purpose of this award is to is to strengthen capacity and maximize the efficiency in achieving HIV epidemic control and sustaining the MOH response to the HIV epidemic in the United Republic of Tanzania.

Amount of Award: The approximate year 1 funding amount will be $5,000,000 in Federal Fiscal Year (FYY) 2023 funds, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation.

Authority: This program is authorized under Public Law 108–25 (the United States Leadership Against HIV AIDS, Tuberculosis and Malaria Act of 2003).

Period of Performance: September 30, 2023 through September 29, 2028.

Dated: March 9, 2023.

Terrance Perry,

Chief Grants Management Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–05253 Filed 3–14–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Board of Scientific Counselors, Deputy Director for Infectious Diseases

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), is seeking nominations for membership on the Board of Scientific Counselors, Deputy Director for Infectious Diseases (BSC, DDID). The BSC, DDID consists of 17 experts from authorities knowledgeable in the fields relevant to the issues addressed by CDC's infectious disease national centers (*e.g.,* respiratory diseases, healthcare-associated infections, antimicrobial resistance, foodborne diseases, zoonotic and vector-borne diseases, sexually transmitted diseases, preparedness) and related specialties, including clinical and public health practice (including state and local health departments), laboratory practice, research, diagnostics, microbiology, immunology, molecular biology, bioinformatics, infectious disease modeling and outbreak analytics, health policy/communications, and industry.

DATES: Nominations for membership on the BSC, DDID must be received no later than April 14, 2023. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to the Centers for Disease Control and Prevention, BSC, DDID, 1600 Clifton Road NE, Mailstop H16–5, Atlanta, Georgia 30329–4027 or emailed to *SWiley@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah Wiley, M.P.H., Senior Advisor, National Center for Emerging and Zoonotic Infectious Diseases, CDC, 1600 Clifton Road NE, Mailstop H16–5, Atlanta, Georgia 30329–4027. Telephone: (404) 639–4840; Email: *SWiley@cdc.gov.*

SUPPLEMENTARY INFORMATION: Nominations are sought for individuals who have the expertise and qualifications necessary to contribute to the accomplishment of the objectives of the BSC, DDID. Nominees will be selected based on expertise in the fields of infectious diseases and related specialties, including those listed above. Federal employees will not be considered for membership. Members may be invited to serve for up to four-year terms. Selection of members is based on candidates' qualifications to contribute to the accomplishment of BSC, DDID objectives (*https://www.cdc.gov/ddid/bsc.html*).

HHS policy stipulates that committee membership be balanced in terms of points of view represented and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Current participation on Federal workgroups or prior experience serving on a Federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning of and annually during their terms. CDC reviews potential candidates

for BSC, DDID membership each year and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in October 2023, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address).
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, NIH, FDA).

Nominations may be submitted by the candidate or by the person/organization recommending the candidate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–05293 Filed 3–14–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2023–0007]

Advisory Committee on Immunization Practices; Amended Notice of Meeting

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces an amendment to the following meeting of the Advisory Committee on Immunization Practices (ACIP). This meeting was open to the public.

FOR FURTHER INFORMATION CONTACT: Stephanie Thomas, ACIP Committee Management Specialist, Centers for Disease Control and Prevention, National Center for Immunization and Respiratory Diseases, 1600 Clifton Road NE, Mailstop H24–8, Atlanta, Georgia 30329–4027; Telephone: 404–639–8367; Email: *ACIP@cdc.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in the meeting of the Advisory Committee on Immunization Practices (ACIP); February 22, 2023, 8:00 a.m. to 5:15 p.m., EST, February 23, 2023, 8:00 a.m. to 5:00 p.m., EST, and February 24, 2023, 8:00 a.m. to 1:00 p.m., EST (times subject to change, see the ACIP website for updates: *http://www.cdc.gov/vaccines/acip/index.html*), in the original **Federal Register** notice.

Notice of the virtual meeting was published in the **Federal Register** on Monday, January 30, 2023, Volume 88, Number 19, pages 5883–5884.

Notice of the virtual meeting is being amended to update the matters to be considered, which should read as follows:

Matters To Be Considered: The agenda will include discussions on mpox vaccines, influenza vaccines, pneumococcal vaccine, varicella vaccines, meningococcal vaccines, Polio vaccine, respiratory syncytial virus vaccine pediatric/maternal, respiratory syncytial virus vaccine adult, dengue vaccines, Chikungunya vaccine, and COVID–19 vaccines. A recommendation vote on mpox vaccine is scheduled. For more information on the meeting agenda visit *https://www.cdc.gov/vaccines/acip/meetings/meetings-info.html.*

Authority: 5 U.S.C. 1001 et. seq.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–05296 Filed 3–14–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single-Source Cooperative Agreement To Fund National Center for HIV/AIDS, Dermatology, and STDs

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), in the Department of Health and Human Services (HHS), announces the award of approximately $1,500,000 for Year 1 funding to the National Center for HIV/AIDS, Dermatology, and STDS (NCHADS). This award will support implementing a comprehensive combination of HIV prevention, monitoring, diagnosis, and treatment systems; emergency preparedness and response; and reduce the infectious disease burden in Cambodia. Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this award will be September 30, 2023, through September 29, 2028.

FOR FURTHER INFORMATION CONTACT: Joyce Neal, Center for Global Health, Centers for Disease Control and Prevention, #80, Samdach Pen Nut Blvd. (289) Sangkat Boeung Kak II, Khan Tuol Kork Phnom Penh, Cambodia, Telephone: 404–433–0184, Email: *jxn4@cdc.gov.*

SUPPLEMENTARY INFORMATION: The single-source award aims to strengthen the systems and capacity of NCHADS to end HIV as a public health threat and to sustain HIV epidemic control. NCHADS is in a unique position to conduct this work, as it is the only recognized national focal point by the Ministry of Health (MOH) under Sub-decree 67 ANKr.BK.

Summary of the Awards

Recipients: National Center for HIV/AIDS, Dermatology, and STDs (NCHADS).

Purpose of the Awards: The purpose of these awards is to support implementing a comprehensive combination of HIV prevention, monitoring, diagnosis, and treatment systems; emergency preparedness and response; and reduce the infectious disease burden in Cambodia.

Amount of the Awards: For NCHADS, the approximate year 1 award funding amount is $1,500,000 in Federal Fiscal

Year (FYY) 2023, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation.

Authorities: This program is authorized under Public Law 108–25 (the United States Leadership Against HIV AIDS, Tuberculosis and Malaria Act of 2003).

Period of Performance: September 30, 2023 through September 29, 2028.

Dated: March 9, 2023.

Terrance Perry,

Chief Grants Management Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–05250 Filed 3–14–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of Single-Source Cooperative Agreements To Fund Fundação para o Desenvolvimento Científico e Tecnológico em Saúde (FIOTEC), Brazil; The Lighthouse Trust, Malawi; and Ghana AIDS Commission (GAC), West Africa Region (Ghana)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), announces the awards of approximately $6,000,000 for Year 1 funding to FIOTEC, Brazil; approximately $13,000,000 for Year 1 to the Lighthouse Trust, Malawi; and approximately $300,000 for Year 1 funding to GAC, Ghana. These awards will support implementation of a comprehensive combination of HIV prevention, monitoring, diagnosis, and treatment systems; emergency preparedness and response; and a reduction of infectious disease burden in Brazil, Malawi, and Ghana. Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this award will be September 30, 2023, through September 29, 2028.

FOR FURTHER INFORMATION CONTACT:

Brazil: Angel Roca, Center for Global Health, Centers for Disease Control and Prevention, 1600 Clifton Road, MS US1–2 Atlanta, GA 30333, Telephone: (404) 639–6476, Email: *axr4@cdc.gov.*

Malawi: Dr. Dumbani Kayira, Center for Global Health, Centers for Disease Control and Prevention, Malawi Office, NICO House, P.O. Box 30016 Lilongwe 3, Malawi, Telephone: +265888969870, Email: *kvj2@cdc.gov.*

West Africa Region (Ghana): Dr. Trong Ao, Center for Global Health, Centers for Disease Control and Prevention, U.S. Embassy, 24 Fourth Circular Rd. Cantonments, Accra, Telephone:: +233302741781, Email: *tfa8@cdc.gov.*

SUPPLEMENTARY INFORMATION:

- *FIOTEC, Brazil:* The single-source award will provide opportunities to support the HIV response consistent with PEPFAR requirements and other public health initiatives that technically support enhancement of public health capacity. FIOTEC is in a unique position to conduct this work, as it is a private, endowed, non-profit foundation with administrative and financial autonomy. And no other national level foundation or non-governmental entity is able to receive and manage funds on behalf of the Brazilian Ministry of Health (MoH) while still meeting USG funding eligibility criteria.
- *The Lighthouse Trust, Malawi:* The single-source award will contribute to sustaining epidemic control through high quality client centered service delivery and national HIV program capacity strengthening.

The Lighthouse Trust is in a unique position as the flagship public service provider and technical leader for and within Malawi's successful national HIV treatment and care program. It is the designated public HIV service provider in the capital city, Lilongwe, and central region's largest public hospitals, and it is the highest-level referral center for HIV clinical services in the national HIV program, providing clinical oversight and care for complicated patients throughout Malawi.

- *GAC, West Africa Region (Ghana):* The single-source award will support GAC which is the mandated government agency providing leadership and coordination of HIV programs in Ghana through the UNAIDS three ones principle: one agreed HIV/AIDS action framework that provides the basis for coordinating the work of all partners, one national AIDS coordinating authority with a broad-based multi-sector mandate, and one agreed country level monitoring and evaluation system.

GAC holds legal responsibility for formulating policies and designing strategies to respond to Ghana's HIV and AIDS epidemic, to provide for the management of the fund, to prevent and control the HIV and AIDS epidemic, and to promote and protect the rights of People Living with HIV (PLHIV) and to provide for related purposes.

Summary of the Awards

Recipients: Fundação para o Desenvolvimento Científico e Tecnológico em Saúde (FIOTEC), Brazil; The Lighthouse Trust, Malawi; Ghana AIDS Commission (GAC), West Africa Region (Ghana).

Purpose of the Awards: The purpose of these awards is to support implementing a comprehensive combination of HIV prevention, monitoring, diagnosis, and treatment systems; emergency preparedness and response; and reduce infectious disease burden in Brazil, Malawi, and Ghana.

Amount of the Awards: For FIOTEC the approximate year 1 award funding amount is $6,000,000 in Federal Fiscal Year (FYY) 2023, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation. For The Lighthouse Trust the approximate year 1 award funding amount is $13,000,000 in Federal Fiscal Year (FYY) 2023, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation. For GAC the approximate year 1 award funding amount is $300,000 in Federal Fiscal Year (FYY) 2023, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation.

Authority: These programs are authorized under Public Law 108–25 (the United States Leadership Against HIV AIDS, Tuberculosis and Malaria Act of 2003).

Period of Performance: September 30, 2023 through September 29, 2028.

Dated: March 9, 2023.

Terrance Perry,

Chief Grants Management Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–05255 Filed 3–14–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single-Source Cooperative Agreement To Fund the Ministry of Health Zanzibar

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately $5,000,000, for Year 1 funding to the Ministry of Health Zanzibar (MOHZ). The award will

provide rapid and flexible support to Zanzibar to accelerate evidence-based, person-centered HIV prevention and treatment program implementation at both facility and community levels, align HSS strengthening activities towards epidemic control, and ensure a comprehensive, coordinated, and strategic approach to the HIV response by organizing policies and interventions supported by reliable epidemiologic and program data. Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this award will be September 30, 2023, through September 29, 2028.

FOR FURTHER INFORMATION CONTACT: Angela Schaad, Center for Global Health, Centers for Disease Control and Prevention, 2448 Albert Luthuli Rd, NIMR Complex | P.O. Box 9123 Dar es Salaam, Tanzania, Telephone: 255 677 680 051, Email: *kin7@cdc.gov.*

SUPPLEMENTARY INFORMATION: The single-source award will enhance collaboration between PEPFAR and the MOHZ to scale up HIV/TB services and improve quality of service delivery by reducing barriers to access.

The MOHZ is in a unique position to conduct this work in terms of its mandate and existing infrastructure to address the HIV strategy throughout Zanzibar.

Summary of the Award

Recipient: Ministry of Health Zanzibar (MOHZ).

Purpose of the Award: The purpose of this award is to provide rapid and flexible support to Zanzibar to accelerate evidence-based, person-centered HIV prevention and treatment program implementation at both facility and community levels, align HSS strengthening activities towards epidemic control, and ensure a comprehensive, coordinated, and strategic approach to the HIV response by organizing policies and interventions supported by reliable epidemiologic and program data.

Amount of Award: The approximate year 1 funding amount will be $5,000,000 in Federal Fiscal Year (FYY) 2023 funds, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation.

Authority: This program is authorized under Public Law 108–25 (the United States Leadership Against HIV AIDS, Tuberculosis and Malaria Act of 2003).

Period of Performance: September 30, 2023 through September 29, 2028.

Dated: March 9, 2023.

Terrance Perry,

Chief Grants Management Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–05252 Filed 3–14–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Biodefense Science Board Public Meeting

AGENCY: Administration for Strategic Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The National Biodefense Science Board (NBSB or the Board), authorized under the Public Health Service (PHS) Act, as added by the Pandemic and All-Hazards Preparedness Act of 2006 and amended by the Pandemic and All-Hazards Preparedness Reauthorization Act, will hold a virtual, public meeting on May 4, 2023, at 2:00 p.m. ET. The NBSB, managed and operated by the ASPR, provides expert advice and guidance to the Secretary of HHS regarding current and future chemical, biological, radiological, and nuclear threats, and other disaster preparedness and response matters. A detailed agenda and Zoom registration instructions will be available on the ASPR/NBSB public meeting web page at least 10 days in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: CAPT Christopher Perdue, NBSB Designated Federal Official, via email message to *NBSB@hhs.gov* or (202) 480–7226.

SUPPLEMENTARY INFORMATION:

Procedures for Public Participation: The link to pre-register for the public meeting will be posted on the meeting website. The online meeting will use a webinar format and include American Sign Language interpretation and live captioning.

Members of the public may provide written comments or submit questions to the NBSB at any time via email to *NBSB@hhs.gov* and are encouraged to provide comments related to the draft recommendations when those are posted. Additionally, the NBSB invites stakeholders to request up to seven minutes to address the Board in-person during the meeting. The Board wishes to hear from experts from relevant biomedical, biodefense, or health industries; faculty or researchers at academic institutions; health professionals, health system experts, or those who work in health care consumer organizations; or experts in state, Tribal, territorial, or local government agencies. Requests to provide remarks to the NBSB during the public meeting must be sent to *NBSB@hhs.gov* by April 21, 2023. In that request, please provide the speaker's name, title, position, and organization, with a brief description of the topic they will address. Requests to speak to the Board will be approved in consultation with the Board Chairperson and based on time available during the meeting.

Dawn O'Connell,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2023–05274 Filed 3–14–23; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Project: Mandatory Guidelines for Federal Workplace Drug Testing Programs (OMB No. 0930–0158)—Extension

SAMHSA will request OMB approval for extension of the Federal Drug Testing Custody and Control Form (CCF) for federal agency and federally regulated drug testing programs which must comply with the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine (UrMG) dated January 23, 2017 (82 FR 7920) and using Oral Fluid (OFMG) dated October 25, 2019, and OMB approval for information provided by test facilities (laboratories and Instrumented Initial Test Facilities, IITFs) for the National Laboratory Certification Program (NLCP).

The CCF is used by all federal agencies and employers regulated by the Department of Transportation (DOT) and the Nuclear Regulatory Commission (NRC) to document the collection and chain of custody of urine specimens at the collection site, for HHS-certified test facilities to report results, and for

Medical Review Officers (MROs) to document and report a verified result. SAMHSA allows the use of the CCF as a paper or electronic form.

Laboratories and IITFs seeking HHS certification under the NLCP must complete and submit the NLCP application form. The NLCP application form remains without change. Prior to an inspection, an HHS-certified laboratory or IITF is required to submit specific information regarding its procedures. Collecting this information prior to an inspection allows the inspectors to thoroughly review and understand the testing procedures before arriving for the onsite inspection. The NLCP information checklist is without change.

The current OMB-approved CCF has an August 31, 2023 expiration date. SAMHSA plans to submit the CCF without content revisions for OMB approval.

The annual total burden estimates for the CCF, the NLCP application, the NLCP information checklist, and the NLCP recordkeeping requirements are shown in the following table.

Form/respondent	Number of respondents	Responses per respondent	Total number of responses	Burden per response (hours)	Annual burden (hours)	Hourly wage rate ($)	Total cost ($) [3]
Custody and Control Form: [1]							
Donor	6,726,610	1	6,726,610	0.08	538,129	25	13,453,225
Collector	6,726,610	1	6,726,610	0.07	470,683	15	7,060,245
Laboratory	6,726,610	1	6,726,610	0.05	336,331	35	11,771,585
IITF	1	0	0	0.05	0	35	0
Medical Review Officer	6,726,610	1	6,726,610	0.05	336,331	150	50,449,650
NLCP Application Form: [2]							
Laboratory	10	1	10	3	30	35	1.050
IITF	0	0	0	3	0	35	0
Sections B and C—NLCP Information Checklist:							
Laboratory	24	1	24	1	24	35	840
IITF	1	1	1	1	1	35	35
Record Keeping:							
Laboratory	24	1	24	250	6,000	35	210,000
IITF	0	0	0	250	0	35	0
Total	6,726,669		26,906,499		1,687,529		82,946,625

[1] **Note:** The time it takes each respondent (*i.e.,* donor, collector, laboratory, IITF, and MRO) to complete the Federal CCF is based on an average estimated number of minutes it would take each respondent to complete their designated section of the form or regulated entities (*e.g.,* HHS, DOT, and NRC).

[1] **Note:** The above number of responses is based on an estimate of the total number of specimens collected annually (approximately 150,000 federal agency specimens; 6,500,000 DOT regulated specimens, and 145,000 NRC regulated specimens).

[2] **Note:** The estimate of 10 applications per year is based on requests for a laboratory application (urine or oral fluid) in the past year (*i.e.,* at the time of these calculations) and only 1 IITF application submitted after October 1, 2010.

[2] **Note:** The estimate of three burden hours to complete the application has not changed.

[3] **Note:** At the time of these calculations, there were 20 certified laboratories and one certified IITF undergoing 2 maintenance inspections each year, and 4 applicant laboratories.

[3] **Note:** The wage rates listed for each respondent are based on estimated average hourly wages for the individuals performing these tasks.

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.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2023–05308 Filed 3–14–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Project: Projects for Assistance in Transition From Homelessness (PATH) Program Annual Report Manual (OMB No. 0930–0205)—Revision

SAMHSA awards PATH grants each fiscal year to states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (hereafter referred to as ''states''), from allotments authorized under the PATH program established by Public Law 101–645, 42 U.S.C. 290cc–21 *et seq.,* the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 [Section 521 *et seq.* of the Public Health Service (PHS) Act and the 21st Century Cures Act (Pub. L. 114–255), hereafter referred to as ''the Act'']. Section 522 of the Act specifies that states must expend their payments

solely for making grants to political subdivisions of the state, and to non-profit private entities (including community-based veterans' organizations and other community organizations) for the purpose of providing services specified in the Act. Available funding is allotted in accordance with the formula provision of Section 524 of the PHS Act. This submission is for a revision to the approved PATH Annual Report Manual. Section 528 of the Act specifies, not later than January 31 of each fiscal year, a funded entity will ''prepare and submit to the Secretary a report in such form and containing such information as the Secretary determines to be necessary for: (1) securing a record and a description of the purposes for which amounts received under Section 521 were expended during the preceding fiscal year and of the recipients of such amounts; and (2) determining whether such amounts were expended in accordance with the provisions of this part.''

The proposed revisions to the PATH 2020 Annual Report Manual are as follows: Homeless Management Information System (HMIS) Data Standards updates.

When needed, field response options and questions have been updated to align with the most recent version of the HMIS Data Standards.

In July 2022, HUD released updated HMIS programming specifications (Version 3.6) for the PATH Annual Report, which changed the instructions for counting contacts in questions 12a and 12b. HMIS vendors received these programming updates and HUD encouraged them to implement the changes by October 1, 2022. When providers run their PATH Annual Report in HMIS, it should reflect Version 3.6, including these most recent programming changes. In October 2022, SAMHSA launched a new PDX website for State Path Contacts (SPCs) and providers, who will use the site to enter provider-level data for their PATH Annual Report and progress reports. User guides were created to describe the features and functions of the new PDX site and provides guidance for reviewing and submitting PATH Annual Reports, setting up and reviewing progress reports, and accessing PATH resources.

The requested revisions will not increase the overall burden.

The estimated annual burden for these reporting requirements is summarized in the table below.

Respondents	Number of respondents	Responses per respondent	Burden per response (hrs.)	Total burden
States	56	1	15	840
Local provider agencies	437	1	15	6,555
Total	493			7,395

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.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2023–05307 Filed 3–14–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Proposed Project: Evaluation of the Projects for Assistance in Transition From Homelessness (PATH) Program (OMB No. 0930–0381)—Reinstatement

SAMHSA is conducting the federally mandated Evaluation of the PATH program. The PATH grant program, created as part of the Stewart B. McKinney Homeless Assistance Amendments Act of 1990, is administered by SAMHSA's CMHS' Division of State and Community Systems Development. The PATH program is authorized under Section 521 *et seq.* of the Public Health Service (PHS) Act, as amended. The SAMHSA PATH program funds each Fiscal Year the 50 states, the District of Columbia, Puerto Rico, and four U.S. Territories (the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands). The PATH grantees make grants to local, public and non-profit organizations to provide the PATH allowable services.

The SAMHSA Administrator is required under Section 528 of the PHS Act to evaluate the expenditures of PATH grantees at least once every three years to ensure they are consistent with legislative requirements and to recommend changes to the program design or operations. The primary task of the PATH evaluation is to meet the mandates of Section 528 of the PHS Act. The second task of the PATH evaluation is to conduct additional data collection and analysis to further investigate the sources of variation in key program output and outcome measures that are important for program management and policy development. The PATH evaluation builds on the previous evaluation which was finalized in 2016 and was conducted as part of the National Evaluation of SAMHSA Homeless Programs. Previously, the data collections activities also included PATH Intermediary Web Survey, a PATH Provider Web Survey, and a PATH Telephone Interview Guide. The current PATH evaluation will be limited to the PATH Contact (SPC) Web Survey and PATH Site Visit Discussion Guides to facilitate the collection of information regarding the structures and processes in place at the grantee and provider level. The current PATH evaluation will use web surveys and site visits to facilitate the collection of information regarding the structures and processes in place at the grantee and provider level. Data regarding the outputs and outcomes of the PATH program will be obtained from grantee applications, providers' intended use plans (IUPs) and from PATH annual report data, which is also required by Section 528 of the PHS Act and is approved under OMB No. 0930–0205.

Web Surveys will be conducted with all State PATH Contacts (SPCs). The *Web Surveys* will capture detailed and structured information in the following topics: selection, monitoring and oversight of PATH providers; populations served; the PATH services provided; provision of training and technical assistance; implementation of Evidence Based Practices (EBPs) and innovative practices including the SSI/SSDI Outreach, Access, and Recovery program; data reporting, use of data and the Homeless Management Information System; and collaboration, coordination and involvement with Continuums of Care and other organizations. The SPCs for all grantees (n=56) will be contacted to complete the web surveys. The *Web Surveys* will be administered once per triennial evaluation cycle.

Site Visits will be conducted with a purposive sample of PATH grantees and providers to collect more nuanced information than will be possible with the web survey. Semi-structured discussions will take place with the SPCs, grantee staff, PATH provider staff including the Project Director and other key management staffs, outreach workers, case managers and other clinical treatment staff, and consumers. Five grantees will be selected for *Site Visits* and visited within each grantee will be one to two PATH providers. The *Site Visits* will be utilized to collect information on provider and state characteristics; practices and priorities; context within which the grantees and providers operate; and services available within the areas the providers operate. The successes, barriers, and strategies faced by PATH grantees and providers will also be discussed. Focus groups will be held with current or former consumers of the PATH program to obtain consumer perspectives regarding the impact of the programs. The *Site Visits* will be conducted once per triennial evaluation cycle.

The estimated burden for the reporting requirements for the PATH evaluation is summarized in the table below.

ANNUAL BURDEN TABLE

Instrument/activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Web Surveys					
SPC Web Survey	[1] 56	1	56	1	56
Site Visit Interviews					
Opening Session with State Staff	[2] 25	1	25	2	50
SPC Session	[3] 5	1	5	2	10
State Stakeholder Session	[4] 25	1	25	1.5	37.5
Provider Stakeholder Session	[5] 50	1	50	1.5	75
Opening Session with PATH Provider Staff	[6] 50	1	50	2	100
PATH Provider Project Director Session	[7] 10	1	10	2	20
PATH Direct Care Provider Session	[8] 50	1	50	2	100
Consumer Focus Groups	[9] 100	1	100	1.5	150
Total	371	.....	371	.....	598.5

[1] 1 respondent * 56 SPCs = 56 respondents.
[2] 5 respondents * 5 site visits = 25 respondents.
[3] 1 respondent * 5 site visits = 5 respondents.
[4] 5 respondents * 5 site visits = 25 respondents.
[5] 5 respondents * 10 site visits (2 providers per state) = 50 respondents.
[6] 5 respondents * 10 site visits (2 providers per state) = 50 respondents.
[7] 1 respondent * 10 site visits (2 providers per state) = 10 respondents.
[8] 5 respondents * 10 site visits (2 providers per state) = 50 respondents.
[9] 10 respondents * 10 site visits (10 Consumers per provider (2 providers per state) = 100 respondents.

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.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2023–05306 Filed 3–14–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Meeting of the Substance Abuse and Mental Health Services Administration's Tribal Technical Advisory Committee (TTAC)

AGENCY: Substance Abuse and Mental Health Services Administration, HHS

ACTION: Notice.

SUMMARY: Notice is hereby given for the meeting on April 25, 2023, of the Substance Abuse and Mental Health Services Administration's Tribal Technical Advisory Committee (TTAC). The meeting is open to the public and will be held in person (hybrid). Agenda with call-in information will be posted on the SAMHSA website prior to the meeting at: *https://www.samhsa.gov/about-us/advisory-councils/meetings.* The meeting will include, but not be limited to, remarks from the Assistant Secretary for Mental Health and Substance Use; updates on SAMHSA priorities; follow up on topics related to the previous TTAC meetings; and council discussions.

DATES: April 25, 2023, 9:00 a.m. to approximately 5:00 p.m. (ET).

ADDRESSES: 5600 Fishers Lane, Rockville, MD 20857, 5th Floor, Room 5W11.

FOR FURTHER INFORMATION CONTACT: CAPT Karen Hearod, Director, Office of Tribal Affairs Policy, 5600 Fishers Lane,

Rockville, Maryland 20857 (mail); telephone: (202) 868–9931; email: *karen.hearod@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION: SAMHSA TTAC provides a venue wherein Tribal leadership and SAMHSA staff can exchange information about public health issues, identify urgent mental health and substance abuse needs, and discuss collaborative approaches to addressing these behavioral health issues and needs.

TTAC meetings are exclusively between Federal officials and elected officials of Tribal governments (or their designated employees) to exchange views, information, or advice related to the management or implementation of SAMHSA programs.

The public may attend but are not allowed to participate in the meeting.

To obtain the call-in number, access code, and/or web access link; or request special accommodations for persons with disabilities, please register on-line at: *https://snacregister.samhsa.gov,* or communicate with Karen Hearod.

Meeting information and a roster of TTAC members may be obtained either by accessing the SAMHSA Council's website at *https://www.samhsa.gov/about-us/advisory-councils/*, or by contacting Karen Hearod.

Dated: March 9, 2023.

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2023–05258 Filed 3–14–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2321]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown be finalized the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described is provided or each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are provided pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. Are required hey should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Alabama:						
Montgomery ...	Town of Pike Road (22–04–4846P).	The Honorable Gordon Stone, Mayor, Town of Pike Road, P.O. Box 640339, Pike Road, AL 36064.	Town Hall, 9575 Vaughn Road, Pike Road, AL 36064.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 2, 2023	010433
Montgomery ...	Unincorporated areas of Montgomery County (22–04–4846P).	The Honorable Doug Singleton, Commissioner, Montgomery County Commission, P.O. Box 1667, Montgomery, AL 36102.	Montgomery County Engineering Department, 100 South Lawrence Street, 2nd Floor, Montgomery, AL 36104.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 2, 2023	010278
Colorado:						
Arapahoe	Unincorporated areas of Arapahoe County (23–08–0031X).	The Honorable Nancy Jackson, Chair, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80210.	Arapahoe County Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 21, 2023	080011
Douglas	Town of Castle Rock (22–08–0258P).	The Honorable Jason Gray, Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104.	Water Department, 175 Kellogg Court, Castle Rock, CO 80109.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 28, 2023	080050
Douglas	Unincorporated areas of Douglas County (22–08–0258P).	The Honorable Abe Laydon, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Douglas County Department of Public Works, 100 3rd Street, Castle Rock, CO 80104.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 28, 2023	080049
Jefferson	Unincorporated areas of Jefferson County (22–08–0193P).	The Honorable Andy Kerr, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Jefferson County Planning and Zoning Division, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 21, 2023	080087
Larimer	Unincorporated areas of Larimer County (22–08–0541P).	The Honorable Kristin Stephens, Chair, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, CO 80522.	Larimer County Administrative Offices Building, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521.	*https://msc.fema.gov/portal/advanceSearch.*	May 31, 2023	080101
Florida:						
Bay	Unincorporated areas of Bay County (22–04–0621P).	The Honorable Robert Carroll, Chair, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning Department, 840 West 11th Street, Panama City, FL 32401.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2023	120004
Broward	Town of Hillsboro Beach (22–04–4947P).	Mac Serda, Manager, Town of Hillsboro Beach, 1210 Hillsboro Mile, Hillsboro Beach, FL 33062.	Building Department, 1210 Hillsboro Mile, Hillsboro Beach, FL 33062.	*https://msc.fema.gov/portal/advanceSearch.*	May 1, 2023	120040
Monroe	Unincorporated areas of Monroe County (23–04–0047P).	The Honorable Craig Cates, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	May 4, 2023	125129
Monroe	Unincorporated areas of Monroe County (23–04–0293P).	The Honorable Craig Cates, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	May 25, 2023	125129
Monroe	Village of Islamorada (23–04–0348P).	The Honorable Joseph Buddy Pinder III, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	*https://msc.fema.gov/portal/advanceSearch.*	May 25, 2023	120424
Palm Beach ...	Unincorporated areas of Palm Beach County (22–04–0989P).	Verdenia C. Baker, Palm Beach County Administrator, 301 North Olive Avenue, Suite 1101, West Palm Beach, FL 33401.	Palm Beach County Vista Center, 2300 North Jog Road, West Palm Beach, FL 33411.	*https://msc.fema.gov/portal/advanceSearch.*	May 23, 2023	120192

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Georgia: Columbia	Unincorporated areas of Columbia County (21–04–3381P).	The Honorable Douglas R. Duncan, Jr., Chair, Columbia County Board of Commissioners, 630 Ronald Reagan Drive, Building B, Evans, GA 30809.	Columbia County Engineering Services Division, Stormwater Compliance Department, 630 Ronald Reagan Drive, Evans, GA 30809.	*https://msc.fema.gov/portal/advanceSearch.*	May 4, 2023	130059
Maryland: Baltimore.	Unincorporated areas of Baltimore County (22–03–0752P).	The Honorable John A. Olszewski, Jr., Baltimore County Executive, 400 Washington Avenue, Towson, MD 21204.	Baltimore County Department of Public Works and Transportation, 111 West Chesapeake Avenue, Room 205, Towson, MD 21204.	*https://msc.fema.gov/portal/advanceSearch.*	May 19, 2023	240010
Montana:						
Missoula	City of Missoula (22–08–0126P).	Jordan Hess, Mayor, City of Missoula, 435 Ryman Street, Missoula, MT 59802.	City Hall, 435 Ryman Street, Missoula, MT 59802.	*https://msc.fema.gov/portal/advanceSearch.*	May 22, 2023	300049
Missoula	Unincorporated areas of Missoula County (22–08–0126P).	Chris Lounsbury, Chief Administrative Officer, Missoula County, 200 West Broadway Street, Missoula, MT 59802.	Missoula County Department of Planning, Development and Sustainability, 127 East Main Street, Suite 2, Missoula, MT 59802.	*https://msc.fema.gov/portal/advanceSearch.*	May 22, 2023	300048
New Mexico:						
Dona Ana	City of Las Cruces (22–06–1258P).	The Honorable Ken Miyagishima, Mayor, City of Las Cruces, 700 North Main Street, Las Cruces, NM 88001.	Community Development Department, 700 North Main Street, Las Cruces, NM 88001.	*https://msc.fema.gov/portal/advanceSearch.*	May 22, 2023	355332
Dona Ana	Unincorporated areas of Dona Ana County (22–06–1258P).	The Honorable Manuel Sanchez, Chair, Dona Ana County Board of Commissioners, 845 North Motel Boulevard, Las Cruces, NM 88007.	Dona Ana County Flood Commission, 845 North Motel Boulevard, Las Cruces, NM 88007.	*https://msc.fema.gov/portal/advanceSearch.*	May 22, 2023	350012
North Carolina:						
Buncombe	Unincorporated areas of Buncombe County (22–04–4158P)	The Honorable Brownie Newman, Chair, Buncombe County Board of Commissioners, 200 College Street, Suite 300, Asheville, NC 28801.	Buncombe County Planning Department, 46 Valley Street, Asheville, NC 28801.	*https://msc.fema.gov/portal/advanceSearch.*	May. 26, 2023	370031
Henderson	Village of Flat Rock (22–04–1155P).	The Honorable Nick Weedman, Mayor, Village of Flat Rock, P.O. Box 1288, Flat Rock, NC 28731.	Village Hall, 110 Village Center Drive, Flat Rock, NC 28731.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 10, 2023	370565
Moore	Village of Pinehurst (22–04–4043P).	The Honorable John C. Strickland, Mayor, Village of Pinehurst, 395 Magnolia Road, Pinehurst, NC 28374.	Planning and Inspections Department, 395 Magnolia Road, Pinehurst, NC 28374.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 8, 2023	370463
Oklahoma: Oklahoma.	City of Edmond (22–06–0815P).	The Honorable Darrell A. Davis, Mayor, City of Edmond, P.O. Box 2970, Edmond, OK 73083.	Engineering Department, Stormwater Management, 10 South Littler Avenue, Edmond, OK 73034.	*https://msc.fema.gov/portal/advanceSearch.*	May 19, 2023	400252
Rhode Island:						
Kent	City of Warwick (22–01–0564P).	The Honorable Frank J. Picozzi, Mayor, City of Warwick, 3275 Post Road, Warwick, RI 02886.	Building Department, 65 Centerville Road, Warwick, RI 02886.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 28, 2023	445409
Providence	City of Cranston (22–01–0564P).	The Honorable Kenneth J. Hopkins, Mayor, City of Cranston, 869 Park Avenue, Cranston, RI 02910.	Planning Department, 869 Park Avenue, Cranston, RI 02910.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 28, 2023	445396
South Carolina:						
Dorchester	Town of Summerville (22–04–2209P).	The Honorable Ricky Waring, Mayor, Town of Summerville, 200 South Main Street, Summerville, SC 29483.	Engineering Department, 200 South Main Street, Summerville, SC 29483.	*https://msc.fema.gov/portal/advanceSearch.*	May 18, 2023	450073
Dorchester	Town of Summerville (22–04–2210P).	The Honorable Ricky Waring, Mayor, Town of Summerville, 200 South Main Street, Summerville, SC 29483.	Engineering Department, 200 South Main Street, Summerville, SC 29483.	*https://msc.fema.gov/portal/advanceSearch.*	May 18, 2023	450073

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Dorchester	Unincorporated areas of Dorchester County (22–04–2209P).	Jason L. Ward, Dorchester County Administrator, 201 Johnston Street, St. George, SC 29477.	Dorchester County Building Services Department, 500 North Main Street, Summerville, SC 29483.	*https://msc.fema.gov/portal/advanceSearch.*	May 18, 2023	450068
Dorchester	Unincorporated areas of Dorchester County (22–04–2210P).	Jason L. Ward, Dorchester County Administrator, 201 Johnston Street, St. George, SC 29477.	Dorchester County Building Services Department, 500 North Main Street, Summerville, SC 29483.	*https://msc.fema.gov/portal/advanceSearch.*	May 18, 2023	450068
Texas:						
Bexar	City of San Antonio (22–06–1472P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Public Works Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*https://msc.fema.gov/portal/advanceSearch.*	May 1, 2023	480045
Collin	City of Celina (22–06–1716P).	The Honorable Sean Terry, Mayor, City of Celina, 142 North Ohio Street, Celina, TX 75009.	Engineering Department, 142 North Ohio Street, Celina, TX 75009.	*https://msc.fema.gov/portal/advanceSearch.*	May 16, 2023	480133
Collin	City of Frisco (22–06–1755P).	The Honorable Jeff Cheney, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	Development Engineers Department, 6101 Frisco Square Boulevard, Frisco, TX 75034.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 24, 2023	480134
Collin	City of Wylie (22–06–1291P).	The Honorable Matthew Porter, Mayor, City of Wylie, 300 County Club Road, Building 100, Wylie, TX 75098.	City Hall, 300 County Club Road, Building 100, Wylie, TX 75098.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 17, 2023	480759
Collin	Unincorporated areas of Collin County (22–06–1291P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 17, 2023	480130
Ellis	City of Waxahachie, (22–06–1707P).	The Honorable David Hill, Mayor, City of Waxahachie, 401 South Rogers Street, Waxahachie, TX 75165.	Public Works and Engineering Department, 401 South Rogers Street, Waxahachie, TX 75165.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 13, 2023	480211
Hidalgo	City of McAllen (22–06–2442P).	Roel Roy Rodriguez, Manager, City of McAllen, P.O. Box 220, McAllen, TX 78505.	Engineering Department, 311 North 15th Street, McAllen, TX 78501.	*https://msc.fema.gov/portal/advanceSearch.*	May 1, 2023	480343
Hidalgo	Unincorporated areas of Hidalgo County (22–06–2442P).	The Honorable Richard F. Cortez, Hidalgo County Judge, 100 East Cano Street, 2nd Floor, Edinburg, TX 78539.	Hidalgo County Drainage District No. 1, 902 North Doolittle Road, Edinburg, TX 78542.	*https://msc.fema.gov/portal/advanceSearch.*	May 1, 2023	480334
Kendall	Unincorporated areas of Kendall County (21–06–3424P).	The Honorable Darrel L. Lux, Kendall County Judge, 201 East San Antonio Avenue, Boerne, TX 78006.	Kendall County Engineer and Development Management Department, 201 East San Antonio Avenue, Boerne, TX 78006.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 17, 2023	480417
Kleberg	Unincorporated areas of Kleberg County (22–06–1663P).	The Honorable Rudy Madrid, Kleberg County Judge, P.O. Box 752, Kingsville, TX 78364.	Kleberg County Courthouse, 700 East Kleberg Avenue, Kingsville, TX 78363.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 14, 2023	480423
Rockwall	City of Rockwall (22–06–2295P).	The Honorable Kevin Fowler, Mayor, City of Rockwall, 385 South Goliad Street, Rockwall, TX 75087.	Engineering Department, 385 South Goliad Street, Rockwall, TX 75087.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 28, 2023	480547
Rockwall	Unincorporated areas of Rockwall County (22–06–2295P).	The Honorable David Sweet, Rockwall County Judge, 101 East Rusk Street, Suite 202, Rockwall, TX 75087.	Rockwall County Environmental Health Coordinator's Office/Floodplain Management, 915 Whitmore Drive, Suite D, Rockwall, TX 75087.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 28, 2023	480543
Tarrant	City of Fort Worth (22–06–1537P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, Engineering Vault & Map Repository, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	May 8, 2023	480596

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Tarrant	Unincorporated areas of Tarrant County (22–06–1537P).	The Honorable B. Glen Whitley, Tarrant County Judge, 100 East Weatherford Street, Suite 501, Fort Worth, TX 76196.	Tarrant County Administration Building, 100 East Weatherford Street, Suite 401, Fort Worth, TX 76196.	*https://msc.fema.gov/portal/advanceSearch.*	May 8, 2023	480582
Wharton	Unincorporated areas of Wharton County (22–06–0763P).	The Honorable Phillip Spenrath, Wharton County Judge, 100 South Fulton Street, Suite 100, Wharton, TX 77488.	Wharton County Annex D, 315 East Milam Street, Suite 102, Wharton, TX 77488.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 13, 2023	480652
Utah:						
Washington	City of St. George (22–08–0356P).	The Honorable Michele Randall, Mayor, City of St. George, 175 East 200 North, St. George, UT 84770.	Engineering Department, 175 East 200 North, St. George, UT 84770.	*https://msc.fema.gov/portal/advanceSearch.*	May 25, 2023	490177
Washington	Unincorporated areas of Washington County (22–08–0356P).	The Honorable Adam Snow, Chair, Washington County Commission, 197 East Tabernacle Street, St. George, UT 84770.	Washington County Planning and Zoning Department, 197 East Tabernacle Street, St. George, UT 84770.	*https://msc.fema.gov/portal/advanceSearch.*	May 25, 2023	490224
Virginia:						
Buchanan	Unincorporated areas of Buchanan County (23–03–0007P).	Robert Craig Horn, Buchanan County Administrator, P.O. Box 950, Grundy, VA 24614.	Buchanan County Government Center, 4447 Slate Creek Road, 2nd Floor, Grundy, VA 24614.	*https://msc.fema.gov/portal/advanceSearch.*	May 5, 2023	510024
Prince William	Unincorporated areas of Prince William County (22–03–0474P).	Elijah Johnson, Acting Executive, Prince William County, 1 County Complex Court, Prince William, VA 22192.	Prince William County Water Management Branch, 5 County Complex Court, Suite 170, Prince William, VA 22192.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 14, 2023	510119

[FR Doc. 2023–05323 Filed 3–14–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/A0A501010.999900]

Advisory Board of Exceptional Children; Meeting.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Indian Education (BIE) is announcing that the Advisory Board for Exceptional Children will hold a two-day in-person and online meeting. The purpose of the meeting is to meet the mandates of the Individuals with Disabilities Education Act of 2004 (IDEA) for Indian children with disabilities.

DATES: The BIE Advisory Board meeting will be held Thursday, April 13, 2023, from 8 a.m. to 4:30 p.m., Mountain Standard Time (MST) and Friday, April 14, 2023, from 8 a.m. to 4:30 p.m., Mountain Standard Time (MST).

ADDRESSES:

• *Meeting:* All Advisory Board activities and meetings will be conducted in-person and online. The onsite meeting location will be at the Sheraton Albuquerque Uptown Hotel located at 2600 Louisiana Blvd. NE, Albuquerque, NM 87110. See the **SUPPLEMENTARY INFORMATION** section of this notice for information on how to join the meeting.

• *Comments:* Public comments can be emailed to the Designated Federal Officer (DFO) at *Jennifer.davis@bie.edu;* or faxed to (602) 265–0293 Attention: Jennifer Davis, DFO; or mailed or hand delivered to the Bureau of Indian Education, Attention: Jennifer Davis, DFO, 2600 N. Central Ave., 12th floor, Suite 250, Phoenix, AZ 85004.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis, Designated Federal Officer, Bureau of Indian Education, 2600 N. Central Ave., 12th floor, Suite 250, Phoenix, AZ 85004, *Jennifer.davis@bie.edu,* or mobile phone (202) 860–7845.

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

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: The Advisory Board was established under the Individuals with Disabilities Act of 2004 (20 U.S.C. 1400 *et seq.*) to advise the Secretary of the Interior, through the Assistant Secretary-Indian Affairs, on the needs of Indian children with disabilities. All meetings, including virtual sessions, are open to the public in their entirety.

Agenda

The following agenda items will be for the April 13–14, 2023, meetings. The reports are regarding special education topics:

• Indian Health Services to discuss the Memorandum of Understanding (MOU) between IHS and the BIE to support services at all levels for the children attending BIE funded schools.

• A panel discussion with a select group of Special Education Coordinators from BIE funded schools (Bureau Operated and Tribally Controlled

Schools) focusing on complications and learning loss resulting from COVID–19 for children with disabilities.

- Panel discussion with a select group of School Leadership personnel from BIE funded schools (Bureau Operated and Tribally Controlled Schools) focusing on concerns related to the provision of special education services.
- Panel discussion with a select group of School Leadership operating a 4-day school schedule and the effects of a 4-day week on working parents, the impact on special education services for students with disabilities receiving services from 5 days to 4 days.
- Advisory board members will work on identifying priority topics for problems that could be creating barriers for children with disabilities within the BIE school system.
- Advisory board members will work on developing the agenda for the next board meeting scheduled for June 22–23, 2023, and September 21–22, 2023.
- Four Public Commenting Sessions will be provided during both meeting days.

○ On Thursday, April 13, 2023, two sessions (15 minutes each) will be provided, 11:30 a.m. to 11:45 a.m. MST and 2:45 p.m. to 3 p.m. MST. Public comments can be provided via webinar or telephone conference call. Please use the meeting registration link listed below.

○ On Friday, April 14, 2023, two sessions (15 minutes each) will be provided, 8:30 a.m. to 8:45 a.m. MST and 10 a.m. to 10:15 a.m. MST. Public comments can be provided during the meeting or telephone conference call. Please use the meeting registration link listed below.

Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Requests to address the Advisory Board during the meeting will be accommodated in the order the requests are received. Individuals who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written comments to the Designated Federal Officer up to 30 days following the meeting. Written comments may be sent to Jennifer Davis listed in the **ADDRESSES** section above.

Registration

Please register at *https://www.zoomgov.com/meeting/register/vJItf-CvrD0vGklWHMVVgFFxwHgMNiM5aak* to attend the April 13–14, 2023, meetings.

Attendees register once and can attend one or both meeting events. After registering, you will receive a confirmation email containing information about joining the meeting

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 5 U.S.C. 10; 20 U.S.C. 1400 *et seq.*)

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–05240 Filed 3–14–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRN_MO4500168917]

Notice of Public Meeting of the Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Alaska Resource Advisory Council (RAC) will meet as follows.

DATES: The RAC will hold a hybrid public meeting, offering in-person and virtual attendance options, on Wednesday, May 24, 2023, from 9 a.m. to 2:30 p.m. with public comments accepted at 1 p.m.

ADDRESSES: Meeting links and participation instructions will be made widely available to the public via news media, social media, the BLM Alaska RAC web page at *blm.gov/Alaska/RAC,* and through personal contact 2 weeks prior to the meeting.

The May 24, 2023, meeting will be held virtually through Zoom and at the BLM Alaska State Office, 4th floor, 222 W 7th Avenue, Anchorage AK 99516. Virtual attendees are required to register online: *https://blm.zoomgov.com/webinar/register/WN_HwHWqvidSaiW9FLGlQSDkw.*

FOR FURTHER INFORMATION CONTACT: RAC Coordinator, Melinda Bolton, email: *mbolton@blm.gov* or telephone: (907) 271–3342. Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Melinda Bolton. 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: The Alaska RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with BLM-managed public lands in Alaska. Topics for the meeting are as follows:

On May 24, 2023, the RAC will be briefed on co-stewardship projects, Bipartisan Infrastructure Law funds and accomplishments, and wildlife habitat management.

RAC meetings are open to the public. Each RAC meeting has time allotted for public comments. Depending on the number of people wishing to speak and the time available, the amount of time for verbal comments may be limited. Written public comments may be sent to the BLM Alaska State Office or RAC Coordinator listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Written public comments will be provided to the Alaska RAC members.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Meeting Accessibility/Special Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the (see **FOR FURTHER INFORMATION CONTACT**) section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Detailed minutes for the RAC meetings are maintained by the BLM Alaska State Office. Minutes are also

posted to the BLM Alaska RAC web page at *www.blm.gov/Alaska/RAC.*

(Authority: 43 CFR 1784.4–2)

Steven M. Cohn,

State Director, Bureau of Land Management Alaska.

[FR Doc. 2023–05224 Filed 3–14–23; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

National Park Service

[DOI–2023–0002; PPWOCOMP1A/PPMPSAS1Y.YF0000]

Privacy Act of 1974; System of Records

AGENCY: National Park Service, Interior.

ACTION: Rescindment of a system of records notice.

SUMMARY: The Department of the Interior (DOI) is issuing a public notice of its intent to rescind the National Park Service (NPS) Privacy Act system of records, INTERIOR/NPS–4, Travel Records, from its existing inventory.

DATES: These changes take effect on March 15, 2023.

ADDRESSES: You may send comments identified by docket number [DOI–2023–0002] by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2023–0002] in the subject line of the message.
- *U.S. mail or hand-delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2023–0002]. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

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

You should be aware your entire comment including your personally identifiable information, such as your address, phone number, email address, or any other personal information in your comment, may be made publicly available at any time. While you may request to withhold your personally identifiable information from public review, we cannot guarantee we will be able to do so.

FOR FURTHER INFORMATION CONTACT: (1) Jennifer Greatorex, NPS Accounting Operations Center (AOC) Center Manager, National Park Service, 13461 Sunrise Valley Drive, Herndon, VA 20171, *jennifer_greatorex@nps.gov* or 703–480–1737, or (2) Felix Uribe, Associate Privacy Officer, National Park Service, 12201 Sunrise Valley Drive, Reston, VA 20192, *nps_privacy@nps.gov* or 202–354–6925.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the NPS is rescinding the INTERIOR/NPS–4, Travel Records, system of records notice (SORN) and removing it from its system of records inventory. This system was used to manage NPS travel advances, authorizations, and vouchers in accordance with Federal Travel Regulations. During a routine review, DOI determined that agency travel records are covered by two government-wide General Services Administration (GSA) SORNs, GSA/GOVT–3, Travel Charge Card Program, 78 FR 20108 (April 3, 2013); and GSA/GOVT–4, Contracted Travel Services Program, 74 FR 26700 (June 3, 2009), modification published at 74 FR 28048 (June 12, 2009). A government-wide system of records is a system of records where one agency has regulatory authority over the records in the custody of multiple agencies and that agency has the responsibility for publishing a SORN that applies to all the records regardless of their custodial location. The two GSA government-wide SORNs apply to the travel records maintained by DOI pursuant to Federal Travel Regulations and policy. Therefore, DOI is rescinding the INTERIOR/NPS–4, Travel Records, SORN to eliminate an unnecessary duplicate notice in accordance with the Office of Management and Budget Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.*

Rescinding the INTERIOR/NPS–4, Travel Records, SORN will have no adverse impacts on individuals as the records are covered under the GSA/GOVT–3, Travel Charge Card Program, and GSA/GOVT–4, Contracted Travel Services Program, SORNs, which apply to the records regardless of their custodial location. This rescindment will also promote the overall streamlining and management of DOI Privacy Act systems of records.

SYSTEM NAME AND NUMBER:

INTERIOR/NPS–4, Travel Records.

HISTORY:

48 FR 51698 (November 10, 1983); modification published at 53 FR 51324 (December 21, 1988) and 73 FR 63992 (October 28, 2008).

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2023–05215 Filed 3–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–TRAILS–34831; PS.SPPFL0088.00.1]

Lands Chief, National Trails Land Resources Program Office; Delegation of Authority

AGENCY: National Park Service.

ACTION: Notification of delegation of authority.

SUMMARY: Delegation from the National Park Service's Director to the Lands Chief of the National Trails Land Resources Program Office (National Trails Lands Office), for the execution of the land acquisition program for National Trails administered by the National Park Service.

DATES: The effective date of this delegation is March 15, 2023.

ADDRESSES: National Park Service, Department of the Interior, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Pam McLay, Chief of Land Resources Division, National Park Service, 1849 C Street NW, Washington, DC 20240, telephone (202) 354–6954.

SUPPLEMENTARY INFORMATION: Recognizing that National Trails have unique acquisition authority and in order to streamline and create efficiencies for National Trail land transactions, the National Park Service's Director has delegated authority to the Lands Chief for the National Trails Lands Office to execute the land acquisition program for National Trails administered by the National Park Service, pursuant to the National Trails System Act of 1968, as amended. This includes contracting for acquisition of lands and related properties; accepting offers to sell to, or exchange with the United States lands or interests in lands, and executing of all necessary agreements and conveyances incidental thereto; accepting deeds conveying to the United States lands or interests in lands; approving on behalf of the National Park Service offers of settlement in condemnation cases; providing relocation assistance; and approving claims for reimbursement under Public Law 91–646, as amended.

This delegation does not include establishing land acquisition priorities for the National Trails or approving acquisitions, which are delegated to the Regional Directors.

Charles F. Sams, III,

Director, National Park Service.

[FR Doc. 2023–05310 Filed 3–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2023–0013]

Notice of Availability of the Proposed Notice of Sale for Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sale 261

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) announces the availability of the Proposed Notice of Sale (Proposed NOS) for the proposed Gulf of Mexico (GOM) Outer Continental Shelf (OCS) Oil and Gas Lease Sale 261 (GOM Lease Sale 261). GOM Lease Sale 261 is required by the Inflation Reduction Act of 2022. BOEM is publishing this notice pursuant to its regulatory authority. Pursuant to section 19 of the OCS Lands Act the Secretary of the Interior provides Governors of affected States and the executive of any affected local government the opportunity to review and comment on the Proposed NOS. The Proposed NOS describes the proposed size, timing, and location of the sale, including lease stipulations, terms and conditions, minimum bids, royalty rates, and rental rates.

DATES: Comments received from the Governors and the executive of any affected local government on the size, timing, and location of GOM Lease Sale 261 must be submitted to BOEM no later than May 15, 2023. BOEM will publish the Final NOS in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for September 27, 2023.

ADDRESSES: The Proposed NOS for GOM Lease Sale 261 and Proposed NOS Package containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana, 70123–2394; telephone: (504) 736–2519. The Proposed NOS and Proposed NOS Package also are available for downloading or viewing on BOEM's website at *http://www.boem.gov/Sale-261/.*

FOR FURTHER INFORMATION CONTACT: Bridgette Duplantis, Acting Chief, Leasing and Financial Responsibility, Office of Leasing and Plans, 504–736–7502, *bridgette.duplantis@boem.gov* or Ben Burnett, Chief, Leasing Policy and Management Division, Office of Strategic Recourses, 703–787–1782, *benjamin.burnett@boem.gov.*

Authority: This notice of sale is published pursuant to 43 U.S.C. 1331 *et seq.* (Outer Continental Shelf Lands Act, as amended) and 30 CFR 556.304(c).

Elizabeth Klein,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2023–05259 Filed 3–14–23; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1355]

Certain Compact Wallets and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 6, 2023, under section 337 of the Tariff Act of 1930, as amended, on behalf of The Ridge Wallet LLC of Santa Monica, California. The complaint was supplemented on February 21, 2023. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain compact wallets and components thereof by reason of the infringement of certain claims of U.S. Patent No. 10,791,808 (''the '808 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complaint also alleges violations of section 337 based upon the importation into the United States, or in the sale of certain compact wallets and components thereof by reason of trade dress infringement, the threat or effect of which is to destroy or substantially injure an industry in the United States. The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2022).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 9, 2023, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended,

(a) an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, or the sale of certain products identified in paragraph (2) by reason of trade dress infringement, the threat or effect of which is to destroy or substantially injure an industry in the United States;

(b) an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–4, 9, and 12–17 of the '808 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the

investigation, is ''two multi-piece panels held together with rivets, where the two panels are connected and urged toward one another with an elastic band.'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

The Ridge Wallet LLC, 2448 Main Street, Santa Monica, CA 90405

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Mosaic Brands, Inc., 1427 Vine Ln, Alamo, CA 94507–1153

Rosemar Enterprise LLC, d/b/a RossM Wallet, 333 E Amado Rd #253, Palm Springs, CA 92263–0253

INSGG, dongxiaolian No. 553, Wensan Road, West Lake District, Room 2019, Zhejiang SME Building, hangzhou city, Zhejiang Province, 330009, China

Shenzhen Swztech Co., Ltd d/b/a SWZA, 27E Building D, ZhongXin Garden, Buji Town, Shenzhen, GuangDong, 518112, China

ARW, Room 312–320, 3rd Building XingHui, Technology Park, HuaLing West Road, DaLang, LongHua, Shenzhen, Shenzhen, Guangdong, 518109, China

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Commission waives Rule 210.10(a)(1) as exceptional circumstances precluded adherence to the 30-day deadline, and the Commission's determination has been made as soon as possible after that deadline. See 19 CFR 210.10(a)(2).

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 9, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–05264 Filed 3–14–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–682 and 731–TA–1592–1593 (Final)]

Certain Freight Rail Couplers and Parts Thereof From China and Mexico; Scheduling of the Final Phase of Countervailing Duty and Anti-Dumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–682 and 731–TA–1592–1593 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain freight rail couplers and parts thereof from China and Mexico, provided for in subheadings 8607.30.10 and 7326.90.86 of the Harmonized Tariff Schedule of the United States, for which imports of certain freight rail couplers and parts thereof from China have been preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized and sold at less-than-fair-value. Subject merchandise attached to finished rail cars may also be imported under HTSUS heading 8606, or under subheadings 9803.00 and 7325.99, if imported as an Instrument of International Traffic.

DATES: March 3, 2023.

FOR FURTHER INFORMATION CONTACT: Ahdia Bavari ((202) 205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—As of the date of this notice, Commerce has defined the scope of the merchandise subject to these investigations to cover ''certain freight railcar couplers (also known as ''fits'' or ''assemblies'') and parts thereof. Freight railcar couplers are composed of two main parts, namely knuckles and coupler bodies but may also include other items (*e.g.,* coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors). The parts of couplers that are covered by the investigation include: (1) E coupler bodies, (2) E/F coupler bodies, (3) F coupler bodies, (4) E knuckles, and (5) F knuckles, as set forth by the Association of American Railroads (AAR). The freight rail coupler parts (*i.e.,* knuckles and coupler bodies) are included within the scope of the investigation when imported separately. Coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors are covered merchandise when imported in an assembly but are not covered by the scope when imported separately.

Subject freight railcar couplers and parts are included within the scope whether finished or unfinished, whether imported individually or with other subject or nonsubject parts, whether assembled or unassembled, whether mounted or unmounted, or if joined with non-subject merchandise, such as other non-subject parts or a completed railcar. Finishing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, machining, and assembly of various parts. When a subject coupler or subject parts are mounted on or to other non-

subject merchandise, such as a railcar, only the coupler or subject parts are covered by the scope.

The finished products covered by the scope of this investigation meet or exceed the AAR specifications of M–211, ''Foundry and Product Approval Requirements for the Manufacture of Couplers, Coupler Yokes, Knuckles, Follower Blocks, and Coupler Parts'' and/or AAR M–215 ''Coupling Systems,'' or other equivalent domestic or international standards (including any revisions to the standard(s)).

The country of origin for subject couplers and parts thereof, whether fully assembled, unfinished or finished, or attached to a railcar, is the country where the subject coupler parts were cast or forged. Subject merchandise includes coupler parts as defined above that have been further processed or further assembled, including those coupler parts attached to a railcar in third countries. Further processing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, painting, coating, priming, machining, and assembly of various parts. The inclusion, attachment, joining, or assembly of nonsubject parts with subject parts or couplers either in the country of manufacture of the in-scope product or in a third country does not remove the subject parts or couplers from the scope.

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of § 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of certain freight rail couplers and parts thereof, and that such products are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). Commerce's preliminary determination with respect to imports of certain freight rail couplers and parts thereof from Mexico that are alleged to be sold in the United States at less than fair value is pending. The investigations were requested in petitions filed on September 28, 2022, by McConway & Torley LLC, Pittsburgh, Pennsylvania, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on May 4, 2023, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on May 18, 2023. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 12, 2023. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the investigation, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3pm the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on May 15, 2023. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00pm on May 17, 2023. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is May 11, 2023. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 25, 2023. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before May 25, 2023. On June 8, 2023, the Commission will make available to parties all information on which they have not had an opportunity to

comment. Parties may submit final comments on this information on or before June 12, 2023, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: March 9, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–05243 Filed 3–14–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Electronic Anti-Theft Shopping Cart Wheels, Components Thereof, and Systems Containing the Same DN 3671;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov*. For help accessing EDIS, please email *EDIS3Help@usitc.gov*.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Gatekeeper Systems, Inc. on March 9, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic anti-theft shopping cart wheels, components thereof, and systems containing the same. The complaint names as respondents: Rocateq International B.V. of the Netherlands; Rocateq USA, LLC of San Fernando, CA; and Zhuhai Rocateq Technology Company Ltd. of China. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding section 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3671) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing

Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov*.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: March 10, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–05285 Filed 3–14–23; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–016]

Sunshine Act Meetings

AGENCY: United States International Trade Commission.

TIME AND DATE: March 23, 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–539–C (Fifth Review) (Uranium from Russia). The Commission currently is scheduled to complete and file its determinations and views of the Commission on March 31, 2023.
5. *Outstanding action jackets:* none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Acting Supervisory Hearings and Information Officer, 202–205–2000.

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: March 13, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–05367 Filed 3–13–23; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On March 6, 2023, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Massachusetts in *United States and Commonwealth of Massachusetts* v. *City of Gloucester, Massachusetts,* 1:23–cv–10505–LTS (D. MA).

The United States filed a complaint under the Clean Water Act (''Act'') seeking injunctive relief for violations of the Act related to the City's failure to meet certain effluent limits, based on secondary treatment standards, of the City's Water Pollution Control Facility in violation of the Final National Pollution Discharge Elimination System permit which became effective on September 1, 2022. The proposed consent decree provides for the construction of secondary sewage treatment upgrades by March 31, 2028, and for compliance with all effluent limits in the Final Permit by June 30, 2028.

The publication of this notice opens a period for public comment on the modification to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Commonwealth of Massachusetts* v. *City of Gloucester, Massachusetts,* D.J. Ref. No. 90–5–1–1–12666. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed modification to the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed modification upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $11.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–05225 Filed 3–14–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On March 8, 2023, the Department of Justice lodged a proposed Consent

Decree with the District Court of the Southern District of New York in a lawsuit entitled *United States* v. *United Alloys & Steel Corp.,* Civil Action No. 23–1968.

In this action the United States seeks, as provided under the Comprehensive Environmental Response, Compensation and Liability Act, recovery of response costs from United Alloys and Steel Corporation (''United'') regarding the Port Refinery Superfund Site (''Site'') in the Village of Rye Brook, New York. The proposed Consent Decree resolves the United States' claims and requires United to pay $260,000, in reimbursement of the United States' past response costs regarding the Site.

The publication of this notice opens the public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *United Alloys & Steel Corp.,* Civil Action No. 23–1968, D.J. Ref. 90–11–3–1142/6. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please email your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry S. Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–05249 Filed 3–14–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0039]

Intertek Testing Services NA, Inc.: Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of Intertek Testing Services NA, Inc., for expansion of the recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before March 30, 2023.

ADDRESSES: Submit comments by any of the following methods:

Electronically: Submit comments and attachments electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov* or the OSHA Docket Office. All documents in the docket (including this **Federal Register** notice) are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2007–0039). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *https://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

Extension of comment period: Submit requests for an extension of the comment period on or before March 30, 2023 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (202) 693–1999 or email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that Intertek Testing Services NA, Inc. (ITSNA), is applying for expansion of the current recognition as a NRTL. ITSNA requests the addition of two test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency

publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including ITSNA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *https://www.osha.gov/dts/otpca/nrtl/index.html.*

ITSNA currently has thirteen facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: Intertek Testing Services NA, Inc., 545 East Algonquin Road, Suite F, Arlington Heights, Illinois 60005. A complete list of ITSNA's scope of recognition is available at *https://www.osha.gov/nationally-recognized-testing-laboratory-program/its.*

II. General Background on the Application

ITSNA submitted an application, dated February 15, 2021 (OSHA–2007–0039–0038), to expand the recognition to include two additional test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1, below, lists the appropriate test standards found in ITSNA's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARDS FOR INCLUSION IN ITSNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 61730–1	Photovoltaic (PV) Module Safety Qualification—Part 1: Requirements for Construction.
UL 61730–2	Photovoltaic (PV) Module Safety Qualification—Part 2: Requirements for Testing.

III. Preliminary Findings on the Application

ITSNA submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application file and pertinent documentation indicates that ITSNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding the recognition to include the addition of these two test standards for NRTL testing and certification listed in Table 1. This preliminary finding does not constitute an interim or temporary approval of ITSNA's application.

OSHA seeks comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether ITSNA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2007–0039 (for further information, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant ITSNA's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 8, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–05279 Filed 3–14–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0042]

CSA Group Testing & Certification Inc.: Grant of Expansion of Recognition and Modification to the NRTL Program's List of Appropriate Test Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for CSA Group Testing & Certification Inc., as a Nationally Recognized Testing Laboratory (NRTL). Additionally, OSHA announces the final decision to add one test standard to the NRTL Program's List of Appropriate test standards.

DATES: The expansion of the scope of recognition becomes effective on March 15, 2023.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999 or email *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone (202) 693–2110 or email *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of CSA Group Testing & Certification Inc. (CSA) as a NRTL. CSA's expansion covers the addition of three test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes an application by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A, 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including CSA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

CSA submitted an application, dated September 24, 2021 (OSHA–2006–0042–0030), to expand their recognition to include four additional test standards. This application was revised on January 18, 2022 (OSHA–2006–0042–0031), to remove one standard from the original request. This expansion covers the remaining three standards. OSHA staff performed detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing CSA's expansion application in the **Federal Register** on January 30, 2023 (88 FR 5921). The agency requested comments by February 14, 2023, but it received no comments in response to this notice.

To obtain or review copies of all public documents pertaining to the CSA's application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. Docket No. OSHA–2006–0042 contains all materials in the record concerning CSA's recognition. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

II. Final Decision and Order

OSHA staff examined CSA's expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that CSA meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed in this notice. OSHA, therefore, is proceeding with this final notice to grant CSA's expanded scope of recognition. OSHA limits the expansion of CSA's recognition to testing and certification of products for demonstration of conformance to the test standards listed below in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN CSA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 8800 *	Horticultural Lighting Equipment and Systems.
UL 1598C	Standard for Light Emitting Diode (LED) Retrofit Luminaire Conversion Kits.
UL 61010–2–091	Standard for Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2—091: Particular Requirements for Cabinet X-Ray Systems.

* Represents the standard that OSHA is adding to the NRTL Program's List of Appropriate Test Standards.

In this notice, OSHA also announces the final decision to add one new test standard to the NRTL Program's List of Appropriate Test Standards. Table 2 below lists the standard that is new to the NRTL Program. OSHA has determined that this test standard is an appropriate test standard and will add it to the NRTL Program's List of Appropriate Test Standards.

TABLE 2—STANDARD OSHA IS ADDING TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 8800	Horticultural Lighting Equipment and Systems.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine

whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, CSA must abide by the following conditions of the recognition:

1. CSA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. CSA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. CSA must continue to meet the requirements for recognition, including all previously published conditions on CSA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of CSA as a NRTL, subject to the limitations and conditions specified above.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 8, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–05277 Filed 3–14–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

[OMB Control No. 1240–0046]

Proposed Revision of Information Collection; FECA Medical Report Forms, Claim for Compensation

AGENCY: Office of Workers' Compensation Programs (OWCP), Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: 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 on respondents can be properly assessed. Currently, the OWCP is soliciting comments on the information collection for FECA Medical Report Forms, Claim for Compensation.

DATES: All comments must be received on or before May 15, 2023.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–OWCP, Office of Workers' Compensation, Room S3223, 200 Constitution Avenue NW, Washington, DC 20210.
- OWCP will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs, Office of Workers' Compensation Programs (OWCP), at *suggs.anjanette@dol.gov;* (202) 354–9660.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Worker's Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), which provides for continuation of pay or compensation for work related injuries or disease from federal employment. 5 U.S.C. 8149, Congress gives the Secretary of Labor authority to prescribe the rules and regulations necessary for the administration and enforcement of the FECA.

The relevant statutory provision allowing for an individual to make a claim for compensation benefits is found at 5 U.S.C. 8102, Compensation for disability or death of employee, and reads as follows:

(a) The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty, unless the injury or death is—

(1) caused by willful misconduct of the employee;

(2) caused by the employee's intention to bring about the injury or death of himself or of another; or

(3) proximately caused by the intoxication of the injured employee.

(b) Disability or death from a war-risk hazard or during or as a result of capture, detention, or other restraint by a hostile force or individual, suffered by an employee who is employed outside the continental United States or in Alaska or in the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979), is deemed to have resulted from personal injury sustained while in the performance of his duty, whether or not the employee was engaged in the course of employment when the disability or disability resulting in death occurred or when he was taken by the hostile force or individual. This subsection does not apply to an individual—

(1) whose residence is at or in the vicinity of the place of his employment and who was not living there solely because of the exigencies of his employment, unless he was injured or taken while engaged in the course of his employment; or

(2) who is a prisoner of war or a protected individual under the Geneva Conventions of 1949 and is detained or utilized by the United States.

The relevant statutory provision 5 U.S.C. 8103, Medical services and initial medical and other benefits, which reads as follows:

(a) The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation. These services, appliances, and supplies shall be furnished—

(1) whether or not disability has arisen;

(2) notwithstanding that the employee has accepted or is entitled to receive benefits under subchapter III of chapter 83 of this title or another retirement system for employees of the Government; and

(3) by or on the order of United States medical officers and hospitals, or, at the employee's option, by or on the order of physicians and hospitals designated or approved by the Secretary. The employee may initially select a

physician to provide medical services, appliances, and supplies, in accordance with such regulations and instructions as the Secretary considers necessary, and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies. These expenses, when authorized or approved by the Secretary, shall be paid from the Employees' Compensation Fund.

(b) The Secretary, under such limitations or conditions as he considers necessary, may authorize the employing agencies to provide for the initial furnishing of medical and other benefits under this section. The Secretary may certify vouchers for these expenses out of the Employees' Compensation Fund when the immediate superior of the employee certifies that the expense was incurred in respect to an injury which was accepted by the employing agency as probably compensable under this subchapter. The Secretary shall prescribe the form and content of the certificate.

References: 5 U.S.C. 8102, 5 U.S.C. 8103, and 5 U.S.C. 8149, 20 CFR 10.102, 20 CFR 10.211, 20 CFR 10.300, 20 CFR 10.314, 20 CFR 314, and 20 CFR 10.506.

II. Desired Focus of Comments

OWCP is soliciting comments concerning the proposed information collection related to the FECA Medical Report Forms, Claim for Compensation. OWCP is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of OWCP's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection 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.

Background documents related to this information collection request are available at *https://regulations.gov* and at DOL–OWCP located at the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns Federal Employees' Compensation Act Medical Reports and Compensation Claims. OWCP has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Revision of a currently approved collection.

Agency: Office of Worker's Compensation Programs.

OMB Number: 1240–0046.

Affected Public: Individuals or Households.

Number of Respondents: 282,353.

Frequency: On occasion.

Number of Responses: 282,353.

Annual Burden Hours: 25,605.

Annual Respondent or Recordkeeper Cost: $133,412.00.

OWCP Forms: CA–16, Authorization for Examination and/or Treatment; CA–17, Duty Status Report; CA–20, Attending Physician's Report; OWCP–5a, Work Capacity Evaluation, Psychiatric Conditions; OWCP–5b, Work Capacity Evaluation, Cardiovascular/Pulmonary Conditions; OWCP–5c, Musculoskeletal Conditions; CA–7, Claim for Compensation; Letters: CA–1090,Claimant request for Attendant Services; CA–1305, Authorization to doctor for eye examination with PPI rating; CA–1331, with CA–1087 enclosure, Authorization to Doctor for Audiologic and Otologic Evaluation with OWCP Hearing Loss Requirements; CA–1332, Outline for Otologic Testing.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Anjanette Suggs,

Certifying Officer.

[FR Doc. 2023–05278 Filed 3–14–23; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL SCIENCE FOUNDATION

Committee Management Renewal

The NSF management officials having responsibility for the advisory committee listed below has determined that renewing this committee for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Committee: Advisory Committee for Polar Programs, #1130.

Effective date for renewal is March 10, 2023. For more information, please contact Crystal Robinson, NSF, at (703) 292–8687.

Dated: March 10, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–05287 Filed 3–14–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Polar Programs (1130).

Date and Time: April 12, 2023; 9 a.m.–4 p.m., April 13, 2023; 10 a.m.–4:30 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; In-person and Virtual via Zoom. Registration for the meeting will be available at least two weeks prior to the meeting date. Both the agenda and the registration link will be located on the Polar AC website at: *https://www.nsf.gov/geo/opp/advisory.jsp.*

Type of Meeting: Open.

Contact Person: Sara Eckert, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; Telephone: (703) 292–7899.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation concerning support for polar research, education, infrastructure and logistics, and related activities.

Agenda

April 12, 2023; 9 a.m.–4 p.m. (In Person and Virtual)

- Upcoming field seasons and COVID–19

- Discussion on Diversity, Equity, and Inclusion
- Antarctic Research Vessel Updates
- Subcommittee on South Pole Prioritization
- Physical Qualifications in Polar Programs
- International Engagement

April 13, 2023; 10 a.m.–4:30 p.m. (In Person and Virtual)

- Joint session with AC–GEO
  - Geosciences Directorate Update
  - Update on Sexual Assault/Harassment Prevention and Response Briefing by head of NSF Office of Legislative and Public Affairs
  - NSF Leadership presentation

Dated: March 10, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–05315 Filed 3–14–23; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97100; File No. SR–LCH SA–2023–001]

Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to the Liquidity Risk Model Framework

March 9, 2023.

I. Introduction

On January 4, 2023, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (the ''Proposed Rule Change'') to amend its Liquidity Risk Modelling Framework (the ''Framework''). The Proposed Rule Change was published for comment in the **Federal Register** on January 24, 2023.[3] The Commission has not received any comments on the Proposed Rule Change. For the reasons discussed below, the Commission is approving the Proposed Rule Change.

II. Description of the Proposed Rule Change

LCH SA is a clearing agency registered with the Commission for the purpose of clearing security-based swaps (also known as credit-default swaps or ''CDS''). LCH SA provides clearing services for eligible CDS contracts, including both European and US Indices and Single Names Index constituents, and clearing services for eligible options on European Index CDS. In offering clearing services for these CDS contracts, LCH SA acts as a central counterparty (''CCP''). Being a CCP means that LCH SA, in clearing a trade, becomes a counterparty to, and responsible for, the corresponding trade obligations arising from the original bilateral trade between its clearing members. In other words, as a CCP, LCH SA acts functionally as the buyer to every seller and the seller to every buyer.

As a CCP providing clearing services, LCH SA is subject to liquidity risk in that it may not have enough cash in the relevant currency to meet its payment obligations when they become due, in particular upon the default of a clearing member. For example, LCH SA would be unable to make a payment in United States Dollars (''USD'') if, at the time the payment were due, all of LCH SA's resources were held in securities or British Pounds Sterling. To comprehensively measure, monitor, and manage its liquidity risk, LCH SA has established, among other policies and procedures,[4] the Framework.

The Framework supports LCH SA's management of liquidity risk by identifying LCH SA's sources of liquidity and corresponding liquidity risks, identifying LCH SA's liquidity requirements with respect to its members and its interoperable central counterparty,[5] describing the metrics and limits that LCH SA monitors, and describing the scenarios under which these metrics are computed.[6]

Broadly, the Proposed Rule Change seeks to amend the Framework in four ways: (1) more accurately describe how LCH SA currently manages its liquidity requirements and operational target[7] calculation when there is a scheduled reduction to LCH SA's Default Fund[8] or when LCH SA needs to provide an extraordinary liquidity injection to facilitate settlement of transactions during a business day; (2) reflect changes to two of LCH SA's committed credit lines; (3) add a list of LCH SA's existing options to address default situations in which there is a liquidity shortfall in a currency different from EUR;[9] and (4) make two changes relating to LCH SA's existing processes for injecting liquidity in the settlement system to ease settlement flow at International Central Securities Depositories (''ICSDs''). Each of these proposed changes is discussed in turn below.

A. Liquidity Requirements and Operational Target

Based on a recommendation from its independent risk model validation department, LCH SA proposes to amend the Framework to address more fully its liquidity requirements in the event of a Default Fund scheduled reduction or an extraordinary intraday liquidity injection in the settlement platform.

A Default Fund scheduled reduction refers to an instance where LCH SA returns Default Fund contributions to its clearing members. As background, at the start of each month, LCH SA determines the amount of its Default Fund according to its internal procedures.[10] If the new amount for a given clearing member is lower than the current amount, then LCH SA will return the appropriate difference to that clearing member. Before a Default Fund

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 96694 (Jan. 18, 2023), 88 FR 4227 (Jan. 24, 2023) (File No. SR–LCH–2023–001) (''Notice'').

[4] For example, as described in the Notice, LCH SA, as a subsidiary of LCH Group, manages its liquidity risk pursuant to, among other policies and procedures, the LCH Group Liquidity Risk Policy and the LCH Group Liquidity Plan. *Id.* at 4228.

[5] LCH SA has an interoperability agreement with Cassa di Compensazione e Garanzia (''CC&G''), an Italian CCP, pursuant to which LCH SA's clearing members and CC&G's clearing members are able to benefit from common clearing services without having to join the other CCP. Each CCP is a clearing member of the other one with a particular status when accessing the clearing system of the other counterparty.

[6] For additional information regarding the Framework, *see* Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to Liquidity Risk Management, Exchange Act Release No. 83691 (July 24, 2018), 83 FR 36635 (July 30, 2018) (SR–LCH SA–2018–003).

[7] The operational target ''represents the amount of liquidity to be held to satisfy the liquidity needs related to the operational management of the CCP in a stressed environment that does not lead to a member's default.'' Notice, 88 FR at 4228, n.6.

[8] LCH SA maintains a Default Fund for its CDS clearing service. The Default Fund consists of financial resources that LCH SA can use to cover losses in the event of a default by a clearing member, in accordance with its rules and procedures. LCH SA requires clearing members to contribute to the Default Fund, and Article 4.4.1.3 of the LCH SA CDS Clearing Rulebook explains how LCH SA determines the amount of each clearing member's contribution. Generally, LCH SA calculates the amount of the Default Fund and each clearing member's contribution thereto each month. If a clearing member's contribution decreases for a given month, LCH SA could be obligated to return cash to that clearing member in the amount of the reduction in its contribution. Such a return of cash to a clearing member would decrease the amount of liquidity available to LCH SA.

[9] As described below, LCH SA did not propose adopting new authorities, but rather, specified existing options to conform the Framework to the LCH SA Liquidity Plan and the LCH SA CDS Clearing Rulebook. *See* LCH SA CDS Clearing Rule Book Chapter 3 Article 1.3.1.7, Appendix 1 Article 8.2, Appendix 1 Article 8.10.

[10] Notice, 88 FR at 4228, n.8.

reduction takes place, a latency period occurs between the final approval of the new Default Fund amount and the settlement of the new contributions. LCH SA is proposing changes to the Framework in order to properly reflect the Default Fund reduction in the operational target calculation until the settlement of the new contributions occurs.[11]

In the Framework, LCH SA proposes additional text to describe enhancements to the operational target calculation. The additional content includes (1) a statement that the Default Fund recomputed is compared to the Default Fund actually paid and in the account of LCH SA, (2) a description of the reported amount of the Default Fund, including adjustments made to the calculation of the operational target, and (3) a detailed description of the operational steps in the calculation.

Moreover, LCH SA proposes to make conforming changes to another section of the Framework to reflect the significance of a Default Fund reduction. The Framework currently lists five different reasons for LCH SA's operational liquidity needs, including repayment of excess cash and non-cash collateral to members, the substitution of cash collateral upon members' request, and LCH SA's provision of liquidity to facilitate settlement, among others. LCH SA proposes to add the planned reduction of Default Fund amounts as another reason for its operational liquidity needs.

LCH SA also proposes various Framework changes to more fully address the impact of intraday liquidity injections into the settlement platform. According to LCH SA, when volumes in the settlement platform are particularly high, additional liquidity may need to be injected during the day to ensure the smooth function of the settlement flows.[12]

The Proposed Rule Change would add governance details regarding the provision of intraday liquidity injections. In particular, the Proposed Rule Change would add language to note that LCH SA has delegated to its Fixed Income Operations team authority to provide up to one billion euros in additional liquidity intraday for settlement. LCH SA's Chief Risk Officer and Head of Collateral and Liquidity Management, or their delegates, would need to approve any intraday amounts greater than one billion euros.[13]

LCH SA proposes changes to the Framework that would require the recalculation of LCH SA's operational liquidity target in response to an intraday injection of more than 1 billion euros. The Framework does not currently take into consideration extraordinary liquidity injections in the settlement system in the daily operational target calculation.

In addition, LCH SA proposes to add a footnote to provide additional context for LCH SA's provision of liquidity in order to facilitate settlement.[14] The proposed footnote would indicate that the provision of liquidity to facilitate settlement includes both beginning-of-day liquidity injections as well as intraday injections above one billion euros.

B. Committed Credit Lines

As part of its liquidity resources, LCH SA maintains different credit lines that it can draw upon as needed to obtain liquid financial resources.[15] LCH SA proposes changes to the Framework to reflect that (1) one such credit line, with KAS Bank to cover non-euro variation margin payments for listed derivatives activity, is no longer active, and (2) LCH SA has established a flexible, intraday credit line with Norges Bank to cover non-euro variation margin payments for listed derivatives activity. Specifically, LCH SA proposes to update the Framework to delete outdated references to the KAS Bank credit line and add references to the Norges Bank credit line.

C. Liquidity Shortfall Options

LCH SA's Liquidity Plan and CDS Clearing Rulebook identify and define a set of tools, or options, that LCH SA can utilize to address a Clearing Member default that leads to a liquidity shortfall in a currency different from EUR, including the following:

- Non-euro cash deposited as collateral;
- The sale of the non-euro securities of the defaulting member;
- Bilateral repo transactions (non-euro cash taker and non-euro collateral giver);
- Cross-currency bilateral repo (non-euro cash taker and euro collateral giver);
- Cross-currency triparty repo (non-euro cash taker and euro collateral giver);
- LCH SA's multicurrency overdraft facility with an International Bank;
- FX spot market transactions;
- ECB weekly tender in USD (last resort); and
- Replacing LCH SA's liabilities in non-euros by euros as per clearing rulebook.[16]

Currently, the Framework does not identify these tools as the options LCH SA has to address default situations in which there is a liquidity shortfall in a currency different from EUR. The Proposed Rule Change would update the Framework to include the list of tools that LCH SA may use.

D. Injection of Liquidity To Ease Settlement Flow

The current Framework describes LCH SA's requirements and process for injecting liquidity into settlement platforms of various ICSDs to facilitate settlement related to certain sovereign debt, such as French, Spanish, German, Belgian, and Italian debt. It includes a table that describes the settlement platforms, the debt activities covered by those settlement platforms, and an associated maximum level of liquidity. LCH SA is proposing two specific changes to this portion of the Framework. First, LCH SA proposes to reduce the maximum level of liquidity to be injected daily in the settlement system to ease settlement flow at an Italian ICSD. This change is being proposed to ensure the maximum level of liquidity specifically related to Italian debt is appropriate given actual settlement activity related to Italian debt observed by LCH SA's Operations Team. Second, LCH SA proposes to include additional text to specify the dates of its most recent tests to successfully transfer securities related to settlement for Italy, Spain, Germany, and Belgium transactions.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

[11] *Id.* at 4228.

[12] *Id.* at 4228, n.9.

[13] An injection of more than $1 billion euro would also trigger certain internal reporting requirements.

[14] *See* Article 1.3.3.5 of LCH SA's rules (stating that ''LCH SA ensures the delivery of Securities or the payment of cash, in accordance with the Clearing Rule Book . . .''). Further, LCH SA injects liquidity in the settlement platforms or lodges non-cash collateral at ICSDs to facilitate settlement, including fails. LCH SA handles these injections since they represent one of the main intraday liquidity needs for the CCP. *See* LCH SA Liquidity Risk Modelling Framework Section 4.2.1.4.

[15] For example, LCH SA has a multi-currency overdraft facility of €10 million with an international bank and a secured, committed, intraday credit line with a different bank. Notice, 88 FR at 4229.

[16] *See* LCH SA CDS Clearing Rule Book Chapter 3 Article 1.3.1.7, Appendix 1 Article 8.2, Appendix 1 Article 8.10; *see* LCH SA Liquidity Plan Section 6.2.2.2.

the organization.[17] For the reasons given below, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act[18] and Rule 17Ad–22(e)(7) thereunder.[19]

A. Consistency With Section 17A(b)(3)(F) of the Act

Under Section 17A(b)(3)(F) of the Act, LCH SA's rules, among other things, must be ''designed to promote the prompt and accurate clearance and settlement of . . . derivative agreements, contracts, and transactions . . . .'' [20] Based on its review of the record, and for the reasons discussed below, the Commission believes that LCH SA's changes are consistent with Section 17A(b)(3)(F) of the Act because they contribute to LCH SA's management of its liquidity risk.

LCH SA relies on the Framework to support its management of liquidity risk arising from a potential member default, default of CC&G, and operational liquidity requirements. Managing such risks, such as through the maintenance of liquid resources sufficient to meet payment obligations, reduces the likelihood that LCH would fail to make payments when due, thereby avoiding disruptions to the settlement of transactions for which such payments are due. Thus, the Framework, as a rule of LCH SA, supports the prompt and accurate clearance and settlement of the derivatives transactions LCH SA clears, including security-based swaps.

Certain of the changes LCH SA proposes would update and clarify existing aspects of the Framework. These include changes meant to accurately portray LCH SA's banking relationships, changes describing the options LCH SA has to address default situations in which there is a liquidity shortfall in a currency different from EUR, and changes reflecting that LCH SA has successfully tested the transfer of securities coming from settlement for Italy, Spain, Germany, and Belgium transactions. These updates and clarifications contribute to the effectiveness of the Framework as a tool supporting LCH SA's management of liquidity risk arising from a potential member default, default of CC&G, and operational liquidity requirements, which facilitates prompt and accurate clearance and settlement.

LCH SA proposes changes designed to control and more accurately quantify LCH SA's liquidity risk with regard to its operational liquidity needs, including changes to the Framework that would take into account decreases in the Default Fund, adding arrangements governing how extraordinary intraday liquidity injections are approved and considered in the operational target, and updating the maximum level of liquidity to be injected daily in the settlement system to ease settlement flow for ICSDs. Control over and accurate measurement of liquidity risk is necessary to ensure that LCH SA's exposure does not exceed its resource so that LCH SA can meet its payment obligations on time without disrupting settlement. Thus, these changes promote prompt and accurate clearance and settlement.

The Commission believes, therefore, that the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.[21]

B. Consistency With Rule 17Ad–22(e)(7) Under the Act

Rule 17Ad–22(e)(7) requires covered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency.[22] In adopting Rule 17Ad–22(e)(7), the Commission provided guidance that a covered clearing agency should consider in establishing and maintaining policies and procedures that address liquidity risk. Specifically, the Commission stated that a covered clearing agency should generally consider whether it has a robust framework to manage its liquidity risks from its participants and other entities.[23]

LCH SA proposes changes that would make the Framework more robust by broadening the description of potential sources of liquidity risk and describing internal processes governing when prior approval must be obtained for an intraday liquidity injection. For example, LCH SA proposes to expand the list of actions that may cause liquidity needs to arise, and would adjust how LCH SA considers decreases in the Default Fund and intraday liquidity injections with regard to its operational target. These proposed changes would provide LCH SA with a more accurate understanding of both its liquidity needs and its operational target. LCH SA's increased ability to measure its liquidity risk due to these changes makes the Framework more robust. Additionally, as noted above, LCH SA proposes changes that would describe internal processes governing when prior approval must be obtained for an intraday liquidity injection. These changes provide for stronger internal controls regarding liquidity risk management. The Commission believes that the proposed changes to LCH SA's Framework described in Section II A above are consistent with Rule 17Ad–22(e)(7) because they are strengthening changes to the Framework and thus support LCH SA's ability to measure, monitor, and manage its liquidity risk.

The Commission believes, therefore, that the Proposed Rule Change is consistent with the requirements of Rule 17Ad–22(e)(7) under the Act.[24]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act, and in particular, Section 17A(b)(3)(F) of the Act[25] and Rule 17Ad–22(e)(7) thereunder.[26]

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the Proposed Rule Change (SR–LCH SA–2023–001) be, and hereby is, approved.[27]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–05271 Filed 3–14–23; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(2)(C).

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 17 CFR 240.17Ad–22(e)(7).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 15 U.S.C. 78q–1(b)(3)(F).

[22] 17 CFR 240.17Ad–22(e)(7).

[23] Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70823 (Oct. 13, 2016) (File No. S7–03–14).

[24] 17 CFR 240.17Ad–22(e)(7).

[25] 15 U.S.C. 78q–1(b)(3)(F).

[26] 17 CFR 240.17Ad–22(e)(7).

[27] In approving the Proposed Rule Change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97094; File No. SR–ICC–2023–002]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the Clearance of Additional Credit Default Swap Contracts

March 9, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4,[2] notice is hereby given that on February 24, 2023, ICE Clear Credit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICC Rulebook (the ''Rules'') to provide for the clearance of additional Standard Emerging Market Sovereign CDS contracts and Standard Western European Sovereign Single Name CDS contracts (collectively, the ''Sovereign Contracts'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to adopt rules that will provide the basis for ICC to clear additional credit default swap contracts. ICC proposes to make such change effective following Commission approval of the proposed rule change. ICC believes the addition of these contracts will benefit the market for credit default swaps by providing market participants the benefits of clearing, including reduction in counterparty risk and safeguarding of margin assets pursuant to clearing house rules. Clearing of the additional Sovereign Contracts will not require any changes to ICC's Risk Management Framework or other policies and procedures constituting rules within the meaning of the Securities Exchange Act of 1934 (''Act'').

ICC proposes amending Subchapter 26D and Subchapter 26I of its Rules to provide for the clearance of additional Sovereign Contracts, specifically the Socialist Republic of Vietnam, Romania, and Kingdom of Sweden. These additional Sovereign Contracts have terms consistent with the other SES and SWES Contracts approved for clearing at ICC and governed by Subchapter 26D and Subchapter 26I of the Rules. Minor revisions to Subchapter 26D (Standard Emerging Market Sovereign (''SES'') Single Name) and 26I (Standard Western European Sovereign (''SWES'') Single Name) are made to provide for clearing the additional Sovereign Contracts. Specifically, in Rule 26D–102 (Definitions), ''Eligible SES Reference Entities'' is modified to include the Socialist Republic of Vietnam and Romania in the list of specific Eligible SES Reference Entities to be cleared by ICC. Also, specifically, in Rule 26I–102 (Definitions), ''Eligible SWES Reference Entities'' is modified to include the Kingdom of Sweden in the list of specific Eligible SWES Reference Entities to be cleared by ICC.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act [3] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions; to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and to comply with the provisions of the Act and the rules and regulations thereunder. The additional Sovereign Contracts proposed for clearing are similar to the Sovereign Contracts currently cleared by ICC, and will be cleared pursuant to ICC's existing clearing arrangements and related financial safeguards, protections and risk management procedures. Clearing of the additional Sovereign Contracts will allow market participants an increased ability to manage risk and ensure the safeguarding of margin assets pursuant to clearing house rules. ICC believes that acceptance of the new Sovereign Contracts, on the terms and conditions set out in the Rules, is consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[4]

Clearing of the additional Sovereign Contracts will also satisfy the relevant requirements of Rule 17Ad–22,[5] as set forth in the following discussion.

Rule 17Ad–22(e)(6)(i) [6] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market. In terms of financial resources, ICC will apply its existing margin methodology to the new Sovereign Contracts, which are similar to the Sovereign Contracts currently cleared by ICC. ICC believes that this model will provide sufficient margin requirements to cover its credit exposure to its clearing members from clearing such contracts, consistent with the requirements of Rule 17Ad–22(e)(6)(i).[7]

Rule 17Ad–22(e)(4)(ii) [8] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. ICC believes its Guaranty Fund, under its existing methodology, will, together with the required initial margin, provide sufficient financial resources to support the clearing of the additional Sovereign Contracts, consistent with the requirements of Rule 17Ad–22(e)(4)(ii).[9]

Rule 17Ad–22(e)(17) [10] requires, in relevant part, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage its operational risks by (i) identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls; and (ii) ensuring that systems have a high

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] *Id.*

[5] 17 CFR 240.17Ad–22.

[6] 17 CFR 240.17Ad–22(e)(6)(i).

[7] *Id.*

[8] 17 CFR 240.17Ad–22(e)(4)(ii).

[9] *Id.*

[10] 17 CFR 240.17Ad–22(e)(17)(i) and (ii).

degree of security, resiliency, operational reliability, and adequate, scalable capacity. ICC believes that its existing operational and managerial resources will be sufficient for clearing of the additional Sovereign Contracts, consistent with the requirements of Rule 17Ad–22(e)(17),[11] as the new contracts are substantially the same from an operational perspective as existing contracts.

Rule 17Ad–22(e)(8), (9) and (10)[12] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to define the point at which settlement is final to be no later than the end of the day on which payment or obligation is due and, where necessary or appropriate, intraday or in real time; conduct its money settlements in central bank money, where available and determined to be practical by the Board, and minimize and manage credit and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used; and establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor, and manage the risks associated with such physical deliveries. ICC will use its existing rules, settlement procedures and account structures for the new Sovereign Contracts, which are similar to the SWES and SES Contracts currently cleared by ICC, consistent with the requirements of Rule 17Ad–22(e)(8), (9) and (10)[13] as to the finality and accuracy of its daily settlement process and addressing the risks associated with physical deliveries.

Rule 17Ad–22(e)(2)(i) and (v)[14] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. ICC determined to accept the additional Sovereign Contracts for clearing in accordance with its governance process, which included review of the contract and related risk management considerations by the ICC Risk Committee and approval by its Board. These governance arrangements continue to be clear and transparent, such that information relating to the assignment of responsibilities and the requisite involvement of the ICC Board and committees is clearly detailed in the ICC Rules and policies and procedures, consistent with the requirements of Rule 17Ad–22(e)(2)(i) and (v).[15]

Rule 17Ad–22(e)(13)[16] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring its participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto. ICC will apply its existing default management policies and procedures for the additional Sovereign Contracts. ICC believes that these procedures allow for it to take timely action to contain losses and liquidity demands and to continue meeting its obligations in the event of clearing member insolvencies or defaults in respect of the additional single name, in accordance with Rule 17Ad–22(e)(13).[17]

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed amendments will have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the purpose of the proposed rule change is to adopt rules that will provide the basis for ICC to clear additional credit default swap contracts. The additional Sovereign Contracts will be available to all ICC participants for clearing. The clearing of the additional Sovereign Contracts by ICC does not preclude the offering of the additional Sovereign Contracts for clearing by other market participants. Accordingly, ICC does not believe that clearance of the additional Sovereign Contracts will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

[11] *Id.*

[12] 17 CFR 240.17Ad–22(e)(8), (9) and (10).

[13] *Id.*

[14] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[15] *Id.*

[16] 17 CFR 240.17Ad–22(e)(13).

[17] *Id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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–ICC–2023–002 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2023–002. 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 such filings will also be available for

inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2023–002 and should be submitted on or before April 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05268 Filed 3–14–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97093; File No. SR–PEARL–2023–11]

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 2622, Limit Up-Limit Down Plan and Trading Halts

March 9, 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 February 28, 2023, MIAX PEARL, LLC (''MIAX Pearl'' or the ''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 amend Exchange Rule 2622 to establish common criteria and procedures for halting and resuming trading in equity securities on the Exchange's equity trading platform (referred to herein as ''MIAX Pearl Equities'') in the event of regulatory or operational issues, and reorganize the text of the rule.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl'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 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

In conjunction with adoption of an amended Nasdaq UTP Plan proposed by its participants (''Amended Nasdaq UTP Plan''),[3] the Exchange is amending Rule 2622 to integrate several definitions and concepts from the Amended Nasdaq UTP Plan and to reorganize the rule in light of the Exchange's experience with applying the rule over many years as a national securities exchange.[4] The Exchange proposes to reorganize and amend Rule 2622, entitled Limit Up-Limit Down Plan and Trading Halts, on MIAX Pearl Equities. The rule sets forth the Exchange's authority to halt trading under various circumstances. The Exchange is a participant of the transaction reporting plan governing Tape C Securities (''Nasdaq UTP Plan'').[5] As part of these changes, the Exchange will amend categories of regulatory and operational halts, improve the rule's clarity, adopt defined terms from the Amended Nasdaq UTP Plan, and relocate certain existing provisions within Exchange Rule 2622.

Background

The Exchange has been working with other SROs to establish common criteria and procedures for halting and resuming trading in equity securities in the event of regulatory or operational issues. These common standards are designed to ensure that events which might impact multiple exchanges are handled in a consistent manner that is transparent. The Exchange believes that implementation of these common standards will assist the SROs in maintaining fair and orderly markets. Notwithstanding the development of these common standards, the Exchange will retain discretion in certain instances as to whether and how to handle halts, as is discussed below.

Every U.S.-listed equity security has its primary listing on a specific stock exchange that is responsible for a number of regulatory functions.[6] These

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On February 11, 2021, the Nasdaq UTP Plan participants filed Amendment 50 to the Plan, to revise provisions governing regulatory and operational halts. *See* Letter from Robert Brooks, Chairman, UTP Operating Committee, Nasdaq UTP Plan, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated February 11, 2021. The Nasdaq UTP Plan subsequently filed two partial amendments to the 50th Amendment, on March 31, 2021 and on April 7, 2021. The SEC approved the amendments on May 28, 2021. *See* Securities Exchange Act Release No. 34–92071 (May 28, 2021), 86 FR 29846 (June 3, 2021) (S7–24–89). The Amended Nasdaq UTP Plan includes provisions requiring participant self-regulatory organizations (''SROs'') to honor a Regulatory Halt declared by the Primary Listing Market. The provisions in the Nasdaq UTP Plan, and the plan for consolidation of data for non-Nasdaq-listed securities, the Consolidated Tape System and Consolidated Quotations System (collectively, the ''CTA/CQS Plan''), include provisions similar to the changes proposed by the Exchange in this filing.

[4] The Exchange notes that this proposed rule change is based on a similar proposed rule change recently filed by Nasdaq PHLX LLC (''Phlx''). *See* Securities Exchange Act Release No. 96574 (December 22, 2022), 87 FR 80213 (December 29, 2022) (SR–Phlx–2022–49). The Exchange also notes The Nasdaq Stock Market, LLC (''Nasdaq'') filed a similar proposed rule change with the Commission. *See* Securities Exchange Act Release No. 94370 (March 7, 2022), 87 FR 14071 (March 11, 2022); Securities Exchange Act Release No. 94838 (May 3, 2022), 87 FR 27683 (May 9, 2022). The Commission approved the proposed rule change on June 8, 2022. *See* Securities Exchange Act Release No. 95069 (June 8, 2022), 87 FR 36018 (June 14, 2022). The Exchange's proposal provides the Exchange with less authority to declare halts in the event of regulatory or operational issues than under Nasdaq's proposal because the Exchange, unlike Nasdaq, is not a Primary Listing Market. Given the Exchange's status as a non-Primary Listing Market, certain definitions and concepts from the Amended Nasdaq UTP Plan, integrated in Nasdaq's proposal, are not included herein.

[5] Each transaction reporting plan has a securities information processor (''SIP'') responsible for consolidation of information for the plan's securities, pursuant to Rule 603 of Regulation NMS. The transaction reporting plan for Nasdaq-listed securities is known as The Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis or the ''Nasdaq UTP Plan.'' Pursuant to the Nasdaq UTP Plan, the UTP SIP, which is Nasdaq, consolidates order and trade data from all markets trading Nasdaq-listed securities. The Exchange uses the term ''UTP SIP'' herein when referring specifically to the SIP responsible for consolidation of information in Nasdaq-listed securities.

[6] The Exchange is proposing to adopt Primary Listing Market as a new term, defined in Nasdaq UTP Plan, Section X.A.8, as follows: ''[T]he

Continued

include confirming that the security continues to meet the exchange's listing standards, monitoring trading in that security and taking action to halt trading in the security when necessary to protect investors and to ensure a fair and orderly market. While these core responsibilities remain with the primary listing venue, trading in the security can occur on multiple exchanges that have unlisted trading privileges for the security [7] or in the over- the-counter market, regulated by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The exchanges and FINRA are responsible for monitoring activity on the markets over which they have oversight, but also must abide by the regulatory decisions made by the Primary Listing Market. For example, a venue trading a security pursuant to unlisted trading privileges must halt trading in that security during a Regulatory Halt, which is a defined term under the proposed rules,[8] and may only trade the security once the Primary Listing Market has cleared the security to resume trading.

While the Exchange and the other SROs intend to harmonize certain aspects of their trading halt rules, other elements of the rules will continue to be unique to each market. The Exchange believes that this is appropriate to reflect different products listed or traded on each market. The Exchange also proposed to relocate paragraphs (h)(2)–(5) of Exchange Rule 2622 to paragraphs (h)(2)(A)(i)(b)–(e).

The Exchange will implement all of the changes proposed herein in conjunction with other SROs implementing the necessary rule changes. The Exchange will publish a Trading Alert at least 30 business days prior to implementing the proposed changes.

Definitions

The Exchange proposes adding definitions to Rule 2622(h)(1) to consolidate the various definitions that will be used in the Rule, some of which are taken from the Amended Nasdaq UTP Plan. The Exchange is adopting the following terms from the Amended Nasdaq UTP Plan: ''Operating Committee,'' ''Operational Halt,'' ''Primary Listing Market,'' ''Processor,'' [9] ''Regulatory Halt,'' ''Regular Trading Hours,'' [10] ''SIP Halt,'' and ''SIP Halt Resume Time.'' The Exchange is adopting a modified form of the term ''Extraordinary Market Activity'' from the Amended Nasdaq UTP Plan, as described below. The definition of ''UTP Exchange Traded Product'' has been moved into the definitions section from elsewhere in the current Rules without change.[11] The definitions of ''Trust Shares,'' ''Index Fund Shares,'' ''Managed Fund Shares,'' and ''Trust Issues Receipts'' have been added as subcategories to the defined term ''UTP Exchange Traded Product.'' [12]

First, the Exchange proposes to add the definition of ''Primary Listing Market'' [13] to Rule 2622, which will have the same meaning as in the Amended Nasdaq UTP Plan, Section X.A.8. As is currently the case under the Nasdaq UTP Plan, all Regulatory Halt decisions are made by the market on which the security has its primary listing. This reflects the regulatory responsibility that the Primary Listing Market has for fair and orderly trading in the securities that list on its market and its direct access to its listed companies, which are required to advise it of certain events and maintain lines of communication with the Primary Listing Market. The proposed definition makes clear that if a security is listed on more than one market (a dually-listed security), the Primary Listing Market means the exchange on which the security has been listed the longest. This provision matches language used in the definition of ''Primary Listing Exchange'' in the Limit-Up Limit-Down Plan and will avoid conflict in the event of dually-listed securities.

Second, the Exchange proposes to add the definition of ''Extraordinary Market Activity'' to Rule 2622,[14] which would represent a modified version of the term defined in the Amended Nasdaq UTP Plan, Section X.A.1.[15] Specifically, the Exchange proposes to remove the concept of a ''market-wide basis'' from the Amended Nasdaq UTP Plan's definition of Extraordinary Market Activity for purposes of the Exchange's Rules because the term ''Extraordinary Market Activity'' would only be used in the Exchange's Rules as a basis for the Exchange to initiate an Operational Halt, which would only occur on the market declaring the halt (*i.e.,* the Exchange).[16] The current rule does not include a definition for Extraordinary Market Activity.

The third set of new proposed definitions would be specific to events involving the SIP. While the Exchange recognizes that many events involving the SIP would also meet the definition of ''Extraordinary Market Activity'' (as defined in the Amended Nasdaq UTP Plan), the Exchange believes that the critical role of the SIPs in market infrastructure factors in favor of additional guidance on how such events will be handled. The definitions of ''SIP Halt Resume Time'' and ''SIP Halt'' are intended to provide additional guidance

national securities exchange on which an Eligible Security is listed. If an Eligible Security is listed on more than one national securities exchange, Primary Listing Market means the exchange on which the security has been listed the longest.''

[7] In addition, securities may be listed on The Nasdaq Global Market or The Nasdaq Global Select Market, and also listed on the New York Stock Exchange (''dually-listed''). *See* Nasdaq Rules 5005(a)(11), 5220 and IM–5220.

[8] *See* proposed Rule 2622(h)(1)(I).

[9] The Exchange proposes to also define the term ''SIP'' to have the same meaning as the term ''Processor'' as set forth in the Amended Nasdaq UTP Plan. Because the terms ''Processor'' and ''SIP'' are also used throughout the Rules, at times, to apply to processors of information furnished pursuant to the Consolidated Tape Association Plan (''CTA Plan''), the term ''Processor'' may, in those applicable circumstances, refer to the processor of transactions in Tape A and B securities, as set forth in the CTA Plan.

[10] The Exchange notes that pursuant to existing Rule 1901, the Regular Trading Session occurs until 4:00 p.m.

[11] ''UTP Exchange Traded Product'' is currently defined in Rule 1901.

[12] As noted above, the Exchange is adopting several new terms that have the same meaning as those terms are defined in the Amended Nasdaq UTP Plan. Each of the national market system plans governing the single plan processors has identical definitions of these terms, thus there will be uniformity in the meaning of the terms among such plans as well as among the rules of the SROs. The definitions of these terms are also identical to those recently adopted by Phlx. *See supra* note 4.

[13] *See* proposed Rule 2622(h)(1)(G).

[14] *See* proposed Rule 2622(h)(1)(B).

[15] In the Amended Nasdaq UTP Plan, ''Extraordinary Market Activity'' means a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated by, or linked to, the Processor or a Trading Center or a member of such Trading Center that has a severe and continuing negative impact, on a market-wide basis, on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this definition, a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or their members; or (iii) the unavailability of quoting, order, or transaction information for a sustained period.

[16] The Exchange proposes to define ''Extraordinary Market Activity'' to mean a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated by, or linked to, the Processor or a Trading Center or a member of such Trading Center that has a severe and continuing negative impact on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this definition, a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or their members; or (iii) the unavailability of quoting, order, or transaction information for a sustained period.

to address this subset of potential market issues.[17] In addition, the Exchange is proposing to define terms related to SIP governance needed in order to understand these definitions:

• ''Processor'' or ''SIP'' [18] have the same meaning as the term ''Processor'' set forth in the Nasdaq UTP Plan, namely the entity selected by the Participants to perform the processing functions set forth in the Plan. Because the terms ''Processor'' and ''SIP'' are also used throughout the Rules, at times, to apply to processors of information furnished pursuant to the CTA Plan, the term ''Processor'' and ''SIP'' may, in those applicable circumstances, refer to the processor of transactions in Tape A and B securities, as set forth in the CTA Plan.

• ''SIP Plan'' [19] is defined as the national market system plan governing the SIP.

• ''Operating Committee'' [20] is defined as having the same meaning as in the Nasdaq UTP Plan, namely the committee charged with administering the Nasdaq UTP Plan.

The Exchange is proposing to adopt a category of Regulatory Halt, called a ''SIP Halt,'' [21] which will have the same meaning as that term is defined in Section X.A.11. of the Nasdaq UTP Plan, namely ''a Regulatory Halt to trading in one or more securities that a Primary Listing Market declares in the event of a SIP Outage or Material SIP Latency.'' This new category of Regulatory Halt will address situations where the Primary Listing Market declares a Regulatory Halt in one or more securities as a result of a SIP outage [22] or material SIP latency.[23]

The Exchange proposes to add a definition of ''Regulatory Halt'' [24] as having the same meaning as in Section X.A.10 of the Amended Nasdaq UTP Plan. Specifically, the Exchange has proposed to define Regulatory Halt to mean a halt declared by the Primary Listing Market in trading in one or more securities on all Trading Centers for regulatory purposes, including for the dissemination of material news, news pending, suspensions, or where otherwise necessary to maintain a fair and orderly market. A Regulatory Halt includes a trading pause triggered by Limit Up Limit Down, a halt based on Extraordinary Market Activity (as defined in the Amended Nasdaq UTP Plan), a trading halt triggered by a Market-Wide Circuit Breaker, and a SIP Halt.

The Exchange proposes to add a definition of ''Operational Halt,'' [25] which is defined as having the same meaning as in Section X.A.7 of the Amended Nasdaq UTP Plan. Specifically, the Exchange is proposing to define Operational Halt to mean a halt in trading in one or more securities only on the market declaring the halt and is not a Regulatory Halt. An Operational Halt is effective only on the Exchange; other markets are not required to halt trading in the impacted securities. In practice, the Exchange has always had the capacity to implement operational halts in specified circumstances.[26] The proposed change would provide greater clarity on when an Operational Halt may be implemented and the process for halting and resuming trading in the event of an Operational Halt. An Operational Halt is not a Regulatory Halt.

Regulatory Halt

Proposed Rule 2622(h)(2)(A)(i)–(ii) includes two situations in which the Exchange must halt trading pursuant to a Regulatory Halt: under the Limit Up-Limit Down Plan or pursuant to extraordinary market volatility (market-wide circuit breakers). Proposed Rule 2622(h)(2)(A)(i) retains without substantive modification the existing rule with respect to the Limit Up-Limit Down Plan (current Rule 2622(h)(1)–(5)). The Exchange, as a non-Primary Listing Market, does not itself declare trading pauses pursuant to the Limit Up-Limit Down Plan, but rather implements such pauses declared by Primary Listing Markets. The Exchange proposes to make clear in Rule 2622(h)(2)(A)(ii) that a trading halt pursuant to extraordinary market volatility (market-wide circuit breakers), as is described in Rule 2622(a), constitutes a Regulatory Halt.

The Exchange proposes to add proposed Rule 2622(h)(2)(A)(iii), which makes clear that the start time of a Regulatory Halt is the time the Primary Listing Market declares the Regulatory Halt, regardless of whether communications issues impact the dissemination of notice of the Halt.[27] This proposal would provide market participants with certainty on the official start time of the Regulatory Halt. Under the proposed rule, the start time is fixed by the Primary Listing Market; it is not dependent on whether notice is disseminated immediately. This will avoid possible disagreement if the Regulatory Halt time were tied to dissemination or receipt of notification, which may occur at different times. The Exchange recognizes that in situations where communication is interrupted, trades may continue to occur until news of the Regulatory Halt reaches all trading centers. However, a fixed ''official'' Regulatory Halt time will allow SROs to revisit trades after the fact and determine in a consistent manner whether specific trades should stand.

Current Rule 2622(c), states, in part, that if the primary listing market declares a halt, the Exchange will halt trading in that security. This would be reiterated in proposed Rule 2622(h)(2)(A)(iii) [sic]. Consistent with Section X.G of the Nasdaq UTP Plan, the proposed Rule will more broadly require the Exchange to halt trading of a UTP security if the Primary Listing Market declares a Regulatory Halt in that security.

Resumption of Trading After a Regulatory Halt

The SROs have jointly developed processes to govern the resumption of trading in the event of a Regulatory Halt. While the actual process of re-launching trading will remain unique to each exchange, the proposed rule would harmonize certain common elements of the reopening process that would benefit from consistency across markets. These common elements include the primacy of the Primary Listing Market in resumption decisions, the requirement that the Primary Listing Market make its determination to

[17] The Exchange proposes to define the terms ''SIP Halt Resume Time'' and ''SIP Halt'' to have the same meaning as in the Amended Nasdaq UTP Plan.

[18] *See* proposed Rule 2622(h)(1)(H).

[19] *See* proposed Rule 2622(h)(1)(M).

[20] *See* proposed Rule 2622(h)(1)(C).

[21] *See* proposed Rule 2622(h)(1)(K).

[22] SIP outage means a situation in which the Processor has ceased, or anticipates being unable, to provide updated and/or accurate quotation or last sale price information in one or more securities for a material period that exceeds the time thresholds for an orderly failover to backup facilities established by mutual agreement among the Processor, the Primary Listing Market for the affected securities, and the Operating Committee unless the Primary Listing Market, in consultation with the Processor and the Operating Committee, determines that resumption of accurate data is expected in the near future. *See* Amended Nasdaq UTP Plan, Section X.A.13.

[23] Material SIP latency means a delay of quotation or last sale price information in one or more securities between the time data is received by the Processor and the time the Processor disseminates the data over the Processor's vendor lines, which delay the Primary Listing Market determines, in consultation with, and in accordance with, publicly disclosed guidelines established by the Operating Committee, to be (a) material and (b) unlikely to be resolved in the near future. *See* Amended Nasdaq UTP Plan, Section X.A.5.

[24] *See* proposed 2622(h)(1)(I).

[25] *See* proposed Rule 2622(h)(1)(D).

[26] *See* Exchange Rule 2600(b).

[27] This is consistent with the Amended Nasdaq UTP Plan. *See* Amended Nasdaq UTP Plan, Section X.D.1.

resume trading in good faith,[28] and certain parts of the complex process of reopening trading after a SIP Halt. With respect to a SIP Halt, common elements of the reopening process include the interaction among SROs (including the Primary Listing Market with the SIP), the requirement that the Primary Listing Market terminate a SIP Halt with a notification that specifies a SIP Halt Resume Time, the minimum quoting times before resumption of trading, the cutoff time after which trading would not resume during Regular Trading Hours, and the time when trading may resume if the Primary Listing Market does not open a security within the amount of time specified in its rules after the SIP Halt Resume Time.

Proposed Rule 2622(h)(2)(B) provides the process to be followed when resuming trading upon the conclusion of a Regulatory Halt. The new rule, which incorporates Section X.E.1 and X.F.3 of the Amended Nasdaq UTP Plan, is divided into the following two subsections concerning resumption of trading: (A) after a Regulatory Halt other than a SIP Halt; and (B) after a SIP Halt. Proposed Rule 2622(h)(2)(B)(i)(a) provides that, for a Regulatory Halt other than a SIP Halt, the Exchange may resume trading subject to the Regulatory Halt after the Exchange receives notification from the Primary Listing Market that the Regulatory Halt has been terminated. The Exchange does not conduct halt crosses and, therefore, the resumption of trading in these securities will occur once notice from the Primary Listing Market is received.

Proposed Rule 2622(h)(2)(B)(ii)(a) provides that, for securities subject to a SIP Halt initiated by another exchange that is the Primary Listing Market, during Regular Trading Hours, the Exchange may resume trading after trading has resumed on the Primary Listing Market or notice has been received from the Primary Listing Market that trading may resume. During Regular Trading Hours, if the Primary Listing Market does not open a security within the amount of time specified by the rules of the Primary Listing Market after the SIP Halt Resume Time, the Exchange may resume trading in that security.

Proposed Rule 2622(h)(2)(B)(iii) retains without substantive modification existing Rule 2622(h)(6). Proposed Rule 2622(h)(2)(B)(iii) states that the Exchange the Exchange shall re-open the security pursuant to the procedures set forth in Exchange Rule 2615, which describes the Exchange's re-opening process and provide, in sum, that the Exchange will re-open trading in following a halt by matching buy and sell orders at the midpoint of the national best bid and offer (''NBBO'').

Operational Halt

The Exchange proposes in Rule 2622(h)(3) to address Operational Halts, which are non-regulatory in nature and apply only to the exchange that calls the halt. The ability to call an Operational Halt has existed for a long time, although in the Exchange's experience, such halts have rarely been initiated. As part of the Exchange's assessment with the other SROs of the halting and resumption of trading, the Exchange believes that the markets would benefit from greater clarity regarding when an Operational Halt may be appropriate.[29] In part, the proposed change is designed to cover situations similar to those that might constitute a Regulatory Halt, but where the impact is limited to a single market. For example, just as a market disruption might trigger a Regulatory Halt for Extraordinary Market Activity (as defined in the Amended Nasdaq UTP Plan) if it affects multiple markets, a disruption at the Exchange, such as a technical issue affecting trading in one or more securities, could impact trading on the Exchange so significantly that an Operational Halt is appropriate in one or more securities. In such an instance, it would be in the public interest to institute an Operational Halt to minimize the impact of a disruption that, if trading were allowed to continue, might negatively affect a greater number of market participants. An Operational Halt does not implicate other trading centers.

Proposed Rule 2622(h)(3) would authorize the Exchange to implement an Operational Halt for any security trading on the Exchange: if it is experiencing Extraordinary Market Activity [30] on the Exchange; or when otherwise necessary to maintain a fair and orderly market or in the public interest.

Proposed Rule 2622(h)(3)(B) provides the process for initiating an Operational Halt. Under the proposed rule, the Exchange must notify the SIP if it has concerns about its ability to collect and transmit Quotation Information or Transaction Reports, or if it has declared an Operational Halt or suspension of trading in one or more Eligible Securities, pursuant to the procedures adopted by the Operating Committee.

Proposed Rule 2622(h)(3)(C) will clarify how the Exchange resumes trading after an Operational Halt. Proposed Rule 2622(h)(3)(C)(i) provides that the Exchange would resume trading when it determines that trading may resume in a fair and orderly manner consistent with the Exchange's rules. Proposed Rule 2622(h)(3)(C)(ii) provides that orders entered during the Operational Halt will not be accepted, unless subject to instructions that the order will be directed to another Trading Center. Proposed Rule 2622(h)(3)(C)(iii) provides that trading in a halted security shall resume at the time specified by the Exchange in a notice. Proposed Rule 2622(h)(3)(C)(iii) also specifies that Exchange will notify all other Plan participants and the SIP using such protocols and other emergency procedures as may be mutually agreed to between the Operating Committee and the Exchange. If the SIP is unable to disseminate notice of an Operational Halt or the Exchange is not open for trading, the Exchange will take reasonable steps to provide notice of an Operational Halt, which shall include both the type and start time of the Operational Halt. Each Plan participant shall continuously monitor communication protocols established by the Operating Committee and the Processor during market hours to disseminate notice of an Operational Halt, and the failure of a participant to do so shall not prevent the Exchange from initiating an Operational Halt.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[31] Specifically, the proposal is consistent with Section 6(b)(5) of the Act [32] because it 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.

As described above, the Exchange and other SROs are seeking to adopt harmonized rules related to halting and resuming trading in U.S.-listed equity securities. The Exchange believes that

[28] *See* Partial Amendment No. 1 of Trading Halt Amendments to the UTP Plan, dated March 31, 2021.

[29] Differences between Nasdaq and the Exchange's proposals as it relates to Operational Halts stem from Nasdaq's status as a Primary Listing Market, unlike the Exchange.

[30] ''Extraordinary Market Activity'' in proposed Rule 2622(h)(1)(B) would have the meaning proposed by the Exchange, which is a modified form of the term from the Amended Nasdaq UTP Plan, as described above.

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

the proposed rules will provide greater transparency and clarity with respect to the situations in which trading will be halted and the process through which that halt will be implemented and terminated. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. equities exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposed rules are consistent with Section 6(b)(5) of the Act [33] because they will foster cooperation and coordination with persons engaged in regulating and facilitating transactions in securities.

As discussed previously, the Exchange believes that the various provisions of the proposed rules that will apply to all SROs are focused on the type of cross-market event where a consistent approach will assist market participants and reduce confusion during a crisis. Because market participants often trade the same security across multiple venues and trade securities listed on different exchanges as part of a common strategy, the Exchange believes that the proposed rules will lessen the risk that market participants holding a basket of securities will have to deal with divergent outcomes depending on where the securities are listed or traded. Conversely, the proposed rules would still allow individual SROs to react differently to events that impact various securities or markets in different ways. This avoids the ''brittle market'' risk where an isolated event at a single market forces all markets trading equities securities to halt or halts trading in all securities where the issue impacted only a subset of securities. By addressing both concerns, the Exchange believes that the proposed rules further the Act's goal of maintaining fair and orderly markets.

The Exchange believes that the proposed rules' focus of responsibility on the Primary Listing Market for decisions related to a Regulatory Halt and the resumption of trading is consistent with the Act, which itself imposes obligations on exchanges with respect to issuers that are listed. As is currently the case, the Primary Listing Market would be responsible for the many regulatory functions related to its listings, including the determination of when to declare a Regulatory Halt. While these core responsibilities remain with the Primary Listing Market, trading in the security can occur on multiple exchanges that have unlisted trading privileges for the security, such as on the Exchange, or in the over-the-counter market, regulated by FINRA. The Exchange is responsible for monitoring activity on its own markets, but also must honor a Regulatory Halt.

The proposed changes relating to Regulatory Halts would ensure that all SROs handle the situations covered therein in a consistent manner that would prevent conflicting outcomes in cross-market events and ensure that all trading centers recognize a Regulatory Halt declared by the Primary Listing Market. The changes are consistent with and implement the Amended Nasdaq UTP Plan.

The Exchange believes that the definitions in the proposed rules are also consistent with the Act. The Exchange proposes adding definitions to Rule 2622(h)(1) to consolidate the various definitions that will be used in the Rule, some of which are taken from the Amended Nasdaq UTP Plan. The Exchange is adopting a modified form of the term ''Extraordinary Market Activity'' from the Amended Nasdaq UTP Plan, as described above. In addition, several other definitions have been moved into the definitions section from elsewhere in the current rule without changes in the definitions. As noted, certain definitions are consistent with the definitions in the Amended Nasdaq UTP Plan, furthering the Act's goal of promoting fair and orderly markets. For example, the Exchange is proposing to adopt a definition of ''SIP Halt,'' to explicitly address a situation that may disrupt the markets, and this definition is identical to the definition in the Amended Nasdaq UTP Plan. In addition to ''SIP Halt,'' the Exchange is adopting the following terms from the Amended Nasdaq UTP Plan: ''Operating Committee,'' ''Operational Halt,'' ''Primary Listing Market,'' ''Processor,'' ''Regulatory Halt,'' ''Regular Trading Hours,'' and ''SIP Halt Resume Time,'' as discussed above.

The Exchange believes that the proposed rules, which make halts more consistent across exchange rules, are consistent with the Act in that they will foster cooperation and coordination with persons engaged in regulating the equities markets. In particular, the Exchange believes it is important for SROs to coordinate when there is a widespread and significant event, as multiple trading centers are impacted in such an event. Further, while the Exchange recognizes that the proposed rule will not guarantee a consistent result on every market in all situations, the Exchange does believe that it will assist in that outcome. While the proposed rules relating to Regulatory Halts focuses primarily on the kinds of cross-market events that would likely impact multiple markets, individual SROs will still retain flexibility to deal with unique products or smaller situations confined to a particular market.

Also consistent with the Act, and with the Amended Nasdaq UTP Plan, is the Exchange's proposal in Rule 2622(h)(3) to address Operational Halts, which are non-regulatory in nature and apply only to the exchange that calls the halt. As noted earlier, the Exchange presently has the ability to call an Operational Halt, but does so rarely. The Exchange believes that the markets would benefit from greater clarity regarding when an Operational Halt may be appropriate. The proposed change is designed to cover situations where the impact is limited to a single market. For example, a disruption at the Exchange, such as a technical issue affecting trading in one or more securities, could impact trading on the Exchange so significantly that an Operational Halt is appropriate in one or more securities. In such an instance, it would be in the public interest to institute an Operational Halt to minimize the impact of a disruption that, if trading were allowed to continue, might negatively affect a greater number of market participants. An Operational Halt does not implicate other trading centers.

Proposed Rule 2622(h)(3) would authorize the Exchange to implement an Operational Halt for any security trading on the Exchange: (i) if it is experiencing Extraordinary Market Activity on the Exchange; or (ii) when otherwise necessary to maintain a fair and orderly market or in the public interest. Lastly, the proposed relocation of paragraphs (h)(2)–(5) of Exchange Rule 2622 to paragraphs (h)(2)(A)(i)(b)–(e) removes impediments to, and perfects the mechanism of, a free and open market and a national market system because it makes the rule easier to understand, thereby avoiding potential investor confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act [34] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

Importantly, the Exchange believes the proposal will not impose a burden on intermarket competition but will

[33] *Id.*

[34] 15 U.S.C. 78f(b)(8).

rather alleviate any burden on competition because it is the result of a collaborative effort by all SROs to harmonize and improve the process related to the halting and resumption of trading in U.S.-listed equity securities, consistent with the Amended Nasdaq UTP Plan. In this area, the Exchange believes that all SROs should have consistent rules to the extent possible in order to provide additional transparency and certainty to market participants and to avoid inconsistent outcomes that could cause confusion and erode market confidence. The proposed changes would ensure that all SROs handle the situations covered therein in a consistent manner and ensure that all trading centers handle a Regulatory Halt consistently. The Exchange understands that all other non-Primary Listing Markets intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that its proposals concerning Operational Halts impose an undue burden on competition. Under the existing Rules, the Exchange already possesses discretionary authority to impose Operational Halts for various reasons, including because of an order imbalance or influx that causes another national securities exchange to impose a trading halt in a security. As described earlier, the proposed Rule change clarifies and broadens the circumstances in which the Exchange may impose such Halts, and specifies procedures for both imposing and lifting them. The Exchange does not intend for these proposals to have any competitive impact whatsoever. Indeed, the Exchange expects that other exchanges will adopt similar rules and procedures to govern operational halts, to the extent that they have not done so already.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally. In addition, information regarding the halting and resumption of trading will be disseminated using several freely accessible sources to ensure broad availability of information in addition to the SIP data and proprietary data feeds offered by the Exchange and other SROs that are available to subscribers. In addition, the declaration and timing of trading halts and the resumption of trading is designed to avoid any advantage to those who can react more quickly than other participants. The proposals encourage early and frequent communication among the SROs, SIPs and market participants to enable the dissemination of timely and accurate information concerning the market to market participants.

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 [35] and Rule 19b–4(f)(6) [36] 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–PEARL–2023–11 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–PEARL–2023–11. 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 such 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–PEARL–2023–11 and should be submitted on or before April 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05269 Filed 3–14–23; 8:45 am]

BILLING CODE 8011–01–P

[35] 15 U.S.C. 78s(b)(3)(A).

[36] 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.

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97099; File No. SR–CboeBZX–2023–013]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Listing Rules To Require Companies Listed on the Exchange To Develop, Implement, and Disclose a Written Compensation Recovery Policy To Comply With Rule 10D–1 Under the Exchange Act and Make Other Related Changes

March 9, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 24, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change. On March 3, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change as modified by Amendment No. 1 to adopt listing rules to require Companies listed on the Exchange to develop, implement, and disclose a written compensation recovery policy to comply with Rule 10D–1 under the Exchange Act and make other related changes.[3] The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This Amendment No. 1 to the rule filing SR–CboeBZX–2023–013 replaces SR–CboeBZX–2023–013 as originally filed on February 24, 2023 and supersedes that filing in its entirety.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This Amendment No. 1 to SR–CboeBZX–2023–013 amends and replaces in its entirety the proposal as originally submitted on February 24, 2023. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act'')[4] added 15 U.S.C. 78j–4 (''Section 10D'') to the Exchange Act. Title 15 Section 78j–4 (a) of the U.S. Code (''Section 10D(a)'') required the Commission to direct the national securities exchanges, including the Exchange, and national securities associations to prohibit the listing of any equity security of an issuer that is not in compliance with the requirements of 15 U.S.C. 78j–4(b) (''Section 10D(b)'') relating to a Company's[5] policy to recover Incentive-based Compensation to executive officers that was erroneously awarded on the basis of materially misreported financial information that requires an accounting restatement. To effect this requirement, the Commission has adopted Rule 10D–1 under the Exchange Act, which was published in the **Federal Register** on November 28, 2022. Rule 10D–1 requires each national securities exchange and national securities association to propose rule amendments that comply with Rule 10D–1 to the Commission, no later than February 27, 2023, which must be effective no later than November 28, 2023.[6]

Rule 10D–1 directs the listing exchanges to establish listing standards that require Companies to:

- Adopt and comply with written policies for recovery of Incentive-based Compensation based on financial information required to be reported under the securities laws, applicable to the Company's executive officers, during the three completed fiscal years immediately preceding the date that the issuer is required to prepare an accounting restatement; and
- Disclose those compensation recovery policies in accordance with Commission rules, including providing the information in tagged data format. Accordingly, in order to carry out the requirements of Rule 10D–1 the Exchange proposes to make several amendments to Exchange Rules 14.1, 14.10, and 14.12.

(1) Definitions

First, the Exchange proposes to adopt several definitions that are applicable to either the entirety of Chapter 14 or exclusively to Rule 14.10(k) that are consistent with defined terms provided in Rule 10D–1(d). Specifically, the Exchange proposes to adopt the term ''Financial Reporting Measures'' under Rule 14.1(a), which would mean measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measures that are derived wholly or in part from such measures. Stock price and total shareholder return are also financial reporting measures. A financial reporting measure need not be presented within the financial statements or included in a filing with the Commission. The Exchange also proposes to adopt the term ''Incentive-based Compensation'' under Rule 14.1(a), which would mean any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure. Based on these proposed definitions, the Exchange also proposes to modify the numbering of the definitions provided under Rule 14.1(a).

The Exchange proposes to adopt new a definition of ''Executive Officer'' applicable only to Rule 14.10(k). The term Executive Officer is already defined under Rule 14.1(a); therefore, the Exchange proposes to adopt a separate definition under proposed Interpretation and Policy .21 of Rule 14.10. As proposed, the term Executive Officer would mean, for purposes of the

[4] Public Law 111–203, 124 Stat. 1376 (2010).

[5] ''Company'' means the issuer of a security listed or applying to list on the Exchange. For purposes of Chapter XIV, the term ''Company'' includes an issuer that is not incorporated, such as, for example, a limited partnership. *See* Exchange Rule 14.1 (a)(3).

[6] *See* 17 CFR 240.10D–1(a)(2).

compensation recovery policy, a Company's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the Company in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the Company. Executive Officers of the Company's parent(s) or subsidiaries are deemed Executive Officers of the Company if they perform such policy making functions for the Company. In addition, when the Company is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the Company is a trust, officers, or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an Executive Officer for purposes of this Rule would include at a minimum executive officers identified pursuant to 17 CFR 229.401(b). The Exchange also proposes to provide under new interpretation and policy .21 of Rule 14.10 that Incentive-based Compensation is deemed received in the Company's fiscal period during which the financial reporting measure specified in the Incentive-based Compensation award is attained, even if the payment or grant of the Incentive-based Compensation occurs after the end of that period.

As noted above, the definition of Financial Reporting Measures, Incentive-based Compensation, Executive Officer, and the application of ''received'' as it relates to Incentive-based Compensation is substantively identical to the definitions provided Rule 10–D–1(d).

(2) Compensation Recovery Policy

Next, the Exchange proposes to adopt a new corporate governance requirement under Rule 14.10 related to the compensation recovery policy. Accordingly, the Exchange proposes to modify Rule 14.10(a) to include the compensation recovery policy in the list of rules covered under Rule 14.10. The Exchange proposes to adopt the compensation recovery policy requirement under proposed Rule 14.10(k). Proposed Rule 14.10(k) first provides a summary of the timing requirements for compliance under the proposed Rule in accordance with Rule 10D–1. Specifically, the Rule would state that in accordance with Rule 10D–1 under the Act, each Company shall: (i) adopt the compensation recovery policy required by this Rule no later than 60 days following {insert date of Commission approval of File No. SR–CboeBZX–2023–013} (the ''effective date''), to which the Company is subject; (ii) comply with that recovery policy for all Incentive-based Compensation received by Executive Officers on or after the effective date of the applicable listing standard; and (iii) provide the disclosures required by this Rule and in the applicable Commission filings required on or after the effective date of the listing standard to which the Company is subject.

Proposed Rule 14.10(k) would then set forth the requirements related to the compensation recovery policy. First, proposed Rule 14.10(k)(1) requires that each Company adopt a written compensation recovery policy providing that the Company will recover reasonably promptly the amount of erroneously awarded Incentive-based Compensation in the event that the Company is required to prepare an accounting restatement due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period, as required by Section 10D–1 under the Act.

Proposed Rule 14.10(k)(1)(A) sets forth the circumstances under which the Company's Incentive-based Compensation recovery policy must apply. Specifically, the Company's recovery policy must apply to a person (i) after beginning service as an Executive Officer; (ii) who served as an Executive Officer at any time during the performance period for that Incentive-based Compensation; (iii) while the Company has a class of securities listed on a national securities exchange or a national securities association; and (iv) during the three completed fiscal years immediately preceding the date that the Company is required to prepare an accounting restatement as described in proposed paragraph (k)(1) of this Rule. In addition to these last three completed fiscal years, the recovery policy must apply to any transition period (that results from a change in the Company's fiscal year) within or immediately following those three completed fiscal years. However, a transition period between the last day of the Company's previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months would be deemed a completed fiscal year. A Company's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.

Proposed Rule 14.10(k)(1)(B) provides that for purposes of determining the relevant recovery period, the date that a Company is required to prepare an accounting restatement as described in paragraph (k)(1) of this Rule is the earlier to occur of: (i) the date the Company's board of directors, a committee of the board of directors, or the officer or officers of the Company authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an accounting restatement as described in paragraph (k)(1) of this Rule; or (ii) the date a court, regulator, or other legally authorized body directs the Company to prepare an accounting restatement as described in paragraph (k)(1) of this Rule.

Proposed Rule 14.10(k)(1)(C) provides that the amount of Incentive-based Compensation that must be subject to the Company's compensation recovery policy (''erroneously awarded compensation'') is the amount of Incentive-based Compensation received that exceeds the amount of Incentive-based Compensation that otherwise would have been received had it been determined based on the restated amounts, and must be computed without regard to any taxes paid. For Incentive-based Compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement, proposed Rule 14.10(k)(1)(C)(i)–(iii) sets forth additional requirements. Specifically, the amount must be based on a reasonable estimate of the effect of the accounting restatement on the stock price or total shareholder return upon which the Incentive-based Compensation was received, and the Company must maintain documentation of the determination of that reasonable estimate and provide such documentation to the exchange or association. The Company must recover erroneously awarded compensation in compliance with its compensation recovery policy except to the extent that the below three conditions are met and

the Company's committee of Independent Directors responsible for executive compensation decisions, or in the absence of such a committee, a majority of the independent directors serving on the board, has made a determination that recovery would be impracticable. The three conditions are as follows:

- The direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on expense of enforcement, the Company must make a reasonable attempt to recover such erroneously awarded compensation, document such reasonable attempt(s) to recover, and provide that documentation to the exchange or association.
- Recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on violation of home country law, the Company must obtain an opinion of home country counsel, acceptable to the applicable national securities exchange or association, that recovery would result in such a violation, and must provide such opinion to the exchange or association.
- Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the registrant, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

Finally, under proposed Rule 14.10(k)(1)(D) a Company's written compensation recovery policy must provide that the Company is prohibited from indemnifying any Executive Officer or former Executive Officer against the loss of erroneously awarded compensation.

The second requirement under proposed Rule 14.10(k)(2) provides that each Company must file all disclosures with respect to the recovery policy in accordance with the requirements of Federal securities laws, including the disclosure required by the applicable Commission filings.

(3) Exemptions to Compensation Recovery Policy Requirement

The Exchange also proposes to amend Rule 14.10(e) (exemptions the Corporate Governance Requirements) to provide for limited exemptions to the compensation recovery policy requirement in accordance with Rule 10D–1. First, the Exchange proposes to exempt asset-backed issuers and other passive issuers from the compensation recovery policy requirement. Specifically, proposed Rule 14.10(e)(1)(A)(iii) exempts any security issued by a unit investment trust (''UIT''), as defined in 15 U.S.C. 80a–4(2), from the compensation recovery policy requirements under proposed Rule 14.10(k). As discussed in the Final Rule,[7] unlike listed funds, UITs are pooled investment entities without a board of directors, corporate officers, or an investment adviser to render investment advice during the life of the UIT, and they do not file a certified shareholder report. In addition, because the investment portfolio of a UIT is generally fixed, UITs are not actively managed. Accordingly, the Commission exempted the listing of any security issued by a UIT from the requirements of Rule 10D–1 under the Exchange Act. As such, the Exchange proposes to similarly exempt such UITs from the requirements of Rule 14.10(k).

Second, proposed Rule 14.10(e)(1)(E)(iv) exempts any security issued by a management company, as defined in 15 U.S.C. 80a–4(3), that is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), if such management company has not awarded Incentive-based Compensation to any Executive Officer of the company in any of the last three fiscal years, or in the case of a company that has been listed for less than three fiscal years, since the listing of the company. Excluding listed funds that do not pay Incentive-based Compensation would allow such funds to avoid the burden of developing recovery policies they may never use. Listed funds that have paid Incentive-based Compensation in that time period, however, would be subject to the rule and rule amendments and be required to implement a compensation recovery policy like other listed issuers.

(4) Failure To Meet Listing Standard

Last, the Exchange proposes to amend Rule 14.12 (Failure to Meet Listing Standards) to provide for a Company's failure to meet the requirements of proposed Rule 14.10(k). Amended Rule 14.12(f)(2)(A)(iii) would provide when a Company is deficient with respect to Rule 14.10(k), it may submit a plan to regain compliance to the Listing Qualifications Department. In this regard, the Exchange proposes to allow Companies 45 calendar days to submit such a plan, which is consistent with the deficiencies from most other rules that allow Companies to submit a plan to regain compliance.[8] If Exchange staff does not accept the plan, a Staff Delisting Determination will be issued, which could be appealed to a Hearings Panel pursuant to Rule 14.12(h). The administrative process for such deficiencies will follow the established pattern used for similar corporate governance deficiencies, and would allow Exchange staff to provide the issuer up to 180 days to cure the deficiency. Thereafter, Exchange staff would be required to issue a delisting letter,[9] which the issuer could appeal to the Hearings Panel, as provided in Exchange Rule 14.12(h). The Hearings Panel could allow the issuer up to an additional 180 days to cure the deficiency.

Exchange Rule 14.12 currently provides that violations of Exchange corporate governance or notification listing standards may result in a Public Reprimand Letter if the Staff of Adjudicatory Body determines that delisting is an inappropriate sanction, with one exception. Specifically, the Exchange will not issue a Public Reprimand Letter if the violation involved the violation of a corporate governance or notification listing standard required by Rule 10A–3 under the Act. The Exchange proposes to similarly prohibit the issuance of a Public Reprimand Letter for violations of a corporate governance or notification listing standard that is required by Rule 10D–1. Accordingly, the Exchange proposes to amend Rule 14.12(b)(9), (f)(4), (h)(3)(iii), (i)(4)(A), and (j)(4). Additionally, the Exchange proposes to modify the aforementioned Rules to provide that Rules 10A–3 and 10D–1 are ''under'' the Act.

[7] *See* Securities Exchange Act No. 11126 (October 26, 2022) 87 FR 73076 (November 28, 2022) (Listing Standards for Recovery of Erroneously Awarded Compensation) (the ''Final Rule'').

[8] The Exchange notes that the following deficiencies are allowed 45 calendar days to submit a plan to regain compliance: deficiencies from the standards of Rules 14.10(f)(3) (Quorum), 14.10(h) (Review of Related Party Transactions), 14.10(i) (Shareholder Approval), 14.6(c)(3) (Auditor Registration), 14.7 (Direct Registration Program), 14.10(d) (Code of Conduct), 14.10(e)(1)(D)(v) (Quorum of Limited Partnerships), 14.10(e)(1)(D)(vii) (Related Party Transactions of Limited Partnerships), or 14.10(j) (Voting Rights).

[9] Rule 14.12 provides that notifications of deficiencies that allow for submission of a compliance plan may result, after review of the compliance plan, in issuance of a Staff Delisting Determination or a Public Reprimand Letter. However, the Exchange believes that issuance of a Public Reprimand Letter is inconsistent with the provisions of Rule 10D–1 and, therefore, proposes to amend its applicable listing rules to provide that a Public Reprimand Letter may not be issued for violations of a listing standard required by Rule 10D–1.

While Rule 10D–1 requires a listed Company recover the amount of erroneously awarded Incentive-based Compensation reasonably promptly, it does not specify the time by which the Company must complete the recovery of excess Incentive-based Compensation. The Exchange would determine whether the steps a Company is taking constitute compliance with its compensation recovery policy. The Company's obligation to recover erroneously awarded Incentive-based Compensation reasonably promptly will be assessed on a holistic basis with respect to each accounting restatement prepared by the Company. In evaluating whether a Company is recovering erroneously awarded Incentive-based Compensation reasonably promptly, the Exchange will consider whether the Company is pursuing an appropriate balance of cost and speed in determining the appropriate means to seek recovery and whether the Company is securing recovery through means that are appropriate based on the particular facts and circumstances of each Executive Officer that owes a recoverable amount.

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.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] 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. Section 6(b)(5) also requires that a national securities exchange's rules not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchange is proposing to adopt Rule 14.10(k) to comply with the requirements of Section 954 of the Dodd-Frank Act and Rule 10D–1 under the Act, and therefore believes the proposed rule change to be consistent with the Act, particularly with respect to the protection of investors and the public interest. The Exchange also believes that the proposal will contribute to investor protection and the public interest by incentivizing executive officers to take steps to reduce the likelihood of inadvertent misreporting and will reduce the financial benefits to executive officers who choose to pursue impermissible accounting methods, which the Exchange expects will further discourage such behavior. These increased incentives may improve the overall quality and reliability of financial reporting, which further benefits investors.

The Exchange believes it is not unfairly discriminatory to exempt UITs and management investment companies that do not pay Incentive-based Compensation from the requirements of proposed Rule 14.10(k). Specifically, excluding management investment companies that do not pay Incentive-based Compensation would allow such companies to avoid the burden of developing recovery policies they may never use. Management investment companies that have paid Incentive-based Compensation in that time period, however, would be subject to the rule and rule amendments and be required to implement a compensation recovery policy like other listed issuers. Further, unlike management investment companies, UITs are pooled investment entities without a board of directors, corporate officers, or an investment adviser to render investment advice during the life of the UIT, and they do not file a certified shareholder report. In addition, because the investment portfolio of a UIT is generally fixed, UITs are not actively managed. Accordingly, the Exchange believes that it is necessary or appropriate in the public interest, and consistent with the protection of investors, to exempt the listing of any security issued by a UIT from the requirements of proposed Rule 14.10(k).

The Exchange believes that allowing a Company to regain compliance with Rule 14.10(k) by submitting a plan of compliance to the Listing Qualifications within 45 calendar days is consistent with the deficiencies from most other rules that allow Companies to submit a plan to regain compliance.[12] Therefore, the Exchange believes the proposal to permit a Company to submit such a plan for a deficiency related to Rule 14.10(k) provides continuity in the Exchange's rulebook, to the benefit of investors.

Finally, the Exchange believes the proposal to prohibit the issuance of a Public Reprimand Letter for violations of a corporate governance or notification listing standard that is required Rule 14.10(k) is consistent with the requirements of Rule 10D–1, which provide that a Company would be subject to delisting if it does not adopt and comply with its compensation recovery policy. The Exchange notes that existing Exchange Rules similarly prohibit violations of a corporate governance or notification listing standard that is required by 10A–3 from issuing a Public Reprimand Letter.

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. Specifically, the Exchange believes that the proposed rules are designed to allow investors to properly assess the value of the Companies whose financial reporting is based on erroneous information. Without such a rule, such erroneous information could result in an inefficient allocation of capital, inhibiting capital formation and competition. The Exchange does not believe the proposal will have any impact on intramarket competition as all listing exchanges are required to adopt similar listing standards pursuant to Rule 10D–1.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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, as modified by Amendment No.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Supra* note 6.

1, 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–CboeBZX–2023–013 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–CboeBZX–2023–013. 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–CboeBZX–2023–013 and should be submitted on or before April 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–05265 Filed 3–14–23; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97102; File No. SR–CboeBZX–2022–035]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Disapproving a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

March 10, 2023.

I. Introduction

On June 24, 2022, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the VanEck Bitcoin Trust (''Trust'') under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on July 13, 2022.[3]

On August 24, 2022, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On October 4, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change,[7] and on December 16, 2022, the Commission designated a longer period for Commission action on the proposed rule change.[8]

This order disapproves the proposed rule change. The Commission concludes that BZX has not met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5), which requires, in relevant part, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.''[9]

When considering whether BZX's proposal to list and trade the Shares is designed to prevent fraudulent and manipulative acts and practices, the Commission applies the same analytical framework used in its orders considering previous proposals to list bitcoin[10]-based commodity trusts and bitcoin-based trust issued receipts to assess whether a listing exchange of an exchange-traded product (''ETP'') can meet its obligations under Exchange Act Section 6(b)(5).[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95218 (July 7, 2022), 87 FR 41755 (''Notice''). BZX previously filed, and the Commission disapproved, a substantially similar proposal to list and trade the Shares of the Trust. *See* Notice of Filing of a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 91326 (Mar. 15, 2021), 86 FR 14987 (Mar. 19, 2021) (''Previous VanEck Filing''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93559 (Nov. 12, 2021), 86 FR 64539 (Nov. 18, 2021) (SR–CboeBZX–2021–019) (''Previous VanEck Order'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 95596, 87 FR 53038 (Aug. 30, 2022).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 95978, 87 FR 61418 (Oct. 11, 2022).

[8] *See* Securities Exchange Act Release No. 96517, 87 FR 78740 (Dec. 22, 2022).

[9] 15 U.S.C. 78f(b)(5).

[10] Bitcoins are digital assets that are issued and transferred via a decentralized, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as the ''bitcoin blockchain.'' The bitcoin protocol governs the creation of new bitcoins and the cryptographic system that secures and verifies bitcoin transactions. *See, e.g.,* Notice, 87 FR at 41757.

[11] *See* Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (Aug. 1, 2018) (SR–BatsBZX–2016–30) (''Winklevoss Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and To List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 88284 (Feb. 26, 2020), 85 FR 12595 (Mar. 3, 2020) (SR–NYSEArca–2019–39) (''USBT Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93700 (Dec. 1, 2021), 86 FR 69322 (Dec. 7, 2021) (SR–CboeBZX–2021–024) (''WisdomTree Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Valkyrie Bitcoin Fund Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 93859 (Dec. 22, 2021), 86 FR 74156 (Dec. 29, 2021) (SR–NYSEArca–2021–31) (''Valkyrie Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Kryptoin Bitcoin ETF Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93860 (Dec. 22, 2021), 86 FR 74166 (Dec. 29, 2021) (SR–CboeBZX–2021–029) (''Kryptoin Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the First Trust SkyBridge Bitcoin ETF Trust Under NYSE Arca Rule 8.201–

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E, Securities Exchange Act Release No. 94006 (Jan. 20, 2022), 87 FR 3869 (Jan. 25, 2022) (SR–NYSEArca–2021–37) (''SkyBridge Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 94080 (Jan. 27, 2022), 87 FR 5527 (Feb. 1, 2022) (SR–CboeBZX–2021–039) (''Wise Origin Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the NYDIG Bitcoin ETF Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 94395 (Mar. 10, 2022), 87 FR 14932 (Mar. 16, 2022) (SR–NYSEArca–2021–57) (''NYDIG Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Global X Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 94396 (Mar. 10, 2022), 87 FR 14912 (Mar. 16, 2022) (SR–CboeBZX–2021–052) (''Global X Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 94571 (Mar. 31, 2022), 87 FR 20014 (Apr. 6, 2022) (SR–CboeBZX–2021–051) (''ARK 21Shares Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the One River Carbon Neutral Bitcoin Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 94999 (May 27, 2022), 87 FR 33548 (June 2, 2022) (SR–NYSEArca–2021–67) (''One River Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Bitwise Bitcoin ETP Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 95179 (June 29, 2022), 87 FR 40282 (July 6, 2022) (SR–NYSEArca–2021–89) (''Bitwise Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of Grayscale Bitcoin Trust under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 95180 (June 29, 2022), 87 FR 40299 (July 6, 2022) (SR–NYSEArca–2021–90) (''Grayscale Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 96011 (Oct. 11, 2022), 87 FR 62466 (Oct. 14, 2022) (SR–CboeBZX–2022–006) (''WisdomTree Order II''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 96751 (Jan. 26, 2023), 88 FR 6328 (Jan. 31, 2023) (SR–CboeBZX–2021–031) (''ARK 21Shares Order II''). In addition, orders were issued by delegated authority on the following matters: Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the SolidX Bitcoin Trust Under NYSE Arca Equities Rule 8.201, Securities Exchange Act Release No. 80319 (Mar. 28, 2017), 82 FR 16247 (Apr. 3, 2017) (SR–NYSEArca–2016–101) (''SolidX Order''); Order Disapproving a Proposed Rule Change To List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF, Securities Exchange Act Release No. 83904 (Aug. 22, 2018), 83 FR 43934 (Aug. 28, 2018) (SR–NYSEArca–2017–139) (''ProShares Order''); Order Disapproving a Proposed Rule Change To List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, Securities Exchange Act Release No. 83913 (Aug. 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR–CboeBZX–2018–001) (''GraniteShares Order''); Previous VanEck Order; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200–E, Commentary .02 (Trust Issued Receipts), Securities Exchange Act Release No. 94620 (Apr. 6, 2022), 87 FR 21676 (Apr. 12, 2022) (SR–NYSEArca–2021–53) (''Teucrium Order''); Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Shares of the Valkyrie XBTO Bitcoin Futures Fund Under Nasdaq Rule 5711(g), Securities Exchange Act Release No. 94853 (May 5, 2022), 87 FR 28848 (May 11, 2022) (SR–NASDAQ–2021–066) (''Valkyrie XBTO Order'').

As the Commission has explained, an exchange that lists bitcoin-based ETPs [12] can meet its obligations under Exchange Act Section 6(b)(5) by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference bitcoin assets.[13]

In this context, the terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[14] A surveillance-sharing agreement entered into with a ''significant market'' assists in detecting and deterring manipulation of the ETP, because a person attempting to manipulate the ETP is reasonably likely to engage also in trading activity on that ''significant market.'' [15]

Although surveillance-sharing agreements are not the exclusive means by which a listing exchange of a commodity-trust ETP can meet its obligations under Exchange Act Section 6(b)(5), such agreements have previously provided the basis for the exchanges that list commodity-trust ETPs to meet those obligations, and the Commission has historically recognized their importance. And where, as here, a listing exchange fails to establish that other means to prevent fraudulent and manipulative acts and practices will be sufficient, the listing exchange must enter into a surveillance-sharing agreement with a regulated market of significant size because such agreements detect and deter fraudulent and manipulative activity.[16]

The Commission has long recognized that surveillance-sharing agreements ''provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur'' and thus ''enable the Commission to continue to effectively protect investors and promote the public interest.'' [17] As the Commission has emphasized, it is essential for an exchange listing a derivative securities product to have the ability that surveillance-sharing agreements provide to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules.[18] The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.[19]

[12] As used in this order, the term ''ETFs'' refers to open-end exchange-traded funds that register the offer and sale of their shares under the Securities Act of 1933 (''Securities Act'') and are regulated as investment companies under the Investment Company Act of 1940 (''1940 Act''). The term ''ETPs'' refers to exchange-traded products that register the offer and sale of their shares under the Securities Act but are not regulated under the 1940 Act, such as commodity trusts and trust issued receipts.

[13] *See* USBT Order, 85 FR at 12596. *See also* Winklevoss Order, 83 FR at 37592 n.202 and accompanying text (discussing previous Commission approvals of commodity-trust ETPs); GraniteShares Order, 83 FR at 43925–27 nn.35–39 and accompanying text (discussing previous Commission approvals of commodity-futures ETPs).

[14] *See* Winklevoss Order, 83 FR at 37594. *See also* USBT Order, 85 FR at 12596–97; WisdomTree Order, 86 FR at 69322; ARK 21Shares Order, 87 FR at 20015.

[15] *See* USBT Order, 85 FR at 12597.

[16] *See* Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70954, 70959 (Dec. 22, 1998) (File No. S7–13–98) (''NDSP Adopting Release''). *See also* Winklevoss Order, 83 FR at 37593–94; ProShares Order, 83 FR at 43936; GraniteShares Order, 83 FR at 43924; USBT Order, 85 FR at 12596.

[17] NDSP Adopting Release, 63 FR at 70954, 70959. *See also id.* at 70959 (''It is essential that the SRO [self-regulatory organization] have the ability to obtain the information necessary to detect and deter market manipulation, illegal trading and other abuses involving the new derivative securities product. Specifically, there should be a comprehensive ISA [information-sharing agreement] that covers trading in the new derivative securities product and its underlying securities in place between the SRO listing or trading a derivative product and the markets trading the securities underlying the new derivative securities product.'').

[18] *See* NDSP Adopting Release, 63 FR at 70959.

[19] *See* Winklevoss Order, 83 FR at 37592–93 (discussing Letter from Brandon Becker, Director, Division of Market Regulation, Commission, to Gerard D. O'Connell, Chairman, Intermarket Surveillance Group (June 3, 1994), *available at https://www.sec.gov/divisions/marketreg/mr-noaction/isg060394.htm*).

The Commission has explained that the ability of a national securities exchange to enter into surveillance-sharing agreements ''furthers the protection of investors and the public interest because it will enable the [e]xchange to conduct prompt investigations into possible trading violations and other regulatory improprieties.'' [20] The Commission has also long taken the position that surveillance-sharing agreements are important in the context of exchange listing of derivative security products, such as equity options, because a surveillance-sharing agreement ''permits the sharing of information'' that is ''necessary to detect'' manipulation and ''provide[s] an important deterrent to manipulation because [it] facilitate[s] the availability of information needed to fully investigate a potential manipulation if it were to occur.'' [21] With respect to ETPs, when approving the listing and trading of one of the first commodity-linked ETPs—a commodity-linked exchange-traded note—on a national securities exchange, the Commission continued to emphasize the importance of surveillance-sharing agreements, stating that the listing exchange had entered into surveillance-sharing agreements with each of the futures markets on which pricing of the ETP would be based and stating that ''[t]hese agreements should help to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making [the commodity-linked notes] less readily susceptible to manipulation.'' [22]

Consistent with these statements, for the commodity-trust ETPs approved to date for listing and trading, there has been in *every* case at least one significant, regulated market for trading futures on the underlying commodity and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group (''ISG'') membership in common with, that market.[23] Moreover, the surveillance-sharing agreements have been consistently present whenever the Commission has approved the listing and trading of derivative securities, even where the underlying securities were also listed on national securities exchanges—such as options based on an index of stocks traded on a national securities exchange—and were thus subject to the Commission's direct regulatory authority.[24]

Listing exchanges have also attempted to demonstrate that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices, including that the bitcoin market as a whole or the relevant underlying bitcoin market is ''uniquely'' and ''inherently'' resistant to fraud and manipulation.[25] In response, the Commission has stated that, if a listing exchange could establish that the underlying market inherently possesses a unique resistance to manipulation beyond the protections that are utilized by traditional commodity or securities markets, the listing market would not necessarily need to enter into a surveillance-sharing agreement with a regulated significant market.[26] Such resistance to fraud and manipulation, however, must be novel and beyond those protections that exist in traditional commodity markets or securities markets for which surveillance-sharing agreements in the context of listing derivative securities products have been consistently present.[27]

Here, BZX contends that approval of the proposal is consistent with Section 6(b)(5) of the Exchange Act, and, in particular, Section 6(b)(5)'s requirement that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.[28] As discussed in more detail below, BZX asserts that the proposal is consistent with Section 6(b)(5) of the Exchange Act because the Exchange has a comprehensive surveillance-sharing agreement with a

[20] Securities Exchange Act Release No. 27877 (Apr. 4, 1990), 55 FR 13344 (Apr. 10, 1990) *(*Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Regarding Cooperative Agreements With Domestic and Foreign Self-Regulatory Organizations) (SR–NYSE–90–14).

[21] Securities Exchange Act Release No. 33555 (Jan. 31, 1994), 59 FR 5619, 5621 (Feb. 7, 1994) (SR–Amex–93–28) (order approving listing of options on American Depositary Receipts (''ADR'')) (''ADR Option Order''). The Commission further stated that it ''generally believes that having a comprehensive surveillance sharing agreement in place, between the exchange where the ADR option trades and the exchange where the foreign security underlying the ADR primarily trades, will ensure the integrity of the marketplace. The Commission further believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.'' *Id.*

[22] Securities Exchange Act Release No. 35518 (Mar. 21, 1995), 60 FR 15804, 15807 (Mar. 27, 1995) (SR–Amex–94–30). *See also* Winklevoss Order, 83 FR at 37593 n.206.

[23] *See* Winklevoss Order, 83 FR at 37594. *See also* SolidX Order, 82 FR at 16254–55 n.125 for a discussion of the representations the Commission has received from listing exchanges in connection with proposals to list commodity-trust ETPs about the existence of a significant, regulated market for trading futures on the underlying commodity and the listing exchanges' ability to obtain trading information with respect to such market. Furthermore, the Commission notes that each of those cases dealt with a futures market that had been trading for a long period of time before an exchange proposed a commodity-trust ETP based on the asset underlying those futures. For example, silver futures and gold futures began trading in 1933 and 1974, respectively, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETPs based on spot silver and gold were approved for listing and trading in 2006 and 2004. *See* Securities Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967 (Mar. 24, 2006) (SR–Amex–2005–072) (order approving iShares Silver Trust); Securities Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614 (Nov. 5, 2004) (SR–NYSE–2004–22) (order approving streetTRACKS Gold Shares). Platinum futures and palladium futures began trading in 1956 and 1968, respectively, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html,* and the first ETPs based on spot platinum and palladium were approved for listing and trading in 2009. *See* Securities Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (order approving ETFS Palladium Trust); Securities Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (order approving ETFS Platinum Trust). Copper futures began trading in 1988, *see https://www.cmegroup.com/media-room/historical-first-trade-dates.html#metals,* and the first ETPs based on spot copper were approved for listing and trading in 2012. *See* Securities Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468 (Dec. 20, 2012) (SR–NYSEArca–2012–28) (order approving JPM XF Physical Copper Trust).

[24] *See* USBT Order, 85 FR at 12597; ADR Option Order, 59 FR at 5621. The Commission has also recognized that surveillance-sharing agreements provide a necessary deterrent to fraud and manipulation in the context of index options even when (i) all of the underlying index component stocks were either registered with the Commission or exempt from registration under the Exchange Act; (ii) all of the underlying index component stocks were traded in the U.S. either directly or as ADRs on a national securities exchange; and (iii) effective international ADR arbitrage alleviated concerns over the relatively smaller ADR trading volume, helped to ensure that ADR prices reflected the pricing on the home market, and helped to ensure more reliable price determinations for settlement purposes, due to the unique composition of the index and reliance on ADR prices. *See* Securities Exchange Act Release No. 26653 (Mar. 21, 1989), 54 FR 12705, 12708 (Mar. 28, 1989) (SR–Amex–87–25) (stating that ''surveillance-sharing agreements between the exchange on which the index option trades and the markets that trade the underlying securities are necessary'' and that ''[t]he exchange of surveillance data by the exchange trading a stock index option and the markets for the securities comprising the index is important to the detection and deterrence of intermarket manipulation''). And the Commission has explained that surveillance-sharing agreements ''ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses'' even when approving options based on an index of stocks traded on a national securities exchange. *See* Securities Exchange Act Release No. 30830 (June 18, 1992), 57 FR 28221, 28224 (June 24, 1992) (SR–Amex–91–22).

[25] *See* USBT Order, 85 FR at 12597.

[26] *See* Winklevoss Order, 83 FR at 37580, 37582–91 (addressing assertions that ''bitcoin and [spot] bitcoin markets,'' generally, as well as one bitcoin trading platform, specifically, have unique resistance to fraud and manipulation). *See also* USBT Order, 85 FR at 12597.

[27] *See* USBT Order, 85 FR at 12597, 12599.

[28] *See* Notice, 87 FR at 41767.

regulated market of significant size,[29] and there exist other means to prevent fraudulent and manipulative acts and practices that are sufficient to justify dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin.[30]

In the analysis that follows, the Commission examines whether the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act by addressing: in Section III.B.1 assertions that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices; in Section III.B.2 assertions that BZX has entered into a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin; in Section III.B.3 assertions that the Commission must approve the proposal because the Commission has approved the listing and trading of ETFs and ETPs that hold Chicago Mercantile Exchange (''CME'') bitcoin futures; and in Section III.C assertions that the proposal is consistent with the protection of investors and the public interest.

Based on its analysis, the Commission concludes that BZX has not established that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin. The Commission further concludes that BZX has not established that it has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin, the underlying bitcoin assets that would be held by the Trust. As discussed further below, BZX repeats various assertions made in prior bitcoin-based ETP proposals, including in the Previous VanEck Filing, that the Commission has previously addressed and rejected, including in the Previous VanEck Order—and more importantly, BZX does not respond to many of the Commission's reasons for rejecting those assertions. As a result, the Commission is unable to find that the proposed rule change is consistent with the statutory requirements of Exchange Act Section 6(b)(5).

The Commission emphasizes that its disapproval of this proposed rule change does not rest on an evaluation of the relative investment quality of a product holding spot bitcoin versus a product holding CME bitcoin futures, or an assessment of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment. Rather, the Commission is disapproving this proposed rule change because, as discussed below, BZX has not met its burden to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5).

II. Description of the Proposed Rule Change

As described in more detail in the Notice,[31] the Exchange proposes to list and trade the Shares of the Trust under BZX Rule 14.11(e)(4), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust would be for the Shares to reflect the performance of the MVIS® CryptoCompare Bitcoin Benchmark Rate (''Benchmark''), less the expenses of the Trust's operations.[32] The Benchmark would be used to calculate the Trust's net asset value (''NAV''). The Benchmark is designed to be a price for bitcoin in USD, and there is no component other than bitcoin in the Benchmark. The current platform composition of the Benchmark is Bitstamp, Coinbase, Gemini, itBit, and Kraken. In calculating the Benchmark, the methodology captures trade prices and sizes from the platforms and examines twenty consecutive three-minute periods leading up to 4:00 p.m. E.T. It then calculates an equal-weighted average of the volume-weighted median price of these twenty three-minute periods, removing the highest and lowest contributed prices.[33]

Each Share would represent a fractional undivided beneficial interest in the Trust's net assets. The Trust's assets would consist of bitcoin held by the Custodian on behalf of the Trust. The Trust generally does not intend to hold cash or cash equivalents. However, there may be situations where the Trust would unexpectedly hold cash on a temporary basis.[34]

The Administrator would determine the NAV and NAV per Share of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. E.T. The NAV of the Trust is the aggregate value of the Trust's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Trust's NAV, the Administrator would value the bitcoin held by the Trust based on the price set by the Benchmark as of 4:00 p.m. E.T.[35]

The Trust would provide information regarding the Trust's bitcoin holdings, as well as an Intraday Indicative Value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV would be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.[36]

When the Trust sells or redeems its Shares, it would do so in ''in-kind'' transactions in blocks of 50,000 Shares at the Trust's NAV. Authorized participants would deliver, or facilitate the delivery of, bitcoin to the Trust's account with the Custodian in exchange for Shares when they purchase Shares, and the Trust, through the Custodian, would deliver bitcoin to such authorized participants when they redeem Shares with the Trust.[37]

III. Discussion

A. The Applicable Standard for Review

The Commission must consider whether BZX's proposal is consistent with the Exchange Act. Section 6(b)(5) of the Exchange Act requires, in relevant part, that the rules of a national securities exchange be designed ''to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [38]

[29] *See id.* at 41768–70.

[30] *See id.* at 41769.

[31] *See supra* note 3. According to the Exchange, the Sponsor (as defined herein), on behalf of the Trust, has filed Amendment No. 2 to a registration statement on Form S–1 under the Securities Act dated June 22, 2022 (File No. 333–251808) (''Registration Statement''). *See* Notice, 87 FR at 41755 n.7.

[32] *See* Notice, 87 FR at 41765. VanEck Digital Assets, LLC (''Sponsor'') is the sponsor of the Trust, and Delaware Trust Company is the trustee. The State Street Bank and Trust Company will be the administrator (''Administrator'') and transfer agent. VanEck Securities Corporation will be the marketing agent in connection with the creation and redemption of Shares. VanEck Securities Corporation provides assistance in the marketing of the Shares. *See id.* at 41764. A third-party regulated custodian (''Custodian'') will be responsible for custody of the Trust's bitcoin. *See id.* at 41755.

[33] *See id.* at 41765.

[34] *See id.* at 41764.

[35] *See id.* at 41766.

[36] *See id.* at 41765.

[37] *See id.* at 41764–65.

[38] 15 U.S.C. 78f(b)(5). Pursuant to Section 19(b)(2) of the Exchange Act, 15 U.S.C. 78s(b)(2), the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act. Exchange Act Section 6(b)(5) states that an exchange shall not be registered as a

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [39]

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[40] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[41] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[42]

B. Whether BZX Has Met Its Burden To Demonstrate That the Proposal Is Designed To Prevent Fraudulent and Manipulative Acts and Practices

(1) Assertions That Other Means Besides Surveillance-Sharing Agreements Will Be Sufficient To Prevent Fraudulent and Manipulative Acts and Practices

(i) Assertions Regarding the Bitcoin Market

As stated above, the Commission has recognized that a listing exchange could demonstrate that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying bitcoin assets, including by demonstrating that the bitcoin market as a whole or the relevant underlying bitcoin market is uniquely and inherently resistant to fraud and manipulation.[43] Such resistance to fraud and manipulation, however, must be novel and beyond those protections that exist in traditional commodities or securities markets.[44]

(a) BZX's Assertions

BZX asserts that bitcoin is resistant to price manipulation.[45] According to BZX, the geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin.[46] BZX asserts that fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging.[47] In addition, BZX states that, to the extent that there are bitcoin platforms engaged in or allowing wash trading [48] or other activity intended to manipulate the price of bitcoin on other markets, such activity does not normally impact prices on other platforms because participants will generally ignore markets with quotes that they deem non-executable.[49] BZX further argues that the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin on any single venue would require manipulation of the global bitcoin price in order to be effective.[50] According to BZX, arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin trading venue.[51] As a result, BZX concludes that the potential for manipulation on a bitcoin trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.[52]

BZX also states that ''the in-kind creation and redemption process and fungibility of bitcoin means that a would be manipulator of a [s]pot [b]itcoin ETP would need to manipulate the price across all bitcoin markets or risk simply providing arbitrage opportunities for authorized participants.'' [53] BZX asserts that ''this arbitrage opportunity also acts to reduce any incentives to manipulate the price of a [s]pot [b]itcoin ETP because the underlying trust will create and redeem shares at set rates of bitcoin per share without regard to the price that the ETP is trading at in the secondary market or the price of the underlying index.'' [54]

(b) Analysis

As with the previous proposals, including the Previous VanEck Filing, the Commission here concludes that the record does not support a finding that the bitcoin market is inherently and uniquely resistant to fraud and manipulation such that the Commission can dispense with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying bitcoin assets. BZX does not sufficiently contest the presence of possible sources of fraud and manipulation in the spot bitcoin market that the Commission has identified in previous orders, including: (1) ''wash'' trading; [55] (2) persons with a dominant position in bitcoin manipulating bitcoin pricing; (3)

national securities exchange unless the Commission determines that ''[t]he rules of the exchange are 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.'' 15 U.S.C. 78f(b)(5).

[39] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[40] *See id.*

[41] *See id.*

[42] *Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 447 (D.C. Cir. 2017) (''Susquehanna'').

[43] *See* USBT Order, 85 FR at 12597 n.23. The Commission is not applying a ''cannot be manipulated'' standard. Instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. *See id.*

[44] *See id.* at 12597.

[45] *See* Notice, 87 FR at 41763 n.54.

[46] *See id.*

[47] *See id.*

[48] A ''wash trade'' is a transaction such as a purchase and sale simultaneously or within a short period of time, that involves no changes in beneficial ownership, and is a means of creating artificial market activity. *See Silseth,* Admin. Proc. File No. 3–9001, Securities Act Release No. 7317, Securities Exchange Act Release No. 37493, at 2 and n.3 (July 30, 1996); *Reddy* v. *CFTC,* 191 F.3d 109, 115 (2d Cir. 1999). Wash trading is manipulative and defrauds investors. *See Reddy* v. *CFTC,* 191 F.3d 109, 115 (2d Cir. 1999); *Santa Fe Indus.* v. *Green,* 430 U.S. 462, 476–77 (1977); *Ernst & Ernst* v. *Hochfelder,* 425 U.S. 185, 199 (1976). Bitcoin spot markets are subject to such ''usual market manipulation tactics.'' Kevin Dowd & Martin Hutchinson, *Bitcoin Will Bite the Dust,* 35 Cato J. 357, 374 n.13 (2015), *available at https://object.cato.org/sites/cato.org/files/serials/files/cato-journal/2015/5/cj-v35n2-12.pdf.*

[49] *See* Notice, 87 FR at 41763 n. 54.

[50] *See id.*

[51] *See id.*

[52] *See id.*

[53] *Id.* at 41764.

[54] *See id.*

[55] *See also CFTC* v. *Gemini Trust Co., LLC,* No. 22–cv–4563 (S.D.N.Y. filed June 2, 2022) (alleging, among other things, failure by Gemini personnel to disclose to the Commodity Futures Trading Commission (''CFTC'') that Gemini customers could and did engage in collusive or wash trading).

hacking of the bitcoin network and trading platforms; (4) malicious control of the bitcoin network; (5) trading based on material, non-public information (for example, plans of market participants to significantly increase or decrease their holdings in bitcoin, new sources of demand for bitcoin, or the decision of a bitcoin-based investment vehicle on how to respond to a ''fork'' in the bitcoin blockchain, which would create two different, non-interchangeable types of bitcoin) or based on the dissemination of false and misleading information; (6) manipulative activity involving purported ''stablecoins,'' including Tether (USDT); and (7) fraud and manipulation at bitcoin trading platforms.[56]

BZX asserts that, because of how bitcoin trades occur, including through continuous means and through fragmented platforms, arbitrage across the bitcoin platforms essentially helps to keep global bitcoin prices aligned with one another, thus hindering manipulation. The Exchange, however, does not provide any data or analysis to support its assertions, either in terms of how closely bitcoin prices are aligned across different bitcoin trading venues or how quickly price disparities may be arbitraged away.[57] Here, the Exchange provides no evidence to support its assertion of efficient price arbitrage across bitcoin platforms, nor any evidence that price arbitrage in the bitcoin market is novel or unique so as to warrant the Commission dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin. As stated above, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[58]

In any event, the Commission has explained that efficient price arbitrage is not sufficient to support the finding that a market is uniquely or inherently resistant to manipulation such that the Commission can dispense with surveillance-sharing agreements.[59] The Commission has stated, for example, that even for equity options based on securities listed on national securities exchanges, the Commission relies on surveillance-sharing agreements to detect and deter fraud and manipulation.[60] Equities that underlie such options trade on U.S. equity markets that are deep, liquid, and highly interconnected.[61] Moreover, BZX does not take into account that a market participant with a dominant ownership position would not find it prohibitively expensive to overcome the liquidity supplied by arbitrageurs and could use dominant market share to engage in manipulation.[62]

In addition, the Exchange makes the unsupported claim that, to the extent that there are bitcoin platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, market participants will generally ignore those platforms. However, the record does not demonstrate that wash trading and other possible sources of fraud and manipulation in the broader bitcoin spot market will be ignored by market participants.[63] Without the necessary data or other evidence, the Commission has no basis on which to conclude that bitcoin platforms are insulated from prices of others that engage in or permit fraud or manipulation.[64]

Further, the continuous nature of bitcoin trading does not support the finding that the bitcoin market is uniquely or inherently resistant to manipulation, and neither do linkages among markets, as BZX asserts.[65] Even in the presence of continuous trading or linkages among markets, formal (such as those with consolidated quotations or routing requirements) or otherwise (such as in the context of the fragmented, global bitcoin markets), manipulation of asset prices, as a general matter, can occur simply through trading activity that creates a false impression of supply or demand.[66]

The Exchange also asserts that the Trust's in-kind create/redeem process and the ''fungibility of bitcoin'' means that a would be manipulator of the Trust would ''need to manipulate the price across all bitcoin markets or risk simply providing arbitrage opportunities for authorized participants'' and that these arbitrage opportunities ''[act] to reduce any incentives to manipulate the price of a [s]pot [b]itcoin ETP because the underlying trust will create and redeem shares at set rates of bitcoin per share without regard to the price that the ETP is trading at in the secondary market or the price of the underlying index.'' [67] As discussed above, BZX provides no evidence of the existence of efficient price arbitrage across spot bitcoin platforms,[68] nor does BZX provide any additional data or analysis to support its conclusion that the arbitrage that may exist would counter an attempt to manipulate the proposed ETP.[69]

Finally, BZX does not address risk factors specific to the bitcoin blockchain and bitcoin platforms, described in the Trust's Registration Statement, that undermine the argument that the bitcoin market is inherently resistant to fraud

[56] *See* USBT Order, 85 FR at 12600–01 & nn.66–67 (discussing J. Griffin & A. Shams, *Is Bitcoin Really Untethered?* (Oct. 28, 2019), *available at https://ssrn.com/abstract=3195066* and published in 75 J. Finance 1913 (2020)); Winklevoss Order, 83 FR at 37585–86; WisdomTree Order, 86 FR at 69326; Global X Order, 87 FR at 14916; ARK 21Shares Order, 87 FR at 20019; One River Order, 87 FR at 33554; Bitwise Order, 87 FR at 40283–84; Grayscale Order, 87 FR at 40305.

[57] For example, the Registration Statement states that ''[i]f increases in throughput on the Bitcoin network lag behind growth in usage of bitcoin, average fees and settlement times may increase considerably'' and that such increased fees and decreased settlement speeds ''could adversely impact the value of the Shares.'' *See* Registration Statement at 20. BZX does not provide data or analysis to address, among other things, whether such risks of increased fees and bitcoin transaction settlement times may affect the arbitrage effectiveness that BZX asserts. *See also infra* note 72 and accompanying text (referencing statements made in the Registration Statement that contradict assertions made by BZX).

[58] *See supra* note 42 and accompanying text.

[59] *See* Winklevoss Order, 83 FR at 37586; SolidX Order, 82 FR at 16256–57; USBT Order, 85 FR at 12601; WisdomTree Order, 86 FR at 69325; Valkyrie Order, 86 FR at 74159–60; Kryptoin Order, 86 FR at 74170; Wise Origin Order, 87 FR at 5531; ARK 21Shares Order, 87 FR at 20019; Grayscale Order, 87 FR at 40306.

[60] *See, e.g.,* USBT Order, 85 FR at 12601; WisdomTree Order, 86 FR at 69329; Valkyrie Order, 86 FR at 74160; Kryptoin Order, 86 FR at 74170; Wise Origin Order, 87 FR at 5531; ARK 21Shares Order, 87 FR at 20019; Grayscale Order, 87 FR at 40306–07.

[61] *See* Market Data Infrastructure Adopting Release, Securities Exchange Act Release No. 90610 (Dec. 9, 2020); 86 FR 18596, 18606–07 (Apr. 9, 2021); Market Data Infrastructure Proposing Release, Securities Exchange Act Release No. 88216 (Feb. 14, 2020), 85 FR 16726, 16728 (Mar. 24, 2020); Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010). *See also* ARK 21Shares Order, 87 FR at 20019 n.70.

[62] *See, e.g.,* Winklevoss Order, 83 FR at 37584; USBT Order, 85 FR at 12600–01; WisdomTree Order, 86 FR at 69325.

[63] *See infra* note 87 and accompanying text.

[64] *See* USBT Order, 85 FR at 12601; WisdomTree Order, 86 FR at 69325. The Exchange has not shown that manipulation on spot platforms not included in the Benchmark will not affect prices on the Benchmark's constituent platforms. *See infra* notes 87–89 and accompanying text.

[65] *See* Winklevoss Order, 83 FR at 37585 n.92 and accompanying text.

[66] *See id.* at 37585. *See also, e.g.,* WisdomTree Order, 86 FR at 69325–26; ARK 21Shares Order, 87 FR at 20019.

[67] *See* Notice, 87 FR at 41764.

[68] *See supra* notes 57–58 and accompanying text. In addition, as discussed above, efficient price arbitrage is not sufficient to support the finding that a market is uniquely or inherently resistant to manipulation such that the Commission can dispense with surveillance-sharing agreements. *See supra* notes 59–62 and accompanying text.

[69] *See also infra* notes 111–113 and accompanying text setting forth the Commission's finding that BZX has not demonstrated that in-kind creations and redemptions provide the Shares with a unique resistance to manipulation.

and manipulation.[70] For example, the Registration Statement acknowledges that ''[b]itcoin [platforms] on which bitcoin trades are relatively new and, in some cases, unregulated, and, therefore, may be more exposed to fraud and security breaches than established, regulated exchanges for other financial assets or instruments''; that ''[t]he trading for spot bitcoin occurs on multiple trading venues that have various levels and types of regulation, but are not regulated in the same manner as traditional stock and bond exchanges'' and if these spot markets ''do not operate smoothly or face technical, security or regulatory issues, that could impact the ability of Authorized Participants to make markets in the Shares'' which could lead to ''trading in the Shares [to] occur at a material premium or discount against the NAV''; that the bitcoin network ''is at risk of vulnerabilities and bugs that can potentially be exploited by malicious actors''; that ''[s]ecurity breaches, computer malware and computer hacking attacks have been a prevalent concern in relation to digital assets''; that the bitcoin blockchain could be vulnerable to a ''51% attack,'' in which a bad actor that controls a majority of the processing power dedicated to mining on the bitcoin network may be able to alter the bitcoin blockchain on which the bitcoin network and bitcoin transactions rely; that ''[t]he nature of the assets held at bitcoin [platforms] makes them appealing targets for hackers and a number of bitcoin [platforms] have been victims of cybercrimes''; and that ''[o]ver the past several years, a number of bitcoin [platforms] have been closed or faced issues due to fraud, failure, security breaches or governmental regulation.'' [71] The Exchange also acknowledges in the proposed rule change that ''largely unregulated currency and spot commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight.'' [72]

(ii) Assertions Regarding the Benchmark and the Create/Redeem Process

(a) BZX's Assertions

BZX also argues that the Benchmark, which would be used to value the Trust's bitcoin, is itself resistant to manipulation based on the Benchmark's methodology.[73] The Exchange states that the Benchmark is calculated by capturing twenty three-minute periods of trade prices and sizes leading up to 4:00 p.m. E.T. from the constituent platforms. An equal-weighted average of the volume-weighted median price of these twenty three-minute periods is then calculated, removing the highest and lowest contributed prices.[74] According to BZX, ''[u]sing twenty consecutive three-minute segments over a sixty-minute period means malicious actors would need to sustain efforts to manipulate the market over an extended period of time, or would need to replicate efforts multiple times across exchanges, potentially triggering review.'' [75] Further, according to BZX, the ''use of a median price reduces the ability of outlier prices to impact the NAV,'' and the ''use of a volume-weighted median (as opposed to a traditional median) serves as an additional protection against attempts to manipulate the NAV by executing a large number of low-dollar trades, because any manipulation attempt would have to involve a majority of global spot bitcoin volume in a three-minute window to have any influence on the NAV.'' [76] BZX also asserts that ''removing the highest and lowest prices further protects against attempts to manipulate the NAV, requiring bad actors to act on multiple [platforms] at once to have any ability to influence the price.'' [77]

The Exchange also states that the Benchmark's constituent bitcoin platforms are sourced from the CryptoCompare Exchange Benchmark review report.[78] The Exchange further states that the CryptoCompare Exchange Benchmark methodology ''utilizes a combination of qualitative and quantitative metrics to analyze a comprehensive data set across eight categories of evaluation[:] legal/regulation, KYC/transaction risk, data provision, security, team/exchange, asset quality/diversity, market quality and negative events.'' [79] The Exchange states that ''the CryptoCompare Exchange Benchmark review report assigns a grade to each [spot bitcoin] platform which helps identify what it believes to be the lowest risk [platforms] in the industry.'' [80] According to the Exchange, ''[b]ased on the CryptoCompare Exchange Benchmark, MVIS initially selects the top five spot bitcoin platforms by rank for inclusion in the [Benchmark].'' [81]

Simultaneously with its assertions regarding the Benchmark, BZX also states that, because the Trust will engage in in-kind creations and redemptions only, the ''manipulability of the Benchmark [is] significantly less important.'' [82] The Exchange elaborates that, ''because the Trust will not accept cash to buy bitcoin in order to create new [S]hares or . . . be forced to sell bitcoin to pay cash for redeemed [S]hares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.'' [83] According to BZX, when authorized participants create Shares with the Trust, they would need to deliver a certain number of bitcoin per Share (regardless of the valuation used), and when they redeem with the Trust, they would similarly expect to receive a certain number of bitcoin per Share.[84] As such, BZX argues that, even if the price used to value the Trust's bitcoin is manipulated, the ratio of bitcoin per Share does not change, and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value.[85] This, according to BZX, not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Benchmark because there is little financial incentive to do so.[86]

(b) Analysis

Based on the assertions made and the information provided with respect to the Benchmark and the create/redeem process, the record is inadequate to conclude that BZX has articulated other means to prevent fraud and manipulation that are sufficient to justify dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing

[70] *See* Previous VanEck Order, 86 FR at 64544.

[71] *See* Registration Statement at 7, 13, 14, 17, 19, and 31. *See also* Winklevoss Order, 83 FR at 37585.

[72] Notice, 87 FR at 41756.

[73] *See id.* at 41764.

[74] *See id.* at 41765. The Exchange states that ''[t]his extended period also supports authorized participant activity by capturing volume over a longer time period, rather than forcing authorized participants to mark an individual close or auction.'' *See id.*

[75] *See id.*

[76] *See id.*

[77] *See id.*

[78] *See id.*

[79] *See id.* at 41765 n.62.

[80] *See id.*

[81] *See id.* The Exchange further states that, ''if an eligible [platform] is downgraded by two or more notches in a semi-annual review and is no longer in the top five by rank, it is replaced by the highest ranked non-component [platform]'' and that ''[a]djustments to [platform] coverage are announced four business days prior to the first business day of each of March and September at 23:00 CET'' and the Benchmark ''is rebalanced at 16:00:00 GMT/BST on the last business day of each of February and August.'' *See id.*

[82] *See id.* at 41764.

[83] *See id.*

[84] *See id.*

[85] *See id.*

[86] *See id.*

agreement with a regulated market of significant size related to spot bitcoin.

The record does not demonstrate that the proposed methodology for calculating the Benchmark would make the proposed ETP resistant to fraud or manipulation sufficient to dispense with the ability to detect and deter fraud and manipulation that is provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin. Specifically, BZX has not assessed the possible influence that spot platforms not included among the Benchmark's constituent platforms would have on bitcoin prices used to calculate the Benchmark.[87] As discussed above, BZX does not sufficiently contest the presence of possible sources of fraud and manipulation in the spot bitcoin market generally.[88] Instead, BZX focuses its analysis on the Benchmark's calculation methodology, as well as on the eligibility and attributes of the Benchmark's constituent bitcoin platforms. What the Exchange does not address, however, is that, to the extent that trading on spot bitcoin platforms not directly used to calculate the Benchmark affects prices on the Benchmark's constituent platforms, the activities on those other platforms where various kinds of fraud and manipulation from a variety of sources may be present and persist may affect whether the Benchmark is resistant to manipulation. Importantly, the record does not demonstrate that these possible sources of fraud and manipulation in the broader spot bitcoin market do not affect the Benchmark's constituent bitcoin platforms that represent a portion of the spot bitcoin market. To the extent that fraudulent and manipulative trading on the broader bitcoin market could influence prices or trading activity on the Benchmark's constituent platforms, such platforms (and thus the Benchmark) would not be inherently resistant to manipulation.[89]

In addition, while BZX asserts that aspects of the Benchmark methodology mitigate the impact of fraud and manipulation on the Shares, the Commission can find no basis to conclude that the Benchmark methodology constitutes a novel means beyond the protections utilized by traditional commodity or securities markets to prevent fraud and manipulation that is sufficient to justify dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin. BZX has not shown that its proposed use of twenty consecutive three-minute periods over a sixty-minute period leading up to 4:00 p.m. E.T. of trade prices from the constituent platforms to calculate the Benchmark would effectively be able to mitigate fraudulent or manipulative activity that is not transient. As the Commission has previously stated, fraud and manipulation in the spot bitcoin market could persist for a ''significant duration.'' [90] The Exchange does not explain how the use of such partitions would protect against the effects of the wash and fictitious trading that may persist in the spot bitcoin market for a significant duration.[91] While the Benchmark methodology calculates an equal-weighted average of the volume-weighted median price of these twenty three-minute periods and removes the highest and lowest contributed prices, this methodology could at most attenuate, but not eliminate, the effect of manipulative activity on the Benchmark's constituent bitcoin platforms—just as it could at most attenuate, but would not eliminate, the effect of bona fide liquidity demand on those platforms.[92]

Moreover, the Exchange's assertions that the Benchmark's methodology helps make the Benchmark resistant to manipulation conflict with the Registration Statement. Specifically, the Registration Statement represents, among other things, that ''[b]itcoin [platforms] on which bitcoin trades are relatively new and, in some cases, unregulated, and, therefore, may be more exposed to fraud and security breaches than established, regulated exchanges for other financial assets or instruments, which could have a negative impact on the Trust.'' [93] The Benchmark's constituent bitcoin platforms are a subset of the bitcoin trading venues currently in existence.

The Registration Statement also states, specifically with respect to the Benchmark, that the Benchmark is ''based on various inputs which may include price data from various third-party exchanges and markets'' and that these inputs ''may be subject to technological error, manipulative activity, or fraudulent reporting from their initial source.'' [94] Although the Sponsor raises concerns regarding fraud and security of bitcoin platforms in the Registration Statement, as well as concerns specific to the Benchmark, the Exchange does not explain how or why such concerns are consistent with its assertion that the Benchmark is resistant to fraud and manipulation.

In addition, BZX represents that the Benchmark includes only the top five spot bitcoin platforms, as ranked by the CryptoCompare Exchange Benchmark review report based on the following categories: legal/regulation, KYC/transaction risk, data provision, security, team/exchange, asset quality/diversity, market quality and negative events. However, the existing level of oversight of the Benchmark's underlying bitcoin platforms, whose trade flows might contribute to the Benchmark, is not equivalent to the obligations, authority, and oversight of national securities exchanges or futures exchanges and therefore is not an appropriate substitute.[95] For example, the Commission's market oversight of national securities exchanges includes substantial requirements, including the requirement to have rules that are ''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.'' [96] Moreover, national securities exchanges must file proposed rules with the Commission regarding certain material aspects of their operations,[97] and the Commission has the authority to disapprove any such rule that is not consistent with the requirements of the Exchange Act.[98]

[87] As discussed above, while the Exchange asserts that bitcoin prices on platforms with wash trades or other activity intended to manipulate the price of bitcoin would generally be ignored, the Commission has no basis on which to conclude that bitcoin platforms are insulated from prices of others that engage in or permit fraud or manipulation. *See supra* notes 63–64 and accompanying text.

[88] *See supra* notes 55–56 and accompanying text.

[89] *See* USBT Order, 85 FR at 12601; WisdomTree Order, 86 FR at 69327; Kryptoin Order, 86 FR at 74172; Valkyrie Order, 86 FR at 74161; SkyBridge Order, 87 FR at 3873; ARK 21Shares Order, 87 FR at 20021; Grayscale Order, 87 FR at 40309.

[90] *See* USBT Order, 85 FR at 12601 n.66; *see also id.* at 12607.

[91] *See* WisdomTree Order, 86 FR at 69327.

[92] *See* SolidX Order, 82 FR at 16257.

[93] *See* Registration Statement at 7, 19. *See also supra* note 71 and accompanying text.

[94] *See* Registration Statement at 23.

[95] *See also* USBT Order, 85 FR at 12603–05; Previous VanEck Order, 86 FR at 64545; WisdomTree Order, 86 FR at 69328; Kryptoin Order, 86 FR at 74173.

[96] 15 U.S.C. 78f(b)(5).

[97] 17 CFR 240.19b–4(a)(6)(i).

[98] Section 6 of the Exchange Act, 15 U.S.C. 78f, requires national securities exchanges to register with the Commission and requires an exchange's registration to be approved by the Commission, and

Thus, national securities exchanges are subject to Commission oversight of, among other things, their governance, membership qualifications, trading rules, disciplinary procedures, recordkeeping, and fees.[99] The Benchmark's underlying spot bitcoin platforms have none of these requirements—none are registered as a national securities exchange and none are comparable to a national securities exchange or futures exchange.[100]

The Commission thus concludes that the Exchange has not demonstrated that its Benchmark methodology makes the proposed ETP resistant to manipulation. While the proposed procedures for calculating the Benchmark using only prices from the Benchmark's constituent spot bitcoin platforms are intended to provide some degree of protection against attempts to manipulate the Benchmark, these procedures are not sufficient for the Commission to dispense with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin.[101]

Further, BZX does not explain the significance of the Benchmark's purported resistance to manipulation to the overall analysis of whether the proposal to list and trade the Shares is designed to prevent fraud and manipulation.[102] To the extent that BZX's argument is that the price of the Trust's Shares would be resistant to manipulation if the Benchmark is resistant to manipulation, BZX has not established in the record a basis for this conclusion because BZX has not established a link between the price of the Shares and the Benchmark, either in the primary or secondary market. The Trust uses the Benchmark to calculate the value of the bitcoin it holds according to the methodology discussed above.[103] However, the Trust will create or redeem baskets in the primary market only upon the receipt or distribution of bitcoins from/to authorized participants, and only for the amount of bitcoin represented by the Shares in such baskets, *without* reference to the value of such bitcoin as determined by the Benchmark or otherwise.[104] In the secondary market, the Shares would trade at market-based prices, and market participants may or may not take into account the value of bitcoin as measured by the Benchmark in determining such prices.[105] The Exchange provides no information on the relationship between the Benchmark and secondary market prices generally, or how the use of the Benchmark would mitigate fraud and manipulation of the Shares in the secondary market.[106]

Moreover, the Exchange's arguments are contradictory. While arguing that the Benchmark is resistant to manipulation, the Exchange simultaneously downplays the importance of the Benchmark in light of the Trust's in-kind creation and redemption mechanism.[107] The Exchange points out that the Trust will create and redeem Shares in-kind, not in cash, which renders the NAV calculation, and thereby the ability to manipulate NAV, ''significantly less important.'' [108] In BZX's own words, the Trust will not accept cash to buy bitcoin in order to create Shares or sell bitcoin to pay cash for redeemed Shares, so the price that the Sponsor uses to value the Trust's bitcoin ''is not particularly important.'' [109] If the Benchmark that the Trust uses to value the Trust's bitcoin ''is not particularly important,'' it follows that the Benchmark's resistance to manipulation is not material to the Shares' susceptibility to fraud and manipulation. As the Exchange does not address or provide any analysis with respect to these issues, the Commission cannot conclude

Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b), requires national securities exchanges to file proposed rule changes with the Commission and provides the Commission with the authority to disapprove proposed rule changes that are not consistent with the Exchange Act. Designated contract markets (''DCMs'') (commonly called ''futures markets'') registered with and regulated by the CFTC must comply with, among other things, a similarly comprehensive range of regulatory principles and must file rule changes with the CFTC. *See, e.g.,* Designated Contract Markets (DCMs), CFTC, *available at http://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/index.htm.*

[99] *See* Winklevoss Order, 83 FR at 37597. The Commission notes that the New York State Department of Financial Services (''NYSDFS'') has issued ''guidance'' to supervised virtual currency business entities, stating that these entities must ''implement measures designed to effectively detect, prevent, and respond to fraud, attempted fraud, and similar wrongdoing.'' *See* Maria T. Vullo, Superintendent of Financial Services, NYSDFS, *Guidance on Prevention of Market Manipulation and Other Wrongful Activity* (Feb. 7, 2018), *available at https://www.dfs.ny.gov/docs/legal/industry/il180207.pdf.* The NYSDFS recognizes that its ''guidance is not intended to limit the scope or applicability of any law or regulation'' (*id.*), which would include the Exchange Act. Nothing in the record evidences whether the Benchmark's constituent bitcoin platforms have complied with this NYSDFS guidance. Further, as stated previously, there are substantial differences between the NYSDFS and the Commission's regulation. Anti-money laundering (''AML'') and know-your-customer (''KYC'') policies and procedures, for example, have been referenced in other bitcoin-based ETP proposals as a purportedly alternative means by which such ETPs would be uniquely resistant to manipulation. The Commission has previously concluded that such AML and KYC policies and procedures do not serve as a substitute for, and are not otherwise dispositive in the analysis regarding the importance of, having a surveillance-sharing agreement with a regulated market of significant size relating to the underlying bitcoin assets. For example, AML and KYC policies and procedures do not substitute for the sharing of information about market trading activity or clearing activity that a surveillance sharing agreement would afford and do not substitute for regulation as a national securities exchange. *See* USBT Order, 85 FR at 12603 n.101. *See also, e.g.,* WisdomTree Order, 86 FR at 69328 n.95; Kryptoin Order, 86 FR at 74173 n.98.

[100] *See* USBT Order, 85 FR at 12603–05 & n.101; Previous VanEck Order, 86 FR at 64545 & n.89; WisdomTree Order, 86 FR at 69328 & n.95; Kryptoin Order, 86 FR at 74173 & n.98; ARK 21Shares Order, 87 FR at 20021–22 & n.107; Grayscale Order, 87 FR at 40308 & n.110.

[101] *See* WisdomTree Order, 86 FR at 69327–28; ARK 21Shares Order, 87 FR at 20021–22.

[102] The Commission has previously considered and rejected similar arguments about the valuation of bitcoin according to a benchmark or reference price. *See, e.g.,* SolidX Order, 82 FR at 16258; Winklevoss Order, 83 FR at 37587–90; USBT Order, 85 FR at 12599–601; WisdomTree Order, 86 FR at 69327–29; Valkyrie Order, 86 FR at 74162; ARK 21Shares Order, 87 FR at 20022; Grayscale Order, 87 FR at 40310.

[103] *See supra* note 35 and accompanying text.

[104] *See* Notice, 87 FR at 41764–65, 41766. According to the Exchange, to create, ''[t]he total deposit of bitcoin required is an amount of bitcoin that is in the same proportion to the total assets of the Trust, net of accrued expenses and other liabilities, on the date the order to purchase is properly received, as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received.'' The required deposit is determined ''for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by 50,000.'' *See id.* at 41766. The Exchange also states that shares of a spot bitcoin ETP would represent interest in bitcoin directly and authorized participants for a spot bitcoin ETP would be able to source bitcoin from any exchange and create or redeem with the applicable trust regardless of the price of the underlying index. *See id.* at 41764.

[105] *See id.* at 41765 (stating that ''[a]uthorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction'' and ''[s]hareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust'').

[106] *See* WisdomTree Order, 86 FR at 69329 & n.108; Valkyrie Order, 86 FR at 74162; ARK 21Shares Order, 87 FR at 20022; Grayscale Order, 87 FR at 40310.

[107] *See supra* notes 82–86 and accompanying text.

[108] Notice, 87 FR at 41764 (''While the Sponsor believes that the Benchmark which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the Benchmark significantly less important.'').

[109] *Id.* (concluding that ''because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important'').

that the Benchmark aids in the determination that the proposal to list and trade the Shares is designed to prevent fraudulent and manipulative acts and practices.[110]

Finally, the Commission finds that BZX has not demonstrated that in-kind creations and redemptions provide the Shares with a unique resistance to manipulation. The Commission has previously addressed similar assertions.[111] As the Commission stated before, in-kind creations and redemptions are a common feature of ETPs, and the Commission has not previously relied on the in-kind creation and redemption mechanism as a basis for excusing exchanges that list ETPs from entering into surveillance-sharing agreements with significant, regulated markets related to the portfolio's assets.[112] Accordingly, the Commission is not persuaded here that the Trust's in-kind creations and redemptions afford it a unique resistance to manipulation.[113]

(2) Assertions That BZX Has Entered Into a Comprehensive Surveillance-Sharing Agreement With a Regulated Market of Significant Size Related to the Underlying Bitcoin Assets

As BZX has not demonstrated that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices, the Commission next examines whether the record supports the conclusion that BZX has entered into a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying bitcoin assets. In this context, the term ''market of significant size'' includes a market (or group of markets) as to which (i) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (ii) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[114]

As the Commission has explained, it considers two markets that are members of the ISG to have a comprehensive surveillance-sharing agreement with one another, even if they do not have a separate bilateral surveillance-sharing agreement.[115] Accordingly, based on the common membership of BZX and the CME in the ISG,[116] BZX has the equivalent of a comprehensive surveillance-sharing agreement with the CME. However, while the Commission recognizes that the CFTC regulates the CME futures market,[117] including the CME bitcoin futures market, and thus such market is ''regulated,'' in the context of the proposed ETP, the record does not, as explained further below, establish that the CME bitcoin futures market is a ''market of significant size'' related to spot bitcoin, the underlying bitcoin assets that would be held by the Trust.

(i) Whether There Is a Reasonable Likelihood That a Person Attempting To Manipulate the ETP Would Also Have To Trade on the CME Bitcoin Futures Market To Successfully Manipulate the ETP

The first prong in establishing whether the CME bitcoin futures market constitutes a ''market of significant size'' related to spot bitcoin is the determination that there is a reasonable likelihood that a person attempting to manipulate the ETP would have to trade on the CME bitcoin futures market to successfully manipulate the ETP. In previous Commission orders, the Commission explained that the lead-lag relationship between the bitcoin futures market and the spot market is ''central'' to understanding this first prong.[118]

(a) BZX's Assertions

According to the Exchange, ''publicly available research, including research done as part of rule filings proposing to list and trade shares of [s]pot [b]itcoin ETPs, supports the thesis that [CME] [b]itcoin [f]utures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP.'' [119] BZX asserts that ''such research indicates that bitcoin futures lead the bitcoin spot market in price formation.'' [120] BZX asserts that CME

[110] *See* WisdomTree Order, 86 FR at 69329; ARK 21Shares Order, 87 FR at 20022.

[111] *See* Winklevoss Order, 83 FR at 37589–90; USBT Order, 85 FR at 12607–08; WisdomTree Order, 86 FR at 69329; ARK 21Shares Order, 87 FR at 20022.

[112] *See, e.g.,* iShares COMEX Gold Trust, Securities Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Securities Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14969, 14974 (Mar. 24, 2006) (SR–Amex–2005–072).

[113] Putting aside the Exchange's various assertions about the nature of bitcoin and the bitcoin market, the Benchmark, and the Shares, the Exchange also does not address concerns the Commission has previously identified, including the susceptibility of bitcoin markets to potential trading on material, non-public information (such as plans of market participants to significantly increase or decrease their holdings in bitcoin; new sources of demand for bitcoin; the decision of a bitcoin-based investment vehicle on how to respond to a ''fork'' in the bitcoin blockchain, which would create two different, non-interchangeable types of bitcoin), or to the dissemination of false or misleading information. *See* Winklevoss Order, 83 FR at 37585. *See also* USBT Order, 85 FR at 12600–01.

[114] *See* Winklevoss Order, 83 FR at 37594.

[115] *See id.* at 37580 n.19.

[116] *See* Notice, 87 FR at 41763.

[117] While the Commission recognizes that the CFTC regulates the CME, the CFTC is not responsible for direct, comprehensive regulation of the underlying spot bitcoin market. *See* Winklevoss Order, 83 FR at 37587, 37599. *See also* WisdomTree Order, 86 FR at 69330 n.118; Kryptoin Order, 86 FR at 74174 n.119; SkyBridge Order, 87 FR at 3874 n.80; Wise Origin Order, 87 FR at 5534 n.93; ARK 21Shares Order, 87 FR at 20023 n.121; Bitwise Order, 87 FR at 40286 n.54; Grayscale Order, 87 FR at 40311 n.138.

[118] *See, e.g.,* USBT Order, 85 FR at 12612 (''[E]stablishing a lead-lag relationship between the bitcoin futures market and the spot market is central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the bitcoin futures market to successfully manipulate prices on those spot platforms that feed into the proposed ETP's pricing mechanism. In particular, if the spot market leads the futures market, this would indicate that it would not be necessary to trade on the futures market to manipulate the proposed ETP, even if arbitrage worked efficiently, because the futures price would move to meet the spot price.''). When considering past proposals for spot bitcoin ETPs, the Commission has discussed whether there is a lead-lag relationship between the regulated market (*e.g.,* the CME) and the market on which the assets held by the ETP would have traded (*i.e.,* spot bitcoin platforms), as part of an analysis of whether a would-be manipulator of the spot bitcoin ETP would need to trade on the regulated market to effect such manipulation. *See, e.g.,* USBT Order, 85 FR at 12612. *See also* Previous VanEck Order, 86 FR at 64547; WisdomTree Order, 86 FR at 69330–31; Kryptoin Order, 86 FR at 74175–76; SkyBridge Order, 87 FR at 3875–76; Wise Origin Order, 87 FR at 5535–36, 5539–40; ARK 21Shares Order, 87 FR at 20023–24; Bitwise Order, 87 FR at 40287–89; Grayscale Order, 87 FR at 40311–13.

[119] *See* Notice, 87 FR at 41762.

[120] *See id.* at 41762–63 and n.51 (citing to (a) the Wise Origin Order; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 94982 (May 25, 2022), 87 FR 33250 (Jun. 1, 2022) (SR–CboeBZX–2022–031) (''ARK 21Shares Filing II''); Notice of Filing of Amendment No. 1 to, and Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove, a Proposed Rule Change To List and Trade Shares of Grayscale Bitcoin Trust (BTC) Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 94844 (May 4, 2022), 87 FR 28043 (May 10, 2022) (SR–NYSEArca–2021–90) (''Grayscale Filing''); and Notice of Filing of Proposed Rule Change to List and Trade Shares of the Bitwise Bitcoin ETP Trust Under NYSE Arca Rule 8.201–E; Securities Exchange Act Release No. 93445 (Oct. 28, 2021), 86 FR 60695 (Nov. 3, 2021) (SR–NYSEArca–2021–89) (''Bitwise Filing''); and (b) Hu, Y., Hou, Y. and Oxley, L. (2019), ''What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective'' (*available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/*) (''Hu, Hou & Oxley'')). The Exchange references the following conclusion from the ''time-varying price discovery'' section of Hu, Hou & Oxley: ''There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points

bitcoin futures ''represent a growing influence on pricing in the spot bitcoin market as has been laid out . . . in other proposals to list and trade [s]pot [b]itcoin ETPs.'' [121]

(b) Analysis

The record does not demonstrate that there is a reasonable likelihood that a person attempting to manipulate the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP. First, the econometric evidence in the record for the proposal does not support the conclusion that an interrelationship exists between the CME bitcoin futures market and the spot bitcoin market such that it is reasonably likely that a person attempting to manipulate the proposed ETP would also have to trade on the CME bitcoin futures market.[122] The Exchange, as it has done previously, relies on the findings of one section of the Hu, Hou & Oxley paper; [123] however, it does not address issues that the Commission has previously raised with respect to this single paper.[124] As the Commission previously explained, including in the Previous VanEck Order, the findings of this paper's Granger causality analysis, which is widely used to formally test for lead-lag relationships, are concededly mixed.[125]

Moreover, while the Exchange highlights data and analyses submitted to the Commission in connection with the Wise Origin Order, the ARK 21Shares Filing II, the Grayscale Filing, and the Bitwise Filing to support the premise that the CME bitcoin futures market leads the spot bitcoin market,[126] the Commission disapproved the proposals related to these submissions, and the Commission raised issues with respect to these submissions—including with the data and analyses therein—that the Exchange does not address.[127]

The Exchange does not provide results of its own analysis and does not present any other data supporting its conclusion. Specifically, the Exchange does not provide results of its own lead-lag analysis or provide any additional evidence of an interrelationship between the CME bitcoin futures market, which is the regulated market, and spot bitcoin platforms, which are the markets on which the assets held by the proposed ETP would trade. As discussed in previous disapprovals, analyses regarding whether the CME bitcoin futures market leads the spot market remain inconclusive.[128] Thus, as in previous disapprovals, because the lead-lag analysis regarding whether the CME bitcoin futures market leads the spot market is ''central'' to understanding the first prong,[129] the Commission determines that the evidence in the record is inadequate to conclude that an interrelationship exists between the CME bitcoin futures market and the spot bitcoin market such that it is reasonably likely that a person attempting to manipulate the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP.[130]

The Commission thus concludes that the information that BZX provides is not sufficient to support a determination that it is reasonably likely that a would-be manipulator of the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP. Therefore, the information in the record also does not establish that the CME bitcoin futures market is a ''market of significant size'' related to the assets to be held by the proposed ETP.

(ii) Whether It Is Unlikely That Trading in the Proposed ETP Would Be the Predominant Influence on Prices in the CME Bitcoin Futures Market

The second prong in establishing whether the CME bitcoin futures market constitutes a ''market of significant size'' related to spot bitcoin is the determination that it is unlikely that trading in the proposed ETP would be the predominant influence on prices in the CME bitcoin futures market.[131]

(a) BZX's Assertions

BZX asserts that trading in the Shares would not be the predominant force on prices in the CME bitcoin futures market (or spot market) because of the in-kind creation and redemption process, the spot market arbitrage opportunities that

to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective.'' *Id.* at 41763 n.51.

[121] *See id.* at 41763. *See also supra* note 120. In addition, the Exchange asserts that pricing in CME bitcoin futures ''is based on pricing from spot bitcoin markets.'' *See id.* at 41763. The Exchange argues that a statement in the Commission's prior approval of CME bitcoin futures ETPs ''makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME [b]itcoin [f]utures.'' *See id.* BZX further states that if CME's surveillance is sufficient to mitigate concerns related to trading in CME bitcoin futures ''for which the pricing is based directly on pricing from spot bitcoin markets, it's not clear how such a conclusion could apply only to ETPs based on [CME] [b]itcoin [f]utures and not extend to [s]pot [b]itcoin ETPs.'' *See id.* at 41763–64. Moreover, BZX argues that CME bitcoin futures ETFs may be more susceptible to potential manipulation than a spot bitcoin ETP that offers only in-kind creation and redemption, and potential manipulation of a CME bitcoin futures ETF would require manipulation on the spot markets on which the pricing for CME bitcoin futures is based. *See id.* at 41764. Because these assertions relate more generally to whether the CME bitcoin futures market constitutes a ''market of significant size'' related to spot bitcoin and do not relate specifically to the first prong, the Commission responds to these assertions in Section III.B.3 *infra.*

[122] *See also* USBT Order, 85 FR at 12611; WisdomTree Order, 86 FR at 69330–31; Wise Origin Order, 87 FR at 5535; NYDIG Order, 87 FR at 14938; Global X Order, 87 FR at 14920; ARK 21Shares, 87 FR at 20024; Bitwise Order, 87 FR at 40288–89; Grayscale Order, 87 FR at 40312–13.

[123] *See supra* note 120.

[124] *See, e.g.,* Previous VanEck Order, 86 FR at 64547 (discussing that the paper's use of daily price data, as opposed to intraday prices, may not be able to distinguish which market incorporates new information faster; and discussing that the paper found inconclusive evidence that futures prices lead spot bitcoin prices—in particular, that the months at the end of the paper's sample period showed, using Granger causality methodology, that the spot market was the leading market—and that the record did not include evidence to explain why this would not indicate a shift towards prices in the spot market leading the futures market that would be expected to persist into the future). *See also* USBT Order, 85 FR at 12613 n.244; WisdomTree Order, 86 FR at 69331.

[125] *See* Previous VanEck Order, 86 FR at 64547; ARK 21Shares Order, 87 FR at 20024; WisdomTree Order, 86 FR at 69331. The paper finds that the CME bitcoin futures market dominates the spot markets in terms of Granger causality, but that the causal relationship is bi-directional, and a Granger causality episode from March 2019 to June/July 2019 runs from bitcoin spot prices to CME bitcoin futures prices. The paper concludes: ''[T]he Granger causality episodes are not constant throughout the whole sample period. Via our causality detection methods, market participants can identify when markets are being led by futures prices and when they might not be.'' *See* Hu, Hou & Oxley, *supra* note 120.

[126] *See supra* note 120 and accompanying text.

[127] *See, e.g.,* Wise Origin Order, 87 FR at 5534–36, 5539–40; ARK 21Shares Order II, 88 FR 6340–42; Grayscale Order, 87 FR at 40311–14; Bitwise Order, 87 FR at 40287–92.

[128] As the academic literature and listing exchanges' analyses pertaining to the pricing relationship between the CME bitcoin futures market and spot bitcoin market have developed, the Commission has critically reviewed those materials. *See* WisdomTree Order II, 87 FR at 62476–77; Grayscale Order, 87 FR at 40311–13; Bitwise Order, 87 FR at 40286–89; ARK 21Shares Order, 87 FR at 20024; Global X Order, 87 FR at 14920; Wise Origin Order, 87 FR at 5535–36, 5539–40; Kryptoin Order, 86 FR at 74176; WisdomTree Order, 86 FR at 69330–32; Previous VanEck Order, 86 FR at 64547–48; USBT Order, 85 FR at 12613.

[129] *See supra* note 118.

[130] In addition, BZX fails to address the relationship (if any) between prices on other bitcoin futures markets and the CME bitcoin futures market, the bitcoin spot market, and/or the constituent bitcoin platforms underlying the Benchmark, or where price formation occurs when the entirety of bitcoin futures markets, not just the CME, is considered. *See* ARK 21Shares Order, 87 FR at 20024 n.147; Previous VanEck Order, 86 FR at 64547–48; WisdomTree Order, 86 FR at 69331; Kryptoin Order, 86 FR at 74176; Wise Origin Order, 87 FR at 5535.

[131] *See* Winklevoss Order, 83 FR at 37594; USBT Order, 85 FR at 12596–97.

such in-kind creation and redemption process creates, the significant volume in the CME bitcoin futures market,[132] the size of bitcoin's market capitalization,[133] and the significant liquidity available in the spot market.[134] BZX further provides that the cost to buy or sell $5 million worth of bitcoin averages roughly 48 basis points with a market impact of $139.08.[135] According to the Exchange, ''[s]tated another way, a market participant could enter a market buy or sell order for $5 million of bitcoin and only move the market 0.48%.'' [136] BZX further asserts that more strategic purchases or sales (such as using limit orders and executing through over-the-counter (''OTC'') bitcoin trade desks) would likely have less obvious impact on the market, which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin.[137] Thus, BZX concludes that the combination of in-kind creation and redemption process, the CME bitcoin futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact, will help prevent the Shares from becoming the predominant force on pricing in either the spot bitcoin or the CME bitcoin futures market.[138]

(b) Analysis

The Commission does not agree with BZX's assertions, which are similar to the assertions that BZX made, and the Commission discussed, in the Previous VanEck Order. Now, as then, the record does not demonstrate that it is unlikely that trading in the proposed ETP would be the predominant influence on prices in the CME bitcoin futures market. As the Commission has already addressed and rejected one of the bases of BZX's assertion—that CME bitcoin futures lead price discovery [139]—the Commission will only address below the other three bases: the in-kind create/redeem mechanism and arbitrage, and the overall size of, and the impact of buys and sells on, the bitcoin market.

BZX's assertions that the Trust's in-kind create/redeem mechanism and resulting arbitrage opportunities will help prevent the Shares from becoming the predominant force on pricing in either the spot bitcoin or the CME bitcoin futures market are general and conclusory. The Exchange provides no further discussion, data or analysis to support its conclusions or to explain further why or how the in-kind create/redeem mechanism or the potential presence of arbitrage implies that it is unlikely that trading in the Shares would be the predominant influence on prices in the CME bitcoin futures market.[140]

Similarly, BZX's assertions about the potential effect of trading in the Shares on the CME bitcoin futures market and spot bitcoin market are general and conclusory, citing to the aforementioned trade volume of the CME bitcoin futures market and the size and liquidity of the spot bitcoin market, as well as the market impact of a single transaction in spot bitcoin, without any analysis or evidence to support these assertions. For example, there is no limit on the amount of mined bitcoin that the Trust may hold. Yet BZX does not provide any information on the expected growth in the size of the Trust and the resultant increase in the amount of bitcoin held by the Trust over time, or on the overall expected number, size, and frequency of creations and redemptions—or how any of the foregoing could (if at all) influence prices in the CME bitcoin futures market. Thus, the Commission cannot conclude, based on BZX's statements alone and absent any evidence or analysis in support of BZX's assertions, that it is unlikely that trading in the ETP would be the predominant influence on prices in the CME bitcoin futures market.[141]

The Commission also is not persuaded by BZX's assertions about the minimal effect a market order to buy or sell bitcoin would have on the bitcoin market.[142] While BZX concludes by way of an example of a $5 million market order that buying or selling large amounts of bitcoin would have insignificant market impact, the conclusion does not analyze the extent of any impact on the CME bitcoin futures market or the CME bitcoin futures market's prices. Accordingly, such statistics, without more, are not relevant to the Commission's consideration of whether trading in the ETP would be the predominant influence on prices in the CME bitcoin futures market.

To the extent that BZX is suggesting that a single $5 million order in bitcoin would have immaterial impact on the prices in the CME bitcoin futures market, the Exchange has not adequately explained why *a single market order in spot bitcoin* is an appropriate proxy for trading in the Shares. As stated above, the second prong in establishing whether the CME bitcoin futures market constitutes a ''market of significant size'' is the determination that it is unlikely that *trading in the proposed ETP* would be

[132] BZX states that the CME began to offer trading in bitcoin futures in 2017. *See* Notice, 87 FR at 41761. According to BZX, nearly every measurable metric related to CME bitcoin futures contracts, which trade and settle like other cash-settled commodity futures contracts, has ''generally trended up since launch, although certain notional volume calculations have decreased roughly in line with the decrease in the price of bitcoin.'' *See id.* For example, according to BZX, there were 219,089 CME bitcoin futures contracts traded in April 2022 (approximately $31.2 billion) compared to 89,852 ($5.4 billion), 118,235 ($4.6 billion), and 201,295 ($55.8 billion) contracts traded in April 2019, April 2020, and April 2021, respectively. *See id.* Additionally, according to BZX, from March 28, 2022, through April 22, 2022, there was approximately $1.3 billion in notional trading volume in CME bitcoin futures on a daily basis, and notional volume was never below $670 million. *See id.* at 41757–58. Additionally, BZX states that open interest was over $2 billion for the entirety of such period, and at one point was over $3 billion. *See id.* at 41758. BZX further states that the number of large interest holders and unique accounts trading CME bitcoin futures have both increased, even in the face of heightened spot bitcoin price volatility. *See id.* at 41762. According to BZX, a large open interest holder in CME bitcoin futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin, and, at a price of approximately $38,605 per bitcoin on April 30, 2022, more than 80 firms had outstanding positions of greater than $4.8 million in CME bitcoin futures. *See id.* at 41762 n.50.

[133] According to BZX, as of December 1, 2021, the total market cap of all bitcoin in circulation was approximately $1.08 trillion. *See id.* at 41757 n.24.

[134] *See id.* at 41764.

[135] *See id.* According to BZX, these statistics are based on samples of bitcoin liquidity in U.S. dollars (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase, FTX and Kraken during the one year period ending May 2022. *See id.* at 41764 n.59.

[136] *Id.* at 41764.

[137] *See id.*

[138] *See id.*

[139] *See supra* Section III.B.2.i.b.

[140] As discussed above, the Exchange has presented no evidence or analysis to support its assertions regarding the presence of price arbitrage in the spot bitcoin markets and, in any event, efficient price arbitrage is not sufficient to support the finding that a market is uniquely or inherently resistant to manipulation such that the Commission can dispense with surveillance-sharing agreements. *See supra* notes 57–62 and accompanying text. Also as discussed above, the Trust's in-kind creations and redemptions do not afford it a unique resistance to manipulation. In-kind creations and redemptions are a common feature of ETPs, and the Commission has not previously relied on the in-kind creation and redemption mechanism as a basis for excusing exchanges that list ETPs from entering into surveillance-sharing agreements with significant, regulated markets related to the portfolio's assets. *See supra* notes 111–113 and accompanying text.

[141] *See* Previous VanEck Order, 86 FR at 64548–59; WisdomTree Order, 86 FR at 69332–33; Kryptoin Order, 86 FR at 74177; SkyBridge Order, 87 FR at 3879; Wise Origin Order, 87 FR at 5537; ARK 21Shares Order, 87 FR at 20025; Global X Order, 87 FR at 14921.

[142] *See* Notice, 87 FR at 41764 (''[T]he cost to buy or sell $5 million worth of bitcoin averages roughly 48 basis points with a market impact of $139.08. Stated another way, a market participant could enter a market buy or sell order for $5 million of bitcoin and only move the market 0.48%.'').

the predominant influence on prices in the CME bitcoin futures market. While authorized participants of the Trust might transact in the spot bitcoin market as part of their creation or redemption of Shares, the Shares themselves would be traded in the secondary market on BZX. Furthermore, the record does not discuss the expected number or trading volume of the Shares, or establish the potential effect of the Shares' trade prices on CME bitcoin futures prices. For example, BZX does not provide any data or analysis about the potential effect the quotations or trade prices of the Shares might have on market-maker quotations in CME bitcoin futures contracts and whether those effects would constitute a predominant influence on the prices of those futures contracts.[143]

Thus, the Commission cannot conclude, based on the assertions in the filing and absent sufficient evidence or analysis in support of these assertions, that it is unlikely that trading in the proposed ETP would be the predominant influence on prices in the CME bitcoin futures market.

Therefore, because BZX has not provided sufficient information to establish both prongs of the ''market of significant size'' determination, the Commission cannot conclude that the CME bitcoin futures market is a ''market of significant size'' related to spot bitcoin such that BZX would be able to rely on a surveillance-sharing agreement with the CME to provide sufficient protection against fraudulent and manipulative acts and practices.

(3) Assertions That the Proposed Spot Bitcoin ETP Is Comparable to Bitcoin Futures-Based ETFs

(i) BZX's Assertions

BZX asserts that, after the Commission has approved the listing and trading of CME bitcoin futures ETPs, disapproving spot bitcoin ETPs ''seems . . . arbitrary and capricious.'' [144] BZX asserts that CME bitcoin futures pricing is based on pricing from spot bitcoin markets and that the pricing mechanism applicable to the Shares is similar to the CME CF Bitcoin Reference Rate (''BRR'').[145] BZX argues that a statement in the Commission's prior approval of CME bitcoin futures ETPs ''makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME [b]itcoin [f]utures.'' [146] The Exchange argues that ''given that there is significant trading volume on numerous bitcoin exchanges that are not part of the CME CF Bitcoin Reference Rate and that arbitrage opportunities across bitcoin exchanges means that such trading volume will influence spot bitcoin prices across the market,'' the Commission's belief that CME ''can detect attempted manipulation of the [CME] [b]itcoin [f]utures through 'trading outside of the CME bitcoin futures market' '' means that ''such ability would apply equally to both [CME] [b]itcoin [f]utures ETFs and [s]pot [b]itcoin ETPs.'' [147] The Exchange further concludes, ''such an ability would also seem to be a strong indication that the CME [b]itcoin [f]utures market represents a regulated market of significant size.'' [148] BZX states that if CME's surveillance is sufficient to mitigate concerns related to trading in CME bitcoin futures ''for which the pricing is based directly on pricing from spot bitcoin markets, it's not clear how such a conclusion could apply only to ETPs based on [CME] [b]itcoin [f]utures and not extend to [s]pot [b]itcoin ETPs.'' [149] BZX asserts that, after approving the listing and trading of CME bitcoin futures ETPs, wherein the Commission concluded that the CME bitcoin futures market is a regulated market of significant size as it relates to CME bitcoin futures, the only consistent outcome would be to approve spot bitcoin ETPs on the basis that the CME bitcoin futures market is also a regulated market of significant size as it relates to the spot bitcoin market.[150]

BZX also states that CME bitcoin futures ETFs may be more susceptible to potential manipulation than a spot bitcoin ETP that offers only in-kind creation and redemption because of the underlying creation and redemption arbitrage mechanism.[151] BZX asserts that any objective review of the proposals to list spot bitcoin ETPs compared to the CME bitcoin futures ETFs and ETPs would lead to the conclusion that spot bitcoin ETPs should be available to U.S. investors because ''any concerns related to preventing fraudulent and manipulative acts and practices related to [s]pot [b]itcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a [CME] [b]itcoin [f]utures ETF.'' [152]

(ii) Analysis

The Commission disagrees with these assertions and conclusions. The proposed rule change does not relate to the same underlying holdings as ETFs that provide exposure to bitcoin through CME bitcoin futures, or CME bitcoin futures-based ETPs. The Commission considers the proposed rule change on its own merits and under the standards applicable to it. Namely, with respect to this proposed rule change, the Commission must apply the standards as provided by Section 6(b)(5) of the Exchange Act, which it has applied in connection with its orders considering previous proposals to list bitcoin-based commodity trusts and bitcoin-based trust issued receipts.[153]

In focusing on whether ''concerns related to preventing fraudulent and

[143] *See* Previous VanEck Order, 86 FR at 64549; WisdomTree Order, 86 FR at 69333; Kryptoin Order, 86 FR at 74177; SkyBridge Order, 87 FR at 3879; Wise Origin Order, 87 FR at 5537; ARK 21Shares Order, 87 FR at 20025; Global X Order, 87 FR at 14921.

[144] *See* Notice, 87 FR at 41760.

[145] *See id.* at 41759–60. BZX asserts that each CME bitcoin futures contract is based on the BRR. *See id.* at 41761. According to the Exchange, the BRR is based on a publicly available calculation methodology based on pricing sourced from several crypto exchanges and trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital. *See id.* at 41761 n.38.

[146] *Id.* at 41759 (citing Teucrium Order, 87 FR at 21679 (''The CME 'comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.' Thus the CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.'')).

[147] *See id.* at 41759–41760.

[148] *See id.* at 41760.

[149] *See id.* at 41763–64.

[150] *See id.*

[151] *See id.* at 41760. BZX states that CME bitcoin futures pricing (and thus the value of the underlying holdings of a CME bitcoin futures ETF) is based on a single price derived from spot bitcoin pricing, and potential manipulation of a CME bitcoin futures ETF would require manipulation on the spot markets on which the pricing for CME bitcoin futures is based. On the other hand, the Exchange states that shares of a spot bitcoin ETP would represent an interest in bitcoin directly and authorized participants would be able to source bitcoin from any exchange and create or redeem with the applicable trust regardless of the price of the underlying index, meaning that a would-be manipulator of a spot bitcoin ETP would need to manipulate the price across all bitcoin markets or risk simply providing arbitrage opportunities for authorized participants. *See id.* at 41760, 41764. BZX also argues that ''the structure of [CME] [b]itcoin [f]utures ETFs provides negative outcomes for buy and hold investors as compared to a [s]pot [b]itcoin ETP.'' *See id. See also infra* Section III.C.1.

[152] *Id.* at 41760. BZX states that while the 1940 Act ''does offer certain investor protections, those protections do not relate to mitigating potential manipulation of the holdings of an ETF in a way that warrants distinction between [CME] [b]itcoin [f]utures ETFs and [s]pot [b]itcoin ETPs.'' *Id.*

[153] *See supra* note 11 and accompanying text.

manipulative acts and practices related to [s]pot [b]itcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a [CME] [b]itcoin [f]utures ETF,'' [154] the Exchange mischaracterizes the framework that the Commission has articulated in the Winklevoss Order. As stated in the Winklevoss Order, the Commission is not applying a ''cannot be manipulated'' approach—either on the CME bitcoin futures market or the spot bitcoin markets. Rather, as the Commission has repeatedly emphasized, and also summarized above, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to the Rules of Practice, the burden is on BZX to demonstrate the validity of its contention that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin,[155] or to establish that it has entered into such a surveillance-sharing agreement.

Consistent with this approach, the Commission's consideration (and thus far, disapproval) of proposals to list and trade spot bitcoin ETPs does not focus on an assessment of the overall risk of fraud and manipulation in the spot bitcoin or futures markets, or on the extent to which such risks are similar.[156] Rather, the Commission's focus has been consistently on whether the listing exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying bitcoin assets of the ETP under consideration, so that it would have the ability to detect and deter manipulative activity. For reasons articulated in the orders approving proposals to list and trade CME bitcoin futures-based ETPs (*i.e.,* the Teucrium Order and the Valkyrie XBTO Order), the Commission found that in each such case the listing exchange has entered into such a surveillance-sharing agreement.[157] Applying the same framework to this proposed spot bitcoin ETP, however, as discussed and explained above, the Commission finds that BZX has not.

Moreover, for the CME bitcoin futures ETPs under consideration in the Teucrium Order and the Valkyrie XBTO Order, the proposed ''significant'' regulated market (*i.e.,* the CME) with which the listing exchange has a surveillance-sharing agreement is the *same* market on which the underlying bitcoin assets (*i.e.,* CME bitcoin futures contracts) trade. Thus, the CME's surveillance can reasonably be relied upon to detect and deter manipulative activity caused by a person attempting to manipulate the CME bitcoin futures ETP through directly trading on the CME bitcoin futures market. Additionally, as explained in the Teucrium and the Valkyrie XBTO Orders, the CME's surveillance can also reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the CME bitcoin futures ETP by manipulating the price of CME bitcoin futures contracts when that attempt is made indirectly by trading outside of the CME bitcoin futures market.[158] Regarding the approved Teucrium Bitcoin Futures Fund in the Teucrium Order (''Teucrium Fund''), for example, when the CME shares its surveillance information with the listing exchange, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the Teucrium Fund.[159] Accordingly, the Commission explains in the Teucrium Order and the Valkyrie XBTO Order that it is unnecessary for a listing exchange to establish a reasonable likelihood that a would-be manipulator would have to trade on the CME itself to manipulate a proposed ETP whose only non-cash holdings would be CME bitcoin futures contracts.[160]

However, as the Commission also states in those Orders, this reasoning does not extend to spot bitcoin ETPs. Spot bitcoin markets are not currently ''regulated.'' [161] If an exchange seeking to list a spot bitcoin ETP relies on the CME as the regulated market with which it has a comprehensive surveillance-sharing agreement, the assets held by the spot bitcoin ETP would not be traded on the CME. Because of this significant difference, with respect to a spot bitcoin ETP, there would be reason to question whether a surveillance-sharing agreement with the CME would, in fact, assist in detecting and deterring fraudulent and manipulative misconduct affecting the price of the spot bitcoin held by that ETP. If, however, an exchange proposing to list and trade a spot bitcoin ETP identifies the CME as the regulated market with which it has a comprehensive surveillance-sharing agreement, the exchange could overcome the Commission's concern by demonstrating that there is a reasonable likelihood that a person attempting to manipulate the spot bitcoin ETP would have to trade on the CME in order to manipulate the ETP, because such demonstration would help establish that the exchange's surveillance-sharing agreement with the CME would have the intended effect of aiding in the detection and deterrence of fraudulent and manipulative misconduct related to the spot bitcoin held by the ETP.[162]

Because, here, BZX is seeking to list a spot bitcoin ETP that relies on the CME as the purported ''significant'' regulated market with which it has a comprehensive surveillance-sharing agreement, the assets held by the proposed ETP would *not* be traded on the CME. Thus, there is reason to question whether a surveillance-sharing agreement with the CME would, in fact, assist in detecting and deterring fraudulent and manipulative misconduct affecting the price of the spot bitcoin held by the proposed ETP.[163] An exchange can overcome this

[154] *See* Notice, 87 FR at 41760.

[155] *See supra* notes 38–41 and accompanying text.

[156] The Commission's past general discussion on the risk of fraud and manipulation in the spot bitcoin or futures markets is only in response to arguments raised by the proposing listing exchanges (or commenters) that mitigating factors against fraud and manipulation in the spot bitcoin or futures markets should compel the Commission to dispense with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying bitcoin assets. *See, e.g.,* Winklevoss Order, 83 FR at 37580, 37582–91 (addressing assertions that ''bitcoin and [spot] bitcoin markets,'' generally, as well as one bitcoin trading platform, specifically, have unique resistance to fraud and manipulation). *See also* USBT Order, 85 FR at 12597, 12599–12608. But even in such instance, the central issue was about the need for such a surveillance-sharing agreement, not the overall risk of fraud and manipulation in the spot bitcoin or futures markets, or the extent to which such risks are similar.

[157] *See* Teucrium Order, 87 FR at 21678–81; Valkyrie XBTO Order, 87 FR at 28850–53.

[158] *See* Teucrium Order, 87 FR at 21679; Valkyrie XBTO Order, 87 FR at 28851.

[159] *See* Teucrium Order, 87 FR at 21679.

[160] *See id.*

[161] *See id.* at 21679 n.46 (citing USBT Order, 85 FR at 12604; NYDIG Order, 87 FR at 14936 nn.65–67). *See also* Valkyrie XBTO Order, 87 FR at 28851 n.42.

[162] *See* Teucrium Order, 87 FR at 21679 n.46; Valkyrie XBTO Order, 87 FR at 28851 n.42.

[163] *See* Teucrium Order, 87 FR at 21679 n.46; Valkyrie XBTO Order, 87 FR at 28851 n.42. The Exchange mischaracterizes the Commission's statement in the Teucrium Order when the Exchange asserts that ''the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME [b]itcoin [f]utures.'' Notice, 87 FR at 41759. What the Commission stated in the Teucrium Order is that for the Teucrium Fun (1) the proposed ''significant'' regulated market (*i.e.,* the CME) with which the listing exchange has a surveillance-sharing agreement is the *same* market on which the underlying assets trade; and (2) therefore that the CME's surveillance can reasonably be relied upon to capture the *effects on the CME bitcoin futures*

concern by demonstrating that there is a reasonable likelihood that a person attempting to manipulate the proposed ETP would have to trade *on the CME* in order to manipulate the ETP because such demonstration would help establish that an exchange's surveillance-sharing agreement with the CME would have the intended effect of aiding in the detection and deterrence of fraudulent and manipulative misconduct related to the spot bitcoin held by the proposed ETP.[164] As discussed and explained above,[165] the Commission finds that BZX has not made such demonstration.

To the extent that the Exchange is arguing that the CME's surveillance would, in fact, assist in detecting and deterring fraudulent and manipulative misconduct that impacts spot bitcoin ETPs in the same way as it would for misconduct that impacts the CME bitcoin futures ETFs/ETPs, the information in the record for this filing does not support such a claim.

BZX asserts that CME bitcoin futures pricing ''is based on pricing from spot bitcoin markets'' and that ''the pricing mechanism applicable to the Shares is similar to the CME CF Bitcoin Reference Rate.'' [166] However, the Exchange provides no evidence or data to support the assertion that CME bitcoin futures pricing ''is based on'' pricing from spot bitcoin markets. Moreover, if, as the Exchange claims here in the context of its arbitrary/capricious argument, CME bitcoin futures prices are ''based on'' spot bitcoin prices, the Exchange does not explain how this is consistent with, and indeed how it does not contradict, the Exchange's claims in the context of its ''significant market'' arguments that CME bitcoin futures prices ''lead'' spot bitcoin prices.

In addition, to the extent the Exchange is asserting that CME bitcoin futures pricing ''is based on'' spot bitcoin pricing because of the BRR, this is also not supported by the evidence in the record for this proposal. While the BRR is used to value the final cash settlement of CME bitcoin futures contracts, it is not generally used for daily cash settlement of such contracts, nor is it claimed to be used for any intra-day trading of such contracts.[167] Moreover, the shares of CME bitcoin futures ETFs/ETPs trade in secondary markets, as would the Shares, and there is no evidence in the record for this filing that such intra-day, secondary market trading prices are, or would be, determined by the BRR. Further, the Commission's determination in the Teucrium Order and the Valkyrie XBTO Order to approve the listing and trading of the relevant CME bitcoin futures ETPs was not based on either the ETPs' or the underlying CME bitcoin futures contracts' pricing mechanism. Rather, as discussed above, the Commission approved the listing and trading of such CME bitcoin futures ETPs because the Commission found that the listing exchanges have a surveillance-sharing agreement with a regulated market of significant size related to the underlying bitcoin assets—which for such ETPs are CME bitcoin futures contracts, not spot bitcoin.

Moreover, even if the Exchange had demonstrated a connection between spot bitcoin prices and CME bitcoin futures prices, which it has not, it does not necessarily follow that the CME's surveillance would, in fact, assist in detecting and deterring fraudulent and manipulative misconduct that impacts spot bitcoin ETPs in the same way as it would for misconduct that impacts the CME bitcoin futures ETFs/ETPs—particularly when such misconduct occurs off of the CME itself.[168] This is because it does not—absent supporting data—necessarily follow that *any* manipulation that impacts spot bitcoin *also similarly* impacts CME bitcoin futures contracts. The Exchange has not provided analysis or data that assesses the reaction (if any) of CME bitcoin futures contracts to instances of fraud and manipulation in spot bitcoin markets.

In addition, for the reasons discussed throughout this order, the disapproval of the proposal would not constitute an ''arbitrary and capricious'' administrative action in violation of the Administrative Procedure Act.[169] Importantly, the issuers are not similarly situated. The issuers of CME bitcoin futures-based ETFs/ETPs propose to hold only CME bitcoin futures contracts (which are traded on the CME itself) as their only non-cash holdings, and the Trust proposes to hold only spot bitcoin (which is not traded on the CME). As explained in detail above, and in the Teucrium Order, the Valkyrie XBTO Order, and the Grayscale Order, because of this important difference, for a spot bitcoin ETP, there is reason to question whether a surveillance-sharing agreement with the CME would, in fact, assist in detecting and deterring fraudulent and manipulative misconduct affecting the price of the spot bitcoin held by that ETP.[170] And as discussed above, neither the Exchange nor any other evidence in the record for this filing, sufficiently demonstrates that the CME's surveillance can be reasonably relied upon to capture the effects of manipulation of the *spot* bitcoin assets underlying the proposed ETP when such manipulation is not attempted on the CME itself.

Moreover, the analytical framework for assessing compliance with the requirements of Exchange Act Section 6(b)(5) that the Commission applies here (*i.e.,* comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying bitcoin assets) is the same one that the Commission has applied in each of its orders considering previous proposals to list bitcoin-based commodity trusts and trust issued receipts.[171] The Commission has applied this framework to each proposal by analyzing the evidence presented by the listing exchange and statements made by commenters.[172] Exchange Act Section 6(b)(5) can be satisfied by a proper showing; the Commission has in fact recently approved proposals by NYSE Arca, Inc. and the Nasdaq Stock Market to list and trade shares of ETPs holding CME bitcoin futures as their

market (*i.e.,* its own market) caused by a person attempting to manipulate the CME bitcoin futures ETP by *manipulating the price of CME bitcoin futures contracts,* whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. *See* Teucrium Order, 87 FR at 21679. Importantly, the Commission *did not* state that, for spot bitcoin ETPs such as the one proposed here, where the underlying asset would not trade on the CME, the CME's surveillance can similarly be relied upon to capture the effects of a person attempting to manipulate a spot bitcoin ETP by *manipulating the price of spot bitcoin* when the attempt is made by trading outside of the CME bitcoin futures market. Indeed, there is reason to question whether the CME's surveillance would capture manipulation of spot bitcoin that occurs off of the CME, if, for example, off-CME manipulation of spot bitcoin does not also similarly impact CME bitcoin futures contracts. And, as discussed below, the Exchange has not provided any data or analysis to show that CME bitcoin futures would be impacted by instances of fraud and manipulation in the spot bitcoin market that occurs off of the CME.

[164] *See* Teucrium Order, 87 FR at 21679 n.46; Valkyrie XBTO Order, 87 FR at 28851 n.42.

[165] *See supra* Section III.B.2.i.

[166] *See* Notice, 87 FR at 41763, 41769.

[167] *See, e.g.,* Grayscale Order, 87 FR at 40317–18.

[168] *See also supra* note 163.

[169] The Commission is disapproving this proposed rule change because BZX has not met its burden to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5). The Commission's disapproval of this proposed rule change does not rest on an evaluation of the relative investment quality of a product holding spot bitcoin versus a product holding CME bitcoin futures, or an assessment of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment. *See, e.g.,* Winklevoss Order, 83 FR at 37580; USBT Order, 85 FR at 12597; One River Order, 87 FR at 33550; Grayscale Order, 87 FR at 40318 n.227.

[170] *See supra* note 163 and accompanying text.

[171] *See supra* notes 11–24 and accompanying text.

[172] *See supra* note 11.

only non-cash holdings.[173] And in the orders approving the CME bitcoin futures-based ETPs, the Commission explicitly discussed how an exchange seeking to list and trade a spot bitcoin ETP could overcome the lack of a one-to-one relationship between the regulated market with which it has a surveillance-sharing agreement and the market(s) on which the assets held by a spot bitcoin ETP could be traded: by demonstrating that there is a reasonable likelihood that a person attempting to manipulate the spot bitcoin ETP would have to trade on the regulated market (*i.e.,* on the CME) to manipulate the spot bitcoin ETP.[174]

When considering past proposals for spot bitcoin ETPs, the Commission has, in particular, reviewed the econometric and/or statistical evidence in the record to determine whether the listing exchange's proposal has met the applicable standard.[175] The Commission's assessment fundamentally presents quantitative, empirical questions, but, as discussed above, the Exchange has not provided evidence sufficient to support its arguments.[176]

The requirements of Section 6(b)(5) of the Exchange Act apply to the rules of national securities exchanges. Accordingly, the relevant obligation to have a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin, or other means to prevent fraudulent and manipulative acts and practices that are sufficient to justify dispensing with such a surveillance-sharing agreement, resides with the listing exchange. Because there is insufficient evidence in the record demonstrating that BZX has satisfied this obligation, the Commission cannot approve the proposed ETP for listing and trading on BZX.

C. Whether BZX Has Met Its Burden To Demonstrate That the Proposal Is Designed To Protect Investors and the Public Interest

BZX contends that, if approved, the proposed ETP would protect investors and the public interest. However, the Commission must consider these potential benefits in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act.[177] Because BZX has not demonstrated that its proposed rule change is designed to prevent fraudulent and manipulative acts and practices, the Commission must disapprove the proposal.

(1) BZX's Assertions

The Exchange states that the proposal is designed to protect investors and the public interest. BZX asserts that access for U.S. retail investors to gain exposure to bitcoin via a transparent and U.S. regulated, exchange-traded vehicle remains limited.[178] According to the Exchange, current options include: (i) OTC bitcoin funds with high management fees and potentially volatile premiums and discounts; [179] (ii) facing the technical risk, complexity, and generally high fees associated with buying spot bitcoin; [180] (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks; [181] or (iv) purchasing CME bitcoin futures ETFs that represent a sub-optimal investment for long-term investors.[182]

BZX also states that investors in many other countries, including Canada and Brazil, are able to use more traditional exchange-listed and traded products (including exchange-traded vehicles holding spot bitcoin) to gain exposure to bitcoin, disadvantaging U.S. investors and leaving them with more risky means of getting bitcoin exposure.[183] BZX concludes that its proposal limits the risk to U.S. investors that are increasingly seeking exposure to bitcoin by providing direct exposure to bitcoin in a regulated, transparent, U.S. exchange-traded vehicle, by: (i) reducing premium volatility; (ii) reducing management fees through meaningful competition; (iii) providing an alternative to CME bitcoin futures ETFs; (iv) reducing risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure; and (v) providing an alternative to custodying spot bitcoin.[184]

(2) Analysis

The Commission disagrees that the proposal should be approved because it is designed to protect investors and the public interest. Here, even if it were true that, compared to trading in unregulated spot bitcoin markets or OTC bitcoin

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[173] *See* Teucrium Order and Valkyrie XBTO Order, *supra* note 11.

[174] *See supra* note 162 and accompanying text.

[175] *See, e.g.,* USBT Order, 85 FR at 12612–13; Previous VanEck Order, 86 FR at 64547–48; WisdomTree Order, 86 FR at 69330–32; Kryptoin Order, 86 FR at 74175–76; NYDIG Order, 87 FR at 14938–39; Wise Origin Order, 87 FR at 5534–36; Global X Order, 87 FR at 14919–20; ARK 21Shares Order, 87 FR at 20023–24; Bitwise Order, 87 FR at 40286–92; Grayscale Order, 87 FR at 40311–14.

[176] *See supra* Sections III.B.1 & III.B.2.

[177] *See* Winklevoss Order, 83 FR at 37602. *See also* GraniteShares Order, 83 FR at 43931; ProShares Order, 83 FR at 43941; USBT Order, 85 FR at 12615; WisdomTree Order, 86 FR at 69333; Valkyrie Order, 86 FR at 74163; Kryptoin Order, 86 FR at 74178; SkyBridge Order, 87 FR at 3880; Wise Origin Order, 87 FR at 5537; ARK 21Shares Order, 87 FR at 20026; Global X Order, 87 FR at 14921; Bitwise Order, 87 FR at 40292; Grayscale Order, 87 FR at 40319.

[178] *See* Notice, 87 FR at 41759.

[179] BZX states that ''[t]he largest OTC [b]itcoin [f]und has an [assets under management or ''AUM''] of $23 billion.'' *See id.* at 41758 n.38. According to BZX, the premium and discount for OTC bitcoin funds ''is known to move rapidly'' and ''investors are buying shares of a fund that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset.'' *See id.* BZX further asserts that ''investors that do not directly buy OTC [b]itcoin [f]unds can be disadvantaged by extreme premiums (or discounts) and premium volatility.'' *See id.*

[180] The Exchange states that ''the Trust presents advantages from an investment protection standpoint for retail investors compared to owning spot bitcoin directly,'' such as ''the elimination of the need for an individual retail investor to either manage their own private keys or to hold bitcoin through a cryptocurrency exchange that lacks sufficient protections.'' *See id.* at 41760.

[181] BZX states that a number of operating companies engaged in unrelated businesses have announced investments as large as $5.3 billion in bitcoin. *See id.* at 41759 n.39. *See also id.* at 41760. BZX argues that, without access to bitcoin ETPs, retail investors seeking investment exposure to bitcoin may purchase shares in these companies in order to gain exposure to bitcoin. BZX contends that such operating companies, however, are imperfect bitcoin proxies and provide investors with partial bitcoin exposure paired with additional risks associated with whichever operating company they decide to purchase. BZX concludes that investors seeking bitcoin exposure through publicly traded companies are gaining only partial exposure to bitcoin and are not fully benefitting from the risk disclosures and associated investor protections that come from the securities registration process. *See id.* at 41759 n.39, 41760–61.

[182] *See id.* at 41758–59. The Exchange asserts that, as a result of rolling CME bitcoin futures contracts and also potentially hitting CME position limits and being forced to invest in non-futures assets for bitcoin exposure, CME bitcoin futures ETFs will ''unnecessarily cost U.S. investors significant amounts of money every year compared to [s]pot [b]itcoin ETPs'' and the proposed rule change ''should be reviewed by the Commission with this important investor protection context in mind.'' *See id.* at 41760.

[183] *See id.* at 41759. BZX represents that investors in other countries, specifically Canada, generally pay lower fees than U.S. retail investors that invest in OTC bitcoin funds due to the fee pressure that results from increased competition among available bitcoin investment options. BZX also argues that, without an approved spot bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to gain access to bitcoin exposure. BZX believes that, given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange-listed ETP. BZX further contends that the lack of a U.S.-listed spot bitcoin ETP is not preventing U.S. funds from gaining exposure to bitcoin—several U.S. ETFs are using Canadian bitcoin ETPs to gain exposure to spot bitcoin—and that approving this proposal ''would provide U.S. [ETFs] and mutual funds with a U.S.-listed and regulated product to provide such access rather than relying on either flawed products or products listed and primarily regulated in other countries.'' *See id.* BZX also states that regulators in other countries have either approved or otherwise allowed the listing and trading of bitcoin-based ETPs. *See id.* at 41759 n.40.

[184] *See id.* at 41770.

funds, trading a spot bitcoin-based ETP on a national securities exchange could provide some additional protection to investors, or that the Shares would provide more efficient exposure to bitcoin than other products on the market such as CME bitcoin futures ETFs/ETPs, the Commission must consider this potential benefit in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act.[185] Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must approve a proposed rule change filed by a national securities exchange if it finds that the proposed rule change is consistent with the applicable requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices—and it must disapprove the filing if it does not make such a finding.[186] Thus, even if a proposed rule change purports to protect investors from a particular type of investment risk—such as experiencing a potentially high premium/discount by investing in OTC bitcoin funds or roll costs by investing in bitcoin futures ETFs/ETPs—or purports to provide benefits to investors and the public interest—such as enhancing competition—the proposed rule change may still fail to meet the requirements under the Exchange Act.[187]

For the reasons discussed above, BZX has not met its burden of demonstrating that the proposal is consistent with Exchange Act Section 6(b)(5),[188] and, accordingly, the Commission must disapprove the proposal.[189]

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR–CboeBZX–2022–035 be, and it hereby is, disapproved.

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

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[185] *See supra* note 177.

[186] *See* Exchange Act Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C). *See also Affiliated Ute Citizens of Utah* v. *United States,* 406 U.S. 128, 151 (1972) (Congress enacted the Exchange Act largely ''for the purpose of avoiding frauds''); *Gabelli* v. *SEC,* 568 U.S. 442, 451 (2013) (The ''SEC's very purpose'' is to detect and mitigate fraud.).

[187] *See* SolidX Order, 82 FR at 16259; Previous VanEck Order, 86 FR at 54550–51; WisdomTree Order, 86 FR at 69344; Kryptoin Order, 86 FR at 74179; Valkyrie Order, 86 FR at 74163; SkyBridge Order, 87 FR at 3881; Wise Origin Order, 87 FR at 5538.

[188] 15 U.S.C. 78f(b)(5).

[189] In disapproving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97088; File No. SR–NYSEARCA–2023–23]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.62P–O(i)(2)

March 9, 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 March 3, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 Rule 6.62P–O(i)(2) to enhance the Exchange's existing Self Trade Prevention modifiers. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.62P–O(i)(2) to enhance the Exchange's existing Self Trade Prevention (''STP'') modifiers. Specifically, the Exchange proposes to allow OTP Holders or OTP Firms (collectively referred to as ''OTP Holders'' herein) the option to apply STP modifiers to orders or quotes submitted not only from the same market participant identifier (''MPID'') and, if specified, any subidentifier of that MPID, as the current rule provides, but also to orders or quotes submitted from (i) other MPIDs associated with the same Client ID (as designated by the OTP Holder); and (ii) Affiliates of the OTP Holder.

Background

Currently, Rule 6.62P–O(i)(2) offers optional anti-internalization functionality to OTP Holders in the form of STP modifiers that enable an OTP Holder to prevent two of its orders or quotes from executing against each other.[4] Currently, OTP Holders can set the STP modifier to apply at the MPID level and, if specified, at the subidentifier of that MPID level.[5] The STP modifier on the order or quote with the most recent time stamp controls the interaction between two orders or quotes marked with STP modifiers. STP functionality assists market participants

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Rule 6.62P–O(i)(2) (providing that ''[a]n Aggressing Order or Aggressing Quote to buy (sell) designated with one of the STP modifiers in this paragraph will be prevented from trading with a resting order or quote to sell (buy) also designated with an STP modifier from the same MPID, and, if specified, any subidentifier of that MPID.'').

[5] The Exchange will refer simply to ''orders'' and ''quotes'' throughout this filing for brevity, but acknowledges that Rule 6.62P–O(i)(2) prevents certain ''Aggressing Orders'' or ''Aggressing Quotes'' marked with an STP modifier from trading with certain resting orders or quotes also designated with an STP modifier. Rule 6.76P–O(a)(5) defines ''Aggressing Orders'' and ''Aggressing Quotes'' as ''a buy (sell) order or quote that is or becomes marketable against sell (buy) interest on the Consolidated Book'' and further provides that ''[a] resting order or quote may become an Aggressing Order or Aggressing Quote if its working price changes, the NBBO is updated, there are changes to other orders or quotes on the Consolidated Book, or when processing inbound messages.''

by allowing firms to better prevent unintended executions with themselves and to reduce the potential for ''wash sales'' that may occur as a result of the velocity of trading in a high-speed marketplace.[6] STP functionality also assists market participants in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm.

Proposed Amendment

The Exchange proposes to amend the Rule 6.62P–O(i)(2) to enhance OTP Holders' flexibility over the levels at which orders or quotes may be grouped for the purposes of applying the Exchange's existing STP modifiers.

First, the Exchange proposes to amend Rule 6.62P–O(i)(2) to permit an OTP Holder to set the STP modifiers to prevent orders or quotes from different MPIDs from executing against each other. The proposed amendment would address this by allowing OTP Holders to apply STP modifiers at the level of ''Client ID,'' which would be an identifier designated by the OTP Holder. As proposed, a Client ID would function similarly to an MPID in that it would be a unique identifier assigned to an OTP Holder. The Exchange believes that this proposed enhancement would provide OTP Holders with greater flexibility in how they instruct the Exchange to apply STP modifiers to their orders and quotes. The Exchange notes that it is not novel for an exchange to provide its members with multiple methods by which to designate anti-internalization instructions, except that the proposed functionality (consistent with current functionality) would apply to both orders and quotes.[7]

Second, the Exchange proposes to amend Rule 6.62P–O(i)(2) to permit OTP Holders to direct orders or quotes not to execute against orders or quotes entered across MPIDs associated with Affiliates of the OTP Holder that are also OTP Holders.[8] This change would expand the availability of the STP functionality to OTP Holders that have divided their business activities between separate corporate entities without disadvantaging them when compared to OTP Holders that operate their business activities within a single corporate entity.

The Exchange believes that these enhancements will all provide helpful flexibility for OTP Holders by expanding their ability to apply STP modifiers at multiple levels, including across multiple MPIDs of the same Client ID, and across multiple MPIDs of the OTP Holder and its Affiliate. These proposed changes would help OTP Holders better manage their quotes and order flow and prevent undesirable executions or the potential for ''wash sales'' that might otherwise occur.

To effect these changes, the Exchange proposes to amend the first sentence of Rule 6.62P–O(i)(2) and add a new sentence as follows (proposed text italicized): ''An Aggressing Order or Aggressing Quote to buy (sell) designated with one of the STP modifiers in this paragraph will be prevented from trading with a resting order or quote to sell (buy) also designated with an STP modifier *and* from the same *Client ID; the same* MPID, and, if specified, any subidentifier of that MPID; *or an Affiliate (as defined in Rule 1.1) identifier (any such identifier, a ''Unique Identifier'').* The Exchange further proposes to replace references to ''MPID'' in Rules 6.62P–O(i)(2)(A)–(C) with the term ''Unique Identifier.''

While this proposal would expand how an OTP Holder can designate orders and quotes with an STP modifier, nothing in this proposal would make substantive changes to the STP modifiers themselves or how they would function with respect to two orders or quotes interacting within a relevant level.

The Exchange notes that, as with its current anti-internalization functionality, use of the proposed revised Rule 6.62P–O(i)(2) will not alleviate or otherwise exempt OTP Holders from their best execution obligations. As such, OTP Holders using the proposed enhanced STP functionality will continue to be obligated to take appropriate steps to ensure that Customer orders that do not execute because they were subject to anti-internalization ultimately receive the same price, or a better price, than they would have received had execution of such orders not been inhibited by anti-internalization.

Timing and Implementation

The Exchange proposes to implement this proposed rule change within 60 days of the effectiveness of this rule filing, but in no case later than the end of the second quarter of 2023.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system and is consistent with the protection of investors and the public interest because enhancing how OTP Holders may apply STP modifiers will provide OTP Holders with additional flexibility with respect to how they implement self-trade protections provided by the Exchange that may better support their trading strategies.

The Exchange believes that the proposed rule change does not unfairly discriminate among OTP Holders because the proposed STP protections will be available to all OTP Holders, and OTP Holders that prefer setting STP modifiers at the MPID level and, if

[6] Options Market Makers enter quotes and orders, which orders and quotes the Exchange processes together with respect to ranking and display. For this reason, STP Modifier instructions can be added to both orders and quotes. Providing STP functionality for quotes facilitates risk management for Market Makers.

[7] *See, e.g.,* MIAX Pearl, LLC (''MIAX Pearl Equities'') Rule 2614(f) (specifying that Self-Trade Prevention Modifiers will be applicable to orders ''from the same MPID, Exchange member identifier, trading group identifier, or Equity Member Affiliate (any such identifier, a 'Unique Identifier')''). The Exchange's affiliated national securities exchanges likewise offer similar STP functionality. *See* NYSE Arca Equities Rule 7.31–E(i)(2) (providing STP functionality consistent with proposed Rule 6.62P–O(i)(2), except that for purposes of that rule an ''Affiliate'' refers to entities under 75% common ownership, which definition aligns with the definition set forth in that exchange's fee schedule); NYSE American LLC Rule 7.31E(i)(2) (same); NYSE LLC Rule 7.31(i)(2) (same); NYSE National, Inc. Rule 7.31(i)(2) (same); and NYSE Chicago, Inc. Rule 7.31(i)(2) (same). As noted herein, the proposed STP functionality differs from functionality offered on these equities exchanges (including the Exchange's affiliated equities exchanges) because it extends to Market Maker quotes for options trading.

[8] Per Rule 1.1, ''[a]n 'affiliate' of, or person 'affiliated' with a specific person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.'' The Exchange notes that relying on the established definition of affiliate for purposes of the proposed STP functionality is not new or novel. *See, e.g.,* MIAX Pearl Equities Rule 2614(f) (for purposes of an STP ''Unique Identifier,'' cross-referencing the definition of affiliate in regards to what constitutes ''Equity Member Affiliates'').

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

specified, at the subidentifier of that MPID level, will still be able to do so. In addition, allowing OTP Holders to apply STP modifiers to trades submitted by their Affiliates that are also OTP Holders is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity.

Finally, the Exchange notes that other exchanges have rules that allow affiliate grouping for their own anti-internalization functionality.[11] Consequently, the Exchange does not believe that this change raises new or novel issues not already considered by the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is designed to enhance the Exchange's competitiveness by providing additional flexibility over the levels at which orders and quotes may be grouped for STP purposes, thereby incentivizing OTP Holders to send orders and quotes to the Exchange and increase the liquidity available on the Exchange. The Exchange also notes that the proposed new STP grouping options, like the Exchange's current anti-internalization functionality, are completely optional and OTP Holders can determine whether to apply anti-internalization protections to orders and quotes submitted to the Exchange, and if so, at what level to apply those protections (*e.g.,* MPID, subidentifier, Client ID, or Affiliate level). There is no barrier to other national securities exchanges adopting similar anti-internalization groupings as those proposed herein.

C. Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)[13] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange requested the waiver because it would enable the Exchange to compete with other exchanges that have recently amended their rules to expand the levels at which orders may be grouped for STP purposes. The Exchange also states that it is currently working on technological solutions to meet this competition and to make similar offerings available to market participants as soon as possible. The Exchange expects to begin rolling out this functionality within 60 days from the date of filing, and thus requests waiver of the operative delay in order to promptly meet market competition. For these reasons, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[16]

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–NYSEARCA–2023–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2023–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2023–23 and

[11] *See supra* note 7.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

should be submitted on or before April 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05270 Filed 3–14–23; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0694]

Cephas Capital Partners III, LP; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Cephas Capital Partners III, LP, 11 Schoen Place, 8th Floor, Pittsford, NY 14534, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concerns, has sought an exemption under section 312 of the Act and 13 CFR 107.730, Financings which Constitute Conflicts of Interest of the Code of Federal Regulations. Cephas Capital Partners III, LP is proposing to provide financing to Air-Flo Mfg. Co, Inc. et al, 365 Upper Oakwood Avenue, Elmira Heights, New York, 14903 to support the company's growth and refinance existing company debt.

The proposed transaction is brought within the purview of § 107.730 of the Regulations because Cephas Capital Partners III, LP is an Associate of Cephas Capital Partners II, LP by virtue of Common Control as defined at 13 CFR 107.50, holds an investment in Air-Flo Mfg. Co, Inc. and the proposed transaction represents a conflict of interest because Cephas Capital Partners III, LP and its Associates did not previously invest in the small business at the same time and on the same terms and conditions, and the proposed financing to Air-Flo Mfg. Co, Inc. will discharge an obligation to Associates or free other funds to pay such obligation.

Therefore, the proposed transaction is considered self-deal pursuant to 13 CFR 107.730 and requires a regulatory exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2023–05078 Filed 3–14–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12003]

U.S. Department of State Advisory Committee on Private International Law: Notice of Annual Meeting

The Department of State's Advisory Committee on Private International Law (ACPIL) will hold its annual meeting in hybrid format on Monday, April 24, 2023. The meeting will be held at the Georgetown University Law Center, Gewirz Student Center, 600 New Jersey Avenue NW, Washington, DC 20001. The program is scheduled to run from 9:00 a.m. to 4:00 p.m.

The meeting will include discussions on commercial arbitration, digital and financial law, and plans for the upcoming Special Commission on the Practical Operation of the 1980 Child Abduction Convention. It will also address private international law developments over the last year and possible future work. If time allows other topics of interest may be discussed.

Time and Place: The meeting will take place on Monday, April 24, 2023, at Georgetown University Law Center, Gewirz Student Center, 600 New Jersey Avenue NW, Washington, DC 20001. Those who cannot participate by either format but wish to comment are welcome to do so by email to Sharla Draemel at *pil@state.gov.*

Public Participation: This meeting is open to the public. Anyone attending in-person will be required to follow Georgetown University's COVID regulations and procedures, including (1) completing the online COVID clearance registration form not later than Thursday, April 20 (the link for the form will be provided once you register); (2) presenting your completed vaccination form upon arrival at the Law Center; and (3) wearing a mask throughout the meeting.

Priority for in-person seating will be given to members of the Advisory Committee, and remaining seating will be reserved based upon when persons contact *pil@state.gov.* Those planning to attend should provide their name, affiliation and contact information to *pil@state.gov* no later than April 12, 2023, stating in their response whether they will attend in-person or virtually. Room information for in-person attendance and a Zoom link for virtual attendance will be provided following registration. A member of the public needing reasonable accommodation should notify *pil@state.gov* not later than April 10, 2023. Requests made after that date will be considered but might not be able to be fulfilled. A more detailed agenda will be available to registered participants in advance of the meeting. Persons who wish to have their views considered are encouraged, but not required, to submit written comments in advance. Comments should be sent electronically to *pil@state.gov.* When you register, please indicate whether attending in-person or via Zoom. If you are attending virtually, please indicate if you require captioning.

Zachary A. Parker,

Director, Office of Directives Management, U.S. Department of State.

[FR Doc. 2023–05260 Filed 3–14–23; 8:45 am]

BILLING CODE 4710–08–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36674]

Ottawa Northern Railroad LLC—Acquisition and Change in Operator Exemption—Midland Historical Railway Association

Ottawa Northern Railroad LLC (ONR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate as a common carrier over approximately 11.09 miles of rail line owned by the Midland Historical Railway Association (MHRA) between milepost 14.95 near Baldwin City, Kan., and milepost 26.04 at Ottawa, Kan. (the Line).

This transaction is related to a concurrently filed verified notice of exemption in *Chicago Rock Island & Pacific Railroad—Continuance in Control Exemption—Ottawa Northern Railroad,* Docket No. FD 36675, in which ONR's parent company, Chicago Rock Island & Pacific Railroad LLC, seeks to continue in control of ONR upon ONR's becoming a Class III rail carrier.

According to the verified notice, ONR and MHRA have reached an agreement pursuant to which ONR will acquire the Line and, upon consummation of the acquisition transaction, replace Leavenworth, Lawrence & Galveston Railroad d/b/a the Baldwin City & Southern Railroad Company (BC&S) as the common carrier service provider on

[17] 17 CFR 200.30–3(a)(12).

the Line.[1] The verified notice indicates that MHRA controls BC&S and that BC&S does not object to the proposed transaction by which it would be replaced by ONR as operator on the Line.

ONR certifies that the agreement governing the proposed transaction does not have an interchange commitment. ONR further certifies that its projected annual revenues will not exceed $5 million and will not result in ONR's becoming a Class I or Class II rail carrier. Under 49 CFR 1150.32(b), a change in operator requires that notice be given to shippers. ONR states that there are currently no customers on the Line, and accordingly, no shippers to notify of the transaction.

The earliest this transaction may be consummated is March 29, 2023. ONR states that it expects to consummate its acquisition of, and commence common carrier operations over, the Line on or after that date.

If the verified 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 March 22, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36674, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on ONR's representative, Bradon J. Smith, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to ONR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: March 9, 2023.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2023–05223 Filed 3–14–23; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36675]

Chicago Rock Island & Pacific Railroad LLC—Continuance in Control Exemption—Ottawa Northern Railroad LLC

Chicago Rock Island & Pacific Railroad LLC (Rock Island), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Ottawa Northern Railroad LLC (ONR), a noncarrier controlled by Rock Island, upon ONR's becoming a Class III rail carrier. According to the verified notice, the proposed transaction will allow Rock Island to continue to exercise common control of ONR and Rock Island's existing subsidiary, Gulf & Ship Island Railroad LLC (G&SI), a Class III rail carrier that operates in the state of Mississippi.[1]

This transaction is related to a concurrently filed verified notice of exemption in *Ottawa Northern Railroad—Acquisition & Change in Operator Exemption—Midland Historical Railway Ass'n.,* Docket No. FD 36674, in which ONR seeks to acquire and begin common carrier operations over approximately 11.09 miles of rail line owned by the Midland Historical Railway Association between milepost 14.95 near Baldwin City, Kan., and milepost 26.04 at Ottawa, Kan., replacing Leavenworth, Lawrence & Galveston Railroad d/b/a the Baldwin City & Southern Railroad Company as the common carrier service provider on that line.

Rock Island represents that: (1) the rail line to be operated by ONR does not connect with Rock Island's lines or any of G&SI's lines; (2) the 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. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

The transaction may be consummated on or after March 29, 2023, the effective date of the exemption (30 days after the verified notice was filed).

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. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified 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 March 22, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36675, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Rock Island's representative, Bradon J. Smith, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to Rock Island, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: March 9, 2023.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2023–05245 Filed 3–14–23; 8:45 am]

BILLING CODE 4915–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna

[1] ONR notes that Midland Railroad LLC secured permissive authority to acquire the line and operate it in place of BC&S in *Midland Railroad—Acquisition & Change in Operator Exemption—Midland Historical Railway Ass'n,* FD 36640 (STB served Sept. 15, 2022), but did not undertake the authorized transaction and has sought permission from the Board to withdraw its notice of exemption in that docket.

[1] Rock Island notes that the notice of exemption filed in *Chicago, Rock Island & Pacific Railroad—Continuance in Control Exemption—Gulf & Ship Island Railroad,* Docket No. FD 36520, mistakenly lists ''Mississippi Delta'' as a Class III carrier under Rock Island's control. Rock Island explains that ''Mississippi Delta'' is a trade name for Rock Island's contract carriage north of Swan Lake, Miss., and not a railroad common carrier.

River Basin Commission during the period set forth in **DATES.**

DATES: February 1–28, 2023.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22 (e) and (f) for the time period specified above.

Water Source Approval—Issued Under 18 CFR 806.22(f):

1. BKV Operating, LLC; Pad ID: Bonnice 2; ABR–201011023.R2; Jessup Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 9, 2023.

2. Blackhill Energy LLC; Pad ID: NICHOLS 1H Pad; ABR–201008090.R2; Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: February 9, 2023.

3. Chesapeake Appalachia, L.L.C.; Pad ID: Dunny; ABR–201011066.R2; Windham Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 9, 2023.

4. Chesapeake Appalachia, L.L.C.; Pad ID: Lytwyn; ABR–201011028.R2; Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 9, 2023.

5. Coterra Energy Inc.; Pad ID: EmpetD P1; ABR–201211007.R2; Harford Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 9, 2023.

6. Coterra Energy Inc.; Pad ID: McLeanD P1; ABR–201211009.R2; Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 9, 2023.

7. Coterra Energy Inc.; Pad ID: WoodE P1; ABR–201211008.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 9, 2023.

8. EOG Resources, Inc.; Pad ID: RIGHTMIRE 2H Pad; ABR–201008083.R2; Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 9, 2023.

9. EXCO Resources (PA), LLC; Pad ID: COP Tract 727 (Pad 3); ABR–201211011.R2; Gallagher Township, Clinton County, Pa.; Consumptive Use of Up to 8.0000 mgd; Approval Date: February 9, 2023.

10. Repsol Oil & Gas USA, LLC; Pad ID: ABELL LIVING TRUST (05 082); ABR–201011052.R2; Warren Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: February 9, 2023.

11. SWN Production Company, LLC; Pad ID: MULLOY PAD; ABR–201209008.R2; Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: February 9, 2023.

12. SWN Production Company, LLC; Pad ID: TI–01 Mase Monte; ABR–201711002.R1; Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: February 9, 2023.

13. Blackhill Energy LLC; Pad ID: KINGSLEY 4H; ABR–201008079.R2; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: February 14, 2023.

14. Repsol Oil & Gas USA, LLC; Pad ID: HUTCHINSON (05 165) R; ABR–201011064.R2; Warren Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: February 16, 2023.

15. Coterra Energy Inc.; Pad ID: HordisC P1; ABR–201211016.R2; Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 20, 2023.

16. Seneca Resources Company, LLC; Pad ID: Neal 815; ABR–201011058.R2; Chatham Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 20, 2023.

17. Seneca Resources Company, LLC; Pad ID: Propheta 288; ABR–201011078.R2; Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 20, 2023.

18. Seneca Resources Company, LLC; Pad ID: Sevem 474; ABR–201011071.R2; Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 20, 2023.

19. SWN Production Company, LLC; Pad ID: HARRIS PAD; ABR–201211015.R2; Harford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: February 20, 2023.

20. SWN Production Company, LLC; Pad ID: LOKE PAD; ABR–201211014.R2; New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: February 20, 2023.

21. Chesapeake Appalachia, L.L.C.; Pad ID: Allen Drilling Pad; ABR–201009002.R2.1; Asylum Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 20, 2023.

22. Chesapeake Appalachia, L.L.C.; Pad ID: Kerrick Drilling Pad; ABR–201103040.R2.1; Asylum Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 20, 2023.

23. Chesapeake Appalachia, L.L.C.; Pad ID: Bishop Drilling Pad; ABR–201212014.R2; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 26, 2023.

24. Chesapeake Appalachia, L.L.C.; Pad ID: Harvey Drilling Pad; ABR–201212015.R2; Lemon Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 26, 2023.

25. Chesapeake Appalachia, L.L.C.; Pad ID: SGL 12 N WEST DRILLING PAD; ABR–201801001.R1; Leroy Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 26, 2023.

26. Coterra Energy Inc.; Pad ID: KielarD P1; ABR–201112002.R2; Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 26, 2023.

27. SWN Production Company, LLC; Pad ID: SHELDON EAST PAD; ABR–201211013.R2; Thompson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: February 26, 2023.

28. Chesapeake Appalachia, L.L.C.; Pad ID: Cochran Drilling Pad; ABR–201301003.R2; West Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 28, 2023.

29. Coterra Energy Inc.; Pad ID: TeddickM P3; ABR–201212006.R2; Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 28, 2023.

30. Seneca Resources Company, LLC; Pad ID: I G Coveney Revocable LVG Trust 282; ABR–201012032.R2; Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 28, 2023.

31. SWN Production Company, LLC; Pad ID: PLATUS PAD; ABR–201212004.R2; New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: February 28, 2023.

32. SWN Production Company, LLC; Pad ID: RACINE PAD; ABR–201212003.R2; New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: February 28, 2023.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: March 9, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023–05244 Filed 3–14–23; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2022–0029]

Proposed Asset Disposition Guidance and Request for Comments

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of availability of proposed guidance relating to an asset disposition option for FTA recipients under the National Defense Authorization Act (NDAA) for fiscal year 2022.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket, and on its website, proposed

guidance intended to provide clarity on an asset disposition option under the National Defense Authorization Act (NDAA) for fiscal year 2022. Under the new provision, FTA may authorize the transfer of an asset acquired with Federal assistance, but no longer needed for the originally authorized purpose, to a local governmental authority, non-profit organization, or other third-party entity if certain statutory criteria are met.

DATES: Comments must be submitted by April 14, 2023. Late filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by any of the following methods, identifying your submission with Docket Number FTA–2022–0029. All electronic submissions must be made to the U.S. Government electronic site at *http://www.regulations.gov.*

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

Fax: 202–493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2022–0029) for this notice at the beginning of each submission of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed stamped postcard. All comments received will be posted without change to *www.regulations.gov* including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

Docket Access: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time or to the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. Eastern Standard Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For policy guidance questions, contact Maggie Schilling, Office of Budget and Policy, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E52–315, Washington, DC 20590, phone: 202–366–1487, or *maggie.schilling@dot.gov.* For legal questions, contact Kathryn Loster at 202–705–1269 or email *kathryn.loster@dot.gov.*

SUPPLEMENTARY INFORMATION: FTA is seeking comment on proposed guidance, published as Frequently Asked Questions on FTA's website, regarding a new asset disposition option for FTA recipients. This guidance explains changes made to 49 U.S.C. 5334(h)(1) by the National Defense Authorization Act (NDAA) for fiscal year 2022 (Pub. L. 117–81). Specifically, section 6609 of the NDAA added a new disposition option for assets acquired with Federal assistance that are no longer needed for the originally authorized purpose. Under the new provision, FTA may authorize the transfer of property to a local government authority, non-profit organization, or other third-party entity if, among other criteria enumerated in the law, it will be used for transit-oriented development and include affordable housing. The proposed guidance, in the form of FAQs, is available on the agency's public website at: *https://www.transit.dot.gov/funding/funding-finance-resources/notice-proposed-asset-disposition-guidance-and-request-comments.* Based on public comment, FTA may revise the definitions and standards in the FAQ's.

After review and consideration of the comments provided on the proposed guidance, FTA will issue a final version of the guidance and will publish it on FTA's website. In addition, FTA will incorporate this statutory change to other relevant FTA guidance in the future when more comprehensive guidance updates occur, incorporating feedback FTA receives on this document as applicable.

Nuria I. Fernandez,

Administrator.

[FR Doc. 2023–05284 Filed 3–14–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Application by Survivors for Payment of Bond or Check Issued Under the Armed Forces Leave Act of 1946, as Amended

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Application By Survivors for Payment of Bond or Check Issued Under the Armed Forces Leave Act of 1946, as amended.

DATES: Written comments should be received on or before May 15, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application By Survivors for Payment of Bond or Check Issued Under the Armed Forces Leave Act of 1946, as amended.

OMB Number: 1530–0038.

Form Number: FS Form 2066.

Abstract: The information is requested to support payment of an Armed Forces Leave Bond or check issued under Section 6 of the Armed Forces Leave Act of 1946, as amended, where the owner died without assigning the bond to the Administrator of Veterans Affairs prior to payment, or without presenting the check for payment.

Current Actions: Revision of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 50.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the

request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. 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; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 9, 2023.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2023–05233 Filed 3–14–23; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Request To Reissue U.S. Savings Bonds to a Personal Trust

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Request to Reissue U.S. Savings Bonds to a Personal Trust.

DATES: Written comments should be received on or before May 15, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request to Reissue U.S. Savings Bonds to a Personal Trust.

OMB Number: 1530–0036.

Form Number: FS Form 1851.

Abstract: The information is necessary to support a request for reissue of savings bonds in the name of the trustee of a personal trust estate.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 10,600.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 2,650.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. 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; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 9, 2023.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2023–05232 Filed 3–14–23; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Minority Bank Deposit Program (MBDP) Certification Form for Admission

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Minority Bank Deposit Program (MBDP) Certification Form for Admission.

DATES: Written comments should be received on or before May 15, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Minority Bank Deposit Program (MBDP) Certification Form for Admission.

OMB Number: 1530–0001.

Form Number: FS Form 3144.

Abstract: The information collected on this form is used by financial institutions to apply for participation in the Minority Bank Deposit Program. Institutions approved for acceptance in the program are entitled to special assistance and guidance from Federal agencies, State and local governments, and private sector organizations.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 85.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 64.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. 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; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 9, 2023.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2023–05231 Filed 3–14–23; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Form 1363

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 1363, *Export Exemption Certificate.*

DATES: Written comments should be received on or before May 15, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Please include, ''OMB Number: 1545–0685—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Export Exemption Certificate.

OMB Number: 1545–0685.

Form Number: Form 1363.

Abstract: Internal Revenue Code section 427(b)(2) exempts exported property from the excise tax on transportation of property. Regulation § 49.4271–1(d)(2) authorizes the filing of Form 1363 by the shipper to request tax exemption for a shipment or a series of shipments. The information on the form is used by the IRS to verify shipments of property made tax-free.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100,000.

Estimated Time per Respondent: 4 Hours, 15 minutes.

Estimated Total Annual Burden Hours: 425,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) 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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: March 9, 2023.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2023–05234 Filed 3–14–23; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 88 Wednesday,
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Part II

Department of Energy

10 CFR Parts 429 and 430
Energy Conservation Program: Test Procedure for Television Sets; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2016–BT–TP–0023]

RIN 1904–AD70

Energy Conservation Program: Test Procedure for Television Sets

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

ACTION: Final rule.

SUMMARY: This final rule amends the test procedure for television sets to incorporate by reference the relevant updated industry standard. The Department of Energy (''DOE'') has determined that incorporating the updated industry standard will result in a test procedure that is more representative of the average energy use of television sets.

DATES: The effective date of this rule is April 14, 2023. The amendments will be mandatory for product testing starting September 11, 2023.

The incorporation by reference of certain materials listed in the rule is approved by the Director of the Federal Register on April 14, 2023.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2016-BT-TP-0023.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

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

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 506–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *celia.sher@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standard into 10 CFR part 430:

ANSI/CTA–2037–D, ''Determination of Television Set Power Consumption,'' September 2022.

Copies of ANSI/CTA–2037–D can be obtained from: Consumer Technology Association, 1919 S Eads Street, Arlington, VA 22202. Telephone: (703) 907–7600, or by going to *www.cta.tech.*

For a further discussion of this standard, see section IV.N of this document.

Table of Contents

I. Authority and Background

Television sets (''TVs'') are included in the list of ''covered products'' for which DOE is authorized to establish and amend test procedures. (42 U.S.C. 6292(a)(12)) DOE's current test procedure for TVs is codified at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix H, ''Uniform Test Method for Measuring the Power Consumption of Television Sets'' (''appendix H''). DOE has not established energy conservation standards for TVs. The following sections discuss DOE's authority to establish the test procedure for TVs and relevant background information regarding DOE's consideration of the test procedure for this product.

A. Authority

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include TVs, the subject of this document. (42 U.S.C. 6292(a)(12))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), 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).

The testing requirements consist of test procedures that manufacturers of covered products must use as the basis

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

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

for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

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) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including TVs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures.

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. (*Id.*) Any such amendment must consider the most current versions of the International Electrotechnical Commission (''IEC'') Standard 62301 [3] and IEC Standard 62087 [4] as applicable. (42 U.S.C. 6295(gg)(2)(A))

DOE is publishing this final rule in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

B. Background

DOE most recently amended its TV test procedure in a final rule published on October 25, 2013 (''October 2013 final rule''). 78 FR 63823. The current DOE test procedure includes methods for measuring TV power consumption in active mode (*i.e.,* on mode), standby mode, and off mode; TV screen luminance; and the annual energy consumption (''AEC'') of TVs. As part of the on mode testing, DOE adopted the use of IEC Standard 62087, Edition 3.0, 2011–04, ''Methods of measurement for the power consumption of audio, video, and related equipment'' (''IEC 62087:2011''). IEC 62087:2011 includes a video test clip on a DVD and Blu-ray Disc™ to be used when conducting on mode testing (''IEC test clip''), as well as a static, black-and-white 3-bar image for measuring screen luminance.

DOE notes that it does not currently prescribe energy conservation standards for TVs. However, DOE's test procedure for TVs provides the basis for qualification criteria established by the U.S. Environmental Protection Agency's (''EPA'') ENERGY STAR program. Additionally, DOE does not specify any certification requirements for TVs at 10 CFR 429.25. However, the Federal Trade Commission (''FTC'') requires manufacturers of TVs to submit annually a report containing the brand name; model number; screen size (diagonal in inches); power (in watts) consumed in on mode, standby-passive mode, standby-active mode, low mode, and off mode; and annual energy consumption (kWh/year) for each basic model in current production among other model identifiers. 16 CFR 305.11(3). FTC allows this information to be submitted to DOE via the Compliance and Certification Management System in lieu of submitting the required information to FTC. *Id.* Therefore, although DOE has not established energy conservation standards or certification requirements for TVs at this time, DOE's test procedure is currently used by other agencies for voluntary representations of TV energy consumption and reporting requirements for the EnergyGuide label.

On June 24, 2016, DOE published in the **Federal Register** a request for information (''June 2016 RFI'') to consider whether revisions were needed to the existing TV test procedure. 81 FR 41262. Specifically, DOE noted in the June 2016 RFI that it found certain TVs consistently demonstrated decreased power use when displaying the IEC test clip as compared to other test clips and requested comments, information, and data on: the use of the IEC test clip or other test clips; whether the current luminance test, which uses a static 3-bar image to measure screen luminance, was representative of an average cycle or period of use, or alternative luminance tests that should be considered; and the default settings of a TV and changes to the default settings and special functions by consumers. *Id.* at 81 FR 41277.

Following the publication of the June 2016 RFI, on January 19, 2017, DOE posted a pre-publication advance notice of proposed rulemaking (''January 2017 pre-publication ANOPR''),[5] which described potential amendments to the TV test procedure that would address the issues discussed in the June 2016 RFI as well as a number of other issues, including the configuration of special functions during testing, performing system updates prior to testing, and incorporating updated industry test

[3] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[4] IEC 62087, *Audio, video and related equipment—Methods of measurement for power consumption* (Edition 1.0, Parts 1–6: 2015, Part 7: 2018).

[5] The January 2017 pre-publication ANOPR is available at *www.energy.gov/sites/prod/files/2017/01/f34/tv_tp_anopr_2017-1-19_4.pdf.*

procedures.[6] (January 2017 pre-publication ANOPR at pp. 6–10) The January 2017 pre-publication ANOPR was intended to assist DOE in determining whether amendments were needed to ensure that the TV test procedure produces results that are representative of an average use cycle or period of use. (*Id.* at p. 5) The January 2017 pre-publication ANOPR was also intended to facilitate discussion, solicit feedback, and provide input to industry consensus standards-setting bodies regarding modifications that DOE was considering so that these other organizations can be apprised of DOE's considerations as they undertook their own revisions. (*Id.* at p. 6)

Subsequently, in October 2021, the Consumer Technology Association (''CTA'') published an update to its TV power measurement standard, ''Determination of Television Set Power Consumption,'' American National Standards Institute (''ANSI'')/CTA–2037–C (''ANSI/CTA–2037–C''). Thereafter, DOE published a notice of proposed rulemaking (''NOPR'') for the TV test procedure on March 2, 2022 (''March 2022 NOPR''), addressing comments in response to the June 2016 RFI and presenting DOE's proposals to amend its test procedure for TVs. 87 FR 11892. In the March 2022 NOPR, DOE tentatively determined that ANSI/CTA–2037–C addressed many of the concerns DOE raised in the June 2016 RFI relating to configuration of special functions and screen luminance. *Id.* at 87 FR 11895. DOE initially determined that ANSI/CTA–2037–C was consistent with the existing metrics and approach incorporated in the currently applicable TV test procedure at appendix H, while also incorporating provisions that addressed current industry trends and improved the accuracy and repeatability of the test procedure. *Id.* DOE additionally noted that ANSI/CTA–2037–C adopted several changes that were suggested in public comments submitted by interested parties in response to DOE's June 2016 RFI. *Id.* These changes related to network configuration, standby mode test, test clips, etc. DOE participated in the CTA standards development process, including providing input and participating in round robin testing to evaluate the CTA standard while under development. A test report detailing the results of the round robin testing is available at the ENERGY STAR website[7] (''round robin test report'').[8]

In the March 2022 NOPR, DOE additionally noted that the CTA–2037 working group (''CTA working group'') was reviewing ANSI/CTA–2037–C at that time to determine if any revisions were necessary. *Id.* at 87 FR 11897. DOE stated that should a revised version, ANSI/CTA–2037–D, publish prior to the publication of a final DOE TV test procedure rule, DOE would consider stakeholder feedback and incorporate by reference ANSI/CTA–2037–D in the final rule, provided that the updates in ANSI/CTA–2037–D are consistent with the provisions DOE proposed in the March 2022 NOPR or the updates are related to topics that DOE discussed and solicited comments on in the March 2022 NOPR. *Id.* Since publication of the March 2022 NOPR, CTA published an additional update to its TV power measurement standard, ANSI/CTA–2037–D, which is substantively the same as ANSI/CTA–2037–C but has some subtle differences, which are discussed throughout section III of this document. DOE has determined that ANSI/CTA–2037–D is an appropriate standard to reference to measure TV screen luminance and power consumption and incorporates ANSI/CTA–2037–D by reference in this final rule.

DOE held a public meeting related to the March 2022 NOPR on April 6, 2022 (hereafter, the ''NOPR public meeting'').

DOE received comments in response to the March 2022 NOPR from the interested parties listed in Table I.1.

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE MARCH 2022 NOPR

Commenter(s)	Reference in this final rule	Comment number in the docket	Commenter type
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy (''ACEEE''), and the New York State Energy Research and Development Authority.	ASAP *et al*	18	Efficiency Advocacy Organizations.
ComEd and Northwest Energy Efficiency Alliance	ComEd and NEEA	20.	Utility and Efficiency Advocacy Organization.
Pacific Gas and Electric Company, San Diego Gas & Electric, and Southern California Edison; collectively, the California Investor-Owned Utilities.	CA IOUs	19	Utilities.
CTA, American Council for an Energy-Efficient Economy, and the Natural Resources Defense Council, Inc.	CTA *et al*	21	Trade Organization and Efficiency Advocacy Organizations.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[9] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the NOPR public meeting, DOE cites the written comments throughout this final rule. Any oral comments provided during the webinar that are not substantively addressed by written comments are summarized and cited separately throughout this final rule.

II. Synopsis of the Final Rule

In this final rule, DOE incorporates by reference into 10 CFR 430.3 the updated industry standard, ANSI/CTA–2037–D, and adopts through reference in appendix H certain provisions of the industry standard that:

[6] The January 2017 pre-publication ANOPR was not subsequently published in the **Federal Register** due to the Regulatory Freeze Pending Review published on January 24, 2017. 82 FR 8346.

[7] ENERGY STAR V. 9.0, which went into effect in October 2022, was under development at the time of publication of the round robin test report. DOE supported EPA to revise the ENERGY STAR test method for TVs and conducted round robin testing to support this effort.

[8] Televisions Test Report, April 12, 2021. Available at *www.energystar.gov/sites/default/files/asset/document/ENERGY%20STAR%20TVs%20Test%20Report%20-%20April%202021.pdf.*

[9] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking for TVs. (Docket No. EERE–2016–BT–TP–0023, which is maintained at *www.regulations.gov.*) The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

• Establish definitions and symbols associated with the updates to the industry standard including those applicable to the new test equipment, TV settings, and video content (*e.g.,* high dynamic range (''HDR''), dynamic luminance, motion detection dimming (''MDD''));

• Update the specifications required for the power supply, power meter, and illuminance meter, including additional requirements to reduce the voltage and frequency fluctuations in the power supply specifically for on mode testing and requiring the calibration of the illuminance meter to a light-emitting diode (''LED'') illuminant;

• Specify the use of a camera photometer for the measurement of dynamic luminance during all on mode testing instead of the usage of a luminance meter only capable of instantaneous luminance measurements;

• Update the method for test video storage to a universal serial bus (''USB'') device rather than a Blu-ray Disc played through a media player that does not conduct any video processing;

• Specify the automatic brightness control (''ABC'') light source to be an LED lamp rather than an incandescent lamp. Additionally, specify that the ABC light source be positioned at an angle of 45 degrees (''°'') from the ABC sensor. The illuminance meter is also required to be angled at 45° pointed directly at the ABC light source;

• Specify detailed unit under test (''UUT'') installation and placement requirements, including the setup of test equipment relative to the UUT and options for placing the TV on the wall or floor, rather than a TV stand or table;

• Specify the TV to be updated to the latest firmware version and include configuration requirements for special functions such as MDD and quick start;

• Introduce on mode testing for TVs with HDR-enabled, and 4K resolution testing;

• Require all on mode and standby mode testing to be conducted with the TV connected to a wide area network (''WAN'') and additionally connected to three types of devices, over local area network (''LAN''), capable for waking the TV: a ''smart'' speaker, mobile device, and network traffic monitor;

• Include new test clips for the high dynamic range-10 (''HDR10'') format;

• Require on mode testing in three different preset picture settings: standard dynamic range (''SDR'') default, SDR brightest, and HDR10 default, rather than a single test in the default preset picture setting;

• Update the ambient light requirements for ABC-enabled testing to 140 lux, 50 lux, 17 lux, and 4 lux, each with a ± 5-percent tolerance;

• Specify a single standby mode test during which the TV is connected to a WAN and additionally connected to the three types of network devices connected via LAN. The standby test period depends on the stability of the average power consumption of the TV during the last third of the measurement period; and

• Specify the calculation of the AEC metric as a weighted average of the power consumption in on mode and standby mode, wherein on mode power consumption is the average of the on mode power in the SDR default, SDR brightest, and HDR10 default preset picture settings.

The adopted amendments are summarized in Table II.1 compared to the test procedure provision prior to the amendment, as well as the reason for the adopted change.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

DOE's test procedure prior to amendment	Amended test procedure	Attribution
Defines terms applicable to the test procedure.	References certain definitions from ANSI/CTA–2037–D.	Update to industry standard.
Requires power supply and power meter to meet specifications incorporated from IEC 62087:2011.	Updates reference to ANSI/CTA–2037–D.	Update to industry standard.
Requires a luminance meter for luminance testing of TVs.	References ANSI/CTA–2037–D, which specifies the use of a camera photometer.	Update to industry standard.
Requires illuminance meter to be accurate for ambient light measurements.	References ANSI/CTA–2037–D, which requires the illuminance meter to be calibrated to an LED illuminant.	Update to industry standard. Improve representativeness of results.
Requires the playback of specified media from a Blue-ray player via a Blu-ray Disc.	References ANSI/CTA–2037–D, which utilizes a media player and USB storage device to play the specified media.	Update to industry standard. Improve representativeness of results.
Requires the ABC light source to be an incandescent bulb for ABC testing.	References ANSI/CTA–2037–D, which uses an LED light source for ABC testing.	Update to industry standard. Improve representativeness of results.
Requires the light source to be directed at the center of the ABC sensor from 1.5 meters (''m'') away aligned directly with the center of the sensor.	References ANSI/CTA–2037–D, which directs the ABC light source at the ABC sensor at an angle of 45°.	Update to industry standard. Improve representativeness of results.
Requires the TV to be placed at least 0.5 m away from any wall surface and set up according to manufacturer's instructions.	References ANSI/CTA–2037–D, which specifies that the TV must be placed on a table, floor, or wall with a black cloth and reflective card be placed underneath the ABC sensor.	Update to industry standard.
Requires the ambient light to be measured by the illuminance meter at the ABC sensor pointing in the direction of the light source.	References ANSI/CTA–2037–D, which requires the illuminance meter to be positioned at the ABC sensor on a stand that allows it to point directly at the 45° light source.	Update to industry standard. Improve representativeness of results.
Requires TVs to be tested in the default state for all special functions, unless a forced menu is displayed requiring the configuration of special functions, in which case the most power consumption option is selected.	References ANSI/CTA–2037–D, which disables MDD, and conditionally enables ''quick start.'' When a forced menu is displayed, the most energy consumptive option is selected, with some exceptions.	Update to industry standard.
Does not conduct any testing for HDR preset picture settings.	References ANSI/CTA–2037–D, which conducts testing in SDR default, SDR brightest, and HDR10 default preset picture settings.	Update to industry standard. Improve representativeness of results.
Does not require TVs to update their system firmware prior to testing.	References ANSI/CTA–2037–D, which requires the UUT use the latest firmware update and conduct a factory reset.	Update to industry standard.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE—Continued

DOE's test procedure prior to amendment	Amended test procedure	Attribution
Requires the TV to be connected to a LAN with no other devices other than the TV.	References ANSI/CTA–2037–D, which requires the UUT be connected to a WAN and additionally be connected to a smart speaker, mobile device, and a network traffic monitor over LAN. These network conditions are required for all on mode and standby mode testing.	Update to industry standard. Improve representativeness of results.
Requires the stabilization of the TV by directing the light source with at least 300 lx into the ABC sensor.	References ANSI/CTA–2037–D, which requires the TV to be stabilized by playing 5 minutes of the IEC test clip and comparing the average power between two successive runs.	Updates to industry standard.
Specifies the use of the IEC test clip (in the highest resolution (SD or HD) supported by the TV) played via a Blu-ray Disc as specified in IEC 62087:2011.	References ANSI/CTA–2037–D, which retains the IEC test clip (in SD and HD resolution) but specifies that it must be played via a USB flash drive. Additionally, specifies a new 5-minute HDR10 test clip (in HD and UHD resolution).	Updates to industry standard.
Requires the on mode test to be conducted at ambient light levels of 100, 35, 12, and 3 lux if the TV has ABC enabled by default.	References ANSI/CTA–2037–D, which conducts ABC testing for preset picture settings with ABC enabled by default at ambient light levels of 140, 50, 17, and 4 lux.	Update to industry standard.
Measures power consumption and luminance separately.	References ANSI/CTA–2037–D, which measures power consumption as well as dynamic luminance of the TV during the same test.	Update to industry standard.
Requires a luminance test to determine the brightest preset picture setting using the luminance meter and the IEC three-bar image.	References ANSI/CTA–2037–D, which determines the SDR brightest preset picture setting by playing the 5-minute IEC test clip in each preset picture setting (with ABC disabled) and determining the brightest based on the dynamic luminance during the 5-minute test period.	Update to industry standard.
Specifies standby-passive mode, standby-active mode, low mode, and off mode tests.	References ANSI/CTA–2037–D, which conducts a single standby mode test during which the UUT is connected to WAN and additionally connected to three network devices on LAN and the average power consumption is measured for a variable duration, depending on the stability of the power consumption, over a period of 40 to 240 minutes. Additionally, eliminates the off mode test.	Update to industry standard. Improve representativeness of results.
Requires the AEC to be calculated using on mode power, standby-active low power, standby-passive power, and off mode power.	References ANSI/CTA–2037–D for AEC calculation which requires the AEC to be calculated using the on mode power as the average power of SDR default, SDR brightest, and HDR10 default preset picture settings, as well as the standby mode power consumption.	Update to industry standard. Improve representativeness of results.

DOE has determined that the amendments described in section III and adopted in this document will alter the measured efficiency of TVs and require retesting and recertification of TV basic models. The amended test procedure is substantively the same procedure established by industry, with certain modifications. Discussion of DOE's actions are addressed in detail in section III of this document.

The effective date for the amended test procedure adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedure beginning 180 days after the publication of this final rule.

III. Discussion

A. General Comments

In the March 2022 NOPR, DOE requested comment on several topics including its proposal to adopt substantive provisions of ANSI/CTA–2037–C as well as the updates being considered in ANSI/CTA–2037–D. While topic-specific comments are addressed in the relevant sections, the following paragraphs summarize the general comments received in response to the March 2022 NOPR.

ASAP *et al.* supported DOE's approach for revising the TV test procedure, stating that TV technology has rapidly evolved since the October 2013 final rule. ASAP *et al.* stated that the revisions presented in the March 2022 NOPR largely address the concerns associated with advances in TV technology. (ASAP *et al.,* No. 18 at pp. 1–2)

CTA *et al.* supported the proposed test procedure, including the proposal to incorporate by reference ANSI/CTA–2037–D. (CTA *et al.,* No. 21 at p. 3; Public Meeting Transcript, No. 16 at pp. 5–7) In the NOPR public meeting, ACEEE supported DOE's proposed test method and recommended that DOE adopt ANSI/CTA–2037–D once it is published. (Public Meeting Transcript, No. 16 at pp. 7–8)

As discussed in later sections of this document, DOE is referencing ANSI/CTA–2037–D in the amended appendix H to measure TV power consumption and screen luminance. Throughout appendix H, DOE has streamlined any references to ANSI/CTA–2037–D to the extent possible.

B. Scope of Applicability

This rulemaking applies to TVs, which are products designed to produce dynamic video, contain an internal TV tuner encased within the product housing, and that are capable of receiving dynamic visual content from wired or wireless sources including but not limited to broadcast signals, display-specific data connections, media storage devices, and/or network connections. 10 CFR 430.2. Section 1, Scope, of appendix H specifies that DOE's test procedure is applicable to TVs that (1) have a diagonal screen size of at least fifteen inches; and (2) are powered by mains power (including TVs with auxiliary batteries but not TVs with main batteries). In the March 2022 NOPR, DOE did not propose to amend the scope of the current TV test procedure. 87 FR 11892, 11896.

DOE did not receive any comments regarding the scope of the TV test procedure. DOE is maintaining the scope of the current TV test procedure in the amended appendix H.

C. Updates to Industry Standards

Appendix H references IEC 62087:2011 and IEC 62301, Edition 2.0, 2011–04, ''Household electrical appliances—Measurement of standby power'' (''IEC 62301 Ed. 2.0'') for certain requirements, while the remaining requirements are specified in appendix H itself.

The IEC and CTA are two industry standards development bodies that have published standards for testing the power consumption of TVs (*e.g.,* IEC 62087 and CTA 2037, respectively). Since publication of the October 2013 final rule, both IEC 62087 and CTA 2037 have been updated more than once to keep pace with evolving TV technologies. At the time of the March 2022 NOPR, the most recent update was the publication of ANSI/CTA–2037–C in October 2021, and ANSI/CTA–2307–D was in development. Since publication of the March 2022 NOPR, the final version of ANSI/CTA–2037–D was published in September 2022.

In the March 2022 NOPR, DOE proposed to incorporate by reference ANSI/CTA–2037–C into 10 CFR 430.3 to reference the relevant sections of this industry standard in the DOE test procedure at appendix H. 87 FR 11892, 11897. Since publication of the October 2013 final rule, TV technology has evolved significantly. ANSI/CTA–2037–C addressed many of the technologies (*e.g.,* ultra-high definition (''UHD'') or ''4K'' resolution, HDR, etc.) not previously considered in the development of the current DOE test procedure and also specified configuration and setup requirements to improve the representativeness with respect to the current DOE test procedure at appendix H.

While standard definition (''SD'') and high definition (''HD'') were the predominant TV display resolutions at the time of the October 2013 final rule, UHD resolution TVs have gained prominence and 8K resolution TVs are emerging. Additionally, HDR content is more prevalent, and a majority of TVs are ''smart'' TVs (*i.e.,* they can be connected to a network connection).

In the March 2022 NOPR, DOE proposed to adopt by reference the substantive provisions of ANSI/CTA–2037–C, with some modifications to specify additional detail and test conditions in order to improve the representativeness of the test results. *Id.* at 87 FR 11897. In the March 2022 NOPR, DOE initially determined that the measurement of screen luminance and power consumption as specified in ANSI/CTA 2037–C would provide a measured result that is more representative of the average period of TV use compared to the current DOE test procedure. *Id.*

In the March 2022 NOPR, DOE also stated that it was aware that the CTA working group was reviewing ANSI/CTA–2037–C to determine if any revisions were necessary. DOE understood that should the working group make any changes to ANSI/CTA–2037–C, CTA would publish a revised standard, potentially numbered as ANSI/CTA–2037–D. *Id.* DOE participated in the working group meetings to review and revise ANSI/CTA–2037–C. While the March 2022 NOPR proposed to reference the requirements from ANSI/CTA–2037–C, it also discussed the revisions being considered under ANSI/CTA–2037–D. In the March 2022 NOPR, DOE requested comment on these revisions as well as any additional revisions under consideration in ANSI/CTA–2037–D that were not discussed in the March 2022 NOPR. *Id.* In the March 2022 NOPR, DOE stated that, should ANSI/CTA–2037–D publish prior to the publication of any DOE TV test procedure final rule, DOE would consider stakeholder feedback and consider incorporating by reference ANSI/CTA–2037–D, provided the updates in ANSI/CTA–2037–D are consistent with the provisions DOE proposed in the March 2022 NOPR or the updates are related to topics that DOE discussed and solicited comments on in the March 2022 NOPR. *Id.*

In the March 2022 NOPR, DOE requested comment on its proposal to adopt the substantive provisions of ANSI/CTA–2037–C in appendix H with certain modifications. *Id.* In response, DOE received the following comments.

CTA *et al.* recommended that DOE incorporate by reference ANSI/CTA–2037–D for the final rule, rather than ANSI/CTA–2037–C, stating that ANSI/CTA–2037–D is more accurate and representative. (CTA *et al.,* No. 21, at p. 5)

ComEd and NEEA supported the adoption of the finalized version of ANSI/CTA–2037–D. ComEd and NEEA also stated that ANSI/CTA–2037–D is an improvement over the current Federal test method. (ComEd and NEEA, No. 20 at p. 2) ComEd and NEEA stated that adopting ANSI/CTA–2037–D would enable harmonization of test methods globally. (ComEd and NEEA, No. 20 at p. 2)

DOE has reviewed ANSI/CTA–2037–D and determined it to be materially the same as the test procedure DOE proposed in the March 2022 NOPR (*i.e.,* ANSI/CTA–2037–C, including the additional modifications DOE proposed in the March 2022 NOPR), albeit with some minor revisions that further improve reproducibility and representativeness. Accordingly, in this final rule, DOE is incorporating by reference ANSI/CTA–2037–D in 10 CFR 430.3 for reference in the amended appendix H. DOE has determined that ANSI/CTA–2037–D produces measures of energy consumption that are representative of current TV use and would not be unduly burdensome to conduct.

The subsequent sections of this document discuss DOE's final amendments to appendix H to incorporate by reference ANSI/CTA–2037–D as the Federal test method.

D. Definitions

In the March 2022 NOPR, DOE noted that the definitions currently specified in appendix H are either provided directly or through adoption of certain definitions provided in IEC 62087:2011. Many of these terms are also defined in ANSI/CTA–2037–C. 87 FR 11892, 11898. Additionally, certain terms are defined in ANSI/CTA–2037–C but are not currently defined in appendix H. *Id.* at 87 FR 11897. In the March 2022 NOPR, DOE identified the terms that are currently used in appendix H and ANSI/CTA–2037–C, the similarities and differences in their respective definitions, and whether DOE proposed to adopt each definition through reference to ANSI/CTA–2037–C. *Id.* at 87 FR 11897–11899.

DOE additionally noted that while some of the defined terms in ANSI/CTA–2037–C have minor differences compared to the current definitions in appendix H, DOE had initially determined that these differences were not substantive and would not change the meaning of the defined terms or impact testing according to the proposed test procedure compared to the current test procedure. *Id.* at 87 FR 11899. Accordingly, to harmonize with the current industry standard, DOE proposed in the March 2022 NOPR to reference section 5.1 of ANSI/CTA–2037–C for the definitions of the terms used in the TV test procedure. *Id.* DOE also proposed to reference section 5.2 of ANSI/CTA–2037–C to include the relevant abbreviations that are used in the TV test procedure. *Id.* Further, for the terms that are currently defined in appendix H, but a definition does not exist in ANSI/CTA–2037–C (*e.g.,*

additional functions, auxiliary battery, retail configuration, special functions, standby-active, high mode, and standby-active, low mode), DOE proposed to remove these terms from appendix H because they are not referenced in ANSI/CTA–2037–C nor are they used anywhere in the proposed test procedure. *Id.*

DOE also noted that the CTA working group was considering revising definitions for power modes (*i.e.,* on mode, partial on mode, etc.) in ANSI/CTA–2037–D. *Id.* In particular, the CTA working group was considering updating all references to standby mode as partial on mode. In the March 2022 NOPR, DOE noted that even if the CTA working group considered using the term ''partial on mode,'' DOE would refer to this mode as ''standby mode.'' *Id.*

In the March 2022 NOPR, DOE requested comment on defining terms through reference to ANSI/CTA–2037–C and also whether DOE should consider the revisions to the power mode definitions being considered at the time for ANSI/CTA–2037–D. *Id.*

CTA *et al.* stated that the definitions proposed in appendix H excluded some definitions that are included in ANSI/CTA–2037–D, including ''television set'' and ''standby,'' which are already defined in 10 CFR 430.2, and recommended that DOE adopt these definitions from ANSI/CTA–2037–D. (CTA *et al.,* No. 21 at p. 11)

As noted in the March 2022 NOPR, DOE did not reference definitions for ''HDMI,'' ''television set,'' and ''standby mode'' from ANSI/CTA–2037–C since these terms are already defined in 10 CFR 430.2. In this final rule, DOE is maintaining its exclusion of referencing these definitions in appendix H. Additionally, DOE had not proposed to include definitions for ''stand,'' ''International System of Units,'' ''filmmaker mode,'' and ''perceptual quantization video.'' However, DOE is including these definitions by reference to ANSI/CTA–2037–D because these definitions are required to understand and implement the test procedure.

Regarding the revised definitions for power modes that were under consideration at the time of publication of the March 2022 NOPR, ANSI/CTA–2037–D does not include definitions for power mode, off mode, standby-passive mode, and standby-active mode. Additionally, partial on mode is now referred to as standby mode in ANSI/CTA–2037–D. However, as mentioned previously, DOE already defines standby mode in 10 CFR 430.2 and is not referencing ANSI/CTA–2037–D for the definition of standby mode in this final rule.

Table III.1 identifies the terms that are specified in appendix H and ANSI/CTA–2037–D, the similarities and differences in their respective definitions, and whether DOE is adopting each definition through reference to ANSI/CTA–2037–D.

TABLE III.1—TERMS CURRENTLY USED IN APPENDIX H AND ANSI/CTA–2037–D AND THE SIMILARITIES OR DIFFERENCES BETWEEN DEFINITIONS

Terms currently in appendix H	Terms currently in ANSI/CTA–2037–D	Similarities/differences between definitions in ANSI/CTA–2037–D and existing appendix H	Adopt by reference to ANSI/CTA–2037–D for appendix H?
Brightest selectable preset picture setting.	Brightest selectable preset picture setting.	Appendix H refers to the brightest picture setting within either the home or retail configuration, whereas ANSI/CTA–2037–D refers to the brightest preset picture setting only within the home configuration. ANSI/CTA–2037–D additionally specifies that this is a user-selectable preset picture setting.	Yes.
Default picture setting	Default picture setting	ANSI/CTA–2037–D specifies that this picture setting is determined using only the home configuration. Appendix H indicates the default picture setting may be decided after a forced menu, which ANSI/CTA–2037–D does not mention.	Yes.
Forced menu	Forced menu	Substantively the same definitions	Yes.
Home configuration	Home configuration	Substantively the same definitions	Yes.
Illuminance	Illuminance	Substantively the same definitions	Yes.
Luminance	Luminance	Substantively the same definitions	Yes.
Main battery	Main battery	Substantively the same definitions	Yes.
Off mode	Off mode	ANSI/CTA–2037–D provides a note that describes how some power may still be consumed when the UUT is in off mode. Appendix H does not include such a note.	Yes.
On mode	On mode	Similar definitions	Yes.
Preset picture setting	Preset picture setting	ANSI/CTA–2037–D provides a simplified definition for preset picture setting compared to appendix H.	Yes.
Standby-passive mode	Standby mode	ANSI/CTA–2037–D defines only the broader term standby mode. Standby mode is already defined in 10 CFR 430.2; therefore, it does not need to be defined in appendix H.	No.
Additional functions		No.t listed in the definitions section of ANSI/CTA–2037–D	No.
Auxiliary Battery		No.t listed in the definitions section of ANSI/CTA–2037–D	No.
Retail configuration	Retail configuration	Similar definitions	Yes.
Special functions		No.t listed in the definitions section of ANSI/CTA–2037–D. The term special functions is not used anywhere in ANSI/CTA–2037–D.	No.
Standby-active, high mode		No.t listed in the definition section of ANSI/CTA–2037–D. The term standby-active, high mode is not used anywhere in ANSI/CTA–2037–D.	No.
Standby-active, low mode		No.t listed in the definition section of ANSI/CTA–2037–D. The term standby-active, low mode is not used anywhere in ANSI/CTA–2037–D.	No.
(not defined)	AEC	This term defines the energy metric that is the output of the test procedure.	Yes.
(not defined)	Automatic brightness control	This term is used throughout ANSI/CTA–2037–D	Yes.
(not defined)	Dynamic Luminance	This term defines the TV screen's luminance as measured during the playback of dynamic video content.	Yes.
(not defined)	Energy-Efficient-Ethernet	This term is used in the Network connection hierarchy in both ANSI/CTA–2037–D and appendix H.	Yes.
(not defined)	Filmmaker Mode	This term defines a preset picture setting that has a specific configuration.	Yes.
(not defined)	Gloss Unit (GU)	This term defines a unit used to measure the reflectance of a surface	Yes.

TABLE III.1—TERMS CURRENTLY USED IN APPENDIX H AND ANSI/CTA–2037–D AND THE SIMILARITIES OR DIFFERENCES BETWEEN DEFINITIONS—Continued

Terms currently in appendix H	Terms currently in ANSI/CTA–2037–D	Similarities/differences between definitions in ANSI/CTA–2037–D and existing appendix H	Adopt by reference to ANSI/CTA–2037–D for appendix H?
(not defined)	HDR10	This term defines a specific video display format that is used to test the UUTs power consumption.	Yes.
(not defined)	High-definition multimedia interface (''HDMI®'').	This term defines a video input terminal for TVs. It is defined at 10 CFR 430.2; therefore, it does not need to be defined in appendix H.	No.
(not defined)	High Dynamic Range (''HDR'')	This term more broadly defines the video format category that HDR10 belongs to.	Yes.
(not defined)	Hybrid Log Gamma (''HLG'')	This term defines a type of HDR video and is used when describing the test signals used during testing.	Yes.
(not defined)	International System of Units	This is defined as ''The modern form of the metric system''	Yes.
(not defined)	Motion-Based Dynamic Dimming (''MDD'').	This term defines a television feature that adjusts luminance in response to motion being displayed and is disabled during TV testing.	Yes.
(not defined)	Neutral density (''ND'') filter	This term is used to define the filter that is used to accomplish the 3 lux luminance requirement for on mode testing.	Yes.
(not defined)	Partial on mode	This term defines the standby sub-modes	Yes.
(not defined)	Perceptual Quantization Video	This term defines a specific video utilized by HDR	Yes.
(not defined)	Quick start	This term defines quick start functionality, which is a special function that impacts the time it takes for a TV to transition to on mode from partial on mode.	Yes.
(not defined)	Snoot	This term defines an object used to prevent the ABC lamp light from reflecting off the UUT and interfering with the dynamic luminance data collection. It is not a required tool but may be needed for testing in specific instances.	Yes.
(not defined)	Software	This term defines code that runs on a UUT and can be updated	Yes.
(not defined)	Stand	This term defines the device used to hold the UUT upright	Yes.
(not defined)	Television set	This term is defined at 10 CFR 430.2; therefore, it does not need to be defined in appendix H.	No.
(not defined)	Wake-By-Remote-Control-App	This term defines the ability to wake a UUT using a network-connected device and is used during standby mode testing.	Yes.
(not defined)	Wake-By-Smart-Speaker	This term defines the ability to wake a UUT using a voice command via smart speaker and is used during standby mode testing.	Yes.
(not defined)	Wake-On-Cast	This term defines the ability to wake a UUT by streaming a video from a mobile device to the UUT and is used during standby mode testing.	Yes.

In summary, in this final rule, DOE is referencing section 5 of ANSI/CTA–2037–D for the definitions and abbreviations required for the TV test procedure, except for those terms which are already defined in 10 CFR 430.2.

E. Test Equipment

1. Power Supply

Sections 3.1 and 3.2 of appendix H reference section 4.3.1 of IEC 62301 Ed. 2.0 for the voltage and frequency and power supply requirements for testing TVs. The requirements specify that the voltage and frequency for each region within North America must have a voltage of 115 volts (''V'') and frequency of 60 hertz (''Hz''). IEC 62301 Ed. 2.0 additionally includes requirements for other regions around the world.

In the March 2022 NOPR, DOE noted that section 7.1.1 of ANSI/CTA–2037–C specifies only the North American-specific requirements; however, these requirements are specified under the standby mode power supply requirements rather than on mode. 87 FR 11892, 11900. As discussed in the March 2022 NOPR, the CTA working group was considering moving these requirements under the power supply requirements for on mode in ANSI/CTA–2037–D. *Id.* DOE additionally noted that it expects that the same power supply is used to test on mode and standby mode power consumption and the specific location of where the requirement is specified would not alter the power supply that is used to test a TV. *Id.*

In the March 2022 NOPR, DOE additionally stated that given DOE's test procedure is applicable to only those TVs that are a type which, to any significant extent, are distributed in commerce in the United States for personal use or consumption by individuals (42 U.S.C. 6291(1); 42 U.S.C. 6292(a)(12); 42 U.S.C.), the North American-specific requirements specified in ANSI/CTA–2037–C are sufficient for the DOE test procedure. In the March 2022 NOPR, DOE proposed to reference section 7.1.1 of ANSI/CTA–2037–C for the alternating current (''AC'') power supply specification. *Id.*

Section 3.2 of appendix H additionally specifies that the total harmonic distortion of the supply voltage must not exceed 5 percent, inclusive to the 13th order harmonic, when the unit is under test. In the March 2022 NOPR, DOE stated that section 7.1.1 of ANSI/CTA–2037–C specifies that the total harmonic distortion must not exceed 2 percent up to and including the 13th harmonic and noted that this specification is more stringent than appendix H. Based on its internal testing and general agreement from manufacturers during the ANSI/CTA–2037–C development working group meetings, DOE had initially determined that most power supplies are capable of meeting this requirement. *Id.* Accordingly, in the March 2022 NOPR, DOE proposed to reference the power supply requirements from ANSI/CTA–2037–C. *Id.*

In the March 2022 NOPR, DOE also noted that the introductory text in Section 9 of ANSI/CTA–2037–C states that power shall be provided to the ABC lamp, camera photometer, and UUT from the specified AC power source. *Id.* However, DOE stated that using the same AC power source to power the UUT as well as the ABC lamp and camera photometer could unintentionally impact the power consumption measurement of the UUT due to ''noise'' from the ABC light source and fluctuations in power draw caused by the camera photometer and ABC light source. DOE also noted that the CTA working group was considering revising this requirement for ANSI/CTA–2037–D to specify that only the

UUT be powered using the power source specified in section 7.1.1 of the CTA–2037 standard, that the camera photometer and ABC lamp must not be powered by the same controlled power source, and that the camera photometer and ABC lamp may be powered by mains power. *Id.* Accordingly, in the March 2022 NOPR, DOE proposed to specify that TVs must be tested with only the UUT powered by the specified AC power source and the camera photometer and ABC lamp may be powered using standard mains electricity. *Id.*

In the March 2022 NOPR, DOE requested comment on referencing section 7.1.1 of ANSI/CTA–2037–C for the power supply requirements. DOE also requested comment on referencing the updated requirements that were under consideration for ANSI/CTA–2037–D, which would move the voltage and frequency requirements for the power supply from the standby mode to the on mode section within section 7.1.1 of the CTA–2037 standard. *Id.*

DOE also requested comment on its proposal to connect only the UUT to the specified AC power source during testing and to specify that the camera photometer and ABC lamp may be powered via mains power. DOE also requested feedback on whether the camera photometer and ABC lamp should be connected to additional specified AC power sources and the burden versus benefit of such an approach. *Id.* In response, DOE received the following comments.

CTA *et al.* recommended DOE adopt ANSI/CTA–2037–D, which includes voltage and frequency requirements specified for both the on mode power supply and the standby mode power supply. CTA *et al.* also stated that ANSI/CTA–2037–D requires the TV to be powered by the controlled power source and the camera photometer and the ABC lamp may be powered by mains power. (CTA *et al.,* No. 21 at p. 11)

As noted by CTA *et al.,* the CTA working group revised the power supply requirements in ANSI/CTA–2037–D to specify that only the UUT is powered using the power source specified in section 7.1.1 of ANSI/CTA–2037–D. Additionally, the published version of ANSI/CTA–2037–D specifies that the power supply supplying mains power to the UUT shall be configured to deliver sufficient power at 115 V and 60 Hz to power the UUT. These requirements are applicable to both on mode and standby mode tests.

The power supply requirements specified in section 7.1.1 of ANSI/CTA–2037–D are the same as those specified in the March 2022 NOPR. For the reasons discussed in the preceding paragraphs and the March 2022 NOPR, DOE is amending the power supply requirements in appendix H to reference section 7.1.1 of ANSI/CTA–2037–D.

2. Power Meter

In the March 2022 NOPR, DOE noted that the power meter requirements specified in section 3.3 of appendix H are the same as the requirements specified in section 7.1.2 of ANSI/CTA–2037–C, which includes the specification of a wattmeter as well as the allowable uncertainty in measurement. 87 FR 11892, 11900. DOE stated that ANSI/CTA–2037–C additionally specifies calibration requirements for the power meter, the current crest factor, and the lower bound on the current range. Accordingly, in the March 2022 NOPR, DOE proposed to reference section 7.1.2 of ANSI/CTA–2037–C for the power meter requirements because it includes the requirements currently specified in appendix H, and the additional requirements specified would ensure that the power meter remains within bounds and calibrated to ensure the results obtained are valid and representative. *Id.*

DOE requested comment on its proposal to reference the power meter requirements from ANSI/CTA–2037–C. Specifically, DOE requested feedback on the potential burden, if any, to meet the more stringent requirements specified in ANSI/CTA–2037–C. *Id.*

CTA *et al.* commented that the power meter requirements in section 7.1.2 of ANSI/CTA–2037–D are appropriate, and that DOE should adopt them. (CTA *et al.,* No. 21 at p. 11)

The power meter requirements in ANSI/CTA–2037–D include a sampling rate of the power meter. Specifically, ANSI/CTA–2037–D requires the power meter to have a sampling rate of at least 1 kilo hertz (''kHz''), and optionally have a sampling rate of at least 10 kHz. DOE's experience with conducting TV testing, as well as testing of other consumer products, indicates that this additional sampling requirement should have no impact on the burden of sourcing a power meter, as the equipment previously used should continue to meet the power meter requirements in ANSI/CTA–2037–D. Accordingly, for the reasons discussed in the preceding paragraph and in the March 2022 NOPR, DOE amends the power meter requirements in appendix H to reference section 7.1.2 of ANSI/CTA–2037–D.

3. Luminance Meter

Section 3.4 of appendix H specifies the accuracy requirements for a luminance meter, which is used to measure screen luminance in the default and brightest preset picture settings as well as the default retail picture setting. The current luminance measurement is performed using the static, 3-bar black-and-white image from IEC 62087:2011. This static black-and-white image does not result in representative luminance measurements because TVs are rarely used to display static images (*i.e.,* the content played on TVs is almost always dynamic, or in motion) and pure white color is rarely displayed on a TV screen (*i.e.,* most scenes displayed on a TV screen are a mix of various colors); therefore, measuring luminance using the black-and-white image is not representative of typical consumer use.

In the March 2022 NOPR, DOE proposed to measure dynamic screen luminance (*i.e.,* luminance of the screen when playing dynamic video content such as the IEC test clip) as specified in ANSI/CTA–2037–C to ensure that a TV's screen luminance is measured at the same time as its power consumption, which would provide consumers a direct relationship for TV brightness (*i.e.,* luminance) as a function of its power consumption. 87 FR 11892, 11900. In the March 2022 NOPR, DOE initially determined that a dynamic screen luminance measurement would provide results that are more representative of the real world in comparison to the currently specified static black-and-white image. *Id.*

DOE additionally noted in the March 2022 NOPR that a luminance meter cannot measure dynamic screen luminance; instead, ANSI/CTA–2037–C specifies use of a camera photometer to measure the dynamic luminance of the TV screen during each on mode test. *Id.* DOE explained that the camera photometer captures the light from the TV screen while displaying video content, and the average of the light entering the camera photometer's sensor in each frame is translated into the average luminance of the TV screen. In conjunction with the proposal to measure dynamic screen luminance, in the March 2022 NOPR, DOE proposed to remove the existing luminance meter requirements specified in section 3.4 of appendix H and instead reference section 7.1.4 of ANSI/CTA–2037–C, which specifies the requirements for the camera photometer's uncertainty, resolution, sample area, and data rate. *Id.* at 87 FR 11900–11901.

DOE additionally noted in the March 2022 NOPR that the CTA working group

was considering specifying an additional requirement in ANSI/CTA–2037–D that the camera used for testing should be calibrated against a traceable light source that more closely matches the spectral power density of LED/OLED [10] TVs than does standard illuminant A (*e.g.,* D65, LED–RGB1). *Id.* at 87 FR 11901. This requirement has since been finalized in ANSI/CTA–2037–D.

DOE requested comment on its proposal to measure dynamic screen luminance and to specify use of a camera photometer to measure dynamic screen luminance. In particular, DOE requested comment on any concerns with the burden associated with using a camera photometer as specified by ANSI/CTA–2037–C to measure screen luminance. *Id.*

DOE also requested comment on the additional calibration requirement that was under consideration for ANSI/CTA–2037–D and whether DOE should include this requirement for its TV test procedure. *Id.*

The CA IOUs recommended that DOE establish criteria for obtaining reproducible and repeatable results using an off-the-shelf camera photometer and manually capturing measurements as opposed to using a customized camera photometer paired with a proprietary software tool. The CA IOUs also recommended that DOE develop specific guidelines regarding the data capture process to ensure both off-the-shelf and NEEA-supplied camera photometers produce results that meet DOE's test tolerance requirements. (CA IOUs, No. 19 at pp. 5–6)

ComEd and NEEA supported the camera photometer requirements in ANSI/CTA–2037–D and stated that the requirements would ensure accurate results while maximizing design flexibility to encourage the development of camera systems by multiple vendors. (ComEd and NEEA, No. 20 at p. 3)

CTA *et al.* commented that DOE should reference the requirement that dynamic screen luminance be measured as specified in section 11.1 of ANSI/CTA–2037–D using a camera photometer as specified in section 7.1.4 of ANSI/CTA–2037–D. (CTA *et al.,* No. 21 at pp. 11–12)

DOE has reviewed the specifications for the camera photometer in ANSI/CTA–2037–D and determined that the requirements provide sufficient level of detail to ensure repeatable and reproducible results, while still allowing for flexibility in sourcing a camera photometer that meets the defined requirements.

[10] Organic light emitting diode.

Additionally, in response to the CA IOUs, DOE notes that ANSI/CTA–2037–D updates the minimum resolution requirement to be a minimum pixel requirement, which allows more variety in the camera photometers that are capable of meeting the specified camera photometer requirements. ANSI/CTA–2037–D additionally includes a clarification that the camera photometer must be capable of capturing the entire UUT screen, which was implicitly understood to be the requirement in ANSI/CTA–2037–C but was not specifically stated.

For the reasons discussed in the preceding paragraphs and in the March 2022 NOPR, DOE amends the camera photometer requirements in appendix H to reference section 7.1.4 of ANSI/CTA–2037–D.

4. Illuminance Meter

Section 3.5 of appendix H specifies accuracy requirements for the illuminance meter, which is used to measure the room illuminance levels at the ABC sensor for tests that are conducted with ABC functionality enabled. In the March 2022 NOPR, DOE stated that section 7.1.3 of ANSI/CTA–2037–C specifies the same accuracy requirements for an illuminance meter and additionally specifies calibration requirements for the illuminance meter. Additionally, DOE noted that ANSI/CTA–2037–C specifies certain requirements if the illuminance meter is neither a spectroradiometer nor calibrated against an illuminant replicating the spectral emissions of LEDs but that the CTA working group was re-evaluating these requirements to ease test burden by clarifying that only specific requirements of the calibration standard must be met. 87 FR 11892, 11901. As stated in the March 2022 NOPR, these requirements were for the illuminance meter accuracy and relative spectral response. The CTA working group was also considering an additional requirement which would require the center of the cosine receptor to be ≤ 40mm in depth. *Id.*

In the March 2022 NOPR, DOE initially determined that the illuminance meter requirements specified in section 7.1.3 of ANSI/CTA–2037–C were appropriate because DOE proposed that an LED lamp be used for ABC testing rather than an incandescent lamp as specified currently in appendix H. Accordingly, in the March 2022 NOPR, DOE proposed to reference section 7.1.3 of ANSI/CTA–2037–C for the illuminance meter requirements. *Id.*

In the March 2022 NOPR, DOE requested comment on its proposal to reference the illuminance meter requirements, including the calibration requirements, from ANSI/CTA–2037–C. DOE also requested comment on the updated illuminance meter requirements under consideration for ANSI/CTA–2037–D, whether DOE should consider referencing the updated requirements when finalized, and the reason(s) for doing so. *Id.*

CTA *et al.* commented that DOE should reference the requirements for the illuminance photometer described in section 7.1.3 of ANSI/CTA–2037–D. CTA *et al.* additionally commented that DOE should adopt the updated requirements for the illuminance photometer described in section 7.1.3 of ANSI/CTA–2037–D, which include a maximum depth for the light reception dome (*i.e.,* integrating sphere) that would help ensure that the sensor will not be too far away from the TV's ABC sensor when illuminance measurements are taken. (CTA *et al.,* No. 21 at p. 12)

DOE notes that the finalized ANSI/CTA–2037–D does not include the cosine receptor depth requirement that was under consideration by the CTA working group. Additionally, it removes the requirements that were specified for illuminance meters that are neither a spectroradiometer nor calibrated against an illuminant replicating the spectral emission of LEDs.

DOE has determined that these changes to the illuminance meter requirements from ANSI/CTA–2037–C to CTA–2037–D improve clarity and repeatability of test results, while not increasing test burden. In this final rule, DOE amends the illuminance meter requirements in appendix H to reference section 7.1.3 of CTA–2037–D.

5. Video Input Device

Section 3.6 of appendix H contains video input device requirements that specify the use of a Blu-ray player and requires that the video input device manufacturer be different from the manufacturer of the UUT. In the March 2022 NOPR, DOE noted that ANSI/CTA–2037–C specifies the use of a USB flash drive [11] to play the IEC test clips. Specifically, sections 7.1.5 through 7.1.7 of ANSI/CTA–2037–C specify the use of a USB 3.0 flash drive that stores the test clips for playback and a separate media player that contains a USB port to send media to the UUT via an HDMI cable. ANSI/CTA–2037–C specifies that the media player must have a video setting that does not perform any video processing (*e.g.,* noise reduction, upscaling, or adjustment of color, hue, contrast, or brightness). ANSI/CTA–

[11] ANSI/CTA–2037–C refers to a USB flash drive as a ''USB thumb drive'' and a ''USB stick.''

2037–C does not include the requirement that the manufacturers for the media player and UUT must be different. 87 FR 87892, 87901.

ANSI/CTA–2037–C additionally requires that all media must be stored and played from a FAT32 or ExFAT [12]-formatted USB flash drive via the USB port in the media player. ANSI/CTA–2037–C requires that the test clips stored on the USB flash drive are played via a USB port on a media player instead of the designated USB port on a UUT. *Id.* In the March 2022 NOPR, DOE proposed to reference the video media player requirements from ANSI/CTA–2037–C. *Id.*

In the March 2022 NOPR, DOE requested comment on its proposal to reference the media player and USB flash drive requirements from ANSI/CTA–2037–C. *Id.* DOE also requested comment on whether DOE should maintain the current requirement that the media player and UUT must not be from the same manufacturer. *Id.*

CTA *et al.* recommended DOE adopt ANSI/CTA–2037–D and stated that there is no need to require that the media player and TV not be from the same manufacturer, as the requirements in ANSI/CTA–2037–D stipulate that the media player have a video setting that performs no video processing. CTA *et al.* stated that because of these requirements, the characteristics of the video played during testing will be the same regardless of who manufactured the video player. (CTA *et al.,* No. 21 at p. 12)

DOE agrees that ANSI/CTA–2037–D addresses the concern about the media player and TV not being from the same manufacturer by requiring that the media player have a video setting that performs no video processing. By removing any video processing, there is no concern about media players interacting differently with TVs from the same manufacturer. ANSI/CTA–2037–D clarifies that the HDMI cable must be a Certified Ultra High Speed HDMI Cable instead of just HDMI 2.0 or greater. As most HDMI 2.0 cables are ultra-high speed, this clarification explicitly specifies a requirement that was previously implicit. The clarification ensures that the HDMI cable is capable of transferring signal at the desired rate.

For the reasons discussed in the preceding paragraph and in the March 2022 NOPR, DOE is finalizing its proposal from the March 2022 NOPR to remove the requirement that the UUT and media player be from different manufacturers and instead specifies that the media player and USB flash drive requirements in appendix H be as specified in sections 7.1.5 through 7.1.7 of ANSI/CTA–2037–D.

6. Light Source for ABC Testing

For conducting tests for TVs with ABC enabled by default, appendix H requires the use of a lamp to alter the amount of light that is directed to the ABC sensor of the TV. Section 7.1.3.3 of appendix H specifies that the ABC lamp must be a standard spectrum, halogen incandescent aluminized reflector lamp and also includes specifications for the lamp diameter, beam angle, and center beam candlepower. Such a light source is used in conjunction with a variable transformer to control the brightness of the lamp, which in turn controls the illuminance at the ABC sensor. This setup measures TV power consumption at different room ambient conditions, reflecting TV usage that is sometimes in a bright room (*e.g.,* during the day) and other times in a dark room (*e.g.,* at night or with room lights turned off).

In the March 2022 NOPR, DOE stated that section 7.1.9 of ANSI/CTA–2037–C specifies the ABC light source requirements, namely that an LED reflector lamp with dimmer switch must be used to provide the specified room illuminance levels. Section 7.1.9 of ANSI/CTA–2037–C additionally specifies the diameter, rated beam angle, correlated color temperature, and color rendering index of the lamp. Further, it specifies a 1-percent allowable tolerance in illuminance measurement and the use of a neutral density (''ND'') filter to reach illuminance levels less than 10 lux, which are consistent with the current requirements in appendix H. 87 FR 11892, 11901–11902. In the March 2022 NOPR, DOE proposed to reference section 7.1.9 of ANSI/CTA–2037–C for the ABC light source requirements. *Id.* at 87 FR 11902.

In the March 2022 NOPR, DOE requested comment on its proposal to reference section 7.1.9 of ANSI/CTA–2037–C for the light source required for conducting tests with ABC enabled. *Id.*

CTA *et al.* commented that DOE should adopt the requirements in section 7.1.9 of ANSI/CTA–2037–D that describe the ABC light source. (CTA *et al.,* No. 21 at p. 13) ANSI/CTA–2037–D specifies that the selected lamps must be compatible only with leading-edge dimmers (*i.e.,* the lamp must not be a retrofit) and additionally specifies that the lamp shall be stabilized for 15 minutes immediately prior to conducting measurements. While testing was already conducted according to these requirements under ANSI/CTA–2037–C, these clarifications were included in ANSI/CTA–2037–D to improve the clarity and repeatability of the ABC lamp configuration.

From its experience conducting TVs testing, DOE has determined that the lamp specifications in ANSI/CTA–2037–D are consistent with current requirements in appendix H but are updated to use a more representative light source (*i.e.,* LEDs). DOE has conducted testing using such an LED lamp and did not find any substantive differences in the test conduct compared to using an incandescent lamp. DOE also agrees with the new requirements specified in ANSI/CTA–2037–D regarding a stabilization period and requiring that the lamp must not be retrofit because these requirements improve the repeatability of the test method. From its testing experience, DOE has determined that the light source specifications in ANSI/CTA–2037–D are an improvement to appendix H in representativeness and do not significantly increase burden.

For the reasons discussed in the preceding paragraph and in the March 2022 NOPR, DOE amends the light source for ABC testing requirements in appendix H to reference section 7.1.9 of ANSI/CTA–2037–D.

F. Test Room Setup

1. Room Ambient Conditions

Sections 4.1 and 4.2 of appendix H specify the ambient temperature and relative humidity conditions of the test room, respectively. The temperature conditions reference section 11.4.1 of IEC 62087:2011, which specifies a requirement of 23 degrees Celsius (''°C'') ± 5 °C. Section 4.2 of appendix H specifies that the ambient relative humidity must be maintained between 10 percent and 80 percent.

In the March 2022 NOPR, DOE stated that section 7.3 of ANSI/CTA–2037–C specifies the same ambient test room and relative humidity requirements as those currently specified in appendix H. 87 FR 11892, 11902. In the March 2022 NOPR, DOE proposed to reference these requirements from ANSI/CTA–2037–C. *Id.*

DOE requested comment on whether the specified ambient temperature and humidity requirements are adequate or whether the temperature and relative humidity specifications should include additional specification regarding the precision and/or accuracy of the instruments used to verify that the required ambient conditions are maintained. *Id.*

[12] FAT32 and ExFAT refer to file allocation formatting systems for storage devices such as USB flash drives. FAT32 means 32-bit version of FAT file allocation table system. exFAT means extensible file allocation table.

CTA *et al.* stated that the environmental conditions specified in section 7.3 of ANSI/CTA–2037–D are adequate and it is not necessary to include additional specifications regarding the precision or accuracy of the instruments used to verify the ambient conditions. CTA *et al.* stated that the additional specifications might make it considerably more difficult or expensive to obtain the measurement instruments without improving test results to any significant degree. (CTA *et al.,* No. 21 at p. 13)

ANSI/CTA–2037–D specifies the ambient relative humidity to be 45 percent ± 35 percent (non-condensing). This requirement is effectively the same as the requirement specified in ANSI/CTA–2037–C, which specifies the ambient relative humidity to be between 10 and 80 percent. ANSI/CTA–2037–D also specifies the ambient temperature to be 23°C ± 5°C, which is the same as the requirement specified in ANSI/CTA–2037–C and the current appendix H.

Given the ambient relative humidity and ambient temperature requirements specified in ANSI/CTA–2037–D are effectively the same as the requirements specified in the current appendix H, DOE amends the room ambient conditions in appendix H to reference section 7.3 of ANSI/CTA–2037–D.

2. Room Illuminance Level

Section 4.3 of appendix H specifies that all luminance and on mode testing must be performed in a room with an illuminance level less than or equal to 1.0 lux measured at the UUT's ABC sensor while the TV is in off mode or standby mode. In the March 2022 NOPR, DOE stated that section 7.4 of ANSI/CTA–2037–C specifies the same requirement but includes an additional requirement regarding the positioning of the illuminance meter used for this measurement (*i.e.,* the illuminance meter must be positioned at the ABC sensor in the same manner as it would be positioned during luminance and power measurement tests). 87 FR 11892, 11902. As this requirement is generally the same between appendix H and ANSI/CTA–2037–C, but with additional specificity regarding meter placement, which would further ensure repeatability and reproducibility of the test results, in the March 2022 NOPR, DOE proposed to reference section 7.4 of ANSI/CTA–2037–C for the room illuminance level. *Id.*

In the March 2022 NOPR, DOE requested comment on its proposal to reference section 7.4 of ANSI/CTA–2037–C for the room illuminance level and requirement to position the illuminance meter in the same manner as it would be positioned during luminance and power measurement tests. *Id.*

CTA *et al.* commented that DOE should adopt the requirements in section 7.4 of ANSI/CTA–2037–D, which specify the room illuminance level and the position of the illuminance meter when the room illuminance level is measured. (CTA *et al.,* No. 21 at p. 13)

The published ANSI/CTA–2037–D specifies the same requirements for room illuminance level as those specified in ANSI/CTA–2037–C. Because these requirements further ensure repeatability and reproducibility of the test results, DOE amends the room illuminance level in appendix H to reference section 7.4 of ANSI/CTA–2037–D.

3. UUT Installation and Placement

Section 4.4 of appendix H specifies that the UUT must be installed in accordance with manufacturer's instructions. Additionally, section 4.5 of appendix H includes requirements for TV placement, which specifies that TVs tested with ABC enabled must be placed at least 0.5 meters away from any wall surface and that all four corners of the face of the TV must be placed equidistant from a vertical reference plane.

In the March 2022 NOPR, DOE noted that many manufacturers provide instructions for multiple installation configurations for the TV, such as stand mounted and wall mounted, and do not specify a single method as a recommended or preferred approach. 87 FR 11892, 11902.

In the March 2022 NOPR, DOE stated that section 8 of ANSI/CTA–2037–C specifies the installation and setup requirements for the UUT as well as all other test equipment relative to the placement of the TV. Specifically, sections 8.2. 8.2.2, and 8.2.3 of ANSI/CTA–2037–C provide instructions on installing a UUT for testing, including a preference for installing a TV using a stand mount if possible; if not, using a wall mount; and if the UUT is neither stand-mounted nor wall-mounted (*e.g.,* permanently mounted in a wheeled furniture stand), special case installation instructions are specified in which the UUT assembly (including whatever support mechanisms or furniture that are part of the UUT) are positioned on a floor. Section 8.2.4 of ANSI/CTA–2037–C specifies requirements for positioning the ABC sensor relative to the UUT for cases where the UUT has an ABC sensor that is not permanently mounted on the display (*e.g.,* in an external enclosure or sound bar). *Id.*

Additionally, in the March 2022 NOPR, DOE noted that ANSI/CTA–2037–C describes the requirements for the placement of the LED lamp, camera photometer, and illuminance meter relative to the UUT. Section 8.1.1 of ANSI/CTA–2037–C specifies placing the LED lamp at a 45° angle, with a tolerance of 2°, pointed at the ABC sensor and also specifies requirements to ensure that light is not reflected off the TV screen. *Id.* In the March 2022 NOPR, DOE tentatively found that positioning the lamp at an angle rather than directly in front of the sensor would be more representative of real-world conditions, as lighting is generally not placed such that a lamp shines directly towards the ABC sensor; instead, any light reaching the sensor is generally directed at the TV screen at an angle, either from overhead lighting or floor lamps. *Id.* Accordingly, in the March 2022 NOPR, DOE proposed to adapt the requirements specified in ANSI/CTA–2037–C regarding lamp setup. *Id.*

In the March 2022 NOPR, DOE also stated that section 8.1.2 of ANSI/CTA–2037–C specifies that the illuminance meter must be oriented at an angle of 45° to be aimed directly at the light source, which is also oriented at 45° relative to, and pointing towards, the ABC sensor. ANSI/CTA–2037–C also requires a firm stationary mount for the illuminance meter to allow for consistent measurement of the illuminance. In the March 2022 NOPR, DOE proposed to reference these additional requirements for the illuminance meter setup within revised section 3 (Test Setup) of appendix H. *Id.*

In the March 2022 NOPR, DOE also stated that section 8.2.5 of ANSI/CTA–2037–C specifies detailed instructions for the placement and setup of the camera photometer, which is used for dynamic luminance measurement. The placement of the camera photometer is dependent on the size of the UUT. The distance between the camera photometer and the TV is proportional to the width of the TV, and the height of the camera photometer is always in the center of the height of the TV. The orientation is 0° with respect to the TV screen, with a 5° tolerance. Section 8.2.5 of ANSI/CTA–2037–C also provides instructions for how to prevent the moiré effect [13] by defocusing the camera

[13] The moiré effect refers to a visual perception that occurs when viewing the dots of the LEDs in the UUT superimposed on the pixels captured from the camera photometer. The overlapped patterns

Continued

photometer appropriately. DOE has conducted testing using this setup and has found this setup provides for a measurement of screen luminance in a repeatable manner. In the March 2022 NOPR, DOE proposed to reference the ANSI/CTA–2037–C requirements for the placement and setup of the camera photometer. *Id.* at 87 FR 11902–11903.

In the March 2022 NOPR, DOE stated that sections 7.1.10 and 8.2.1 of ANSI/CTA–2037–C include additional requirements regarding the table surface on which the UUT is placed for testing. This includes the specifications for covering the table with black, non-reflective cloth and placing a reflective card directly underneath the ABC sensor of the UUT. The reflective card is used to better redirect light from the ABC lamp into the ABC sensor, given the 45° angle of the ABC lamp. In the March 2022 NOPR, DOE proposed to reference these requirements in the test room setup section of appendix H. *Id.* at 87 FR 11903. DOE additionally noted that while it proposed to reference these requirements, the CTA working group was considering amending this requirement to specify that a ''minimally reflective cloth'' (such as black felt) rather than a ''non-reflective cloth'' be used for testing, since no material is truly non-reflective. *Id.* The published ANSI/CTA–2037–D has since finalized this requirement. In the March 2022 NOPR, DOE requested comment on its proposal to reference all the requirements specified in section 8 of ANSI/CTA–2037–C for the test room setup. These include the setup of the UUT, illuminance meter, camera photometer, table surface, and reflective card. DOE also requested comment on whether it would be appropriate to specify that the table surface must be covered with black, non-reflective cloth or whether DOE should specify a ''minimally reflective'' cloth instead. *Id.*

CTA *et al.* commented that DOE should adopt the requirements in section 8 of ANSI/CTA–2037–D regarding the physical setup of the test. CTA *et al.* also stated that DOE should adopt the requirements in section 8.2.1 of ANSI/CTA–2037–D, which differ from ANSI/CTA–2037–C by specifying ''minimally reflective'' cloth instead of ''nonreflective'' cloth. (CTA *et al.,* No. 21 at p. 13)

ANSI/CTA–2037–D specifies UUT setup requirements that are substantively the same as those specified in ANSI/CTA–2037–C, with two minor updates. First, ANSI/CTA–2037–D specifies that the table surface must be covered with black, minimally reflective cloth, as discussed in the March 2022 NOPR. Second, ANSI/CTA–2037–D specifies that the illuminance meter's position along the x-axis shall be minimized and shall be less than 95 millimeters. This requirement is effectively the same as that stated in ANSI/CTA–2037–C, which specified that the base of the dome (of the illuminance meter) must be placed on the bezel of the TV. The requirement in ANSI/CTA–2037–D includes a quantitative distance, which should improve repeatability in placing the illuminance meter consistently, but does not materially change the placement compared to ANSI/CTA–2037–C. For the reasons discussed in the preceding paragraphs and in the March 2022 NOPR, DOE amends the UUT installation and placement in appendix H to reference sections 7.1.10 and 8 of ANSI/CTA–2037–D.

G. Test Configuration

1. Configuration of Special Functions

Section 5 of appendix H specifies configuration requirements for various TV functions such as: additional functions and special functions; the setup of the TV when presented with forced menu prompts; a connection priority to be used for connecting the TV to the video input device; the selection of the preset picture setting for on mode tests; video aspect ratio; frame rate; sound level; and network connection configuration. For many of these requirements, appendix H references the requirements specified in relevant sections of IEC 62087:2011. The requirements specified in appendix H are also consistent with earlier versions of the ANSI/CTA–2037 standard.

In the March 2022 NOPR, DOE noted that as TV technology has evolved, the configuration requirements currently specified in appendix H may not be as representative of current TV use. 87 FR 11892, 11903. DOE additionally noted that special functions such as MDD often trigger a more significant decrease in power consumption when testing with the IEC test clip compared to other real-world media content. *Id.* DOE additionally stated that ANSI/CTA–2037–C provides setup requirements for functions including quick start, MDD, and forced menus. Section 9.1 of ANSI/CTA–2037–C specifies that the UUT must operate on the latest manufacturer-supplied firmware and requires a factory reset to ensure the TV is configured with the most recent firmware update. Section 9.2 of ANSI/CTA–2037–C specifies instructions for the initial configuration of the UUT, including how to adjust according to initial setup and forced menu prompts that may have multiple configurations from which to choose. DOE stated that ANSI/CTA–2037–C specifies disabling accessibility settings intended for vision or hearing-impaired viewers as well as choosing the configuration that does not include the addition of content such as applications (*i.e.,* ''apps'') or TV stations. Other than these exceptions, in the March 2022 NOPR, DOE stated that ANSI/CTA–2037–C specifies that the most power-consumptive configuration must be selected, and the selection must be verified via a test if the most power-consumptive configuration is unknown. *Id.*

In the March 2022 NOPR, DOE additionally stated that section 9.7 of ANSI/CTA–2037–C requires all testing to be completed with MDD disabled. Further, section 9.9 of ANSI/CTA–2037–C provides criteria that are used to determine whether quick start is enabled or disabled during testing. Specifically, quick start is enabled during testing if it is enabled by default or if the wake time of the TV is greater than or equal to 10 seconds when quick start is disabled. In the latter scenario, quick start is enabled to provide the shortest possible resume time. To determine the wake time of the TV for the quick start configuration, ANSI/CTA–2037–C specifies connecting the UUT to LAN without any other devices connected, playing the SDR IEC test clip, turning off the TV for 20 minutes, and turning it back on such that it is configured to turn on to the HDMI input connection that is playing the IEC test clip. The time between turning on the TV to content being displayed is determined to be the wake time of the TV for the configuration of quick start function. *Id.* at 87 FR 11903–11904.

In the March 2022 NOPR, DOE proposed to adopt through reference sections 9.1, 9.2, 9.7, and 9.9 of ANSI/CTA–2037–C. *Id.* at 87 FR 11904. DOE tentatively determined that adopting these sections would address stakeholder comments in response to the June 2016 RFI, would make the DOE test procedure consistent with the industry standard for the configuration of these settings, and would ensure that the DOE test procedure is measuring power consumption in a representative and repeatable manner. *Id.* While DOE proposed to reference these requirements, DOE noted in the March 2022 NOPR that the most power consumptive configuration of a special function may not be readily identified, as required in section 9.2 of ANSI/CTA–2037–C, particularly because ANSI/CTA–2037–C specifies on mode testing

can cause a glare in the recorded image, which can impact results if not corrected.

at three preset picture settings. DOE noted that ANSI/CTA–2037–C does not address which configuration should be selected if a given special function impacts power consumption differently when testing the different preset picture settings or power modes. Additionally, DOE noted in the March 2022 NOPR that the CTA working group was considering updating this requirement to specify that the most energy consumptive configuration of a special function must be selected if a forced menu is displayed requiring the configuration of special functions. *Id.*

DOE also acknowledged in the March 2022 NOPR that the CTA working group was considering changing how the most consumptive state is determined. Specifically, the working group was considering changing this requirement to specify that the option that is more likely to increase energy consumption be selected. As an example, if a UUT has a prompt for enabling or disabling location sharing, this special function is unlikely to use a significant amount of additional energy, but it is more likely that enabling it will result in higher energy consumption than disabling it, and therefore, location sharing should be enabled during testing, according to the language under consideration by the CTA working group. *Id.* DOE additionally stated that the CTA working group was considering other alternate language to eliminate subjective configuration of special functions from forced menu prompts. In particular, the working group was considering specifying that if it is unknown which configuration yields the most energy consumptive state, then the configuration that enables more functionality should be selected, such as location sharing, data reporting, or data backup. However, if a forced menu is displayed requesting the configuration of features that would reduce or save energy, the configuration that consumes maximum energy should be selected (*e.g.,* smart viewing modes or energy saving functionality). The ultimate goal of such a requirement would be to select the configuration that consumes the most energy, and it is expected that, generally, enabling more functionality would consume more energy. The CTA working group was also considering selecting the option that is highlighted or pre-selected when a given forced menu prompt appears on the screen. *Id.*

At the time of the March 2022 NOPR, the CTA working group was also considering specifying that the TV must be tested in the default settings for all functions other than those that require configuration when a forced menu prompt appears on the screen. Further, the working group was considering specifying that the tester must not log into any services if prompted by a forced menu during initial setup, unless it is required for the setup of any other functionality noted in the standard (*e.g.,* smart wake functionality setup via a smart speaker). *Id.* The working group also intended to clarify certain requirements for quick start. In particular, to measure the quick start wake time, ANSI/CTA–2037–C specifies that the test must be conducted on LAN, without WAN connection. The working group intended to remove this requirement for ANSI/CTA–2037–D, so that the quick start wake time check is conducted under the same settings as the rest of the test (*i.e.,* on WAN). Additionally, ANSI/CTA–2037–C specifies that the wake time must be measured when the UUT wakes to the HDMI input. However, it does not state how the wake time should be measured if the UUT does not wake to the HDMI input. For ANSI/CTA–2037–D, the working group was considering specifying that if the UUT does not wake to displaying video content from the HDMI port, then the wake time measurement period would end as soon as an HDMI input port can be selected to play content. *Id.*

In the March 2022 NOPR, DOE requested comment on whether it should consider requiring that if a forced menu is displayed requesting the configuration of specific features, then the most energy consumptive configuration, as represented by AEC, must be selected (rather than the most power consumptive configuration). Additionally, if stakeholders supported the use of the most power consumptive configuration, DOE requested comment on whether it should specify that the power consumption measurement is averaged over the duration of the test. *Id.* at 87 FR 11905.

DOE also requested comment on any approaches that were under consideration for ANSI/CTA–2037–D by the CTA working group for the initial setup of the TV, the configuration of forced menu options, or the requirements for the quick start wake time measurement test. *Id.*

CTA *et al.* recommended that DOE adopt ANSI/CTA–2037–D, including the requirements in section 9.2 of ANSI/CTA–2037–D, which stipulate that, if a forced menu is displayed, then the menu selection(s) which result in the most energy consumptive state shall be selected. CTA *et al.* also stated that the most energy consumptive state does not need to be determined by running complete tests and calculating AEC for each configuration. Instead, if the most energy consumptive state is not obvious, then the configuration that results in the most functionality should be selected. (CTA *et al.,* No. 21 at p. 13)

CTA *et al.* also commented that DOE should adopt the requirements in section 9.11 of ANSI/CTA–2037–D for quick start functionality, which requires that quick start wake time be measured to determine if it should be enabled during testing. (*Id.* at p. 14) ANSI/CTA–2037–D includes some updates in the introductory text of section 9 and sections 9.1, 9.2, 9.7, and 9.10 (which is the new section number for quick start requirements, compared to section 9.9 in ANSI/CTA–2037–C). Specifically, the introductory text of section 9 specifies explicitly that the UUT must be configured and tested in the home configuration,[14] while this same requirement is specified in section 9.2 of ANSI/CTA–2037–C. Accordingly, DOE is adopting the introductory text in section 9 of ANSI/CTA–2037–D in this final rule.

Additionally, section 9.1 of ANSI/CTA–2037–C specifies that the UUT must operate on the latest manufacturer-supplied firmware. Section 9.1 of ANSI/CTA–2037–D specifies the same requirements but changes the term ''firmware'' to ''software;'' *i.e.,* the UUT must operate on the latest manufacturer-supplied software. As discussed previously, ANSI/CTA–2037–D also includes a definition for ''software,'' which specifies, in part, that code that might be classified as ''firmware'' elsewhere is classified as ''software'' in ANSI/CTA–2037–D. Overall, it is DOE's understanding that while ANSI/CTA–2037–C and ANSI/CTA–2037–D use different terminologies, the intent of the requirement is the same. Accordingly, DOE is adopting section 9.1 of ANSI/CTA–2037–D for the UUT software update requirements.

Section 9.2 of ANSI/CTA–2037–C and ANSI/CTA–2037–D specify the initial steps to configurate the TV prior to conducting tests. However, in the published ANSI/CTA–2037–D, the CTA working group finalized each of the items that were discussed as being under consideration in the March 2022 NOPR. These include configuration of features required via forced menu prompts using the most energy consumptive state rather than the most power consumptive state. ANSI/CTA–2037–D also specifies that the most energy consumptive state is selected

[14] Home configuration is the configuration designed for typical consumer viewing and is recommended by the manufacturer for home environments. It is typically selected from the forced menu wherein a selection needs to be made for ''home'' vs. ''retail'' configurations.

based on the configuration that enables more functionality unless the feature would reduce or save energy, in which case the configuration that consumes maximum energy is selected, as discussed in the March 2022 NOPR. Section 9.2 of ANSI/CTA–2037–D also specifies that the tester must not log into any services if prompted by a forced menu during initial setup, unless it is required for the setup of any other functionality noted in the standard (*e.g.,* smart wake functionality setup via a smart speaker), as discussed in the March 2022 NOPR. These clarifications are intended to improve repeatability and reproducibility while configuring the initial TV settings. Accordingly, DOE is adopting section 9.2 of ANSI/CTA–2037–D for the initial configuration requirements. DOE notes that ANSI/CTA–2037–D also includes a new section 9.2.1 to specify network configuration requirements. These requirements were previously specified in section 9.10 of ANSI/CTA–2037–C. DOE discusses networking requirements in section III.G.6 of this document.

Section 9.7 of ANSI/CTA–2037–D specifies the same requirements as those specified in section 9.7 of ANSI/CTA–2037–C and discussed in the March 2022 NOPR for the configuration of MDD for SDR preset picture settings. Since MDD is not known to impact power consumption of HDR10 preset picture settings when tested with the HDR10 IEC test clip, the configuration of MDD in the HDR10 preset picture setting is not expected to impact results. Accordingly, DOE is adopting section 9.7 of ANSI/CTA–2037–D for the MDD setup.

Finally, for the quick start requirements specified in section 9.10 of ANSI/CTA–2037–D, the CTA working group adopted each of the requirements that were discussed as being under consideration in the March 2022 NOPR. The updated quick start requirements are intended to reduce burden by removing the requirement to wait for displayed content to appear, which is sometimes not repeatable, and improve representativeness by clarifying that the TV be connected to LAN and WAN. Accordingly, DOE is adopting section 9.10 of ANSI/CTA–2037–D for the quick start requirements.

2. Media Player Setup and Connection

Sections 5.2 and 5.3 of appendix H require the use of an HDMI input cable and the HDMI input terminal that is designed for viewing live TV or dynamic content from a Blu-ray Disc player or set-top-box. However, appendix H does not provide additional instructions regarding the settings that must be selected for the media player (*e.g.,* noise reduction, upscaling, etc.).

In the March 2022 NOPR, DOE stated that section 9.3 of ANSI/CTA–2037–C specifies requirements for playing video test files using the media player. Specifically, this section specifies that for all UUT setup and test tasks requiring video play, video test files stored on a USB flash drive shall be played from the media player by inserting the USB flash drive into the media player, connecting the media player to the UUT using an HDMI cable, and selecting the HDMI input on the UUT associated with the media player. On the media player, a video setting shall be selected that performs no video processing (*e.g.,* no noise reduction, no upscaling, no adjustment of color, hue, contrast, or brightness). 87 FR 11892, 11905.

Accordingly, in the March 2022 NOPR, DOE proposed to incorporate by reference section 9.3 of ANSI/CTA–2037–C for the media player setup and connection. *Id.* DOE received no comments specific to this topic in response to the March 2022 NOPR.

The published ANSI/CTA–2037–D specifies the same requirements in section 9.3. Accordingly, DOE amends appendix H by referencing the media player setup and connection requirements in section 9.3 of ANSI/CTA–2037–D.

3. Test Clips

Appendix H currently specifies use of the IEC 62087:2011 Blu-ray Disc dynamic broadcast-content video signal (*i.e.,* the IEC test clip) for all on mode testing. Section 5.7 of appendix H requires the video aspect ratio of the video signal to fill the entire screen, and section 5.8 of appendix H requires the frame rate and resolution of the video signal to match the highest available format signal capable of the UUT.

In the March 2022 NOPR, DOE noted that stakeholders have collaborated during both IEC and CTA working groups to identify an appropriate test clip for TV testing. As a result of these meetings, the SDR IEC test clip continues to be used for testing the SDR preset picture settings. Additionally, an adapted HDR10 test clip (referred to as the ''HDR10 IEC test clip'' elsewhere in this document), has been developed by the Collaborative Labeling and Appliance Standards Program (''CLASP''), for testing HDR10 preset picture settings. Members of the IEC and CTA working groups have agreed to use this HDR10 test clip for testing HDR10 preset picture settings in the respective industry standards. 87 FR 11892, 11905–11906

In the March 2022 NOPR, DOE stated that ANSI/CTA–2037–C specifies use of the SDR IEC test clip for SDR preset picture settings and the HDR10 IEC test clip for HDR10 preset picture settings, while providing similar direction as appendix H for the aspect ratio, resolution, and frame rate of the video signal. *Id.* at 87 FR 11906. Additionally, ANSI/CTA–2037–C specifies that the test clips be played via a USB flash drive rather than a Blu-ray Disc. *Id.*

Accordingly, in the March 2022 NOPR, DOE proposed to reference sections 7.2 and 9.5 of ANSI/CTA–2037–C for the test clip provisions. Section 7.2 of ANSI/CTA–2037–C specifies the video files that should be used for determination of on mode power consumption and states that the file with the highest resolution supported by the UUT shall be used. Four test clips are specified in ANSI/CTA–2037–C, two of which are used for SDR preset picture settings and two of which are used for HDR10 preset picture settings. Section 9.5 of ANSI/CTA–2037–C additionally specifies that the aspect ratio of the video content must fill the entire screen without being cropped to ensure all TV pixels are activated during testing. *Id.*

In the March 2022 NOPR, DOE requested comment on its proposal to reference the SDR and HDR10 IEC test clips specified in ANSI/CTA–2037–C for testing TVs in the default, brightest, and HDR10 preset picture settings. *Id.*

ASAP *et al.* stated that the proposed IEC test clips have abnormally short scenes and lack TV viewing-related sounds, such as human voices, that are found in typical TV content. ASAP *et al.* encouraged DOE to develop a new test clip that is more representative of real-world video and sound as part of a future rulemaking. (ASAP *et al.,* No. 18 at p. 2)

DOE recognizes that the SDR IEC test clip may not be entirely representative of current real-world video content. However, DOE has determined that certain other requirements specified in this final rule (*e.g.,* configuration of special functions, preset picture settings selected for on mode testing, dynamic luminance measurement, etc.) address many of the identified shortcomings of the SDR IEC test clip, particularly related to the short scenes. DOE additionally notes that the HDR10 IEC test clip specified by this final rule is more representative of real-world video content.

In addition, DOE believes that IEC is the most suitable forum to build international consensus on the development of a future test clip to be used for TV energy testing. If a new test

clip were to be developed through international consensus, DOE would evaluate the clip and, if appropriate, consider it for the DOE test procedure. DOE would welcome participation in any such international effort.

ANSI/CTA–2037–D includes the same requirements regarding test clips as those discussed in the March 2022 NOPR. Additionally, the published standard includes the websites at which each of the test clips can be accessed. For the reasons discussed above, and in the March 2022 NOPR, DOE adopts the requirements for the test clips in appendix H as referenced in sections 7.2 and 9.5 of ANSI/CTA–2037–D.

4. Preset Picture Settings for On Mode Tests

Appendix H requires on mode testing only in the default preset picture setting. In the March 2022 NOPR, DOE specified that ANSI/CTA–2037–C requires on mode testing using three preset picture settings, based on the functionality of the TV: default SDR, brightest SDR, and the default HDR10 preset picture settings. 87 FR 11892, 11907. In the March 2022 NOPR, DOE explained that these preset picture settings are determined as specified in sections 9.6 and 9.8 of ANSI/CTA–2037–C. Specifically, section 9.6 of ANSI/CTA–2037–C requires the tester to play the SDR IEC test clip to identify the SDR default preset picture setting and the HDR10 IEC test clip to identify the HDR10 default preset picture setting. If ABC is enabled by default in these preset picture settings, the on mode test is conducted with ABC enabled. Section 9.8 of ANSI/CTA–2037–C instructs the tester to identify the brightest preset picture setting using the SDR IEC test clip, which is played for 5 minutes while the camera photometer collects the dynamic luminance of the UUT in each preset picture setting. The preset picture setting with the highest dynamic luminance is determined to be the brightest preset picture setting and is used during on mode testing. Section 9.8 of ANSI/CTA–2037–C also includes details such as how to determine the brightest preset picture setting if the dynamic luminance of each considered preset picture setting is very similar and specifies certain preset picture settings that are specifically excluded, such as ''PC'' or ''Game.'' *Id.* Additionally, DOE stated in the March 2022 NOPR that the CTA working group was considering explicitly stating that the brightest preset picture setting must be identified with ABC disabled. *Id.*

In the March 2022 NOPR, DOE had tentatively determined the methodology specified in ANSI/CTA–2037–C addressed many of the issues in appendix H pertaining to testing only a single preset picture setting; and that the methodology specified in ANSI/CTA–2037–C—capturing a range of preset picture settings that are reflective of different resolutions and brightness settings that consumers may choose among—would produce test results that are more representative of average TV use than the current requirements of appendix H. *Id.*

Accordingly, in the March 2022 NOPR, DOE proposed to reference sections 9.6 and 9.8 of ANSI/CTA–2037–C to identify the preset picture settings that must be selected for testing. DOE additionally proposed to specify that the brightest preset picture setting must be identified with ABC disabled.

In the March 2022 NOPR, DOE also noted that it was aware of certain preset picture settings being introduced on recent TVs that are known to adapt the TV's configuration based on the content, usage pattern, and the environment in which the TV operates. These TVs use artificial intelligence technology to adapt and adjust these settings and such a preset picture setting is sometimes available in addition to Filmmaker mode (defined in section III.C of this document). *Id.* While DOE did not propose any requirement around such a preset picture setting in the March 2022 NOPR, it requested additional information about such preset picture settings and whether DOE should consider excluding such preset picture settings when selecting the default SDR, brightest SDR, and default HDR10 preset picture settings that are required for testing on mode power consumption. *Id.*

In the March 2022 NOPR, DOE requested comment on its proposal to reference the requirements in ANSI/CTA–2037–C for the selection of the preset picture settings that must be used for testing and additionally specifying that the brightest preset picture setting be identified with ABC disabled. *Id.*

In the March 2022 NOPR, DOE also requested information on preset picture settings that can adapt the TV's configuration based on content, usage pattern, environment, etc. DOE also requested comment on whether such preset picture settings should be excluded from testing, even if they are one of the default SDR, brightest SDR, or default HDR10 preset picture settings. If stakeholders support excluding such a preset picture setting from testing, DOE requested comment on which preset picture setting(s) should be used for testing instead, particularly if the intelligent preset picture setting is a default SDR or default HDR10 preset picture setting. *Id.*

CTA *et al.* commented that DOE should adopt the requirements in section 9.6 of ANSI/CTA–2037–D for the identification of the default SDR and HDR10 preset picture settings. CTA *et al.* also recommended adopting the requirements in section 9.8 of ANSI/CTA–2037–D for the selection of the brightest preset picture setting. (CTA *et al.,* No. 21 at p. 14)

ComEd and NEEA stated there is insufficient information about adaptive picture settings to include them in the test procedure and 2019 NEEA field research showed little use of these settings. (ComEd and NEEA, No. 20 at p. 4)

DOE notes that adaptive picture settings may cause repeatability and reproducibility issues by altering the TVs configuration during testing. Therefore, DOE agrees with ComEd and NEEA that adaptive picture settings should be excluded from the test procedure.

Sections 9.6 and 9.8 of the published ANSI/CTA–2037–D specify the same requirements as those proposed in the March 2022 NOPR, including determining the brightest preset picture setting with ABC off. As no other changes have been made to the preset picture selection between ANSI/CTA–2037–C and ANSI/CTA–2037–D, DOE amends the preset picture settings for on mode testing to reference sections 9.6 and 9.8 of ANSI/CTA–2037–D.

5. Sound Level

Section 5.9 of appendix H specifies that the TV sound level shall be configured in accordance with section 11.4.11 of IEC 62087:2011. Section 11.4.11 of IEC 62087:2011 specifies that the volume control shall be adjusted to a level at which the sound output is audible. DOE understands this instruction to mean starting with the volume control at zero and increasing the volume until an audible level is achieved.

In the March 2022 NOPR, DOE stated that section 9.4 of ANSI/CTA–2037–C specifies that the volume control shall be adjusted to a level greater than zero that is closest to 2 percent of the maximum (*e.g.,* a TV with a maximum level of 30 would have its volume set to 1). As this requirement is more objective than the current requirement specified in IEC 62087:2011, while resulting in comparable sound levels, in the March 2022 NOPR, DOE proposed to reference section 9.4 of ANSI/CTA–2037–C for the sound level requirements in appendix H. 87 FR 11892, 11907.

ASAP *et al.* encouraged DOE to consider measuring power consumption using more representative TV sound

levels as part of a future rulemaking and encouraged DOE to conduct testing at different sound levels to determine the relationship between TV volume and power consumption. (ASAP *et al.,* No. 18, at p. 2)

In the NOPR public meeting, NEEA and Pacific Crest Lab (''PCL'') commented that the current test clips have 1 kilohertz (''kHz'') sine waves as the sound on the test clips and the test clips would need to be redesigned to accommodate more representative sound. Associated with the update to the test clip, NEEA and PCL stated that testing laboratories would also need to be redesigned, with soundproofing for instance, if a more representative sound is used on the test clip. NEEA and PCL additionally stated that it would be a longer-term goal to change the sound requirements for the TV test procedure. (Public Meeting Transcript, No. 16 at p. 43–44)

DOE has determined that the sound level configuration specified in ANSI/CTA–2037–D (which is same as the requirement in ANSI/CTA–2037–C) ensures a repeatable and reproducible sound level by specifying the volume be set to a percentage of the maximum volume rather than relying on the audibility of the sound. Accordingly, DOE is adopting this requirement in this final rule. Should additional data become available regarding the impact of sound level on measured power use, or a representative sound level for conducting testing, DOE may consider a different sound level in a future test procedure rulemaking.

For reasons discussed here and, in the March 2022 NOPR, DOE amends the sound level configuration to reference section 9.4 of ANSI/CTA2037–D.

6. Network Configuration

Section 5.10 of appendix H specifies the network connection configuration to which the UUT must be connected. Section 5.10.2 of appendix H requires the UUT to be connected to a LAN both in on mode and prior to being placed in standby mode, if the TV is network enabled. The LAN shall allow devices to ping other devices on the network but must not allow access to a WAN. Section 5.10.2 of appendix H also provides a network connection hierarchy table prioritizing that the UUT be connected via Wi-Fi, then Ethernet if Wi-Fi is not supported by the UUT.

Sections 7.1.8, 9.9, 9.10, and 9.11 of ANSI/CTA–2037–C include requirements for network-related equipment and configuration of network connections, and configuration of specified networking devices. Specifically, section 7.1.8.1 of ANSI/CTA–2037–C specifies that the internet network connection shall support download speeds of at least 25 megabytes per second (''MBps'') and upload speeds of at least 3 Mbps. Sections 7.1.8.2 and 7.1.8.3 specify the use of a smart speaker that shall be used to conduct the wake-by-smart-speaker test and the use of a mobile device that is used for remote control and casting applications. Section 7.1.8.4 of ANSI/CTA–2037–C specifies that a network traffic generator shall be configured to output multicast discovery packets to the LAN every 1 second. The packets include requests to the UUT typical of everyday use [15] that can be responded to over LAN by the UUT. 87 FR 11892, 11907–11908. Section 9.10 of ANSI/CTA–2037–C requires that for UUTs that are network enabled, both the on mode and standby mode tests be conducted with the UUT connected to WAN as well as up to three additional devices (*i.e.,* the smart speaker, mobile device, and network traffic generator) connected via the LAN. Section 9.10 also requires that the LAN network include no other networking devices besides the devices required to conduct the test (*i.e.,* the smart speaker, mobile device, and network traffic generator). Section 9.11 of ANSI/CTA–2037–C specifies that for TVs that are advertised to support wake-by-remote-control-app (''WbRA''), wake-on-cast (''WoC''), or wake-by-smart-speaker (''WbS''), enable as many of the supported smart wake features as possible. Any devices used to configure these features (*e.g.,* mobile device, smart speaker, etc.) should be connected to the same LAN as the UUT. Section 9.11 of ANSI/CTA–2037–C further specifies that the goal is to configure the UUT to wake with as many of the three identified smart wake features as possible.

DOE stated in the March 2022 NOPR, that the CTA working group was considering explicitly specifying the following additional requirements: (a) the LAN must not include other networking devices besides the devices required to conduct the test; (b) internet connectivity must be confirmed (*e.g.,* by streaming media); (c) if the UUT does not support Wi-Fi or Ethernet connectivity then it shall not be connected to other possible forms of network connection (*e.g.,* MoCA); and, (d) the three smart wake features must be enabled before performing any of the on or standby mode tests. *Id.*

DOE's analysis of the market indicates that most TVs currently on the market are equipped with the capability to connect to the network. The growing availability of streaming services and video content via digital media suggests that a growing percentage of TVs are connected to an active internet connection when installed in a consumer's home. Additionally, the growth in the market for connected devices, particularly mobile devices and smart speakers, suggests that these devices are also becoming more prevalent in consumer homes.

Based on an analysis of the market and the requirements specified in ANSI/CTA–2037–C and those under consideration at the time for ANSI/CTA–2037–D, in the March 2022 NOPR, DOE tentatively concluded that the network configuration requirements specified in ANSI/CTA–2037–C—which require an active internet connection for the TV and the configuration of three different types of devices connected to the same local network—are more representative of TVs currently sold on the market than the requirements currently specified in appendix H. Therefore, in the March 2022 NOPR, DOE proposed to reference the network connection requirements specified in sections 7.1.8, 9.10, and 9.11 of ANSI/CTA–2037–C. *Id.*

DOE additionally noted that it had found through its testing that configuring the specified network devices, especially the smart speaker, to communicate with the TV was challenging for some TV models due to inadequate setup instructions. Further, DOE experienced challenges pairing certain TV models with smart speakers, noting that some TV models could only connect to certain smart speaker brands, but not others. *Id.*

In the March 2022 NOPR, DOE requested comment on its proposal to reference sections 7.1.8, 9.10, and 9.11 of ANSI/CTA–2037–C for the network configuration requirements. DOE also requested comment on the updates being considered by the CTA working group for ANSI/CTA–2037–D as they pertain to the WAN and LAN connection requirements and the connection requirements for smart wake features. *Id.*

DOE also requested feedback on its observed challenges with pairing certain TV models with smart speakers. *Id.*

CTA *et al.* stated that DOE should adopt the requirements in sections 7.1.8, 9.9, and 9.10 of ANSI/CTA2037–D [16] regarding network configuration

[15] For example, the packets include commands sent to the Google and Spotify internet servers.

[16] DOE observes that while CTA *et al.* commented that the relevant network configuration requirements are specified in sections 7.1.8, 9.9, and 9.10 of ANSI/CTA–2037–D, the requirements are in fact specified in sections 7.1.8, 9.2.1, and 9.9 of ANSI/CTA–2037–D.

requirements. CTA *et al.* additionally stated that, at the time of filing the comments, the CTA working group was still discussing appropriate wording for section 7.1.8 and its subsections, which describe the network activity to be generated during testing. (CTA *et al.,* No. 21 at p. 14) CTA *et al.* additionally commented that DOE should adopt the requirements from ANSI/CTA–2037–D, including section 9.10 [17] which describes how to configure a TV to be woken using smart speakers and how to address situations where a smart speaker is unable to wake the TV. CTA *et al.* noted that, according to CTA *et al.,* ANSI/CTA–2037–D addressed the issues pertaining to pairing certain TVs with certain smart speakers. (*Id.* at p. 15) CTA *et al.* commented that DOE should not include any additional specifications beyond those specified in ANSI/CTA–2037–D. (*Id.*)

ANSI/CTA–2037–D generally includes the same networking requirements as those specified in ANSI/CTA–2037–C. While DOE referenced sections 7.1.8, 9.10, and 9.11 of ANSI/CTA–2037–C for the networking requirements in the March 2022 NOPR, these same requirements are specified in sections 7.1.8, 9.2.1, and 9.9 of ANSI/CTA–2037–D. Additionally, section 7.1.8 of ANSI/CTA–2037–D removes the requirement regarding additional packet generation as specified in ANSI/CTA–2037–C. Based on DOE's ongoing participation in the CTA standard development process, DOE understands that the reason for removing this requirement is that the wake features utilized during the on mode and standby testing already generate packets that are representative of average household usage, and that any additional packets generated artificially via a packet generator would not be representative.

Additionally, the requirements in section 9.9 of ANSI/CTA–2037–D are generally the same as those in section 9.11 of ANSI/CTA–2037–C, except that section 9.9 of ANSI/CTA–2037–D removes the test specified in ANSI/CTA 2037–C to confirm at the end of a standby mode test that the TV can be powered on via a smart wake feature. Instead, section 9.9 of ANSI/CTA–2037–D specifies that to reduce test burden, the test method does not require testers to confirm [via a separate test] that they have configured smart wake features to persist throughout the entire standby test period; however, testers should confirm that they understand how to achieve this result for all UUT brands or platforms tested.[18] Section 9.9 of ANSI/CTA–2037–D additionally provides guidance for the tester if any of the smart wake functions do not work. This includes testing with a different smart speaker brand and suggesting enabling quick start, which is a common setting that must be enabled for smart wake features to function and mitigates the challenges that DOE observed when testing according to a draft version of ANSI/CTA–2037–C associated with pairing the smart speaker with the TV. The smart wake devices are also required to stay configured to the UUT even if the 5-second check is not successful. These requirements generally ensure that testing is conducted in the same environment as that specified in ANSI/CTA–2037–C.

DOE found that the additional instructions for configuring and connecting the smart speaker provided by ANSI/CTA–2037–D are helpful for informing testers of the common missteps made while configuring the smart speaker and would help improve repeatability and reproducibility across test labs. Additionally, the updated network requirements in ANSI/CTA–2037–D are more representative of modern TVs and home network environments. For the reasons discussed here and, in the March 2022 NOPR, DOE amends the network configuration requirements to reference sections 7.1.8, 9.2.1, and 9.9 of ANSI/CTA–2037–D.

H. Test Conduct

Section 7 of appendix H specifies the tests for measuring on mode power consumption, luminance, standby mode power consumption, and off mode power consumption. The following sections describe the amendments DOE proposed to each of these tests in the March 2022 NOPR as well as the final requirements adopted in this final rule.

1. On Mode Test

As discussed in previous sections, in the March 2022 NOPR, DOE proposed to adopt the testing requirements specified in ANSI/CTA–2037–C, which specifies a new method to measure dynamic screen luminance at the same time as on mode power consumption. Accordingly, the on mode test specified in ANSI/CTA–2037–C specifies requirements for camera configuration, UUT stabilization, and measurement of luminance and power consumption. 87 FR 11892, 11908.

Section 10 of ANSI/CTA–2037–C specifies the camera configuration and UUT stabilization procedure. First, the camera photometer must be configured to ensure that the UUT's screen border fits in the camera's field of view. Additionally, the color correction factors must be identified, if necessary, per the camera manufacturer's instructions. The UUT is then stabilized by playing the first 5 minutes of the IEC SDR test clip multiple times until the average power level between successive runs of the clip is within 2 percent. The procedure specifies that final camera configuration is performed just before on mode testing so that the UUT remains stabilized during the transition from this step to on mode testing. In the March 2022 NOPR, DOE proposed to reference section 10 of ANSI/CTA–2037–C in appendix H to specify the UUT and camera photometer stabilization requirements.

Section 11.1 of ANSI/CTA–2037–C specifies the on mode test conduct, which as discussed, specifies measuring power consumption and dynamic luminance simultaneously. ANSI/CTA–2037–C specifies conducting on mode testing in the SDR default, SDR brightest, and HDR10 default preset picture settings. All UUTs are tested with ABC off at the default backlight in each preset picture setting. In ANSI/CTA–2037–C, any preset picture setting with ABC off by default is additionally tested with the backlight level set to 20 percent of its maximum backlight level. As specified in ANSI/CTA–2037–C, any preset picture setting with ABC on by default is additionally tested at 140 lux, 50 lux, 17 lux, and 4 lux room illuminance levels. These room illuminance levels are not identical, but are in practice equivalent, to the room illuminance levels specified in the current appendix H (*i.e.,* 100 lux, 35 lux, 12 lux, and 3 lux) for the following reason. Appendix H requires the lamp to be placed directly in front of the ABC sensor to set room illuminance levels at 100 lux, 35 lux, 12 lux, and 3 lux. Given that ANSI/CTA–2037–C specifies the lamp to be placed at an angle of 45° from the ABC sensor, the room illuminance levels are slightly higher to ensure that the light at the ABC sensor is equivalent to the current room illuminance values with the lamp placed directly in front of the ABC sensor.

In the March 2022 NOPR, DOE proposed to reference these requirements for the on mode power and luminance measurements in the default SDR, brightest SDR, and default HDR10 preset picture settings. However, for the brightest SDR preset picture setting, in the March 2022 NOPR DOE proposed to only utilize the on mode

[17] These requirements are specified in section 9.9 of ANSI/CTA–2037–D.

[18] Section 9.9 of ANSI/CTA–2037–D further states that, for example, it is common that the Quick Start feature must be enabled in order to enable persistent smart wake features.

power consumption with ABC disabled for the calculation of AEC, regardless of the default ABC setting. This is because the selection of the brightest preset picture setting is performed with ABC disabled [as discussed in section III.G.4 of this document]. If ABC were then enabled during the on mode measurement test, it would be inconsistent with how the preset picture setting was selected and may not truly capture the intended brightest preset picture setting's luminance and power. 87 FR 11892, 11908.

In the March 2022 NOPR, DOE requested comment on its proposal to reference section 10 of ANSI/CTA–2037–C for the camera photometer and stabilization requirements. DOE also requested comment on its proposal to reference section 11.1 of ANSI/CTA–2037–C for the on mode dynamic luminance and power measurement. Specifically, DOE requested comment on using the brightest preset picture setting measurement with ABC turned off for the AEC calculation, regardless of its default setting. *Id.*

Additionally, in the NOPR public meeting, DOE discussed that the CTA working group was considering specifying certain additional requirements for the on mode tests. Specifically, DOE noted that the working group was considering specifying that ABC-enabled tests that are conducted at each room illuminance level should include a 1-minute stabilization period at each room illuminance level. (*See* Public Meeting Transcript, No. 16 at p. 26) DOE additionally noted that for preset picture settings with ABC disabled by default, the CTA working group was considering replacing the measurement point at 20 percent of the maximum backlight level with two measurement points, *i.e.,* the minimum backlight level and a second measurement point that is halfway between the minimum and default backlight level. (*Id.* at p. 27) DOE also noted that the working group was considering including requirements that if the minimum backlight level is too dim to view the IEC test clip's countdown timer, the backlight level can be increased until the countdown timer is visible. Additionally, the working group was considering specifying that if a backlight setting is not available, then the backlight is adjusted via the brightness or the luminance setting. *Id.*

In response to the March 2022 NOPR, CTA *et al.* commented that DOE should adopt the requirements in section 10 of ANSI/CTA–2037–D regarding configuration of the camera and stabilization of the TV. CTA *et al.* also commented that DOE should adopt the requirements in section 11.1 of ANSI/CTA–2037–D regarding on mode testing, including using the test results with ABC on for the brightest preset picture setting if ABC is on by default, because CTA *et al.* does not expect consumers to manually change the ABC setting when using a TV's brightest preset picture setting. (CTA *et al.,* No. 21 at p. 15)

The CA IOUs recommended that DOE test the brightest SDR preset picture setting in the default ABC setting during the on mode test, rather than always disabled because the ABC feature reduces power consumption and would encourage manufactures to support the ABC feature and enable it by default. (CA IOUs, No. 19 at p. 4; Public Meeting Transcript, No. 16 at p. 32–33)

ComEd and NEEA supported testing the brightest preset picture setting with ABC disabled to avoid circumvention of the brightest preset picture setting test. (ComEd and NEEA, No. 20 at p. 4)

While CTA *et al.* and the CA IOUs commented that the on mode power consumption of the brightest preset picture setting should be determined with ABC enabled, if ABC is enabled by default in the brightest preset picture setting, DOE notes that ANSI/CTA–2037–D calculates the on mode power consumption of the brightest preset picture setting at the ABC disabled measurement point in Annex A of the standard. DOE is adopting this approach (as discussed in section III.1 of this document) because DOE has determined that if the brightest preset picture setting is identified with ABC disabled, then, for consistency, its representative power consumption in on mode must also be measured with ABC disabled. Further, the on mode test requirements specified in ANSI/CTA–2037–D state that for preset picture settings with ABC enabled, on mode power consumption can be measured at each of the room illuminance levels, in addition to the ABC off measurement point. Should stakeholders be interested in the power consumption with ABC enabled, these values will be determined as part of the test procedure, but for the calculation of average on mode power consumption and AEC, DOE is specifying that only the ABC off measurement point be used for the brightest preset picture setting. Section III.I of this document discusses the on mode power consumption and AEC calculations for all other preset picture settings and power modes, respectively.

Section 10 of ANSI/CTA–2037–D specifies the same requirements as those specified in section 10 of ANSI/CTA–2037–C for the camera configuration and UUT stabilization but additionally specifies that the camera photometer must be powered on for at least 30 minutes prior to the final camera configuration. Based on its participation in the CTA standards development process, DOE understands that this requirement is intended to improve repeatability and reproducibility, as the camera requires a period of time to ''warm up.''

Additionally, as discussed during the NOPR public meeting, section 11.1 of ANSI/CTA–2037–D specifies on mode test requirements, some of which are similar to those specified in section 11.1 of ANSI/CTA–2037–C while other requirements have been updated to those that were under consideration at the time of the NOPR public meeting. Specifically, ANSI/CTA–2037–D specifies that the UUT must be stabilized by playing the first 5 minutes of the IEC test clip until the average power is within 2 percent of the previous run. ANSI/CTA–2037–D additionally specifies that for tests conducted with ABC enabled, the UUT shall have 1 minute to stabilize after the room illuminance level has been configured before starting each ABC enabled test. Additionally, all preset picture settings are tested at the default backlight level with ABC disabled. For preset picture settings with ABC enabled, tests are conducted at room illuminance levels of 140 lux, 50 lux, 17 lux, and 4 lux. For preset picture settings with ABC disabled, tests are conducted at the minimum backlight and a backlight level that is approximately halfway between default and minimum backlight, as discussed during the NOPR public meeting. Finally, ANSI/CTA–2037–D also finalized the requirement that if the minimum backlight level is too dim to view the IEC test clip's countdown timer, the backlight level can be increased until the countdown timer is visible and specifies that if a backlight setting is not available, then the backlight is adjusted via the brightness or the luminance setting, as discussed during the NOPR public meeting.

Based on its experience with testing TVs, DOE has determined that the additional stabilization period specified in ANSI/CTA–2037–D at each room illuminance level is crucial for repeatability of test results as TVs typically require some time to adjust to changes in room illuminance and is not unduly burdensome. DOE also expects the clarifications specified regarding how to adjust the backlight level will ensure that a TV unit under test is configured consistently during testing. Accordingly, for the reasons discussed here and, in the March 2022 NOPR,

DOE amends the on mode test to reference sections 10 and 11.1 of ANSI/CTA–2037–D.

2. Luminance Test

Section 7.2 of appendix H specifies the procedures for measuring the luminance of the UUT by playing the static IEC 3-bar, black-and-white image and measuring the instantaneous luminance. As discussed, ANSI/CTA–2037–C specifies measuring the dynamic luminance concurrently with on mode power consumption in each preset picture setting utilizing a camera photometer, which provides more representative results compared to a single instantaneous luminance. As such, in the March 2022 NOPR, DOE proposed to reference ANSI/CTA–2037–C for the on mode power consumption and dynamic luminance measurement and remove the separate luminance test currently specified in section 7.2 of appendix H. 87 FR 11892, 11909.

The CA IOUs recommended that DOE address the significantly reduced dynamic luminance values measured using the camera photometer method compared to the current Federal test method's spot measurements. The CA IOUs also recommended that DOE include luminance measurement using both dynamic test clips and the existing 3-bar black-and-white test pattern, stating that it is a better representation of peak luminance. (CA IOUs, No. 19 at p. 4)

DOE is aware that the dynamic luminance values are lower than the values measured by the instantaneous 3-bar luminance method. This is because dynamic luminance measures the luminance of the TV screen when playing the test clips, which includes many different scenes with movement and images that include a wide range of different colors. Whereas, the static 3-bar image displays a static pattern of pure white and pure black bars, and screen luminance at the location of the pure white bar is measured. The luminance of the static 3-bar image is generally greater than the dynamic luminance measurement because pure white has the highest luminance compared to any other color. However, during representative consumer use, TV screens do not display a static, pure-white image. Therefore, even though the dynamic luminance values are lower, this measurement is more representative of consumer use. Furthermore, the dynamic luminance yields a measurement of power consumption that directly corresponds to the luminance of the screen during the test. For these reasons, DOE is specifying that dynamic luminance be measured concurrently with on mode power consumption in lieu of performing a separate static luminance measurement test using the static 3-bar image.

For the reasons discussed here and, in the March 2022 NOPR, DOE is finalizing the removal of the luminance test specified in appendix H and referencing ANSI/CTA–2037–D for on mode power consumption and dynamic luminance measurement.

3. Standby Mode Test

Section 7.3 of appendix H specifies the procedures for measuring the power consumption of TVs in standby mode, which encompasses standby-passive mode and standby-active, low mode.

For conducting these tests, appendix H specifies using the methodology prescribed in section 5.3.1 of IEC 62301 Ed. 2.0, which states that standby mode power consumption shall be determined using one of three methods—sampling method, average reading method, or direct meter reading method. Specifically, IEC 62301 Ed. 2.0 specifies that the UUT must be energized for not less than 15 minutes; data recorded in the second two-thirds of the total test duration is used to determine stability. For input powers less than or equal to 1 watt, stability is established when a linear regression through all power readings for the second two-thirds of the data has a slope of less than 10 milli-watts per hour (''mW/h''); for input powers of more than 1 watt, stability is established when a linear regression through all power readings for the second two-thirds of the data has a slope of less than 1 percent of the measured input power per hour. The test duration is extended up to a maximum of 3 hours until the stability criteria are met. If stability cannot be achieved within 3 hours, IEC 62301 Ed. 2.0 specifies assessing the raw data for periodic or cyclic patterns to meet different criteria specific to cyclic or irregular power consumption patterns. IEC 62301 Ed. 2.0 also specifies additional requirements for different scenarios, such as modes with cycle, non-cyclic, unstable, or irregular power consumption.

Section 11.2 of ANSI/CTA–2037–C specifies the procedures for performing the standby mode test. As part of the overall setup and configuration requirements, the UUT is connected to WAN, and up to three devices (*i.e.,* smart speaker, mobile device, and network traffic generator) are connected to the same LAN, as discussed previously in section III.G.6 of this document. Section 11.2 of ANSI/CTA–2037–C specifies that the standby-active and standby-passive measurements shall be conducted by powering down the UUT from the SDR default preset picture setting configuration. After the UUT is powered down, power consumption is measured at intervals of 1 second or shorter, and the test concludes when the cumulative average of all data points taken in the last third of the measurement period falls within ± 1 percent or ± 10 milliwatts (''mW'') of the average of the last two-thirds of the total measurement period. The total measurement period cannot be less than 60 minutes nor greater than 240 minutes. The standby power measurement is the average power reading during the last two-thirds of the total measurement period. If a UUT does not meet the stability criteria at the end of 240 minutes, ANSI/CTA–2037–C specifies reviewing the power trace for any signs of unusual behavior, such as an automatic update, and requires repeating the test if atypical behavior was observed. Depending on the network capabilities of the UUT, the measurement performed during the standby test is recorded as either a standby-active mode [19] measurement or a standby-passive mode [20] measurement.

Accompanying the standby mode test, section 9.11 of ANSI/CTA–2037–C additionally requires a series of ''wake'' commands to be sent from the specified networking devices to the TV to verify that the TV is properly connected to the LAN and properly configured to communicate with other devices on the network. Section 9.11 of ANSI/CTA–2037–C specifies how to wake the TV using three possible wake commands: WbRA, WoC, or WbS. To start the test, the UUT is first powered down for 5 seconds and then powered on via one of the three wake commands according to the following hierarchy: WbS if available, otherwise WoC, otherwise WbRA (hereafter referred to as the ''5-second check test''). The standby test is then performed, as described in the previous paragraph. Subsequently, at the end of the standby mode test, the TV must be woken using the same hierarchy as was used during the initial 5-second check test.

[19] Section 5.1 of ANSI/CTA–2037–C defines standby-active mode as a partial on mode power mode in which the UUT is connected to an external power source and does not provide picture or sound. The UUT can be switched into another power mode with the remote control unit, an internal signal, or an external signal.

[20] Section 5.1 of ANSI/CTA–2037–C defines standby-passive mode as a partial on mode power mode in which the UUT is connected to an external power source and does not provide picture or sound. The UUT can be switched into another power mode with the remote control unit or an internal signal, but not with an external signal.

As discussed in the March 2022 NOPR, the CTA working group was considering certain revisions to the test method for measuring power consumption in standby mode. The following paragraph enumerates the revisions that were under consideration by the working group for the standby mode test. 87 FR 11892, 11910.

First, the CTA working group was considering removing the requirement that the UUT must be woken using the smart wake devices at the end of the standby mode test. Instead, the 5-second check test is performed only once when the UUT is first powered down for 5 seconds. If any or all of the configured smart wake features fail the 5-second check test, then they must remain configured for the duration of the test. Additionally, the working group was considering three different parameters to record the standby mode power consumption, depending on the level of functionality provided by the UUT in standby mode. For UUTs with at least one smart wake feature enabled, the power consumption is recorded as ''partial on mode with smart wake enabled.'' For UUTs with no advertised or enabled smart wake features, the power consumption is recorded as ''partial on mode power with internet connection'' and for non-internet connected UUTs, the power consumption is recorded as ''partial on mode power without internet connection.'' Finally, the working group was considering removing the wake time test provisions since this measurement is not repeatable because it is dependent on how the TV is woken. *Id.* In the March 2022 NOPR, DOE stated its concerns that if a TV cannot be consistently woken at the end of the standby mode test, the measurement would not be representative of real-world use. *Id.*

Overall, DOE noted in the March 2022 NOPR that in some instances, neither the standby mode measurement nor the wake test was repeatable. Lacking additional data, DOE proposed to reference the requirement specified in ANSI/CTA–2037–C, which specifies that the wake test must be performed at the end of the standby mode measurement. *Id.*

Specifically, in the March 2022 NOPR, DOE proposed to reference section 9.11 of ANSI/CTA–2037–C for the instructions to wake the UUT from standby mode using network connected devices, and section 11.2 of ANSI/CTA–2037–C to conduct the standby mode test. Specifically, DOE proposed that at the end of the standby mode test, the UUT must be woken using the smart wake features (as is specified in section 9.11 of ANSI/CTA–2037–C) in the following order of preference: WbS, WoC, and WbRA. If the UUT can be powered on using any one of these methods, its standby mode power should be recorded as ''standby power with smart wake enabled.'' However, if the UUT cannot be powered on using any of the three specified methods either during the 5-second check test or at the end of the standby mode test, the measured standby mode power consumption would be recorded as ''standby power with internet connection and without smart wake enabled.'' *Id.*

Similarly, DOE proposed that if the UUT was powered on during the 5-second check test but is unable to be powered on via any of the network connected devices at the end of the standby mode test, the measured power consumption would be recorded as ''standby power with internet connection and without smart wake enabled.'' Additionally, TVs that do not have network capability would be required to record the measured standby power consumption as standby-passive mode measurement. *Id.*

Additionally, section 11.2 of ANSI/CTA–2037–C specifies that if a UUT does not meet the stability criteria at the end of the 240-minute measurement period, the tester should review the logged data for any signs of unusual behavior—like that associated with the TV performing an automatic update—and redo the test if atypical behavior was observed. *Id.* at 87 FR 11910–11911. In the March 2022 NOPR, DOE noted that section 11.2 of ANSI/CTA–2037–C did not provide instruction for how to proceed if review of the logged data does not show any signs of unusual behavior. *Id.* at 87 FR 11911.

DOE additionally stated in the March 2022 NOPR that, during testing, it had observed that some TVs do not meet the stability criteria after 240 minutes despite not exhibiting any unusual behavior.

To accommodate TVs that do not achieve stability after the end of the specified 240-minute measurement period, DOE proposed in the March 2022 NOPR that the stability requirement be waived if the full 240 minutes conclude without meeting the stability criteria. In such cases, DOE proposed that the average power during the last two-thirds of the measurement period would be recorded as the standby-active mode measurement. *Id.*

Finally, section 11.2 of ANSI/CTA–2037–C includes instruction to measure the wake time when performing the wake procedure following completion of the standby mode test. In the March 2022 NOPR, DOE noted that the CTA working group was evaluating whether the wake time test should be eliminated from ANSI/CTA–2037–D. DOE proposed to exclude the measurement of wake time from the DOE test procedure, because DOE tentatively concluded that ''wake time'' is a performance-related feature that does not impact the energy consumption of the UUT. *Id.*

DOE requested comment on several topics pertaining to the standby mode test requirements in the March 2022 NOPR. DOE requested stakeholders to provide any additional data and information regarding the repeatability of the standby mode test when connected to smart wake functions, the ability to consistently wake the UUT using smart wake functionality, and the representativeness of the standby mode test, if a wake test is not included at the end of the standby mode duration. *Id.* at 87 FR 11910.

DOE also requested comment on its proposal to reference section 11.2 of ANSI/CTA–2037–C to measure the power consumption in standby mode with some additional specifications. DOE also requested comment on its proposal to reference section 9.11 of ANSI/CTA–2037–C for conducting the wake tests at the completion of standby mode. Additionally, DOE requested comment on the revisions that are under consideration for the standby mode test by the CTA working group. *Id.*

DOE also requested comment on whether it is appropriate to differentiate the standby mode power consumption of TVs that can be powered on using any of the three specified methods versus those that cannot be powered on using the smart wake features. DOE also requested comment on whether there would be any benefit to differentiating between the power consumption of such TVs. DOE requested comment on whether the parameters ''standby smart wake'' and ''standby internet'' are appropriate or if it should consider other parameters, such as ''standby-active, high'' and ''standby-active, low,'' respectively. *Id.*

Finally, for TVs that do not meet the stability criteria of the standby mode measurement, DOE requested comment on measuring power consumption for 240 minutes and using the average power consumption over the last two-thirds of the measurement period as the standby-active mode measurement. *Id.* at 87 FR 11911.

In the NOPR public meeting, NEEA and PCL presented standby mode test data to support reducing the standby mode test time. Specifically, NEEA and PCL presented data showing that most TVs achieved stability within 40

minutes and recommended reducing the minimum test time from 60 minutes to 40 minutes. (Public Meeting Transcript, No. 16 at p. 61–63) NEEA and PCL additionally agreed with DOE's proposal to not retest a unit if it does not meet the stability criteria at the end of the 240-minute test duration. (Public Meeting Transcript, No. 16 at p. 64)

In response to the March 2022 NOPR, ASAP *et al.* encouraged DOE to monitor standby testing results to ensure that standby power measurements are both repeatable and representative and encouraged DOE to consider any necessary modifications to the standby testing methods as part of a future rulemaking. (ASAP *et al.,* No. 18 at p. 2) ComEd and NEEA stated that ANSI/CTA–2037–D addresses the significant increase in energy consumption driven by smart wake features and, therefore, supported the adoption of ANSI/CTA–2037–D in the DOE test method. (ComEd and NEEA, No. 20 at p. 2)

CTA *et al.* stated they are not aware of any issues related to the repeatability of the standby mode test when connected to smart wake functions, the ability to consistently wake the UUT using smart wake functionality, or the representativeness of the standby mode test when a wake test is not included at the end of the standby mode duration. (CTA *et al.,* No. 21 at pp. 15–16)

CTA *et al.* commented that DOE should adopt the test procedure for measuring standby power described in section 11.2 of ANSI/CTA–2037–D. CTA *et al.* stated that DOE should not require that wake tests be conducted at the completion of standby mode tests because the quick start test specified in section 9.11 of ANSI/CTA–2037–D runs a wake time test and this test is completed before standby mode and on mode testing because quick start is configured for these tests. (*Id.* at p. 16)

CTA *et al.* recommended that DOE adopt ANSI/CTA–2037–D, including the revisions made to the standby mode test. CTA *et al.* also stated that these revisions shorten the minimum test period and widen the tolerance used to determine if standby power consumption is stable. (*Id.*) CTA *et al.* additionally commented that DOE should adopt the requirement in Annex B of ANSI/CTA–2037–D that the smart wake capability of the TV be reported along with its standby power, asserting that this would help consumers compare between TVs. CTA *et al.* commented that DOE should include the parameters specified in ANSI/CTA–2037–D to define the measured standby power. These include ''standby with smart wake enabled,'' ''standby with internet connection,'' or ''standby without internet connection.'' (*Id.*)

CTA *et al.* also commented that using the average power consumption of the last two-thirds of the measurement period in cases where the required stability was not achieved is appropriate but that at the time of filing comments, the CTA working group had not yet addressed this topic. (*Id.* at pp. 16–17)

ComEd and NEEA agreed with the exclusion of the wake time test because, according to ComEd and NEEA, the test is problematic, time consuming, and could yield misleading results. (ComEd and NEEA, No. 20 at p. 4).

The CA IOUs recommended that DOE include a wake time measurement as specified in ANSI/CTA–2037–C to encourage consumer adoption of smart wake features. (CA IOUs, No. 19 at p. 4)

Section 11.2 of ANSI/CTA–2037–D specifies some updates to conduct the standby mode measurement compared to section 11.2 of ANSI/CTA–2037–C. As noted by CTA *et al.,* ANSI/CTA–2037–D widens the tolerance to determine if standby power consumption is stable from ± 1 percent or ± 10 mW to ± 1 percent or ± 50 mW, whichever is greater. Given that the measured standby mode power consumption of many TVs is 1 watt or less, DOE does not expect this change to significantly impact measured results; additionally, it is likely to reduce test burden for units that have generally stable standby mode power consumption.

Further, ANSI/CTA–2037–D reduces the shortest total measurement period from 60 minutes to 40 minutes, as recommended by NEEA and PCL during the NOPR public meeting and by CTA *et al.* in its comments. This requirement does not change the measured standby power; rather, it only reduces the test duration for TVs that achieve stability prior to 60 minutes, thereby reducing test burden.

Additionally, ANSI/CTA–2037–D aligns with DOE's proposal in the March 2022 NOPR to not retest a unit if it does not achieve the specified stability requirements at the end of the standby mode test. Specifically, ANSI/CTA–2307–D specifies that if the stability criteria is not achieved at 240 minutes, which is the end of the standby mode measurement period, then the data collected shall be used for determining average power, as if the UUT had met the stability criteria at the 240th minute. In this final rule, DOE is adopting section 11.2 of ANSI/CTA–2037–D for the standby mode test conduct.

Similar to ANSI/CTA–2037, accompanying the standby mode test, section 9.9 of ANSI/CTA–2037–D specifies the smart wake functionality that must be configured during both on mode and standby mode tests. While the general smart wake configuration requirements between ANSI/CTA–2037–C and ANSI/CTA–2037–D are the same, ANSI/CTA–2037–D removes the wake test at the end of the standby mode test, which DOE had proposed to include in the March 2022 NOPR. However, as discussed in section III.G.6 of this document, section 9.9 of ANSI/CTA–2037–D explains that testers should confirm that they understand how to configure smart wake features to persist throughout the entire standby mode test period for all UUT brands or platforms that are tested. The requirements in section 9.9 of ANSI/CTA–2037–D generally ensure that testing is conducted in the same environment as that specified in ANSI/CTA–2037–C.

Additionally, as proposed in the March 2022 NOPR, ANSI/CTA–2037–D specifies three different parameters to record standby mode power consumption, depending on the level of functionality provided by the UUT in standby mode. For UUTs with at least one advertised smart wake feature, the power consumption is recorded as ''standby with smart wake enabled.'' This label is even used for those TVs that may not be able to wake using smart wake features because, as discussed in section 9.9 of ANSI/CTA–2037–D, this connection is maintained during both on mode and standby mode. For UUTs with no advertised or enabled smart wake features, the power consumption is recorded as ''standby with internet connection'' and for non-internet connected UUTs, the power consumption is recorded as ''standby without internet connection.'' In this final rule, DOE is adopting section 9.9 of ANSI/CTA–2037–D for the smart wake features configuration and setup.

Finally, ANSI/CTA–2037–D does not include the wake time test. DOE is also not including the wake time test in this final rule because ''wake time'' is a performance related feature that does not impact the energy consumption of the UUT.

Although ANSI/CTA–2037–D does not reference IEC 62301 Ed. 2.0, the standby power measurement procedure is consistent with the method outlined in section 5.3 of IEC 62301 Ed. 2.0, with the stability requirements adjusted specifically for TVs and an additional specification for minimum and maximum test duration based on expected TV behavior. Accordingly, DOE has determined that the standby power test method specified in ANSI/CTA–2037–D is consistent with EPCA's

requirement under 42 U.S.C. 6295(gg)(2)(A) which specifies that DOE must consider the most current versions of IEC 62301 and IEC 62087 for the standby power requirements. Therefore, in this final rule DOE amends the standby mode requirements in appendix H to sections 9.9 and 11.2 of ANSI/CTA–2037–D.

4. Off Mode Test

Section 7.4 of appendix H references IEC 62301 Ed. 2.0 for measuring the off mode power consumption of TVs. In the March 2022 NOPR, DOE stated that while ANSI/CTA–2037–C specifies the same methodology to measure off mode power consumption as that specified for standby mode, the CTA working group was considering removing the off mode test. 87 FR 11892, 11911.

In the March 2022 NOPR, DOE proposed removing the existing off mode test specified in appendix H because TVs generally do not have an off mode that is distinct from standby mode. *Id.* DOE noted that even when a TV is powered off using a remote, it typically has some functionality operational to be able to receive a signal from the remote control or other device to turn back on, which meets the definition of standby mode rather than off mode. *Id.* In the March 2022 NOPR, DOE requested comment on its proposal to remove the off mode test from appendix H.

CTA *et al.* agreed that an off mode test was not necessary and stated that ANSI/CTA–2037–D does not include such a test. (CTA *et al.,* No. 21 at p. 17)

For the reasons discussed here and, in the March 2022 NOPR, DOE is removing the off mode test from appendix H.

I. Calculation of Annual Energy Consumption

Section 8 of appendix H specifies the calculation and rounding requirements for AEC using the on and standby mode power consumption measurements. ANSI/CTA–2037–C does not contain an equivalent section for the calculation of AEC. Therefore, in the March 2022 NOPR, DOE proposed to retain the current AEC calculation requirements in appendix H but proposed certain modifications consistent with the proposed amendments to the on mode, standby mode, and off mode tests. 87 FR 11892, 11911.

In the March 2022 NOPR, DOE proposed that the average on mode power consumption be calculated as the average of the on mode power in the three preset picture settings: SDR default, SDR brightest, and HDR10 default. If ABC is enabled for the SDR or HDR10 default preset picture settings, the power consumption at each of the four room illuminance levels would be used to determine the average power consumption of the preset picture setting. The equations below detail the calculation of on mode power consumption and AEC proposed in the March 2022 NOPR. The calculation of AEC is different from the current calculation in appendix H primarily in the value used for P_{On}. Given that appendix H specifies testing only the default preset picture setting in on mode, P_{On} reflects the average power consumption in that default preset picture setting. However, in the March 2022 NOPR, DOE proposed testing three preset picture settings for on mode power consumption; therefore, P_{On} would be the average of the power consumption in the tested preset picture settings. *Id.*

$P_{on} = (P_{Default} + P_{Brightest} + P_{HDR10})/3$

Where:

$P_{Default}$ = the measured average power consumption in the default SDR preset picture setting, if ABC is disabled

Or

$P_{Default} = (P_{Default\_140} + P_{Default\_50} + P_{Default\_17} + P_{Default\_4})/4$

if ABC is enabled by default in the default SDR preset picture setting and, $P_{Default\_140}$, $P_{Default\_50}$, $P_{Default\_17}$, and $P_{Default\_4}$ are the average power consumption values at room illuminance levels of 140, 50, 17, and 4 lux, respectively

$P_{Brightest}$ = the measured average power consumption in the brightest SDR preset picture setting

P_{HDR10} = the measured average power consumption in the default HDR10 preset picture setting, if ABC is disabled

Or

$P_{HDR10} = (P_{HDR10\_140} + P_{HDR10\_50} + P_{HDR10\_17} + P_{HDR10\_4})/4$

if ABC is enabled by default in the default HDR10 preset picture setting and, P_{HDR10_140}, P_{HDR10_50}, P_{HDR10_17}, and P_{HDR10_4} are the average power consumption values at room illuminance levels of 140, 50, 17, and 4 lux, respectively

For standby mode, DOE proposed to retain the same hours per day spent in standby mode, but instead of standby-active and standby-passive, as currently specified in appendix H, DOE proposed to use standby power with smart wake, standby power with internet connection, and standby-passive, corresponding to the parameters DOE proposed in the March 2022 NOPR. *Id.* DOE chose to use these parameters because standby-active does not encompass the multiple different standby states that modern TVs have.

Additionally, in the March 2022 NOPR, DOE proposed to retain the AEC equation currently specified in appendix H but to remove the off mode parameter. Given that the current AEC equation assigns 0 hours to off mode, DOE proposed to retain the same weighting factors for on and standby modes.

The AEC equation proposed in the March 2022 NOPR is presented below:

$AEC = 365 * (P_{on} * H_{on} + P_{standby\_smart\_wake} * H_{standby\_smart\_wake} + P_{standby\_internet} * H_{standby\_internet} + P_{standby\_passive} * H_{standby\_passive})/1000$

Where:

P_m = power measured in a given mode m (in watts)

H_m = hours per day spent in mode m

365 = conversion factor from daily to yearly

1000 = conversion factor from watts to kilowatts

And values for H_m are as specified in Table III.2. *Id.*

TABLE III.2—HOURLY WEIGHTINGS

	H_{on}	$H_{standby\_smart\_wake}$	$H_{standby\_internet}$	$H_{standby\_passive}$
Standby smart wake	5	19	0	0
Standby internet	5	0	19	0
Standby-passive	5	0	0	19

In the NOPR public meeting, DOE additionally clarified that it proposed to include similar equations for calculating average dynamic luminance as the equations for calculating on mode power consumption. (Public Meeting Transcript, No. 16 at p. 47) DOE additionally clarified that the on mode power consumption is an average of the

power consumption values for the tested preset picture settings. That is, if a TV does not support HDR10 and is not tested in the HDR10 default preset picture setting, then the on mode power consumption would be the average of the default and brightest preset picture settings. (*Id.* at p. 32)

In the March 2022 NOPR, DOE requested comment on its proposed calculations for the average on mode power consumption and AEC. 87 FR 11892, 11912.

The CA IOUs recommended that DOE consider adopting a weighted luminous efficacy metric to show consumers how efficiently a TV converts power into luminance. (CA IOUs, No. 19 at p. 2; Public Meeting Transcript, No. 16 at p. 45) The CA IOUs also recommended a weighted average for the on mode power consumption and provided data from a market survey of 100 California residents that showed that 26 percent of TV operating hours were in the standard preset picture setting and 48 percent of TV operating hours were in the non-standard preset picture setting (*i.e.,* vivid/dynamic, natural, game, custom/calibrated/user, other), which usually have brighter displays.[21] Based on a market survey they conducted, the CA IOUs recommended setting the weight factors for luminance efficacy at 25 percent for standard preset picture setting, 50 percent for brightest preset picture setting, and 25 percent for HDR preset picture setting. (CA IOUs, No. 19 at p. 2)

CTA *et al.* commented that DOE should adopt the requirement in Annex B of ANSI/CTA–2037–D, which specifies the same AEC calculation as that provided in the March 2022 NOPR. (CTA *et al.,* No. 21 at p. 17)

In this final rule, DOE has determined not to specify a luminous efficacy metric. DOE has determined that a luminous efficacy metric would not easily accommodate the combining of on mode power consumption and standby mode power consumption into a single integrated metric, as required by EPCA if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) Additionally, use of a luminous efficacy metric may not encourage the use of ABC, which reduces power consumption during representative consumer use, because the luminous efficacy of a TV with or without ABC enabled would likely be the same. This could have the unintended consequence of increasing overall TV energy consumption. Accordingly, DOE is specifying an AEC metric and dynamic luminance metric, as discussed.

Additionally, DOE is specifying a simple average to calculate on mode power consumption as opposed to a weighted average, as recommended by the CA IOUs. At this time, it is not explicitly clear if the non-default preset picture settings specified by the CA IOUs do in fact consume more power compared to the default preset picture setting (which the brightest preset picture setting is expected to do). In the absence of any additional data regarding power consumption of the non-default SDR preset picture settings as well as consumer usage of HDR10 preset picture settings, DOE is adopting the simple average calculation for on mode power consumption and dynamic luminance.

Finally, as noted by CTA *et al.,* Annex A [22] of ANSI/CTA–2037–D includes the same equations to calculate average on mode power consumption and AEC as those proposed by DOE in the March 2022 NOPR. Additionally, Annex A of ANSI/CTA–2037–D includes an equation to calculate dynamic luminance, which is the same equation as that specified to calculate average on mode power consumption using dynamic luminance values for each preset picture setting.

In this final rule, DOE amends the AEC calculation in appendix H, to reference Annex A of ANSI/CTA–2037–D.

J. Updates to the Regulatory Text at Appendix H

In the March 2022 NOPR, DOE's proposed amendments to appendix H in the CFR referenced ANSI/CTA–2037–C while retaining the overall structure and headings from the current appendix H. 87 FR 11892, 11919–11921.

CTA *et al.* recommended that DOE delete appendix H and revise 10 CFR 430.23 to reference only ANSI/CTA–2037–D. (CTA *et al.,* No. 21 at p. 6) CTA *et al.* also commented that DOE should include section 6 of ANSI/CTA–2037D and the introductory texts in the relevant sections of ANSI/CTA–2037–D. (CTA *et al.,* No. 21 at p. 8)

As discussed in the preceding sections, DOE is amending appendix H to replace the current regulatory text and reference the relevant sections of ANSI/CTA–2037–D in its place. Accordingly, in this final rule, DOE is modifying the overall structure of appendix H to simplify the references to ANSI/CTA–2037–D and to better match the structure of ANSI/CTA–2037–D. Additionally, because ANSI/CTA–2037–D does not explicitly specify the rounding requirements for standby mode power consumption and dynamic luminance, DOE is specifying these requirements in section 4 of appendix H.

K. Test Procedure Costs

In this final rule, DOE amends the existing test procedure for TVs by referencing ANSI/CTA–2037–D to measure on mode dynamic screen luminance and power consumption as well as standby mode power consumption. ANSI/CTA–2037–D has several differences in testing TVs compared to the current test method at appendix H. Key differences include testing three preset picture settings as opposed to a single default picture setting; measuring dynamic screen luminance over the entire duration of the test clip using a camera photometer at the same time as on mode power consumption measurement; using an LED lamp setup at an angle of 45° for testing TVs with ABC enabled by default; and, testing on and standby mode with an active internet connection (*i.e.,* WAN) and additionally connecting the TV to other devices on LAN to wake the TV from standby mode to on mode.

EPCA requires that test procedures proposed by DOE not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The following sections discuss DOE's evaluation of estimated costs associated with the amendments.

Given the new equipment, setup, and testing requirements specified in ANSI/CTA–2037–D, DOE estimated that TV testing would have a one-time equipment investment cost, a one-time re-testing cost, and additional annual testing costs for the TVs covered by the amended test procedure.

To determine the potential costs manufacturers would incur due to the amended test procedure, DOE used data from DOE's publicly available Compliance Certification Database (''CCD'') to estimate the number of unique basic models that are currently covered by the existing DOE test procedure. Based on data from DOE's CCD,[23] DOE estimated there are approximately 4,285 unique basic models currently on the market. DOE also estimated the amount of time it would take manufacturers to test a single TV unit to the amended test

[21] It is DOE's understanding that ''standard preset picture setting'' refers to the default preset picture setting and ''non-standard preset picture setting'' refers to all other preset picture settings on the TV.

[22] While CTA *et al.* referenced Annex B in its comments, the calculations are specified in Annex A of ANSI/CTA–2037–D.

[23] U.S. Department of Energy's Compliance Certification Database. Television Sets. *See https://www.regulations.doe.gov/certification-data/CCMS-4-Television_Sets.html#q=Product_Group_s%3A%22Television%20Sets%22.* Last accessed on November 11, 2022.

procedure, as well as the amount of time it currently takes manufacturers to test a single TV unit to the existing DOE test procedure. In the March 2022 NOPR, DOE estimated that the existing DOE test procedure requires an average of 2.9 hours to conduct (ranging from 2.6 to 3.1 hours, depending on the specific features of the TV), whereas the proposed test procedure, which referenced ANSI/CTA–2037–C, would require an average of 4.4 hours to conduct (ranging from 3.3 to 5.3 hours). 87 FR 11892, 11912

In response to the March 2022 NOPR, CTA *et al.* commented that, compared to the existing method for measuring TV power consumption, ANSI/CTA–2037–D requires new equipment and more time for conducting the test. CTA *et al.* also commented they have not found the changes to be unduly burdensome, especially given that ANSI/CTA–2037–D reasonably and more accurately reflects modern TV products and their energy use. (CTA *et al.,* No. 21 at p. 17)

The amended test procedure references ANSI/CTA–2037–D, which is largely the same as ANSI/CTA–2037–C that was proposed in the March 2022 NOPR. ANSI/CTA–2037–D specifies a 1-minute stabilization period for on mode ABC testing, which would increase test duration. However, ANSI/CTA–2037–D also eliminates the wake time test and decreases the minimum standby test duration compared to ANSI/CTA–2037–C. These updates are expected to, on balance, not substantively alter the overall test duration compared to the estimates provided in the March 2022 NOPR. Accordingly, DOE's test procedure cost estimates for this amended test procedure are the same as those initially estimated in the March 2022 NOPR, updated to reflect current wages and rates, as well as additional models from the CCD.

Based on data from the Bureau of Labor Statistics' (''BLS's'') Occupational Employment and Wage Statistics, the mean hourly wage for an electronics technician is $33.21.[24] Additionally, DOE used data from BLS's Employer Costs for Employee Compensation to estimate the percentage that wages comprise of the total compensation for an employee. DOE estimated that wages make up 70.5 percent of the total compensation for private industry employees.[25] Therefore, DOE estimated that the total hourly compensation (including all fringe benefits) of a technician performing the testing is $47.11.[26] Using these labor rates and time estimates, DOE estimated that it would cost TV manufacturers on average approximately $205.87 to conduct a single test on a TV unit in accordance with the amended test procedure.[27] DOE estimated that this is, on average, approximately $70.19 more than TV manufacturers are incurring to conduct a single test on a TV in accordance with the existing DOE test procedure.[28]

TV manufacturers are required to test at least two units per basic model. Therefore, DOE estimates that it would cost manufacturers approximately $411.64 per basic model to test in accordance with the amended test procedure, which is on average approximately $140.38 more per basic model than TV manufacturers are currently incurring to test a TV basic model.

In addition to these testing costs, DOE assumed that manufacturers would need to purchase camera photometers to conduct the amended test procedure. DOE estimated that a camera photometer costs approximately $10,000.

The burden associated with amending appendix H to reference ANSI/CTA–2037–D is necessary in order to update the test procedure to the industry standard, which measures both power and luminance simultaneously while connected to a representative network.

In this final rule, DOE finalizes its determination that the changes in test duration and cost due to the amendments adopted in the final rule are not unduly burdensome.

L. Effective and Compliance Dates

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2))

EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

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

[24] DOE used the mean hourly wage of the ''17–3023 Electrical and Electronic Engineering Technologists and Technicians'' from the most recent BLS Occupational Employment and Wage Statistics (May 2021) to estimate the hourly wage rate of a technician assumed to perform this testing. *See www.bls.gov/oes/current/oes173023.htm.* Last accessed on November 10, 2022.

[25] DOE used the June 2022 ''Employer Costs for Employee Compensation'' to estimate that for ''Private Industry Workers,'' ''Wages and Salaries'' are 70.5 percent of the total employee compensation. *See www.bls.gov/news.release/pdf/ecec.pdf.* Last accessed on November 10, 2022.

[26] $33.21 ÷ 0.705 = $47.11.

[27] 4.37 hours × $47.11 = $205.87.

[28] $205.87 − (2.88 hours × $47.11) = $70.19.

regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (''FRFA'') for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (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 DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.* DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

DOE has recently conducted a focused inquiry into small business manufacturers of the products covered by this rulemaking. For manufacturers of TVs, the Small Business Administration (''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 TVs is classified under NAICS 334220, ''radio and television broadcasting and wireless communications equipment manufacturing.'' The SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

DOE used available public information to identify potential small manufacturers. DOE accessed the Compliance Certification Database [29] to create a list of companies that import or otherwise manufacture the products covered by this proposal. DOE identified 33 unique companies that manufacture TVs sold in the domestic market. DOE screened out companies that do not meet the SBA definition of a small business and also those that are entirely or largely foreign-owned and operated. All 33 companies have more than 1,250 employees or are owned and operated outside the United States.

Therefore, DOE concludes that the cost effects accruing from the final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of TVs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including TVs. (*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.

There is currently no energy conservation standard for TVs. As such, the amended test procedure adopted by this final rule does not establish a reporting requirement. In the event that DOE proposes an energy conservation standard for TVs with which manufacturers must demonstrate compliance, DOE will seek OMB approval of the associated information collection requirement. DOE will seek approval either through a proposed amendment to the information collection requirement approved under OMB control number 1910–1400 or as a separate proposed information collection requirement.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for TVs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the

[29] U.S. Department of Energy Compliance Certification Management System, available at *www.regulations.doe.gov/ccms.*

distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

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

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it will not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of

proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for TVs adopted in this final rule incorporate testing methods contained in certain sections of the following commercial standard: ANSI/CTA–2037–D. DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

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

N. Description of Materials Incorporated by Reference

ANSI/CTA–2037–D is an industry accepted test standard that measures on mode and standby mode TV power consumption. Specifically, the test procedure codified by this final rule references ANSI/CTA–2037–D for testing the on mode and standby mode of TVs. ANSI/CTA–2037–D is reasonably available from CTA (*www.cta.tech*).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Energy conservation, Household appliances, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on February 21, 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 February 22, 2023.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends parts 429 and 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

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

■ 2. Amend § 429.25 by revising paragraphs (a)(2)(ii) and (a)(2)(iii)(A) and (B) to read as follows:

§ 429.25 Television sets.

(a) * * *

(2) * * *

(ii) Any represented annual energy consumption of a basic model shall be determined by applying the AEC calculation in section 4 of appendix H to subpart B of part 430 of this chapter to the represented values of power consumption as calculated pursuant to paragraph (a)(2)(i) of this section.

(iii) * * *

(A) For power consumption in the on and standby modes, the represented value shall be rounded according to the requirements specified in sections 4.1 and 4.3 of appendix H to subpart B of part 430 of this chapter.

(B) For annual energy consumption, the represented value shall be rounded according to the requirements specified in section 3.4 of appendix H to subpart B of part 430 of this chapter.

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Amend § 430.3 by:

■ a. Redesignating paragraphs (n) through (w) as paragraphs (o) through (x), respectively;

■ b. Adding new paragraph (n);

■ c. Removing newly redesignated paragraph (q)(5) and redesignating paragraphs (q)(6) through (10) as paragraphs (q)(5) through (9), respectively; and

■ d. In newly redesignated paragraph (q)(6), removing the text ''G, H, I'' and adding in its place ''G, I''.

The addition reads as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(n) CTA. Consumer Technology Association, 1919 S. Eads Street, Arlington, VA 22202; 703–907–7600; *www.cta.tech*.

(1) ANSI/CTA–2037–D, Determination of Television Set Power Consumption, September 2022; IBR approved for appendix H to subpart B.

(2) [Reserved]

* * * * *

■ 5. Amend § 430.23 by revising paragraph (h) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(h) *Television sets.* The power consumption of a television set, expressed in watts, including on and standby modes, shall be determined in accordance with sections 3 and 4 of appendix H of this subpart respectively. The annual energy consumption, expressed in kilowatt-hours per year, shall be determined in accordance with section 4 of appendix H of this subpart.

* * * * *

■ 6. Revise Appendix H to subpart B of part 430 to read as follows:

Appendix H to Subpart B of Part 430—Uniform Test Method for Measuring the Power Consumption of Television Sets

Note: On or after April 14, 2023 and prior to September 11, 2023, any representations made with respect to the energy use or

energy efficiency of a television must be based upon results generated under this appendix as it appeared in 10 CFR part 430 edition revised as of January 1, 2023, or this appendix. Beginning September 11, 2023 any representations made with respect to the energy use or efficiency of a television must be based upon results generated under this appendix. Given that beginning September 11, 2023, representations with respect to the energy use or efficiency of televisions must be made in accordance with tests conducted pursuant to this appendix, manufacturers may wish to begin using this test procedure as soon as possible.

0. Incorporation by Reference

DOE incorporated by reference in § 430.3, ANSI/CTA–2037–D in its entirety. However, only enumerated provisions of ANSI/CTA–2037–D are applicable to this appendix, as follows:

0.1 ANSI/CTA–2037–D

(a) Section 5 as referenced in section 2 of this appendix;

(b) Sections 6 and 8 through 11 as referenced in section 3 of this appendix;

(c) Section 7 as referenced in sections 3 and 4 of this appendix; and

(d) Annex A as referenced in section 4 of this appendix.

0.2 [Reserved]

1. Scope

This appendix covers the test requirements used to measure the energy and power consumption of television sets that have a diagonal screen size of at least fifteen inches; and are powered by mains power (including TVs with auxiliary batteries but not TVs with main batteries).

2. Definitions and Symbols

2.1. *Definitions.* The following terms are defined according to section 5.1 of ANSI/CTA–2037–D.

(a) Annual energy consumption
(b) Automatic brightness control
(c) Brightest selectable picture setting
(d) Default preset picture setting
(e) Dynamic Luminance
(f) Energy-Efficient-Ethernet
(g) Filmmaker Mode
(h) Forced menu
(i) Gloss Unit (GU)
(j) HDR10
(k) High Dynamic Range
(l) Home configuration
(m) Hybrid Log Gamma (HLG)
(n) Illuminance
(o) International System of Units
(p) Luminance
(q) Main battery
(r) Motion-Based Dynamic Dimming
(s) Neutral density filter
(t) Off Mode
(u) On Mode
(v) Perceptual Quantization Video
(w) Preset picture setting
(x) Quick start
(y) Retail Configuration
(z) Snoot
(aa) Software
(ab) Wake-By-Remote-Control-App
(ac) Wake-By-Smart-Speaker
(ad) Wake-On-Cast

2.2. *Symbol usage.* The symbols and abbreviations in section 5.2 of ANSI/CTA–2037–D apply to this test procedure.

3. Test Conduct

Determine the dynamic luminance and on mode and standby mode power consumption of TVs by following the procedure specified in sections 6 through 11 of ANSI/CTA–2037–D.

4. Calculation of Measured Values

Calculate the on mode power consumption, dynamic luminance, standby mode power consumption, and annual energy consumption as specified in Annex A of ANSI/CTA–2037–D. The following additional requirements are also applicable.

4.1. Round on mode power value as specified in Annex A of ANSI/CTA–2037–D.

4.2. Round dynamic luminance to the nearest tenth.

4.3. Round standby mode power as specified in section 7.1.2 of ANSI/CTA–2037–D.

4.4. Round annual energy consumption as specified in Annex A of ANSI/CTA–2037–D.

[FR Doc. 2023–03986 Filed 3–14–23; 8:45 am]

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Part III

Department of Energy

10 CFR Part 430
Energy Conservation Program: Energy Conservation Standards for Battery Chargers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2020–BT–STD–0013]

RIN 1904–AE50

Energy Conservation Program: Energy Conservation Standards for Battery Chargers

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

ACTION: Notice of proposed rulemaking; 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 battery chargers. EPCA also requires the U.S. Department of Energy (''DOE'' or ''Department'') 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 battery chargers, 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 Thursday, April 27, 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 May 15, 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 April 14, 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–0013. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–STD–0013, by any of the following methods:

Email: batterychargers2020STD0013@ee.doe.gov. Include the docket number EERE–2020–BT–STD–0013 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-0013.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VII of this document for information on how to submit comments through *www.regulations.gov.*

EPCA requires the Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition. The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the Division at *energy.standards@usdoj.gov* on or before the date specified in the **DATES** section. Please indicate in the ''Subject'' line of your email the title and Docket Number of this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Melanie Lampton, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 751–5157. Email: *Melanie.Lampton@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Synopsis of the Proposed Rule

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include battery chargers, 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 new multi-metric energy conservation standards for battery chargers. The proposed standards, which are expressed in max active charge energy and max standby and off modes power values, are shown in Table I.1. These proposed standards, if adopted, would apply to all battery chargers 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 BATTERY CHARGERS

Product class	Battery energy E_{batt} (Wh)	Maximum active mode energy E_a (Wh)	Maximum standby mode power P_{sb}* (W)	Off mode power P_{off} (W)
1a Fixed-Location Wireless	≤100	1.718 * Ebatt + 8.5	1.5	0
1b Open-Placement Wireless	N/A	N/A	0.8 (P_{nb} only)	0
2a Low-Energy	≤100	1.222 * Ebatt + 4.980	0.00098 * Ebatt + 0.4	0
2b Medium-Energy	100–1,000	1.367 * Ebatt + −9.560.		
2c High-Energy	>1,000	1.323 * Ebatt + 34.361.		

* Standby mode power is the sum of no-battery mode power and maintenance mode power, unless noted otherwise.

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of battery chargers, as measured by the average life-cycle cost (''LCC'') savings and the simple payback period (''PBP'').[2] 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 battery chargers, which is estimated to range from 3.0 to 10.0 years (see section IV.F of this document).

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF BATTERY CHARGERS

Battery charger product class	Average LCC savings *(2021$)*	Simple payback period *(years)*
Fixed-Location Wireless Chargers	−0.03	3.8
Open-Placement Wireless Chargers	0.12	4.1
Low-Energy Wired Chargers	0.13	4.0
Medium-Energy Wired Chargers	1.55	4.4
High-Energy Wired Chargers	14.32	1.5

DOE's analysis of the impacts of the proposed standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers

The industry net present value (''INPV'') is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2023–2056). Using a real discount rate of 9.1 percent, DOE estimates that the INPV for manufacturers of battery charger applications in the case without amended standards is $78.9 billion in 2021$. Under the proposed standards, the change in INPV is estimated to range from 4.6 percent to −0.3 percent, which is approximately −$3,659 million to −$214 million. To bring products into compliance with amended standards, it is estimated that the industry would incur total conversion costs of $398.2 million.

DOE's analysis of the impacts of the proposed standards on manufacturers is described in section IV.J of this document. The analytic results of the manufacturer impact analysis (''MIA'') are presented in section V.B.2.

C. National Benefits and Costs[3]

DOE's analyses indicate that the proposed energy conservation standards for battery chargers would save a significant amount of energy. Relative to the case without amended standards, the lifetime energy savings for battery chargers purchased in the 30-year period that begins in the anticipated year of compliance with the amended standards (2027–2056) amount to 1.2 quadrillion British thermal units (''Btu''), or quads.[4] This represents a savings of 17.6 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 battery chargers ranges from $3.7 billion (at a 7-percent discount rate) to $7.5 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 battery chargers purchased in 2027–2056.

In addition, the proposed standards for battery chargers 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 40 million metric tons (''Mt'')[5] of carbon dioxide (''CO_2''), 272 thousand tons of methane (''CH_4''), 0.42 thousand tons of nitrous oxide (''N_2O''), 18 thousand tons of sulfur dioxide (''SO_2''), 62 thousand tons of nitrogen oxides (''NO_X''), and 0.11 tons of mercury (''Hg'').[6]

DOE estimates the value of climate benefits from a reduction in greenhouse gases (GHG) using four different estimates of the social cost of CO_2 (''SC-CO_2''), the social cost of methane (''SC-CH_4''), and the social cost of nitrous oxide (''SC-N_2O''). Together these represent the social cost of GHG (SC-GHG).[7] DOE used interim SC-GHG values developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).[8] The derivation of these values is discussed in section IV.L. of this document. For presentational purposes, the climate benefits associated with the average SC-GHG at a 3-percent discount rate are estimated to be $2.1 billion. DOE does not have a single central SC-GHG point estimate and it emphasizes the importance and value of considering the

[2] The average LCC savings refer to consumers that are affected by a standard and are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of new or amended standards (see section IV.F.6 of this document). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (see section IV.C of this document).

[3] All monetary values in this document are expressed in 2023 dollars.

[4] The quantity refers to full-fuel-cycle (''FFC'') energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.1 of this document.

[5] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[6] DOE calculated emissions reductions relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2022* (''*AEO2022*''). *AEO2022* represents current federal and state legislation and final implementation of regulations as of the time of its preparation. See section IV.K of this document for further discussion of *AEO2022* assumptions that effect air pollutant emissions.

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

[8] 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.*

benefits calculated using all four sets of SC-GHG estimates.

DOE estimated the monetary health benefits of SO_2 and NO_X emissions reductions using benefit per ton estimates from the scientific literature, as discussed in section IV.L. of this document. DOE estimated the present value of the health benefits would be $1.8 billion using a 7-percent discount rate, and $3.8 billion using a 3-percent discount rate.[9] DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions.

Table I.3 summarizes the economic benefits and costs expected to result from the proposed standards for battery chargers. There are other important unquantified effects, including certain unquantified climate benefits, unquantified public health benefits from the reduction of toxic air pollutants and other emissions, unquantified energy security benefits, and distributional effects, among others.

TABLE I.3—SUMMARY OF ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR BATTERY CHARGERS

[TSL 2]

	Billion $2021
3% discount rate	
Consumer Operating Cost Savings	9.0
Climate Benefits *	2.1
Health Benefits **	3.8
Total Benefits †	15.0
Consumer Incremental Product Costs	1.4
Net Benefits	13.5
7% discount rate	
Consumer Operating Cost Savings	4.6
Climate Benefits * (3% discount rate)	2.1
Health Benefits **	1.8
Total Benefits †	8.6
Consumer Incremental Product Costs	0.9
Net Benefits	7.7

Note: This table presents the costs and benefits associated with product name shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056.

* Climate benefits are calculated using four different estimates of the social cost of carbon (SC-CO_2), methane (SC-CH_4), and nitrous oxide (SC-N_2O) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate) (see section IV.L of this NOPR). Together these represent the global SC-GHG. For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 3 percent discount rate are shown, but DOE does not have a single central SC-GHG point estimate. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this proposed rule, DOE has reverted to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. See section IV.L of this document for more details.

† Total and net benefits include those consumer, climate, and health benefits that can be quantified and monetized. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC-GHG with 3-percent discount rate, but DOE does not have a single central SC-GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four sets of 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 climate and health benefits of emission reductions, all annualized.[10]

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 battery chargers 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 battery chargers shipped in 2027–2056. Total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate. Estimates of SC-GHG values are presented for all four discount rates in section IV.L of this document.

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

[9] 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.

[10] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2023, 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 2023. 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.

reduced GHG emissions, the estimated cost of the standards proposed in this rule is $89 million per year in increased equipment costs, while the estimated annual benefits are $457 million in reduced equipment operating costs, $120 million in climate benefits, and $178 million in health benefits. In this case. The net benefit would amount to $665 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is $81 million per year in increased equipment costs, while the estimated annual benefits are $500 million in reduced operating costs, $120 million in climate benefits, and $215 million in health benefits. In this case, the net benefit would amount to $754 million per year.

Table I.4 presents the total estimated monetized benefits and costs associated with the proposed standard, expressed in terms of annualized values. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced NO_X and SO_2 emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards proposed in this rule is $89 million per year in increased equipment costs, while the estimated annual benefits are $457 million in reduced equipment operating costs, $120 million in climate benefits, and $178 million in health benefits. In this case. The net benefit would amount to $665 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is $81 million per year in increased equipment costs, while the estimated annual benefits are $500 million in reduced operating costs, $120 million in climate benefits, and $215 million in health benefits. In this case, the net benefit would amount to $754 million per year.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR BATTERY CHARGERS

[TSL 2]

	Million 2021$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	500	487	516
Climate Benefits*	120	120	120
Health Benefits**	215	215	215
Total Benefits†	834	821	850
Consumer Incremental Product Costs	81	90	71
Net Benefits	754	731	779
7% discount rate			
Consumer Operating Cost Savings	457	447	469
Climate Benefits* (3% discount rate)	120	120	120
Health Benefits**	178	178	178
Total Benefits†	754	744	766
Consumer Incremental Product Costs	89	98	79
Net Benefits	665	646	687

Note: This table presents the costs and benefits associated with battery chargers shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the AEO2022 Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC-GHG (see section IV.L of this NOPR). For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC-GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC-GHG estimates. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this proposed rule, DOE has reverted to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. See section IV.L of this document for more details.

† Total 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's analysis of the national impacts of the proposed standards is described in sections IV.H, IV.K, and IV.L of this document.

D. Conclusion

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Specifically, with regards to technological feasibility products achieving these standard levels are already commercially available for

all product classes covered by this proposal. As for economic justification, DOE's analysis shows that the benefits of the proposed standard exceed, to a great extent, the burdens of the proposed standards.

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 battery chargers is $89 million per year in increased battery charger costs, while the estimated annual benefits are $457 million in reduced battery charger operating costs, $120 million in climate benefits and $178 million in health benefits. The net benefit amounts to $665 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 1.2 quad FFC. 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 battery chargers.

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 battery chargers, the subject of this document. (42 U.S.C. 6291(32); 42 U.S.C. 6292(a)(20)) EPCA directed DOE to issue a final rule that prescribes energy conservation standards for battery chargers or classes of battery charges or to determine that no energy conservation standard is technically feasible or economically justified. 42 U.S.C. 6295(u)(1)(E)(i)(II) EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1))

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 battery chargers appear at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix Y and appendix Y1.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including battery chargers. 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)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3))

Moreover, DOE may not prescribe a standard: (1) for certain products, including battery chargers, 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 imposition of the standard;

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

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

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of 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 interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

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

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (''EISA 2007''), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for battery chargers address standby mode and off 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 June 13, 2016 (''June 2016 Final Rule''), DOE prescribed the current energy conservation standards for battery chargers manufactured on and after June 13, 2018. 81 FR 38266. These standards are set forth in DOE's regulations at 10 CFR 430.32(z) and are summarized in Table II.1.

TABLE II.1—CURRENT FEDERAL ENERGY CONSERVATION STANDARDS FOR BATTERY CHARGERS

Product class	Battery charger classification	Maximum unit of energy consumption (UEC) * *(kWh/year)*
1	Low-energy inductive battery chargers to be used in wet environment with associated battery energy of less than or equal to 5 watt-hours (Wh).	3.04.
2	Low-energy, low-voltage battery chargers with associated battery energy of less than 100Wh, and battery voltage of less than 4 volts (V).	$0.1440 * E_{batt} + 2.95$.
3	Low-energy, medium-voltage battery chargers with associated battery energy of less than 100Wh, and battery voltage of 4V to 10V.	For $E_{batt} < 10Wh$, 1.42; For $E_{batt} \geq 10Wh$, $0.0255 * E_{batt} + 1.16$.
4	Low-energy, high-voltage battery chargers with associated battery energy of less than 100Wh, and battery voltage of more than 10V.	$0.11 * E_{batt} + 3.18$.
5	Medium-energy, low-voltage battery chargers with associated battery energy of 100Wh to 3,000Wh, and battery voltage of less than 20V.	$0.0257 * E_{batt} + 0.815$.
6	Medium-energy, high-voltage battery chargers with associated battery energy of 100Wh to 3,000Wh, and battery voltage of higher than or equal to 20V.	$0.0778 * E_{batt} + 2.4$.
7	High-energy battery chargers with associated battery energy of more than 3,000Wh.	$0.0502 * E_{batt} + 4.53$.

* Maximum UEC is expressed as a function of representative battery energy (E_{batt}).

2. History of Standards Rulemaking for Battery Chargers

On September 16, 2020, DOE published notice that it was initiating an early assessment review to determine whether any new or amended standards would satisfy the relevant requirements of EPCA for a new or amended energy conservation standard for battery chargers and a request for information (''RFI''). 85 FR 57787 (''September 2020 Early Assessment Review RFI''). Specifically, through the published notice and request for information, DOE sought data and information that could enable the agency to determine whether DOE should propose a ''no new standard'' determination because a more stringent standard: (1) would not result in a significant savings of energy; (2) is not technologically feasible; (3) is not economically justified; or (4) any combination of foregoing. *Id.*

Subsequently, DOE published a preliminary analysis on March 3, 2022 (''March 2022 Preliminary Analysis'') to respond to comments pertaining to the September 2020 Early Assessment Review RFI, and presented preliminary engineering analyses based on a multi-metric approach that independently measures active mode, standby mode, and off mode energy use metrics. 87 FR 11990. DOE conducted in-depth technical analyses in the following

areas: (1) engineering; (2) markups to determine product price; (3) energy use; (4) LCC'' and ''PBP''; and (5) national impacts. The preliminary TSD that presents the methodology and results of each of these analyses is available at *https://www.regulations.gov/docket/EERE-2020-BT-STD-0013*.

DOE received comments in response to the March 2022 Preliminary Analysis from the interested parties listed in Table II.2.

TABLE II.2—MARCH 2022 PRELIMINARY ANALYSIS WRITTEN COMMENTS

Commenter(s)	Abbreviation	Comment number in the docket	Commenter type
UL Solutions	UL	11	Efficiency Organization.
Northwest Energy Efficiency Alliance	NEEA	16	Efficiency Organization.
Association of Home Appliance Manufacturers; Consumer Technology Association; Information Technology Industry Council; National Electrical Manufacturers Association; Outdoor Power Equipment Institute; Power Tool Institute.	Joint Trade Associations	17	Trade Association.
Pacific Gas and Electric Company; San Diego Gas & Electric Company; Southern California Edison.	CA IOUs	18	Utility Association.
Appliance Standards Awareness Project; American Council for an Energy-Efficiency Economy; Consumer Federation of America; New York State Energy Research and Development Authority.	Joint Efficiency Advocates	19	Efficiency Organization.
Delta-Q Technologies	Delta-Q	20	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[11] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the April 2022 public meeting, DOE cites the written comments throughout this document. Any oral comments provided during the webinar that are not substantively addressed by written comments are summarized and cited separately throughout this document.

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 NOPR stages for an energy conservation standards rulemaking. Section 6(f)(2) of appendix A specifies that the length of the public comment period for a NOPR 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 March 2022 Preliminary Analysis on the technical and economic analyses and provided stakeholders with a 60-day comment period. 87 FR 11990. 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.

III. General Discussion

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

A. General Comments

This section summarizes general comments received from interested parties regarding rulemaking timing and process.

In response to the March 2022 Preliminary Analysis, Joint Trade Associations commented that DOE's process for this rulemaking undermines the value of early stakeholder engagement because: (1) DOE developed the preliminary analysis based on a proposed test procedure rather than a finalized one; and (2) DOE has provided a shortened comment period on the preliminary analysis that overlaps with the comment period for the external power supply (''EPS'') preliminary analysis as well as a preliminary analysis on amended standards for electric motors, both of which impact many of the same manufacturers as the ones for battery chargers. (Joint Trade Associations, No. 17 at pp. 2–3) The Joint Trade Associations further commented that the proposed test procedure has drawn serious concerns from several commenters, and it would be flawed without addressing opposing comments. The Joint Trade Associations also suggested that amended standards would not be justified regardless of whether the standards were analyzed using either the current test procedure or the recently finalized new test procedure in appendix Y1 and that, as a result, DOE should issue a notice of proposed determination not to amend battery charger standards. (Joint Trade Associations, No. 17 at p. 4)

DOE reiterates that the preliminary analysis was intended to provide stakeholders with an opportunity to comment on the various methodologies DOE intended to use in the NOPR. DOE again notes that the preliminary analysis results should not be relied upon to assess whether amended standards for battery chargers are justified. In addition, by conducting the March 2022 Preliminary Analysis with the proposed test procedure, DOE gave stakeholders an early preview of what the new multi-metric standards may potentially look like, allowing stakeholders enough time to review and comment on potential issues with DOE's approach and results. DOE notes that there were concerns and potential test burdens associated with the original proposed test procedure; however, these issues have been addressed in the test procedure final rule published in September 2022 (''September 2022 Test Procedure Final Rule''). 87 FR 55090. As such, unless otherwise noted, test results used in support of this NOPR were measured using the multi-metric test procedure as finalized in the September 2022 Test Procedure Final Rule. DOE further notes that because the finalized test procedure adopts the multi-metric approach, the current integrated UEC standards would

[11] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for battery chargers. (Docket No. EERE–2020–BT–STD–0013, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

no longer be applicable to test results under the new test procedure. As such, even if DOE were to hold the multi-metric standards at the same level as the current UEC standards, DOE would still need to amend the current standards to translate them to the multi-metric one. DOE understands that the Joint Trade Associations are concerned that amended standards might not be justified, based on results from the preliminary analysis. However, DOE has expanded its analysis further in the NOPR stage and has more robust results that indicate amended standards can result in significant conservation of energy. These results are further discussed in section V of this NOPR document.

With regards to a shortened comment period, DOE believes the 60-day comment period was sufficient for reviewing the methodologies and results presented. However, DOE did not receive any comment period extension requests from any stakeholder during the preliminary analysis comment period.

NEEA stated its general support for several aspects of the preliminary TSD, including the general framework and approach to battery charger efficiency metrics and standards levels, active candidate standard levels (CSLs) that are continuous across product class boundaries, the approach to translate current compliance certification data (CCD) to active mode by subtracting 5 hours of battery maintenance power from the total charge and maintenance energy measurement, and the technology neutral definition of wireless charging. (NEEA, No. 16 at p. 5) DOE appreciates NEEA's general support on these aspects of DOE's battery charger rulemaking.

B. Scope of Coverage

This NOPR covers those consumer products that meet the definition of ''battery chargers,'' which are devices that charge batteries for consumer products, including battery chargers embedded in other consumer products. 10 CFR 430.2. (*See also* 42 U.S.C. 6291(32)) A battery charger may be wholly embedded in another consumer product, partially embedded in another consumer product, or wholly separate from another consumer product. Currently under the test procedure at appendix Y, only consumer wired chargers and wet environment wireless inductive chargers designed for battery energies of no more than 5 watt-hours are covered battery charger product classes.

In the September 2022 Test Procedure Final Rule, DOE expanded the battery charger test procedure coverage to cover all fixed-location wireless chargers in all modes of operation, and open-placement wireless chargers in no-battery mode only. 87 FR 55090, 55095–55098. As such, in this NOPR, DOE is proposing to expand the scope of battery energy conservation standards to cover these fixed-location and open-placement wireless chargers in separate product classes.

See section IV.A.1 of this document for discussion of the product classes analyzed in this NOPR.

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. As stated, currently, only consumer wired chargers and wet environment wireless inductive chargers designed for batteries with energies of no more than 5 watt-hours are covered under the test procedure scope at 10 CFR part 430, subpart B, appendix Y. However, on September 8, 2022, DOE published a test procedure final rule that expanded the battery charger test procedure coverage to cover all fixed-location and open-placement wireless chargers, and adopted the multi-metric test procedure approach, where each mode of operation is independently regulated, thus making usage profiles no longer required. 87 FR 55090, 55092–55093. This new test procedure is in the separate appendix Y1, and manufacturers will be required to use results of testing under the new test procedure to determine compliance with amended energy conservation standards.

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 (''Process Rule'').

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety, and (4) unique-pathway proprietary technologies. Sections 6(b)(3)(ii)–(v) and 7(b)(2)–(5) of the Process Rule. Section IV.B of this document discusses the results of the screening analysis for battery chargers, 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 technical support document (''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 battery chargers, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C of this proposed rule and in chapter 5 of the 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 battery chargers purchased in the 30-year period that begins in the year of compliance with the proposed standards (2027–2056).[12] The savings are measured over the entire lifetime of

[12] 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 9-year period.

battery chargers 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 battery chargers. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. For natural gas, the primary energy savings are considered to be equal to the site energy savings. DOE also calculates NES in terms of FFC energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[13] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.1 of this document.

2. Significance of Savings

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B))

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[14] 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 at TSL 2 are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

F. Economic Justification

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)-(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts an MIA, as discussed in section IV.J of this document. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) INPV, which values the industry on the basis of expected future cash flows, (2) cash flows by year, (3) changes in revenue and income, and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

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

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

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific 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

[13] 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).

[14] 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).

considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F of this document.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.E, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this document would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (''DOJ'') provide its determination on this issue. DOE will publish and respond to the Attorney General's determination in the final rule. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

f. Need for National Energy Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the proposed standards are likely to provide improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity, as discussed in section IV.M of this document.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The proposed standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and 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.K; 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 IV.L of this document.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section V.B of this proposed rule.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to battery chargers. 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/document/EERE-Mar-BT-STD-0013*. Additionally, DOE used output from the latest version of the Energy Information Administration's (''EIA's'') *Annual Energy Outlook* (''*AEO*''), a widely known energy projection for the United States, for the emissions and utility impact analyses.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily

on publicly-available information. The subjects addressed in the market and technology assessment for this rulemaking include (1) a determination of the scope of the rulemaking and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends; and (6) technologies or design options that could improve the energy efficiency of battery chargers. 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. Product Classes

When evaluating and establishing energy conservation standards, DOE may establish separate standards for a group of covered products (*i.e.,* establish a separate product class) if DOE determines that separate standards are justified based on the type of energy used, or if DOE determines that a product's capacity or other performance-related feature justifies a different standard. (42 U.S.C. 6295(q)) In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (*Id.*)

DOE currently defines separate energy conservation standards for the following battery charger product classes (10 CFR 430.32(z)(1)):

TABLE IV.1—CURRENT BATTERY CHARGER PRODUCT CLASSES

Product class	Battery charger classification	Maximum UEC * (kWh/year)
1	Low-energy inductive battery chargers to be used in wet environment with associated battery energy of less than or equal to 5 watt-hours (Wh).	3.04.
2	Low-energy, low-voltage battery chargers with associated battery energy of less than 100Wh, and battery voltage of less than 4 volts (V).	$0.1440 * E_{batt} + 2.95$.
3	Low-energy, medium-voltage battery chargers with associated battery energy of less than 100Wh, and battery voltage of 4V to 10V.	For $E_{batt} < 10Wh$, 1.42; For $E_{batt} \geq 10Wh$, $0.0255 * E_{batt} + 1.16$.
4	Low-energy, high-voltage battery chargers with associated battery energy of less than 100Wh, and battery voltage of more than 10V.	$0.11 * E_{batt} + 3.18$.
5	Medium-energy, low-voltage battery chargers with associated battery energy of 100Wh to 3,000Wh, and battery voltage of less than 20V.	$0.0257 * E_{batt} + 0.815$.
6	Medium-energy, high-voltage battery chargers with associated battery energy of 100Wh to 3,000Wh, and battery voltage of higher than or equal to 20V.	$0.0778 * E_{batt} + 2.4$.
7	High-energy battery chargers with associated battery energy of more than 3,000Wh.	$0.0502 * E_{batt} + 4.53$.

* Maximum UEC is expressed as a function of representative battery energy (E_{batt}).

Battery chargers are devices that charge batteries for consumer products, including battery chargers embedded in other consumer products. 10 CFR 430.2. (*See also* 42 U.S.C. 6291(32)) A battery charger may be wholly embedded in another consumer product, partially embedded in another consumer product, or wholly separate from another consumer product. Under appendix Y, only consumer wired chargers and wet environment wireless inductive chargers designed for battery energies of no more than 5 watt-hours are covered battery charger product classes.

In the September 2022 Test Procedure Final Rule, DOE adopted the proposal to expand the battery charger test procedure scope to cover all both fixed-location wireless chargers and open-placement wireless chargers. 87 FR 55090, 55095–55098. DOE also adopted the proposal to establish new multi-metric test procedure for battery chargers. 87 FR 55090, 55100–55108.

DOE notes that in transitioning to the multi-metric approach where each mode of operation is independently regulated, usage profiles are no longer required. Currently established product classes help identify the particular set of usage profiles that must be applied to the UEC equation for a given battery charger model's UEC to be calculated. Without the need for usage profiles, however, the need to maintain currently established product classes is also greatly diminished. In light of this situation, along with the additional wireless battery charger test procedure coverage, DOE is proposing to remove the existing product classes and establish new ones as follows:

TABLE IV.2—PROPOSED BATTERY CHARGER PRODUCT CLASS DESCRIPTION

Product class No.	Product class description	Rated battery energy (Ebatt)
1a	Fixed-Location Wireless Battery Chargers	≤100Wh.
1b	Open-Placement Wireless Battery Chargers	All Battery Energies.
2a	Low-energy Wired Battery Charger	0–100Wh.
2b	Medium-energy Wired Battery Charger	100–1000Wh.
2c	High-energy Wired Battery Charger	>1000Wh.

As shown in Table IV.2, wired battery chargers are further divided into three sub-product classes representing chargers with associated battery energies that are either low-energy (0–100Wh), medium-energy (100–1000Wh), or high-energy (>1000Wh) such that equations representing potential standards for each of these sub-classes can be independently adjusted to accommodate the unique characteristics of chargers at each of these ranges and to achieve a desired pass rate. Similarly, wireless chargers are divided into fixed-location wireless charger and open-placement wireless charger because of the expanded test procedure scope.

The Joint Efficiency Advocates stated support for DOE's evaluation of both fixed-location and open-placement wireless chargers in the NOPR stage analysis because of the significant energy savings that could be achieved. The Joint Efficiency Advocates reiterated that wireless chargers are significantly less efficient than wired chargers, as stated from their response to the standards RFI published on September 16, 2020.[15] (Joint Efficiency Advocates, No. 19 at p. 2)

The CA IOUs and NEEA both supported DOE's development of standards for wireless chargers. (CA IOUs, No. 18 at pp.2–3; NEEA No. 16 at pp. 3–4) NEEA further commented that considering active mode and standby mode CSLs are appropriate for fixed-location wireless chargers and no battery mode only standards for open-placement wireless chargers are also appropriate at this time. (*Id.*) Both the CA IOUs and NEEA also encouraged DOE to further analyze the standards for wireless chargers with the CA IOUs urging DOE to work with the industry to cover the active mode operation of open-placement wireless chargers as well.

DOE notes that DOE's battery charger standards are developed with the test procedure in mind. Although DOE adopted both active and standby modes test procedure for fixed-location wireless chargers, because of the intrinsic testing repeatability and representativeness issues, DOE did not prescribe an active mode test procedure for open-placement wireless chargers in the September 2022 Test Procedure Final Rule. As a result, DOE is also not considering active mode energy conservation standards for open-placement wireless chargers in this rulemaking.

An engineer from UL commented that a cross-class standard for multi-port and/or multi-voltage battery chargers should be developed because one of the battery charger products that they are testing cannot be classified with the current battery charger product classes, and the compliance certification management system (CCMS) reporting template also does not address such issue. (UL, No. 11 at pp. 1–2)

DOE notes that for multi-port and/or multi-voltage battery chargers, DOE's battery selection criteria in Table 3.2.1 from appendix Y and appendix Y1 clearly notes that all ports and battery or configuration of batteries with the highest individual voltage should be used for testing, and if multiple batteries meet the criteria, then the battery or configuration of batteries with the highest total nameplate charge capacity at the highest individual voltage should be used for testing. As such, the battery charger product class for such multi-port/multi-voltage battery would be based on the highest individual battery voltage, and the highest total battery charge capacity.

The CA IOUs stated that DOE should reconsider its decision not to include DC fast chargers (DCFCs) used to charge light-duty EVs and PHEVs in DOE's battery charger standards. The CA IOUs stated that the original decision to not regulate these products under battery charger rulemaking scope was because DOE stated that it lacks the authority to regulate automobiles as consumer products. However, the CA IOUs considered that DCFCs fall within the definition of covered products in that ''a battery charger must charge batteries for consumer products,'' and that such DCFCs are consumer products used to charge other consumer products. The CA IOUs further commented that when EPCA passed in 1975, it could not have foreseen how excluding automobiles from consumer products could bar DOE from regulating DCFCs. Therefore, the CA IOUs recommended DOE to reconsider if DCFCs should fall within the scope of DOE's standards. (CA IOUs, No. 18 at pp. 3–5)

DOE reiterates that DOE's authority to regulate battery chargers is limited to battery chargers that charge batteries for consumer products. (42 U.S.C. 6291(32)) As defined by EPCA, ''consumer products'' explicitly excludes automobiles as that term is defined in 49 U.S.C. 32901(a)(3). (42 U.S.C 6291(1)) DOE has limited information on whether DCFCs are used to charge any consumer products other than automobiles. As such, DOE is not proposing standards for DCFCs at this time. However, considering the current trend towards electrification in many industries, DOE is interested in whether DCFCs are used to charge other consumer products, including electric vehicles other than automobiles, such as electric motorcycles.

2. Technology Options

For technology assessment, DOE identifies technology options that appear to be a feasible means of improving product efficiency. This assessment provides the technical background and structure on which DOE bases its screening and engineering analyses. The following discussion provides an overview of the salient aspects of the technology assessment, including issues on which DOE seeks public comment. Chapter 3 of the NOPR TSD provides detailed descriptions of the basic construction and operation of battery chargers, followed by a discussion of technology options to improve their efficiency and power consumption in various modes. These technology options are also listed in the table as follows:

TABLE IV.3—BATTERY CHARGER DESIGN OPTIONS

Technology option	Description
Slow Charger:	
Improved Cores	Use transformer cores with low losses.
Termination	Limit power provided to fully-charged batteries.
Elimination/Limitation of Maintenance Current	Limit power provided to fully-charged batteries.
Elimination of No-Battery Current	Limit power provided drawn when no battery is present.
Switched-Mode Power Supply	Use switched-mode power supplies instead of linear power supplies.
Fast Charger:	
Low-Power Integrated Circuits	Use integrated circuit controllers with minimal power consumption.
Elimination/Limitation of Maintenance Current	Limit power provided to fully-charged batteries.
Schottky Diodes and Synchronous Rectification	Use rectifiers with low losses.
Elimination of No-Battery Current	Limit power provided drawn when no battery is present.
Phase Control to Limit Input Power	Limit input power in lower-power modes.

[15] The Joint Efficiency Advocates' response to the September 2020 RFI can be found at *https://www.regulations.gov/comment/EERE-2020-BT-STD-0013-0005*.

TABLE IV.3—BATTERY CHARGER DESIGN OPTIONS—Continued

Technology option	Description
Wide-Band Gap Semiconductors	Use semiconductors such as Gallium Nitride and Silicon Carbide to achieve higher charging efficiency.

B. Screening Analysis

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

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

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

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

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

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

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

In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed in the following sections.

The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded (''screened out'') based on the screening criteria.

1. Screened-Out Technologies

Battery charger manufacturers often use various combinations of the DOE identified technology option, and because these options are relatively common with little barrier to implement, DOE did not screen out any technology option. DOE did not receive comments on its screening analysis.

2. Remaining Technologies

DOE tentatively concludes that all of the identified technologies listed in section IV.A.2 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.4—REMAINING BATTERY CHARGER DESIGN OPTIONS

Technology Option		Description
Slow Charger	Improved Cores	Use transformer cores with low losses.
	Termination	Limit power provided to fully-charged batteries.
	Elimination/Limitation of Maintenance Current	Limit power provided to fully-charged batteries.
	Elimination of No-Battery Current	Limit power provided drawn when no battery is present.
	Switched-Mode Power Supply	Use switched-mode power supplies instead of linear power supplies.
Fast Charger	Low-Power Integrated Circuits	Use integrated circuit controllers with minimal power consumption.
	Elimination/Limitation of Maintenance Current	Limit power provided to fully-charged batteries.
	Schottky Diodes and Synchronous Rectification	Use rectifiers with low losses.
	Elimination of No-Battery Current	Limit power provided drawn when no battery is present.
	Phase Control to Limit Input Power	Limit input power in lower-power modes.
	Wide-Band Gap Semiconductors	Use semiconductors such as Gallium Nitride and Silicon Carbide to achieve higher charging efficiency.

DOE has initially determined that these technology options are technologically feasible because they are being 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). While DOE does not anticipate any material impact on fit, function, and utility of the battery chargers, we request comment on potential impacts from the proposed standard. For additional details on the analysis, see chapter 4 of the NOPR TSD.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of battery chargers. 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).

To analyze the battery charger efficiency levels under the new multi-metric approach, DOE established efficiency levels for active charge energy and standby power separately. For off mode power consumption, DOE notes that for chargers that offer an off mode, the power draw is usually negligible; therefore, DOE estimated the off mode power to be zero across all efficiency levels and did not analyze the off mode performance for battery chargers in this NOPR.

In developing CSLs, DOE used data available in the CCD as a representation of the wired battery charger market. The CCD currently provides values for metrics based on the DOE test procedure at 10 CFR, part 430, subpart B, appendix Y, which includes UEC, 24-hour charge and maintenance mode energy (''E_{24}''), maintenance mode power (''P_m''), standby mode power (''P_{nb}''), and off mode power (''P_{off}''). However, in order to develop CSLs for wired chargers in consideration of the metrics in the newly adopted appendix Y1, DOE needed to further disaggregate the current E_{24} rated value to estimate the active charge energy (''E_a'') component. DOE achieved this by subtracting maintenance mode energy, which equals the time in hours spent in maintenance mode multiplied by P_m, from E_{24}. However, the time spent in maintenance mode for each battery charger basic model can vary significantly depending on intended application, and DOE does not have sufficient information to derive these times on a case-by-case basis. As such, for this NOPR, DOE continues to estimate that every charger spends five hours in maintenance mode out of the 24-hour charge and maintenance mode test period, as determined by section 3.3.2 of the current test procedure. As a result, DOE calculated E_a as E_{24} minus five hours times P_m. DOE used the resultant data to define CSLs. DOE also slightly adjusted the intercept of the resultant CSL equation for each analyzed battery energy group as necessary so that each CSL would be a continuous function across battery energy groups.

For fixed-location wireless battery chargers, DOE also relied on the CCD data to estimate the relationship between the CCD derived E_a and CCD reported E_{batt} for their active mode CSLs. However, for the standby mode power (the sum of maintenance mode power and no-battery mode power), or P_{sb}, because the newly covered fixed-location wireless chargers can have higher maintenance mode power consumption because of different inductive power transmitting standards, DOE developed the standby power CSLs based on its own testing data. The multi-metric CSL results for fixed-location wireless chargers are further discussed in sections IV.C.1.a and IV.C.1.b below.

For open-placement wireless battery chargers, similarly, because these are chargers covered under the expanded scope, DOE relied on its own testing data to develop the no-battery mode only CSLs for these chargers, with further discussion in sections IV.C.1.a and IV.C.1.b below.

The Joint Efficiency Advocates commented that DOE could consider uncoupling active mode and standby mode efficiency levels rather than increasing both active mode and standby mode efficiency together at each CSL so that alternate combinations could be analyzed to explore the potential for additional cost-effective savings. (Joint Efficiency Advocates, No. 19 at p. 2)

DOE notes that the electronics related to these modes of operations are typically highly integrated and in performing teardowns, DOE was unable to accurately establish technology options and cost that would solely improve the energy performance in one mode of operation without affecting another. While not universal, DOE noticed from its teardowns that battery charger designs with improved efficiency in one more of operation will typically also be more efficient in other modes. Lacking accurate cost information associated with improving the performance in each mode of operation separately, DOE chose not to decouple active mode and standby mode efficiency levels for wired and fixed-location wireless battery chargers in this NOPR. In taking this approach, DOE however ensured that teardown units representing successive efficiency levels (''ELs'') achieved both the required active mode as well as standby performance for that EL. This ensures that the teardown cost of representative units accurately capture the cost of attaining both the active mode and standby performance required by each EL. The results of these TSLs are also further discussed in chapter 5 of the TSD.

The CA IOUs also supported DOE in updating the standards for battery chargers and expand the engineering analysis to higher-capacity battery chargers because of advances in technology and the increasing availability of higher-powered lithium-ion battery consumer devices on the market. (CA IOUs, No. 18 at pp. 1–2) The CA IOUs recommended DOE to reevaluate the bins for battery chargers as proposed in the preliminary analysis because the CSLs allow higher active mode energy for battery chargers with higher battery capacities within a product class. The CA IOUs recommended DOE to develop more granular battery capacity bins or redesign the standard algorithms to flatten the curve of allowable maximum active mode energy, making CSLs equally stringent across battery chargers of all battery capacities. (CA IOUs, No. 18 at p. 5)

DOE notes that DOE's active mode charge energy measures the raw energy input into the battery charger; therefore, as battery energy increases within each product class, the corresponding raw active energy would increase as well. As such, ''flattening'' the active charge energy curve within each product class

would increase relative stringency for those battery chargers designed to charge higher-energy batteries from the same product class.

The Joint Trade Associations stated that several joint commenters opposed DOE's test procedure proposal to rely on separate metrics, and urged retention of the UEC metric in response to the test procedure NOPR published in November 2021. The commenters also opposed DOE's proposed approach for determining active, standby, and battery maintenance mode energy, as well as DOE's proposal to specify that, for chargers not shipped with adapters and where one is not recommended, the test can be done with any EPS that is minimally compliant with DOE's energy conservation standards. (Joint Trade Associations, No. 17 at pp. 3–4)

DOE notes that these comments pertain to the test procedure rulemaking, and DOE has already addressed these stakeholder concerns in the September 2022 Test Procedure Final Rule by adopting the alternate method for measuring the active mode energy consumption of a battery charger, ensuring that the test method for the new multiple metrics remain largely the same as that of DOE's previous test procedure for the UEC metric. 87 FR 55090, 55100–55108. DOE also notes that it adopted the additional requirement to test battery chargers with an EPS because it ensures test procedure representativeness and test result comparability. 87 FR 55090, 55098–55099.

Delta-Q commented that DOE's efficiency level analysis of product class 2c contains incorrect assumptions, because the test procedure measures the energy consumption of the battery charge system as a whole, which fails to take into account energy losses in the battery itself and these losses vary depending on battery type and battery chemistry. Attempting to reduce the amount of charge delivered, particularly for lead acid batteries, would result in precipitous reductions in battery life. (Delta-Q, No. 20 at p. 1) Delta-Q provided an example that for a golf cart with a flooded lead acid battery of 80% round-trip efficiency, a charger around 90% efficiency, and a total system efficiency that meets the current DOE standard of around 70% total efficiency; however, DOE's proposed CSL for product class 2c would require battery charge system efficiency to be substantially increased. In the extreme case of CSL 3, lead-acid batteries would be effectively banned because they cannot meet the standard, even though lead-acid batteries dominate some parts of the market. Delta-Q further noted that the cost to replace these batteries can be ten to fifteen times the charger cost, with the total system replacement cost increasing in hundreds of dollars. (Delta-Q, No. 20 at p. 2) As such, Delta-Q commented that DOE's proposed CSL efficiencies appear to be flawed because product class 2c contains products with a variety of battery chemistries and system efficiencies, and while most lithium ion batteries would have system efficiencies passing at CSL 2, flooded lead-acid batteries would struggle to pass CSL 1; in effect, 100% of lead-acid battery charge systems would fail. (*Id.*)

DOE notes that the battery charger test procedure was designed to measure the overall system efficiency. As a result, the energy losses in the batteries would also be accounted for as wasted energy or ''non-useful energy''. DOE understands that for some manufacturers, they do not have direct control over the type of battery consumers use with their chargers; however, for each battery charger product class and each comparable battery energy range, these chargers would still be regulated along with other similar types of chargers with comparable battery characteristics. DOE's standards have been, and will be, developed based on the representative units from a variety of end use product types and battery energy ranges. As such, DOE's battery charger standards do account for the battery energy losses and do not negatively impact battery charger manufacturers. DOE further notes that CSL 0 for active mode and standby mode were developed to be an approximate translation of the current DOE battery charger UEC standard, with higher CSLs developed based on CCD reported battery charger performance trends and/or DOE's own testing results. Currently presented CSLs are only for standards development process; any standard DOE decides to adopt later in the final rule stage will be verified to be cost effective while having meaningful energy savings without undue burden. To account for Delta-Q's concern, DOE has slightly relaxed high-energy chargers' higher CSL levels in this NOPR, and from DOE's internal testing and modeling, DOE was able to confirm that even CSL 3 was attainable by some lead-acid battery chargers.

Delta-Q commented that the present single, unified metric of UEC would provide more flexibility in reducing overall energy consumption while still delivering on customer features and cost targets, and that separate standards for separate metrics will reduce design flexibility and raise the cost of compliance. (Delta-Q, No. 20 at p. 2) Delta-Q further commented that the proposed baseline standby mode power requirements are already restrictive, resulting in targets that are very challenging to meet, which can limit the maximum charge speed or the minimum battery size. This is particularly challenging for generic and standalone battery chargers such as those manufactured by Delta-Q and used by many OEMs. (Delta-Q, No. 20 at pp. 2–3) Delta-Q commented that standby mode power provides a variety of customer-required functions, such as status display, signal communication, or maintain state of charge, and therefore does not necessarily represent wasted energy. Delta-Q further stated that if efficiency regulations precluded drawing from AC mains in maintenance mode power, battery chargers would require power draw from the DC battery, reducing battery readiness and runtime. (*Id.*)

DOE recognizes that the current UEC metric may provide design flexibility for manufacturers; however, it risks being increasingly unrepresentative without frequent and continuous updates to the usage profiles. If DOE were to constantly update the usage profiles, manufacturers would also need to repeatedly recalculate the representative UEC and recertify their products, which would add undue burden for manufacturers. Although DOE's adopted multi-metric testing approach does not provide the same level of freedom for battery charger design in all modes of operation when compared to the current integrated UEC approach, it would still provide design flexibility in standby mode operation by allowing manufacturers to prioritize either maintenance power or no-battery power, which accounts for the majority of battery charger operation time. DOE reiterates that the CSLs presented in the preliminary analysis were only for DOE to present the general approach for developing the standards, and for stakeholders to get an early chance at contributing to DOE's standards rulemaking process. As such, the CSLs presented in the preliminary analysis are not final results. Any standard adopted by DOE in the final rule must be economically justifiable and technologically feasible, and will be required to demonstrate that they are verified to be cost effective while having meaningful energy savings without undue burden. In response to Delta-Q's comment that the baseline standard levels presented in the preliminary analysis are already restrictive, DOE notes that these were either translated from the current UEC standard, or developed from DOE's own testing data

representing some of the most energy consumptive products in the market; demonstrating that the technology required to achieve the currently prescribed standards at the baseline level are readily available and not restrictive.

a. Baseline Energy Use

For each product class, DOE generally selects a baseline model as a reference point for each class, and measures changes resulting from potential energy conservation standards against the baseline. The baseline model in each product class represents the characteristics of a product typical of that class (*e.g.,* capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market.

Consistent with the baseline efficiency levels analyzed from the preliminary analysis, for this NOPR, DOE's baseline multi-metric efficiency levels for wired battery chargers are approximated from the current UEC standards along with reference to the original California Energy Commission's (''CEC'') battery charger multi-metric standard. Because the current UEC standard was adopted based on approximated CEC standards for most of the original product classes except product classes 5 and 6, which were more efficient than CEC's, DOE's current standard can be approximately ''translated'' back to the CEC's standard, especially on the lower end of the battery energy spectrum (for battery chargers with battery energy less than 100Wh). DOE further assumed that most chargers on the CCD are only single port chargers and applied the CEC active charge energy standard to the current CCD battery energy levels to get the maximum charge and maintenance energy, and then subtracted five hours of maintenance mode power to approximate the active charge energy for every single wired battery charger entry. DOE did not receive any opposing comments to this approach.

DOE further notes that the September 2022 Test Procedure Final Rule adopted the requirement that for all battery chargers that would need an external power supply for operation, they would need to be tested with a minimally compliant EPS. 87 FR 55090, 55098–55099. DOE anticipated that a proposed standard would also be affected by this change. As such, DOE analyzed the CCD reported battery charger basic models and manually removed entries with negligible power draw in no-battery mode so that the remaining entries would likely be tested with an EPS or with input power measured directly at the wall. Although this may unintentionally remove some entries with very efficient no-battery mode design, it would ensure that all the remaining models are indeed tested with an appropriate power supply or have the conversion losses captured. DOE then applied a linear regression to the remaining CCD entries to establish a relationship between battery energy and the approximated CEC standard described in the previous paragraph. DOE repeated the same steps for standby mode power and battery energy to establish the standby mode baseline efficiency level for wired battery chargers. Each CSL would contain both the independent active mode efficiency level, and the independent standby mode efficiency level.

For fixed-location wireless chargers in active mode, DOE also repeated similar steps to establish the active energy CSL based off of CCD data, but assumed that the slopes across CSL 0 to CSL 3 are the same, which equal to the slope of the active charge energy vs. battery energy from the wet-environment wireless charger CCD data. DOE then adjusted the intercept so that all currently reported wet-environment wireless chargers pass the baseline standard level.

For the baseline efficiency level for standby mode power of fixed-location wireless chargers, DOE relied on the worst average 30% standby mode power of the fixed-location wireless chargers that passed DOE's internal testing. Similarly for open-placement wireless chargers' baseline no-battery mode power level, DOE also relied on the worst no-battery mode power of the wireless chargers that passed DOE's internal testing.

Table IV.5 below shows the baseline efficiency level for all wired and wireless battery chargers.

TABLE IV.5—BASELINE EFFICIENCY LEVEL OR CSL 0 FOR BATTERY CHARGERS

CSL 0: Approximated current standards				
Product class	Battery energy (E_{batt})	Active mode energy (E_a)	Standby mode power ($P_{sb} = P_m + P_{nb}$)	Off mode power (P_{off})
1a	≤100Wh	1.718 * Ebatt + 17.3	1.7	0
1b	N/A	N/A	1.4 (P_{nb} only)	0
2a	≤100Wh	1.656 * Ebatt + 10.5	0.0021 * Ebatt + 1	0
2b	100–1000	1.564 * Ebatt + 19.661.		
2c	>1000	1.549 * Ebatt + 34.361.		

b. Higher Efficiency Levels

As part of DOE's analysis, the maximum available efficiency level is the highest efficiency unit currently available on the market. DOE also defines a ''max-tech'' efficiency level to represent the maximum possible efficiency for a given product.

Again, DOE applied linear regression models to different portions of the CCD to characterize three different performance levels of the reported wired battery charger basic models. For active mode energy of high-energy battery chargers in product class 2c, DOE held the intercept constant but adjusted the slope to allow slightly relaxed higher CSLs when compared to the preliminary analysis and to retain the continuous CSL for each level.

For active mode energy of fixed-location wireless chargers, DOE held the slopes the same across efficiency levels but adjusted the intercepts to achieve similar pass rates when compared to the wired battery charger pass rates at each corresponding CSLs. DOE further finetuned the intercepts by aligning them with DOE's internal testing results.

Similar to how DOE developed the baseline standard levels for standby mode power of fixed-location wireless chargers and no-battery mode power for open-placement wireless chargers, DOE relied on its own testing data to develop the higher efficiency levels as well. For P_{sb} of fixed-location wireless chargers, CSL 2 represents the approximated average value of DOE's tested samples,

whereas CSL 3 represents the most efficient 25–30% of the samples. CSL 1 P_{sb} of fixed-location wireless chargers was set to approximately be the average of CSL 0 and CSL 2 levels. For open-placement wireless charger no-battery mode CSLs, DOE approximated CSL 2 to be the average no-battery mode power of all the units tested by DOE. DOE then set CSL 1 to be the average of the bottom third of tested units and CSL 3 to represent open-placement wireless chargers that do not consume any power in no-battery mode from their wireless charging components, but with all power draw coming from the power supply just meeting DOE's multi-voltage EPS maximum no-load power of 0.3W, as prescribed in 10 CFR 430.32(w)(1)(ii).

DOE analyzed these three higher battery charger efficiency levels, identified design options, and obtained incremental cost data at each of these levels. Table IV.6 below shows the efficiency levels analyzed for this NOPR analysis.

TABLE IV.6—HIGHER EFFICIENCY LEVELS FOR BATTERY CHARGERS

Product class	Battery energy (E_{batt})	Active mode energy E_a	Standby mode power ($P_{sb} = P_m + P_{nb}$)	Off mode power P_{off}
CSL 1: Intermediate (~70% Pass Rate)				
1a	≤100Wh	1.718 * Ebatt + 8.5	1.5	0
1b	N/A	N/A	0.8 (P_{nb} only)	0
2a	≤100Wh	1.390 * Ebatt + 7.5	0.00154 * Ebatt + 0.65	0
2b	100–1000	1.418 * Ebatt + 4.692.		
2c	>1000	1.388 * Ebatt + 34.361.		
CSL 2: Above Intermediate (~40% Pass Rate)				
1a	≤100Wh	1.718 * Ebatt + 5.54	1.25	0
1b	N/A	N/A	0.5 (P_{nb} only)	0
2a	≤100Wh	1.222 * Ebatt + 4.980	0.00098 * Ebatt + 0.4	0
2b	100–1000	1.367 * Ebatt + −9.560.		
2c	>1000	1.323 * Ebatt + 34.361.		
CSL 3: Max-Tech (~10% Pass Rate)				
1a	≤100Wh	1.718 * Ebatt + 2	0.65	0
1b	N/A	N/A	0.3 (P_{nb} only)	0
2a	≤100Wh	1.053 * Ebatt + 4.980	0.0005 * Ebatt + 0.25	0
2b	100–1000	1.316 * Ebatt + −21.292.		
2c	>1000	1.260 * Ebatt + 34.361.		

For wired battery chargers, the three analyzed higher efficiency levels (*i.e.,* ELs) correspond to the top 70%, 40%, and 10% of battery chargers in the market in terms of their active mode energy and standby mode power consumption. For ease of reference, DOE refers to the efficiency level that represents the top 70% of the market as ''Intermediate'', the top 40% of the market as ''Above Intermediate'' and those that represent the top 10% of the market as ''Max-Tech,'' which typically also represents the lowest active mode energy and standby mode power consumption commercially attainable using current technology. Fixed-location wireless chargers share similar market distribution as wired chargers for these higher CSLs from DOE's estimates. However, for open-placement wireless chargers, DOE's internal testing data shows higher pass rates for higher efficiency levels, especially at Max-Tech. DOE notes that although DOE tried to test a wide variety of the wireless chargers covered under the expanded scope, there are still hundreds of wireless charger models in the market that have various no-battery mode efficiency. As such, the actual market efficiency distribution for open-placement wireless chargers in higher CSLs can be different than DOE's current estimates; additionally, because the CSL differences of the no-battery mode power draw is relatively small, the overall energy use analysis based on these market distribution estimates should still yield meaningful and reliable results.

DOE requests feedback on DOE's approach of establishing these higher efficiency CSLs and welcomes stakeholders to submit any data on the actual market distribution of these higher efficiency CSLs.

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 battery charger on the market. The cost approaches are summarized as follows:

- *Physical teardowns:* Under this approach, DOE physically dismantles a commercially available product, component-by-component, to develop a detailed bill of materials for the product.
- *Catalog teardowns:* In lieu of physically deconstructing a product, DOE identifies each component using parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the bill of materials for the product.
- *Price surveys:* If neither a physical nor catalog teardown is feasible (for example, for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable) or cost-prohibitive and otherwise impractical (*e.g.,* large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

In the present case, DOE conducted the analysis using all three methods (physical teardowns, catalog teardowns, and price surveys) of analysis to determine manufacturing cost as it

relates to the efficiency of a battery charger. Units for teardown were selected from the CCD based on reported energy values. Several units were selected as representative units for each CSL. In addition to units from the CCD, DOE purchased various open-placement and fixed-location wireless chargers to study their design, cost, and performance. DOE received additional cost data from manufacturer interviews and stakeholder feedback, which was incorporated in the cost model generation.

After testing, physical teardowns of CCD units were performed using internal tools. Price survey data was collected in manufacturer interviews and in some stakeholder feedback for units at each CSL.

To generate the cost model, cost data from teardowns were combined with price survey data to generate cost/efficiency relationships at each battery energy group of interest. Equations for cost as a function of relative active mode energy and standby mode power were then created using an exponential fit to the data at each battery energy level. The resulting manufacturer production costs (MPCs) were then generated for each efficiency level using the fit equations.

The Joint Efficiency Advocates expressed concerned that only four units representing CSL 0 and CSL 3 at two battery energy levels were used in the preliminary engineering analysis to estimate costs for all other wired charger CSLs and battery energy combinations. The Joint Efficiency Advocates commented that better accuracy would be obtained through additional testing and teardowns for all product classes, or through a design option approach for estimating costs for all wired chargers, or a combination of both. (Joint Efficiency Advocates, No. 19 at p. 2)

The CA IOUs further suggested DOE conduct additional teardowns of larger battery chargers in product classes 2a, 2b, and 2c for common product types (*e.g.,* notebooks, cordless vacuums, power tools, landscaping equipment, ride-on electric vehicles, electric scooters, and golf carts) because larger battery chargers for such devices may have different efficiency profiles than smaller ones due to higher quality components or the incorporation of high-efficiency technologies, such as wide-band-gap semiconductors. The CA IOUs stated their expectation that larger battery chargers may not show a linear trend between active energy and battery energy. (CA IOUs, No. 18 at p. 2)

Similarly, NEEA commented that DOE's methodology of conducting teardowns of four chargers in product class 2a representing only the lowest (baseline) and highest (CSL 3) of the four CSLs resulted in insufficient reliable data for class 2a CSL 1 and 2. NEEA's own research suggested that design options to enable CSL 1 and CSL 2 efficiencies are likely quite different than those used to achieve the highest efficiency level (CSL 3), creating inaccuracies in DOE's current estimates of the incremental cost for these middle levels. NEEA further commented that the reliance on four charger teardowns with battery energies less than 20 Wh (product class 2a) to 35 different battery charger applications with battery energies up to two orders of magnitude higher (2000 Wh) has yielded insufficient data to develop incremental cost information for product classes 2b and 2c because these higher power battery chargers likely use different semiconductor chipsets and/or can be impacted by production volume-related cost effects from other similar power electronics applications. (NEEA, No. 16 at pp. 1–2) NEEA commented that incremental battery charger costs presented for product class 2b ($2.59 to $8.73) are high relative to DOE EPS cost analysis, indicating that battery charger incremental costs are likely to be overestimated for these middle CSLs (CSLs 1 and 2). (NEEA, No. 16 at p. 2) NEEA stated that DOE should make three changes to more accurately measure the energy consumption of battery chargers: (1) add an alternative approach such as design option approach to teardown data already collected for class 2a CSL 1 and CSL 2; (2) conduct teardowns and/or utilize design option approaches to determine costs for product classes 2b and 2c; and (3) consider costs that maintain charge rate (slow or fast), given that slower chargers can be less costly due to a lower power output level. NEEA commented that if an expanded engineering analysis reveals that current CSL levels are not cost-effective in wired charges, NEEA recommends that DOE consider alternative combinations and standby and active mode that are more likely to be cost-effective, and adding an additional CSL level between CSL 0 and CSL 1. (NEEA, No. 16 at pp. 2–3)

DOE acknowledges that better representativeness can be achieved through additional testing and teardowns. Therefore, for the NOPR analysis, DOE has expanded the representative unit size significantly to cover more battery energy ranges and different end product types. DOE has also conducted various manufacturer interviews to get more direct design and cost information from stakeholders to calibrate DOE's internal teardown results, which improves the accuracy and representativeness of DOE's battery charger cost-efficiency relationship. Details of how DOE updated its cost analysis can be found in chapter 5 of the NOPR TSD.

To account for manufacturers' non-production costs and profit margin, DOE applies a multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (''MSP'') is the price at which the manufacturer distributes a unit into commerce. DOE, throughout this NOPR analysis, is using the average manufacturer markup presented in the June 2016 final rule. 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.D of this document.

3. Cost-Efficiency Results

The results of the engineering analysis are presented as cost-efficiency data for each product class by efficiency levels. The cost-efficiency curves are described by the efficiency levels DOE analyzed and the increase in MPC required to improve a baseline-efficiency product to each of the considered efficiency levels. DOE recognizes that costs of battery chargers vary according to the energy of the battery it is intended to charge. DOE analyzed costs at various battery energies from different battery energy groups for each CSL as shown below. These representative battery energies were selected based on areas of significant market density, as indicated by entries in the CCD. They also span a wide range of battery energy groups for which the CSL equations were defined. For battery energy groups for which DOE lacks direct teardown costs, DOE extrapolated these costs from representative units that DOE has physically torn down and calibrated DOE's extrapolation with price information DOE acquired from manufacturer interviews.

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.

DOE requests stakeholder feedbacks on these analyzed incremental costs as well as any topic covered in chapter 5 of the NOPR TSD. DOE also welcomes stakeholders to submit their own cost-efficiency results, should there be any.

Product class	Product class name	Battery energy (Wh)	Incremental MPC ($)			
			Base	CSL 1	CSL 2	CSL 3
1a	Fixed-Location Wireless Charger	12	0.00	0.67	1.51	3.52
1b	Open-Placement Wireless Charger	N/A	0.00	0.53	1.49	2.14
2a	Low-Energy Wired Battery Charger (≤100Wh).	5	0.00	0.23	0.63	0.75
		12	0.00	0.40	0.77	1.59
		25	0.00	0.55	1.00	1.85
		75	0.00	0.93	1.60	2.67
2b	Medium-Energy Wired Battery Charger (100–1000Wh).	200	0.00	1.58	2.45	3.24
		420	0.00	3.35	5.20	6.86
2c	High-Energy Wired Battery Charger (>1000Wh).	2000	0.00	3.35	5.20	6.86

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis 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 battery chargers, the main parties in the distribution chain are battery charger 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.[16]

In the March 2022 Preliminary Analysis, DOE used the same baseline and incremental markups that were used in the June 2016 Final Rule.[17] DOE did not receive any comments regarding the markups or distribution channels in the March 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 battery chargers.

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.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of battery chargers 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 battery charger efficiency. The energy use analysis estimates the range of energy use of battery chargers 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 March 2022 Preliminary Analysis, DOE used usage profiles that were developed in the June 2016 Final Rule, along with efficiency data at different load conditions, to calculate the UECs for battery chargers for a variety of applications.[18] Usage profiles are estimates of the average time a device spends in each mode of operation. In the February 2023 NOPR for external power supplies, DOE updated some of the usage profiles for certain applications based on stakeholder comments. 88 FR 7284. For this analysis, DOE aligned the battery charger usage profiles for these applications with the EPS usage profiles for consistency.

Chapter 7 of the NOPR TSD provides details on DOE's energy use analysis for battery chargers.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for battery chargers. 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 battery chargers in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is

[16] 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.

[17] See Chapter 6 of the 2016 Final Rule Technical Support Document for Battery Chargers. (Available at: *www.regulations.gov/document/EERE-2008-BT-STD-0005-0257*) (last accessed Sept. 12, 2022). See also Chapter 6 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).

[18] See appendix 7A of the 2016 Final Rule Technical Support Document for Battery Chargers. (Available at: *www.regulations.gov/document/EERE-2008-BT-STD-0005-0257*) (last accessed Sept. 12, 2022). See also appendix 7A 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).

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 [19] (RECS 2015) and the 2018 Commercial Building Energy Consumption Survey [20] (CBECS 2018). For each sample household, DOE determined the energy consumption for the battery chargers 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 battery chargers.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and battery chargers' user samples. For this rulemaking, the Monte Carlo approach is implemented in MS Excel. The model calculated the LCC 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 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 battery chargers 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 battery chargers manufactured 2 years after the date on which any new or amended standard is published. (42 U.S.C. 6295(u)) At this time, DOE estimates publication of a final rule in late 2024, therefore, for purposes of this analysis, DOE used 2027 as the first year of compliance with any amended standards for EPSs.

Table IV.7 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.

TABLE IV.7—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost ..	Derived by multiplying MPCs by battery charger manufacturer and appliance manufacturer markups and sales tax, as appropriate. Used historical Product Price Index (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 March 2022 Preliminary Analysis, DOE did not use any price trend.[21] In response, the CA IOUs commented that based on American Council for an Energy-Efficient Economy information and price comparisons, DOE has historically overestimated its forecasts of the incremental cost for products subject to standards due to energy conservation policies that may accelerate the decline of appliance costs due to increased production and innovation. (CA IOUs, No. 18 at pp. 5–6) The CA IOUs further commented that battery chargers are increasingly employing gallium nitride (GaN) semiconductors as a primary cost component, and GaN semiconductor costs are expected to decrease substantially; in addition, GaN topologies require fewer components and heat dissipation needs, causing system-level costs to decrease. For these reasons, DOE should include price learning in its analysis of battery chargers and develop criteria for applying price learning in all cases involving products with rapidly expanding sales volumes or based on components or materials that are likely

[19] *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.

[20] *www.eia.gov/consumption/commercial/* (last accessed Sept. 12, 2022).

[21] See Chapters 8 and 10 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).

to experience declining costs. (CA IOUs, No. 18 at pp. 6–7)

The Joint Efficiency Advocates stated that with price learning not addressed in the preliminary analysis, costs to achieve higher efficiency levels over the analysis period could be overestimated; learning rates associated with semiconductors are especially important because improved semiconductors are a key technology option for reaching higher efficiency levels. (Joint Efficiency Advocates, No. 19 at p. 2)

NEEA also commented that DOE should incorporate manufacturer price learning and leverage general semiconductor price data into its analysis of life-cycle cost and payback period for battery chargers. (NEEA, No. 16 at p. 3)

DOE agrees with the commenters that costs for electronic components are likely to change during the analysis period. In this NOPR, DOE has incorporated a price trend based on the PPI for semiconductors,[22] 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 battery charger costs attributable to semiconductors, which is estimated at 90 percent of incremental costs.

2. Annual Energy Consumption

For each sampled household or commercial business, DOE determined the energy consumption for a battery charger at different efficiency levels using the approach described previously in section IV.E of this document.

3. Energy Prices

Because marginal electricity price more accurately captures the incremental savings associated with a change in energy use from higher efficiency, it provides a better representation of incremental change in consumer costs than average electricity prices. Therefore, DOE applied average electricity prices for the energy use of the product purchased in the no-new-standards case, and marginal electricity prices for the incremental change in energy use associated with the other efficiency levels considered.

For the NOPR, DOE derived average monthly residential and commercial marginal electricity prices for the various regions using 2021 data from EIA.[23]

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.[24] To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2023 through 2050.

See chapter 8 of the NOPR TSD for details.

4. Product Lifetime

In the March 2022 Preliminary Analysis, DOE based the battery charger lifetime on the lifetime of the application for which it is associated.[25] In the February 2023 NOPR for external power supplies, DOE increased the lifetime for several applications based on stakeholder comments. 88 FR 7284. For this analysis, DOE aligned the application lifetimes (and thus battery charger lifetimes) for these applications with the EPS lifetime estimates for consistency.

5. 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 battery chargers 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.[26] 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 [27] (''SCF'') for 1995, 1998, 2001, 2004, 2007, 2010, and 2013. 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 4.1% 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 6.7%.

See chapter 8 of the NOPR TSD for further details on the development of consumer discount rates.

[22] Producer Price Index: Semiconductors and Related Manufacturing. Series ID: PCU334413334413. (Available at: *beta.bls.gov/dataViewer/view/timeseries/PCU334413334413*) (last accessed Sept. 12, 2022).

[23] 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).

[24] EIA. *Annual Energy Outlook 2022 with Projections to 2050.* Washington, DC. (Available at *www.eia.gov/forecasts/aeo/*) (last accessed Sept. 12, 2022).

[25] See Chapter 8 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).

[26] 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.

[27] Board of Governors of the Federal Reserve System. *Survey of Consumer Finances.* 1995, 1998, 2001, 2004, 2007, 2010, and 2013. (Available at: *www.federalreserve.gov/econres/scfindex.htm*) (last accessed Sept. 12, 2022).

6. 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 March 2022 Preliminary Analysis, DOE used the CCD [28] to estimate the energy efficiency distribution of battery chargers for 2027.[29] DOE updated these distributions based on the latest data in CCD. For wireless chargers, DOE estimated the efficiency distributions based on the models tested and used for the engineering analysis. The estimated market shares for the no-new-standards case for battery chargers are shown in Table IV.8. See chapter 8 of the NOPR TSD for further information on the derivation of the efficiency distributions.

TABLE IV.8—ESTIMATED MARKET SHARES OF BATTERY CHARGERS IN THE NO-NEW-STANDARDS CASE

Representative unit (battery energy)	Baseline (%)	Intermediate (%)	Above intermediate (%)	Max-Tech (%)
10Wh	9.8	48.9	19.4	21.9
10–50Wh (RPU 12.7Wh)	26.1	53.0	18.1	2.8
10–50Wh (RPU 25Wh)	26.1	53.0	18.1	2.8
50–100Wh (RPU 75Wh)	20.6	51.5	27.8	0.1
100–400Wh (RPU 200Wh)	19.7	27.5	37.6	15.2
400–1000Wh (RPU 420Wh)	19.7	27.5	37.6	15.2
>1000Wh (RPU 2000Wh)	38.5	36.1	13.6	11.8
Fixed-Location wireless charger	8.3	25.0	58.3	8.3
Open-Placement wireless charger	6.7	20.0	20.0	53.3

7. Payback Period Analysis

The payback period is the amount of time (expressed in years) it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. DOE refers to this as a ''simple PBP'' because it does not consider changes over time in operating cost savings. The PBP calculation uses the same inputs as the LCC analysis when deriving first-year operating costs.

As noted previously, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the amended standards would be required.

The Joint Trade Associations and Delta-Q commented that amended standards for battery chargers are not economically justified because the payback periods are far longer than the average useful life of the product; therefore, most consumers will experience a net cost through amended standards. The Joint Trade Associations further recommended that DOE focus on other rulemakings for potential significant energy savings. (Joint Trade Associations, No. 17 at p. 1; Delta-Q, No. 20 at p. 1)

DOE notes that the preliminary analysis did not propose any specific standard level. For this NOPR, DOE's evaluation of the economic justification of potential standard levels, including the consideration of payback periods, is provided in section V.C.

G. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[30] 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 national energy savings (''NES'') and NPV, because operating costs for any year depend on the age distribution of the stock.

In the March 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.[31] 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.

H. 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.[32] (''Consumer'' in this context

[28] *https://www.regulations.doe.gov/ccms.*

[29] See Chapter 8 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).

[30] 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.

[31] See Chapter 9 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).

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

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 battery chargers 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.

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.9 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.9—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	2022.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.6 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 first full year of anticipated compliance with an amended or new standard. To project the trend in efficiency absent amended standards for battery chargers 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 [33] 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 costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

As discussed in section IV.F.1 of this document, DOE developed battery charger 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 battery charger price is projected to drop 90 percent relative to 2021. DOE's projection of product prices is described in chapter 8 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 2020 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.[34] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended energy conservation standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. The purpose of a subgroup analysis is to determine the extent of any such disproportional impacts. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this 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.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of amended energy conservation standards on manufacturers of battery chargers 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 battery charger manufacturing industry based on the market and technology assessment, manufacturer interviews, and publicly-available information. This included a top-down

[33] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009,* DOE/EIA–0581(2009), October 2009. Available at *www.eia.gov/forecasts/aeo/index.cfm* (last accessed December 2, 2022).

[34] United States Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Section E. Available at *georgewbush-whitehouse.archives.gov/omb/memoranda/m03-21.html* (last accessed December 2, 2022).

analysis of battery charger 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 battery charger manufacturing industry, including company filings of form 10–K from the U.S. Securities and Exchange Commission (''SEC''),[35] corporate annual reports, the U.S. Census Bureau's *Economic Census,*[36] and reports from D&B Hoovers.[37]

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.

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 subgroups for separate impact analysis: the small appliance application industry segment, the consumer electronics application industry segment, the power tools application industry segment, and the high energy application industry segment, as well as 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.

[35] *See www.sec.gov/edgar.shtml.*

[36] *See www.census.gov/programs-surveys/asm/data.html.*

[37] *See app.dnbhoovers.com.*

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 change 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 2023 (the reference year) and continuing to 2056. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of battery charger applications, DOE used a real discount rate of 9.1 percent, which was the same value used in the August 2016 Final Rule.

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.

a. Manufacturer Production Costs

Manufacturing more efficient products is typically more expensive than manufacturing baseline products due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of covered products can affect the revenues, gross margins, and cash flow of the industry. Throughout its analysis of manufacturers, DOE adjusted the MPC value of battery chargers but did not adjust the value of battery charger applications—focusing on the changes to the overall product package caused by possible amended standards on battery chargers. An overview of the methodology used to generate MPCs of battery chargers is in the engineering analysis (see section IV.C.2), 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 2023 (the reference year) to 2056 (the end year of the analysis period). A complete discussion of shipments can be found in chapter 9 of the NOPR.

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 anticipates that, while amended standards would not fundamentally alter the manufacturing process for battery chargers, battery charger application manufacturers would incur capital conversion costs as a result of amended standards. These costs would take the form of updated tooling, new or altered plastic molds, and additional or new testing equipment. DOE developed estimates of the conversion costs using estimated revenues related to battery charger applications, the capital expenditure factor of revenue used in the August 2016 Final Rule for each industry segment, and research related to the engineering analysis. These capital conversion cost estimates can be found in section V.B.2.a of this document. DOE assumes that all capital conversion costs would occur between the date of the final rule publication and the compliance date.

DOE does also 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 minimum 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 battery charger applications, the R&D factor of revenue used in the August 2016 Final Rule for each industry segment, and research related to the engineering analysis. The product conversion cost estimates used in the GRIM can be found in section V.B.2.a of this document. DOE assumes that all product conversion costs would occur between the date of the final rule publication and the compliance date.

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 constant price 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 constant price markup scenario, DOE modeled a situation in which manufacturers do not adjust their prices in response to increased MPCs of battery chargers. 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. Manufacturer Interviews

DOE interviewed battery charger manufacturers, battery charger application manufacturers, and industry stakeholders in order to develop its analysis.

In interviews, DOE asked manufacturers to describe their major concerns regarding this rulemaking. The following section highlights manufacturer concerns, related to the MIA, that helped inform the projected potential impacts of an amended standard on the industry. Manufacturer interviews are conducted under non-disclosure agreements (''NDAs''), so DOE does not document these discussions in the same way that it does public comments in the comment summaries and DOE's responses throughout the rest of this document.

Manufacturers communicated concerns generally over the potential costs imposed by amended energy conservation standards. Product redesign related costs were noted as the most substantial likely costs, but also that capital conversion costs would be imposed on both application and battery charger manufacturers and could be quite substantial depending on the extent of possible changes.

Manufacturers additionally noted concerns around engineering manpower related to potential product redesigns as a major concern. Several manufacturers described limited qualified staff and difficulty retaining and hiring staff in recent times. As such, it may be difficult to hire and possibly train additional staff on relatively short notice. Further, while manufacturers may have the capacity to engage in substantial product redesigns in order to comply with amended efficiency standards, standards would also impose an opportunity cost since those engineers would have to be redirected from projects intended to reduce production costs or improve non-efficiency-related product features.

Manufacturers also expressed concerns over tariffs, which cause manufacturers to avoid vendors from China or relocate manufacturing operations elsewhere abroad—such as Mexico—in order to avoid additional cost. This issue restricts the competitive set of potential vendors and diminishes manufacturer's ability to negotiate optimal prices.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions to emissions of other gases due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion.

The analysis of electric power sector emissions of CO_2, NO_X, SO_2, and Hg uses emissions factors intended to represent the marginal impacts of the change in electricity consumption associated with amended or new standards. The methodology is based on results published for the *AEO,* including a set of side cases that implement a variety of efficiency-related policies. The methodology is described in appendix 13A in the NOPR TSD. The analysis presented in this NOPR 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).[38]

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.

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

[38] Available at *www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf* (last accessed July 12, 2021).

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.[39]

SO_2 emissions from affected electric generating units (''EGUs'') are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from numerous States in the eastern half of the United States are also limited under the Cross-State Air Pollution Rule (''CSAPR''). 76 FR 48208 (Aug. 8, 2011). CSAPR requires these States to reduce certain emissions, including annual SO_2 emissions, and went into effect as of January 1, 2015.[40] *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). The final rule establishes power plant emission standards for mercury, acid gases, and non-mercury metallic toxic pollutants. 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 NOx emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce NO_X emissions in States covered by CSAPR. Energy conservation standards would be expected to reduce NO_X emissions in the States not covered by CSAPR. DOE used *AEO2022* data to derive NO_X emissions factors for the group of States not covered by CSAPR.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would be expected to slightly reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO2022,* which incorporates the MATS.

L. Monetizing Emissions Impacts

As part of the development of this proposed rule, for the purpose of complying with the requirements of Executive Order 12866, DOE considered the estimated monetary benefits from the reduced emissions of CO_2, CH_4, N_2O, NO_X, and SO_2 that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to 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. As reflected in this proposed rule, DOE has reverted to its approach prior to the injunction and presents 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.

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 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,

[39] 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 Oct. 12, 2022).

[40] 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).

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, which 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.*[41] 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).[42] 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.

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

[41] 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-CO2 estimates. *Climate Policy.* 2015. 15(2): pp. 272-298.

[42] 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.

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,[43] 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 analysis.

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 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 above assessment and will continue to follow developments in the literature pertaining to this issue. While the IWG works to assess how best to incorporate the latest, peer reviewed science to develop an updated set of SC-GHG estimates, it set the interim estimates to be the most recent estimates developed by the IWG prior to the group being disbanded in 2017. The estimates rely on the same models and harmonized inputs and are calculated using a range of discount rates. As explained in the February 2021 SC-GHG TSD, the IWG has recommended that agencies revert to the same set of four values drawn from the SC-GHG distributions based on three discount rates as were used in regulatory analyses between 2010 and 2016 and 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

[43] Interagency Working Group on Social Cost of Carbon. *Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866.* 2010. United States Government. (Last accessed April 15, 2022.) *www.epa.gov/sites/default/files/2016-12/documents/scc_tsd_2010.pdf;* Interagency Working Group on Social Cost of Carbon. *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* 2013. (Last accessed April 15, 2022.) *www.federalregister.gov/documents/2013/11/26/2013-28242/technical-support-document-technical-update-of-the-social-cost-of-carbon-for-regulatory-impact;* Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Technical Support Document: Technical Update on the Social Cost of Carbon for Regulatory Impact Analysis-Under Executive Order 12866. August 2016. (Last accessed January 18, 2022.) *www.epa.gov/sites/default/files/2016-12/documents/sc_co2_tsd_august_2016.pdf;* Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide. August 2016. (Last accessed January 18, 2022.) *www.epa.gov/sites/default/files/2016-12/documents/addendum_to_sc-ghg_tsd_august_2016.pdf.*

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.[44] 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 presented for the IWG's February 2021 TSD. Table IV.10 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 to include all four sets of SC-CO_2 values, as recommended by the IWG.[45]

TABLE IV.10—ANNUAL SC–CO_2 VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per metric ton CO_2]

Year	Discount rate and statistic			
	5%	3%	2.5%	3%
	Average	Average	Average	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

For 2051 to 2070, DOE used SC-CO_2 estimates published by EPA, adjusted to 2021$.[46] These estimates are based on methods, assumptions, and parameters identical to the 2020–2050 estimates published by the IWG.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SC-CO_2 value for that year in each of the four cases. DOE adjusted the values to 2021$ using the implicit price deflator for gross domestic product (''GDP'') from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SC-CO_2 values in each case.

b. Social Cost of Methane and Nitrous Oxide

The SC-CH_4 and SC-N_2O values used for this NOPR were based on the values developed for the February 2021 TSD. Table IV.11 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.

[44] 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/*.

[45] 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.

[46] See EPA, *Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis,* Washington, DC, December 2021. Available at: *www.epa.gov/system/files/documents/2021-12/420r21028.pdf* (last accessed January 13, 2022).

TABLE IV.11—ANNUAL SC-CH_4 AND SC-N_2O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050
[2020$ per metric ton]

Year	SC-CH_4				SC-N_2O			
	Discount rate and statistic				Discount rate and statistic			
	5%	3%	2.5%	3%	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile	Average	Average	Average	95th percentile
2020	670	1500	2000	3900	5800	18000	27000	48000
2025	800	1700	2200	4500	6800	21000	30000	54000
2030	940	2000	2500	5200	7800	23000	33000	60000
2035	1100	2200	2800	6000	9000	25000	36000	67000
2040	1300	2500	3100	6700	10000	28000	39000	74000
2045	1500	2800	3500	7500	12000	30000	42000	81000
2050	1700	3100	3800	8200	13000	33000	45000	88000

DOE multiplied the CH_4 and N_2O emissions reduction estimated for each year by the SC-CH_4 and SC-N_2O estimates for that year in each of the cases. DOE adjusted the values to 2021$ using the implicit price deflator for 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.[47] 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 battery chargers using a method described in appendix 14B of the NOPR TSD.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the electric power generation industry that would result from the adoption of new or amended energy conservation standards. The utility impact analysis estimates the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from the NEMS associated with *AEO2022.* NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. For the current analysis, impacts are quantified by comparing the levels of electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO2022* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the 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.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by (1) reduced spending by consumers on energy, (2) reduced spending on new energy supply by the utility industry, (3) increased consumer spending on the products to which the new standards apply and other goods and services, and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (''BLS''). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[48] 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

[47] *Estimating the Benefit per Ton of Reducing $PM_{2.5}$ Precursors from 21 Sectors. www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors.*

[48] 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).

called Impact of Sector Energy Technologies version 4 (''ImSET'').[49] 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.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for battery chargers. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for battery chargers, 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 four TSLs for battery chargers. 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 battery chargers. TSL 4 represents the maximum technologically feasible (''max-tech'') energy efficiency for all product classes.

TABLE V.1—TRIAL STANDARD LEVELS FOR BATTERY CHARGERS

TSL	Product class				
	1a fixed-location wireless	1b open-placement wireless	2a low-energy wired	2b medium-energy wired	2c high-energy wired
1	1	1	1	1	1
2	1	1	2	2	2
3	2	2	2	2	2
4	3	3	3	3	3

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 product 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.[50]

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on battery chargers' 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.6 show the LCC and PBP results for the TSLs considered for each product class. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second table, impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F of this document). Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline product and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

[49] 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.

[50] Efficiency levels that were analyzed for this NOPR are discussed in section IV.C.4 of this document. Results by efficiency level are presented in TSD chapters 8, 10, and 12.

TABLE V.2—AVERAGE LCC AND PBP RESULTS FOR FIXED-LOCATION WIRELESS CHARGERS

EL	Average costs and savings (2021$)			Average LCC savings* (2021$)	Percent of consumers with net cost (%)	Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating savings	Lifetime operating savings				
EL 1	$0.90	−$0.24	−$0.87	−$0.03	13.9	3.8	3.9
EL 2	1.57	−0.26	−0.93	−0.64	35.5	6.0	3.9
EL 3	3.43	−0.44	−1.51	−1.92	90.0	7.8	3.9

*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 OPEN-PLACEMENT WIRELESS CHARGERS

EL	Average costs and savings (2021$)			Average LCC savings* (2021$)	Percent of consumers with net cost (%)	Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating savings	Lifetime operating savings				
EL 1	$0.71	−$0.17	−$0.83	$0.12	6.8	4.1	5.5
EL 2	1.69	−0.18	−0.89	−0.81	38.4	9.2	5.5
EL 3	2.06	−0.19	−0.90	−1.16	55.1	11.0	5.5

*The savings represent the average LCC for affected consumers. Numbers may not add up due to rounding.

TABLE V.4—AVERAGE LCC AND PBP RESULTS FOR LOW-ENERGY WIRED CHARGERS

EL	Average costs and savings (2021$)			Average LCC savings* (2021$)	Percent of consumers with net cost (%)	Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating savings	Lifetime operating savings				
EL 1	$0.57	−$0.22	−$0.86	$0.28	11.2	3.1	4.7
EL 2	0.77	−0.23	−0.90	0.13	39.0	4.0	4.7
EL 3	1.48	−0.26	−1.05	−0.43	65.5	6.4	4.7

*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 MEDIUM-ENERGY WIRED CHARGERS

EL	Average costs and savings (2021$)			Average LCC savings* (2021$)	Percent of consumers with net cost (%)	Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating savings	Lifetime operating savings				
EL 1	$3.17	−$0.90	−$4.61	$1.44	16.5	4.5	5.5
EL 2	3.42	−0.96	−4.96	1.55	30.5	4.4	5.5
EL 3	3.66	−1.02	−5.27	1.61	49.8	4.4	5.5

*The savings represent the average LCC for affected consumers. Numbers may not add up due to rounding.

TABLE V.6—AVERAGE LCC AND PBP RESULTS FOR HIGH-ENERGY WIRED CHARGERS

EL	Average costs and savings (2021$)			Average LCC savings* (2021$)	Percent of consumers with net cost (%)	Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating savings	Lifetime operating savings				
EL 1	$4.95	−$3.46	−$16.41	$11.46	2.4	1.4	9.2
EL 2	5.92	−4.04	−20.24	14.32	1.6	1.5	9.2
EL 3	7.69	−5.24	−26.63	18.94	1.3	1.5	9.2

*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.7 to Table V.11 compare the average LCC savings and PBP at each efficiency level for the consumer subgroups with similar metrics for the entire consumer sample for battery chargers. In all 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.7—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; FIXED-LOCATION WIRELESS CHARGERS

	Low-income households	All households
Average LCC Savings (2021$)		
EL 1	−0.01	−0.03
EL 2	−0.63	−0.64
EL 3	−1.91	−1.92
Payback Period (years)		
EL 1	3.7	3.8
EL 2	5.9	6.0
EL 3	7.7	7.8
Consumers with Net Cost (%)		
EL 1	14.4	13.9
EL 2	35.0	35.5
EL 3	90.9	90.0

TABLE V.8—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; OPEN-PLACEMENT WIRELESS CHARGERS

	Low-income households	All households
Average LCC Savings (2021$)		
EL 1	0.14	0.12
EL 2	−0.80	−0.81
EL 3	−1.16	−1.16
Payback Period (years)		
EL 1	4.0	4.1
EL 2	9.1	9.2
EL 3	10.8	11.0
Consumers with Net Cost (%)		
EL 1	7.5	6.8
EL 2	40.1	38.4
EL 3	56.0	55.1

TABLE V.9—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; LOW-ENERGY WIRED CHARGERS

	Low-income households	All households
Average LCC Savings (2021$)		
EL 1	0.21	0.28
EL 2	0.06	0.13
EL 3	−0.52	−0.43
Payback Period (years)		
EL 1	3.8	3.1
EL 2	4.7	4.0
EL 3	7.5	6.4
Consumers with Net Cost (%)		
EL 1	12.9	11.2
EL 2	43.0	39.0
EL 3	68.0	65.5

TABLE V.10—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; MEDIUM-ENERGY WIRED CHARGERS

	Low-income households	All households
Average LCC Savings (2021$)		
EL 1	1.32	1.44
EL 2	1.40	1.55
EL 3	1.47	1.61
Payback Period (years)		
EL 1	4.6	4.5
EL 2	4.5	4.4
EL 3	4.5	4.4
Consumers with Net Cost (%)		
EL 1	15.5	16.5
EL 2	30.1	30.5
EL 3	49.5	49.8

TABLE V.11—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; HIGH-ENERGY WIRED CHARGERS

	Low-income households	All households
Average LCC Savings (2021$)		
EL 1	11.12	11.46
EL 2	16.39	14.32
EL 3	22.81	18.94
Payback Period (years)		
EL 1	2.5	1.4
EL 2	2.1	1.5
EL 3	2.1	1.5
Consumers with Net Cost (%)		
EL 1	4.9	2.4
EL 2	3.2	1.6
EL 3	3.0	1.3

c. Rebuttable Presumption Payback

As discussed in section III.F.2, 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 battery chargers. In contrast, the PBPs presented in section V.B.1.a were calculated using distributions that reflect the range of energy use in the field.

Table V.12 presents the rebuttable-presumption payback periods for the considered TSLs for battery chargers. 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, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V.12—REBUTTABLE-PRESUMPTION PAYBACK PERIODS

EL	PC 1a	PC 1b	PC 2a	PC 2b	PC 2c
1	3.8	4.1	3.1	4.5	1.4
2	6.0	9.2	4.0	4.4	1.5
3	7.8	11.0	6.4	4.4	1.5

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of battery chargers. The following section describes the expected impacts on manufacturers at each considered TSL. Section IV.J 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 battery chargers as well as the conversion costs that DOE estimates manufacturers of battery chargers would incur at each TSL. These results are presented both at an all-industry level and for each industry segment.

TABLE V.13—MANUFACTURER IMPACT ANALYSIS FOR BATTERY CHARGERS—PRESERVATION OF GROSS MARGIN SCENARIO

	TSL 1	TSL 2	TSL 3	TSL 4
All INPV (No-New-Standards Case = $78,912 millions)	78,872	78,685	78,637	78,265
All Change in INPV ($ millions)	(40)	(214)	(260)	(598)
All % Change in INPV	(0.1)	(0.3)	(0.3)	(0.8)
All Capital Conversion Costs ($ millions)	24.0	103.4	127.1	268.3
All Product Conversion Costs ($ millions)	57.2	294.8	358.8	868.4
Total Conversion Costs ($ millions)	81.3	398.1	485.9	1,136.7

TABLE V.14—MANUFACTURER IMPACT ANALYSIS FOR BATTERY CHARGERS—CONSTANT PRICE SCENARIO

	TSL 1	TSL 2	TSL 3	TSL 4
All INPV (No-New-Standards Case = $78,912 millions)	77,427	75,328	74,596	70,039
All Change in INPV ($ millions)	(1,523)	(3,659)	(4,402)	(9,032)
All % Change in INPV (%)	(1.9)	(4.6)	(5.6)	(11.4)
All Capital Conversion Costs ($ millions)	24.0	103.4	127.1	268.3
All Product Conversion Costs ($ millions)	57.2	294.8	358.8	868.4
Total Conversion Costs ($ millions)	81.3	398.1	485.9	1,136.7

At TSL 1, DOE estimates impacts on INPV will range from approximately −$1,523 million to −$40.3 million, which represents a change of approximately −1.9 to −0.1 percent. At TSL 1, industry free cash-flow decreases to $6,265 million, which represents a decrease of approximately 0.5 percent, compared to the no-new-standards case value of $6,299 million in 2026, the year before the anticipated first full year of compliance, 2027.

TSL 1 would set the energy conservation standard at EL 1 for all product classes. DOE estimates that approximately 73 percent of low energy wired battery charger shipments, approximately 54 percent of medium energy wired battery charger shipments, approximately 75 percent of high energy wired battery charger shipments, approximately 92 percent of fixed location wireless battery charger shipments, and approximately 93 percent of open location wireless battery charger shipments would meet or exceed the efficiency levels analyzed at TSL 1 in 2027. DOE expects battery charger manufacturers to incur approximately $57.2 million in product conversion costs to redesign all non-compliant models and $24.0 million in related capital conversion costs.

At TSL 1, the shipment-weighted average MPC for battery chargers and battery charger applications slightly increases by less than 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 $81.6 million in conversion costs, causing a slightly negative change in INPV at TSL 1 under the preservation of gross margin scenario.

Under the constant price scenario, manufacturers do not adjust their product's price from the price in the no-new-standards case and do not pass on the cost increase to consumers. 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 $81.6 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 1 under the constant price scenario.

At TSL 2, DOE estimates impacts on INPV will range from −$3,658.8 million to −$214.1 million, which represents a change of −4.6 percent to −0.3 percent, respectively. At TSL 2, industry free cash-flow decreases to $6,131 million, which represents a decrease of approximately 2.7 percent, compared to the no-new-standards case value of $6,299 million in 2026, the year before the estimated first full year of compliance.

TSL 2 would set the energy conservation standard at EL 1 for wireless product classes and at EL 2 for wired product classes. DOE estimates that approximately 27 percent of low energy wired battery charger shipments, approximately 46 percent of medium energy wired battery charger shipments, approximately 26 percent of high energy wired battery charger shipments, approximately 92 percent of fixed location wireless battery charger shipments, and approximately 93 percent of open location wireless battery charger shipments would meet or exceed the efficiency levels analyzed at TSL 2 in 2027. DOE expects battery charger manufacturers to incur approximately $294.8 million in product conversion costs to redesign all non-compliant models and $103.4 in related capital conversion costs.

At TSL 2, the shipment-weighted average MPC for battery chargers slightly increases by 0.2 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 $398.2 million in conversion costs, causing a slightly negative change in INPV at TSL 2 under the preservation of gross margin scenario.

Under the constant price scenario, manufacturers do not adjust their product's price from the price in the no-new-standards case and do not pass on the cost increase to consumers. This 0.2 percent reduction in the margin and the $398.2 million in conversion costs incurred by manufacturers cause a moderately negative change in INPV at TSL 2 under the constant price scenario.

At TSL 3, DOE estimates impacts on INPV will range from −$4,402 million to −$358.8 million, which represents a change of −5.6 percent to −0.3 percent, respectively. At TSL 3, industry free cash-flow decreases to $6,100 million, which represents a decrease of approximately 3.1 percent, compared to the no-new-standards case value of $6,299 million in 2026, the year before the estimated first full year of compliance.

TSL 3 would set the energy conservation standard at EL 2 for all product classes. DOE estimates that approximately 27 percent of low energy wired battery charger shipments, approximately 46 percent of medium energy wired BC shipments, approximately 26 percent of high energy wired battery charger shipments, approximately 66 percent of fixed location wireless battery charger shipments, and approximately 73 percent of open location wireless battery charger shipments would meet or exceed the efficiency levels analyzed at TSL 3 in 2027. DOE expects battery charger manufacturers to incur approximately $358.8 million in product conversion costs to redesign all non-compliant models and $127.1 in related capital conversion costs.

At TSL 3, the shipment-weighted average MPC for battery chargers slightly increases by 0.2 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 $485.9 million in conversion costs, causing a slightly negative change in INPV at TSL 3 under the preservation of gross margin scenario.

Under the constant price scenario, manufacturers do not adjust their product's price from the price in the no-new-standards case and do not pass on the cost increase to consumers. This 0.2 percent reduction in the margin and the $485.9 million in conversion costs incurred by manufacturers cause a moderately negative change in INPV at TSL 3 under the constant price scenario.

At TSL 4, DOE estimates impacts on INPV will range from −$9,032 million to −$597.7 million, which represents a change of −11.4 percent to −0.8 percent, respectively. At TSL 4, industry free cash-flow decreases to $5,822 million, which represents a decrease of approximately 7.6 percent, compared to the no-new-standards case value of $6,299 million in 2026, the year before the estimated first full year of compliance.

TSL 4 would set the energy conservation standard at EL 3 for all product classes. DOE estimates that approximately 8 percent of low energy wired battery charger shipments, approximately 19 percent of medium energy wired battery charger shipments, approximately 12 percent of high energy wired battery charger shipments, approximately 8 percent of fixed location wireless battery charger shipments, and approximately 53 percent of open location wireless battery charger shipments would meet the efficiency levels analyzed at TSL 4 in 2027. DOE expects battery charger manufacturers to incur approximately $868.4 million in product conversion costs to redesign all non-compliant models and $262.3 in related capital conversion costs.

At TSL 4, the shipment-weighted average MPC for battery chargers slightly increases by 0.6 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 slight cost increase. The slight increase in shipment weighted average MPC is outweighed by the $1,136.7 million in conversion costs, causing a slightly negative change in INPV at TSL 4 under the preservation of gross margin scenario.

Under the constant price scenario, manufacturers do not adjust their product's price from the price in the no-new-standards case and do not pass on the cost increase to consumers. In this scenario, the 0.6 percent shipment weighted average MPC increase results in a reduction in the margin after the analyzed compliance year. This reduction in the margin and the $1,136.7 million in conversion costs incurred by manufacturers cause a substantially negative change in INPV at TSL 4 under the constant price scenario.

b. Direct Impacts on Employment

DOE identified very limited domestic battery charger manufacturing, 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 battery chargers. These domestic facilities are concentrated within the high energy industry subsector and support relatively low volumes for specialized applications. Since, energy conservation standards are not expected to alter production methodology, DOE does not expect that there would be any direct impacts on domestic production employment as a result of amended energy conservation standards.

DOE requests comment on how the proposed energy conservation standards might affect domestic battery charger 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 battery charger manufacturing equipment. Further, DOE does not expect that there would be capacity issues providing components to battery charger manufacturers for more efficient battery charger.

DOE requests comment on possible impacts on manufacturing capacity stemming from amended energy conservation standards.

d. Impacts on Subgroups of Manufacturers

DOE identified five subgroups of manufactures that may experience disproportionate or different impacts as a result of amended standards—small appliances industry subgroup, consumer electronics industry subgroup, power tools industry subgroup, high energy industry subgroup, and small business manufacturers. Estimated quantitative impacts on the four industry subgroups are presented in tables V.15 through V.22. Analysis of the possible impact on small business manufacturers is discussed in section VI.B of this document.

TABLE V.15—MANUFACTURER IMPACT ANALYSIS FOR BATTERY CHARGERS—PRESERVATION OF GROSS MARGIN SCENARIO—SMALL APPLIANCE INDUSTRY SUBGROUP

	TSL 1	TSL 2	TSL 3	TSL 4
All INPV (No-New-Standards Case = $2,757 M)	2,747	2,715	2,688	2,562
All Change in INPV ($ M)	(10.2)	(42.0)	(68.5)	(195.3)
All % Change in INPV (%)	(0.4)	(1.5)	(2.5)	(7.1)
All Capital Conversion Costs ($ M)	5.6	20.1	32.2	84.9
All Product Conversion Costs ($ M)	9.8	43.9	71.5	216.1

TABLE V.16—MANUFACTURER IMPACT ANALYSIS FOR BATTERY CHARGERS—CONSTANT PRICE SCENARIO—SMALL APPLIANCE INDUSTRY SUBGROUP

	TSL 1	TSL 2	TSL 3	TSL 4
All INPV (No-New-Standards Case = $2,757 M)	2,525	2,229	1,901	902.0
All Change in INPV ($ M)	(231.9)	(527.5)	(855.5)	(1,854.8)
All % Change in INPV (%)	(8.4)	(9.1)	(31.0)	(67.3)
All Capital Conversion Costs ($ M)	5.6	20.1	32.2	84.9
All Product Conversion Costs ($ M)	9.8	43.9	71.5	216.1

TABLE V.17—MANUFACTURER IMPACT ANALYSIS FOR BATTERY CHARGERS—PRESERVATION OF GROSS MARGIN SCENARIO—CONSUMER ELECTRONICS INDUSTRY SUBGROUP

	TSL 1	TSL 2	TSL 3	TSL 4
All INPV (No-New-Standards Case = $71,577 M)	71,544	71,400	71,378	71,150
All Change in INPV ($ M)	(28.9)	(160.0)	(179.8)	(372.7)
All % Change in INPV (%)	(0.0)	(0.2)	(0.3)	(0.5)
All Capital Conversion Costs ($ M)	16.6	75.4	87.0	166.8
All Product Conversion Costs ($ M)	60.2	305.1	353.1	767.9

TABLE V.18—MANUFACTURER IMPACT ANALYSIS FOR BATTERY CHARGERS—CONSTANT PRICE SCENARIO—CONSUMER ELECTRONICS INDUSTRY SUBGROUP

	TSL 1	TSL 2	TSL 3	TSL 4
All INPV (No-New-Standards Case = $71,577 M)	70,433	68,816	68,412	65,045
All Change in INPV ($ M)	(1,178)	(2,831)	(3,247)	(6,686)
All % Change in INPV (%)	(1.6)	(4.0)	(4.5)	(9.3)
All Capital Conversion Costs ($ M)	16.6	75.4	87.0	166.8
All Product Conversion Costs ($ M)	60.2	305.1	353.1	767.9

TABLE V.19—MANUFACTURER IMPACT ANALYSIS FOR BATTERY CHARGERS—PRESERVATION OF GROSS MARGIN SCENARIO—POWER TOOLS INDUSTRY SUBGROUP

	TSL 1	TSL 2	TSL 3	TSL 4
All INPV (No-New-Standards Case = $822.5 M)	822.0	819.3	819.3	817.0
All Change in INPV ($ M)	(0.5)	(3.2)	(3.2)	(5.4)
All % Change in INPV (%)	(0.1)	(0.4)	(0.4)	(0.7)
All Capital Conversion Costs ($ M)	0.4	2.0	2.0	3.5
All Product Conversion Costs ($ M)	0.8	7.0	5.0	9.8

TABLE V.20—MANUFACTURER IMPACT ANALYSIS FOR BATTERY CHARGERS—CONSTANT PRICE SCENARIO—POWER TOOLS INDUSTRY SUBGROUP

	TSL 1	TSL 2	TSL 3	TSL 4
All INPV (No-New-Standards Case = $822.5 M)	798.6	759.3	759.3	712.6
All Change in INPV ($ M)	(23.9)	(63.1)	(63.1)	(109.8)
All % Change in INPV (%)	(2.9)	(7.7)	(7.7)	(13.4)
All Capital Conversion Costs ($ M)	0.4	2.0	2.0	3.5
All Product Conversion Costs ($ M)	0.8	7.0	5.0	9.8

TABLE V.21—MANUFACTURER IMPACT ANALYSIS FOR BATTERY CHARGERS—PRESERVATION OF GROSS MARGIN SCENARIO—HIGH ENERGY INDUSTRY SUBGROUP

	TSL 1	TSL 2	TSL 3	TSL 4
All INPV (No-New-Standards Case = $3,760 M)	3,759	3,751	3,751	3,736
All Change in INPV ($ M)	(0.7)	(9.0)	(8.9)	(24.3)
All % Change in INPV (%)	(0.0)	(0.3)	(0.4)	(0.8)
All Capital Conversion Costs ($ M)	1.4	5.8	5.8	13.0
All Product Conversion Costs ($ M)	3.1	16.3	16.3	41.3

TABLE V.22—MANUFACTURER IMPACT ANALYSIS FOR BATTERY CHARGERS—CONSTANT PRICE SCENARIO—HIGH ENERGY INDUSTRY SUBGROUP

	TSL 1	TSL 2	TSL 3	TSL 4
All INPV (No-New-Standards Case = $3,760 M)	3,671	3,523	3,523	3,379
All Change in INPV ($ M)	(89.3)	(237.0)	(237.0)	(381.4)
All % Change in INPV	−2.4%	−6.3%	−6.3%	−10.1%
All Capital Conversion Costs ($ M)	1.4	5.8	5.8	13.0
All Product Conversion Costs ($ M)	3.1	16.3	16.3	41.3

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.15—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING BATTERY CHARGER 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 *** (90)
Room Air Conditioners † 87 FR 20608 (Apr. 7, 2022)	8	3	2026	$22.8 (2020$)	0.5
Microwave Ovens † 87 FR 52282 (Aug. 24, 2022)	19	6	2026	$46.1 (2021$)	0.7
Clothes Dryers † 87 FR 51734 (Aug. 23, 2022)	15	2	2027	$149.7 (2020$)	1.8
Residential Clothes Washers †‡	19	6	2027	$411.6 (2021$)	8.1
Refrigerators, Refrigerator-Freezers, and Freezers 88 FR 12452 † (Feb. 27, 2023)	49	7	2027	$1,324 (2021$)	10.5
External Power Supplies 88 FR 7284 (Feb. 2, 2023)	611	154	2027	$17.1 (2021$)	0.6

* 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.

‡ At the time of issuance of this battery charger proposed rule, this rulemaking has been issued and is pending publication in the **Federal Register**. Once published, the residential clothes washers proposed rule will be available at: *www.regulations.gov/docket/EERE–2017–BT–STD–0014.*

In addition to the rulemakings listed in Table V.15, DOE has ongoing rulemakings for other products or equipment that battery charger manufacturers produce, including air cleaners; [51] automatic commercial ice makers; [52] commercial clothes washers; [53] dehumidifiers,[54] and miscellaneous refrigeration products.[55] If DOE proposes or finalizes any energy conservation standards for these products or equipment prior to finalizing energy conservation standards for battery chargers, DOE will include the energy conservation standards for these other products or equipment as part of the cumulative regulatory burden for the battery charger final rule.

DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of battery chargers 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 battery chargers, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2027–2056). Table V.16 presents DOE's projections of the national energy savings for each TSL considered for battery chargers. The savings were calculated using the approach described in section IV.H of this document.

TABLE V.16—CUMULATIVE NATIONAL ENERGY SAVINGS FOR BATTERY CHARGERS; 30 YEARS OF SHIPMENTS
[2027–2056]

	Trial standard level			
	1	2	3	4
	(quads)			
Primary energy	0.4	1.1	1.2	2.0
FFC energy	0.4	1.2	1.3	2.0

OMB Circular A–4 [56] 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.[57] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to battery chargers. 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.17. The impacts are counted over the lifetime of battery chargers purchased in 2027–2036.

TABLE V.17—CUMULATIVE NATIONAL ENERGY SAVINGS FOR BATTERY CHARGERS; 9 YEARS OF SHIPMENTS
[2027–2036]

	Trial standard level			
	1	2	3	4
	(quads)			
Primary energy	0.1	0.3	0.3	0.6
FFC energy	0.1	0.3	0.4	0.6

[51] *www.regulations.gov/docket/EERE-2021-BT-STD-0035*

[52] *www.regulations.gov/docket/EERE-2017-BT-STD-0022*

[53] *www.regulations.gov/docket/EERE-2019-BT-STD-0044*

[54] *www.regulations.gov/docket/EERE-2019-BT-STD-0043*

[55] *www.regulations.gov/docket/EERE-2020-BT-STD-0039*

[56] 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 December 2, 2022).

[57] EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6 year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for battery chargers. In accordance with OMB's guidelines on regulatory analysis,[58] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.18 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2027–2036.

TABLE V.18—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR BATTERY CHARGERS; 30 YEARS OF SHIPMENTS
[2027–2036]

Discount rate	Trial standard level			
	1	2	3	4
	(billion 2021$)			
3 percent	2.4	7.5	7.7	9.6
7 percent	1.2	3.7	3.8	4.3

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.19. The impacts are counted over the lifetime of products purchased in 2027–2036. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.19—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR BATTERY CHARGERS; 9 YEARS OF SHIPMENTS
[2027–2036]

Discount rate	Trial standard level			
	1	2	3	4
	(billion 2021$)			
3 percent	0.8	2.6	2.6	2.6
7 percent	0.5	1.7	1.7	1.6

c. Indirect Impacts on Employment

It is estimated that that amended energy conservation standards for battery chargers 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 V.B.2 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 (2027–2056), 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 III.F.1.d of this document, DOE has tentatively concluded that the standards proposed in this NOPR would not lessen the utility or performance of battery chargers 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

[58] 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 December 2, 2022).

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 battery chargers is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V.20 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 of this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.20—CUMULATIVE EMISSIONS REDUCTION FOR BATTERY CHARGERS SHIPPED IN 2027–2056

	Trial standard level			
	1	2	3	4
Power Sector Emissions				
CO_2 (*million metric tons*)	14	38	40	65
CH_4 (*thousand tons*)	1.1	2.9	3.1	5.0
N_2O (*thousand tons*)	0.15	0.41	0.43	0.71
NO_X (*thousand tons*)	7	19	20	33
SO_2 (*thousand tons*)	7	18	19	31
Hg (*tons*)	0.04	0.11	0.12	0.19
Upstream Emissions				
CO_2 (*million metric tons*)	1.0	2.9	3.0	4.9
CH_4 (*thousand tons*)	98	269	284	462
N_2O (*thousand tons*)	0.01	0.01	0.02	0.03
NO_X (*thousand tons*)	16	43	46	74
SO_2 (*thousand tons*)	0.08	0.21	0.22	0.36
Hg (*tons*)	0.0002	0.0004	0.0005	0.0008
Total FFC Emissions				
CO_2 (*million metric tons*)	15	40	43	69
CH_4 (*thousand tons*)	99	272	287	467
N_2O (*thousand tons*)	0.15	0.42	0.45	0.73
NO_X (*thousand tons*)	23	62	66	107
SO_2 (*thousand tons*)	7	18	19	31
Hg (*tons*)	0.04	0.11	0.12	0.19

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 battery chargers. Section IV.L of this document discusses the SC–CO_2 values that DOE used. Table V.21 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.21—PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR BATTERY CHARGERS SHIPPED IN 2027–2056

TSL	SC–CO_2 Case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	(million 2021$)			
1	158	647	999	1,968
2	432	1,773	2,738	5,397
3	457	1,873	2,892	5,701
4	743	3,048	4,705	9,276.

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 battery chargers. Table V.22 presents the value of the CH_4 emissions reduction at each TSL, and Table V.23 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.22—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR BATTERY CHARGERS SHIPPED IN 2027–2056

TSL	SC–CH_4 case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	(million 2021$)			
1	48	135	186	358
2	131	370	510	981
3	139	390	538	1,035
4	225	635	874	1,683

TABLE V.23—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR BATTERY CHARGERS SHIPPED IN 2027–2056

TSL	SC–N_2O case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	(million 2021$)			
1	1	2	4	6
2	2	7	10	17
3	2	7	11	18
4	3	11	17	30

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 battery chargers. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.24 presents the present value for NO_X emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates, and Table V.25 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.24—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR BATTERY CHARGERS SHIPPED IN 2027–2056

TSL	3% Discount rate	7% Discount rate
	(million 2021$)	
1	464	1,004
2	1,275	2,755
3	1,347	2,909
4	2,195	4,732

TABLE V.25—PRESENT VALUE OF SO_2 EMISSIONS REDUCTION FOR BATTERY CHARGERS SHIPPED IN 2027–2056

TSL	3% Discount rate	7% Discount rate
	(million 2021$)	
1	190	399
2	524	1,094
3	554	1,158
4	904	1,886

Not all the public health and environmental benefits from the reduction of greenhouse gases, NO_x, and SO_2 are captured in the values above, and additional unquantified benefits from the reductions of those pollutants as well as from the reduction of direct PM, and other co-pollutants may be significant. DOE has not included monetary benefits of the reduction of Hg emissions because the amount of reduction is very small.

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.26 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 battery chargers, and are measured for the lifetime of products shipped in 2027–2056. The climate benefits associated

with reduced GHG emissions resulting from the adopted standards are global benefits, and are also calculated based on the lifetime of battery chargers shipped in 2027–2056.

TABLE V.26—CONSUMER NPV COMBINED WITH PRESENT VALUE OF CLIMATE BENEFITS AND HEALTH BENEFITS

Category	TSL 1	TSL 2	TSL 3	TSL 4
3% discount rate for Consumer NPV and Health Benefits (billion 2021$)				
5% Average SC–GHG case	4.0	11.9	12.4	17.2
3% Average SC–GHG case	4.6	13.5	14.1	19.9
2.5% Average SC–GHG case	5.0	14.6	15.2	21.8
3% 95th percentile SC–GHG case	6.2	17.8	18.5	27.2
7% discount rate for Consumer NPV and Health Benefits (billion 2021$)				
5% Average SC–GHG case	2.0	6.1	6.3	8.4
3% Average SC–GHG case	2.6	7.7	8.0	11.1
2.5% Average SC–GHG case	3.0	8.8	9.1	13.0
3% 95th percentile SC–GHG case	4.1	11.9	12.5	18.4

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 battery chargers at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy. DOE refers to this process as the ''walk-down'' analysis.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information, (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. Specifically, consumers of battery charger applications make purchasing decisions based on the application's overall feature set, performance, and design, but rarely on the basis of the accompanying charger's energy efficiency. While there are secondary advantages to a more efficient charging product—*e.g.,* less heat output from a more efficient charger means the product form factor can be smaller and more portable—they affect choices when purchasing replacement products, not the original application. In either scenario, DOE does not expect that consumers are making these decisions with energy efficiency in mind, which undervalues the potential of energy 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.[59]

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

[59] 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.*

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.[60] 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 Battery Chargers Standards

Table V.27 and Table V.28 summarize the quantitative impacts estimated for each TSL for battery chargers. The national impacts are measured over the lifetime of battery chargers 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.

TABLE V.27—SUMMARY OF ANALYTICAL RESULTS FOR BATTERY CHARGERS TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Cumulative FFC National Energy Savings				
Quads	0.4	1.2	1.3	2.0
Cumulative FFC Emissions Reduction				
CO_2 (*million metric tons*)	15	40	43	69
CH_4 (*thousand tons*)	99	272	287	467
N_2O (*thousand tons*)	0.15	0.42	0.45	0.73
SO_2 (*thousand tons*)	7	18	19	31
NO_X (*thousand tons*)	23	62	66	107
Hg (*tons*)	0.04	0.11	0.12	0.19
Present Value of Benefits and Costs (3% discount rate, billion 2021$)				
Consumer Operating Cost Savings	3.3	9.0	9.5	15.5
Climate Benefits *	0.8	2.1	2.3	3.7
Health Benefits **	1.4	3.8	4.1	6.6
Total Benefits †	5.5	15.0	15.8	25.8
Consumer Incremental Product Costs ‡	0.8	1.4	1.8	5.9
Consumer Net Benefits	2.4	7.5	7.7	9.6
Total Net Benefits	4.6	13.5	14.1	19.9
Present Value of Benefits and Costs (7% discount rate, billion 2021$)				
Consumer Operating Cost Savings	1.7	4.6	4.9	8.0
Climate Benefits *	0.8	2.1	2.3	3.7
Health Benefits **	0.7	1.8	1.9	3.1
Total Benefits †	3.1	8.6	9.1	14.8
Consumer Incremental Product Costs ‡	0.5	0.9	1.1	3.6
Consumer Net Benefits	1.2	3.7	3.8	4.3
Total Net Benefits	2.6	7.7	8.0	11.1

Note: This table presents the costs and benefits associated with battery chargers shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056.

* Climate benefits are calculated using four different estimates of the SC–CO_2, SC–CH_4 and SC–N_2O. Together, these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this proposed rule, DOE has reverted to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for NO_X and SO_2) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.L of this document for more details.

† Total and net benefits include consumer, climate, and health benefits. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates.

‡ Costs include incremental equipment costs.

[60] 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 December 2, 2022).

TABLE V.28—SUMMARY OF ANALYTICAL RESULTS FOR BATTERY CHARGERS TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1*	TSL 2*	TSL 3*	TSL 4*
Manufacturer Impacts				
Industry NPV (*million 2021$*) (No-new-standards case INPV = 78,929.8)	77,427–78,872	75,328–76,685	74,596–78,637	70,039–78,265
Industry NPV *(% change)*	(1.9)–(0.1)	(4.6)–(0.3)	(5.6)–(0.3)	(11.4)–(0.8)
Consumer Average LCC Savings (2021$)				
Fixed-Location Wireless Chargers	-$0.03	-$0.03	-$0.64	-$1.92
Open-Placement Wireless Chargers	$0.12	$0.12	-$0.81	-$1.16
Low-Energy Wired Chargers	$0.28	$0.13	$0.13	-$0.43
Medium-Energy Wired Chargers	$1.44	$1.55	$1.55	$1.61
High-Energy Wired Chargers	$11.46	$14.32	$14.32	$18.94
Consumer Simple PBP (years)				
Fixed-Location Wireless Chargers	3.8	3.8	6.0	7.8
Open-Placement Wireless Chargers	4.1	4.1	9.2	11.0
Low-Energy Wired Chargers	3.1	4.0	4.0	6.4
Medium-Energy Wired Chargers	4..5	4.4	4.4	4.4
High-Energy Wired Chargers	1.4	1.5	1.5	1.5
Percent of Consumers that Experience a Net Cost				
Fixed-Location Wireless Chargers	13.9%	13.9%	35.5%	90.0%
Open-Placement Wireless Chargers	6.8%	6.8%	38.4%	55.1%
Low-Energy Wired Chargers	11.2%	39.0%	39.0%	65.5%
Medium-Energy Wired Chargers	16.5%	30.5%	30.5%	49.8%
High-Energy Wired Chargers	2.4%	1.6%	1.6%	1.3%

DOE first considered TSL 4, which represents the max-tech efficiency levels. These levels correspond to the most efficient units tested by DOE or among the top 10% of models identified in the market (as discussed in IV.C.1.b). TSL 4 would save an estimated 2.0 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $4.34 billion using a discount rate of 7 percent, and $9.59 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 69 Mt of CO_2, 467 thousand tons of CH_4, and 0.73 thousand tons of N_2O, 31 thousand tons of SO_2, 107 thousand tons of NO_X, and 0.19 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 $3.7 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 4 is $3.1 billion using a 7-percent discount rate and $6.6 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 $11.1 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 4 is $19.9 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 is a savings of $18.94 for high-energy chargers, an average LCC savings $1.61 for medium-energy charger, an average LCC loss of $0.43 for low-energy chargers, an average LCC loss of $1.16 for open-placement wireless chargers, and an average LCC loss of $1.92 for fixed-location wireless chargers. The simple payback period is 1.5 years for high-energy chargers, 4.4 years for medium-energy chargers, 6.4 years for low-energy chargers, 11 years for open-placement wireless chargers, and 7.8 years for fixed-location wireless chargers. The fraction of consumers experiencing a net LCC cost is 1.3 percent for high-energy chargers, 49.8 percent for medium-energy chargers, 65.5 percent for low-energy chargers, 55.1 percent for open-placement wireless chargers, and 90 percent for fixed-location wireless chargers.

DOE further notes that for high-energy battery chargers, the overall battery charger performance can be heavily influenced by the performance of the battery or the combination of batteries it is tested with. These products are designed to work with a multitude of third party batteries (typically various types of lead acid batteries) and manufacturers have little control over the type of battery a consumer is likely to use with these high-energy battery chargers. DOE recognizes that the current market is still dominated by flooded lead acid batteries, which are used interchangeably with other lead acid battery subtypes for different applications (*i.e.,* golf carts, marine application, and RVs), due to their low cost to acquire, abundant availability, and relatively lower safety risks; however, flooded lead acid batteries usually yield the least efficiency. When they are used to test corresponding high-energy battery chargers, DOE confirmed through internal testing that these flooded lead acid battery and charger combinations would not be able to meet TSL 4 standards. If TSL 4 was proposed, charger manufacturers would likely be unable to produce any chargers that are intended for flooded lead acid batteries, resulting in potentially millions of batteries left in the market without a proper charging solution.

At TSL 4, the projected change in INPV ranges from a decrease of $9,032 million to a decrease of $598 million, which represents a change of approximately −11.4 and −0.8 percent, respectively. DOE estimates that

approximately 8 percent of low energy wired battery charger, approximately 19 percent of medium energy wired BC shipments, approximately 12 percent of high energy wired battery charger shipments, approximately 8 percent of fixed location wireless battery charger shipments, and approximately 53 percent of open location wireless battery charger shipments would meet the efficiency levels analyzed at TSL 4 in 2027. At TSL 4, many manufacturers would be required to redesign every battery charger model covered by this rulemaking. It is unclear 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 models, they will likely prioritize redesigns based on sales volume. The 12 percent of high energy wired battery charger shipments that presently would meet a TSL 4 standard are not designed to be used with flooded lead acid batteries. As noted previously, battery charger manufacturers would likely be unable to produce any charger that are intended for flooded lead acid batteries and there is risk that some other battery charger models will become either temporarily or permanently unavailable after the compliance date.

The Secretary tentatively concludes that at TSL 4 for battery chargers, 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, and the impacts on manufacturers, including the large conversion costs and profit margin impacts that could result in a large reduction in INPV. A majority of consumers for most battery charger product classes (up to 90 percent for fixed-location wireless chargers) would experience a net cost and the average LCC savings would be negative, due to increased purchase prices. In particular, a majority of consumers of the product class with the most shipments (low-energy wired chargers) would experience a net cost. The potential reduction in INPV could be as high as 11.4 percent. In addition, the Secretary is concerned about the possibility of stranding certain categories of batteries that would not be able to find chargers that could comply with TSL 4 efficiencies. Consequently, the Secretary has tentatively concluded that TSL 4 is not economically justified.

DOE then considered TSL 3. TSL 3 represents efficiency level 2 for all battery charger product classes. TSL 3 represents above average models on the current market. TSL 3 would save an estimated 1.3 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $3.8 billion using a discount rate of 7 percent, and $7.7 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 43 Mt of CO_2, 287 thousand tons of CH_4, and 0.45 thousand tons of N_2O, 19 thousand tons of SO_2, 66 thousand tons of NO_X, and 0.12 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 3 is $2.3 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 3 is $1.9 billion using a 7-percent discount rate and $4.1 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 3 is $8.0 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 3 is $14.1 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 3, the average LCC impact is a savings of $14.32 for high-energy chargers, an average LCC savings $1.55 for medium-energy charger, an average LCC savings of $0.13 for low-energy chargers, an average LCC loss of $0.81 for open-placement wireless chargers, and an average LCC loss of $0.64 for fixed-location wireless chargers. The simple payback period is 1.5 years for high-energy chargers, 4.4 years for medium-energy chargers, 4.0 years for low-energy chargers, 9.2 years for open-placement wireless chargers, and 6.0 years for fixed-location wireless chargers. The fraction of consumers experiencing a net LCC cost is 1.6 percent for high-energy chargers, 30.5 percent for medium-energy chargers, 39.0 percent for low-energy chargers, 38.4 percent for open-placement wireless chargers, and 35.5 percent for fixed-location wireless chargers.

For wired battery chargers, TSL 3 provides meaningful energy savings amount with positive average LCC savings and acceptable conversion costs. DOE further notes that from internal testing and modeling, high-energy flooded lead acid battery chargers can also be compliant with TSL 3 with marginal added cost. However, TSL 3 for wireless chargers remains a challenging efficiency level to meet. DOE estimates that a large portion of wireless charger consumers will face net costs if standards were set at TSL 3. DOE also notes that the estimated PBP is longer than average product lifetime for these wireless battery chargers at TSL 3, indicating that consumers will likely not be able to recoup the additional cost in the long run. Furthermore, although the market for wireless chargers is quite developed already, new wireless charging products and options are still being introduced to the market on a regular basis. As such, prescribing standards at TSL 3 can limit the rate of growth for wireless charging market.

At TSL 3, the projected change in INPV ranges from a decrease of $4,402 million to a decrease of $260 million, which correspond to changes of −5.6 percent and −0.3 percent, respectively. DOE estimates that approximately 27 percent of low energy wired battery charger shipments, approximately 46 percent of medium energy wired battery charger shipments, approximately 26 percent of high energy wired battery charger shipments, approximately 66 percent of fixed location wireless battery charger shipments, and approximately 73 percent of open location wireless battery charger shipments would meet the efficiency levels analyzed at TSL 3 in 2027.

The Secretary tentatively concludes that at TSL 3 for battery chargers, 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, and the impacts on manufacturers, including the large conversion costs, profit margin impacts that could result in a large reduction in INPV. Many battery charger consumers would experience a net cost and the average LCC savings would be negative for consumers of wireless battery chargers, due to increased purchase prices. These average LCC costs for wireless chargers are significant enough that, even with continued reductions in incremental purchase price, the LCC would not become positive for at least 10 years beyond the first year of compliance. Consequently, the Secretary has tentatively concluded that TSL 3 is not economically justified.

DOE then considered TSL 2, which represents efficiency level 2 for wired battery chargers and efficiency level 1 for wireless chargers. TSL 2 would save an estimated 1.2 quads of energy, an

amount DOE considers significant. Under TSL 2, the NPV of consumer benefit would be $3.7 billion using a discount rate of 7 percent, and $7.5 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 40 Mt of CO_2, 272 thousand tons of CH_4, and 0.42 thousand tons of N_2O, 18 thousand tons of SO_2, 62 thousand tons of NO_X, and 0.11 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 2 is $2.1 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 2 is $1.8 billion using a 7-percent discount rate and $3.8 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 2 is $7.7 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 2 is $13.5 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 2, the average LCC impact is a savings of $14.32 for high-energy chargers, an average LCC savings $1.55 for medium-energy charger, an average LCC savings of $0.13 for low-energy chargers, an average LCC savings of $0.12 for open-placement wireless chargers, and an average LCC loss of $0.03 for fixed-location wireless chargers. For fixed-location wireless chargers, the average LCC quickly turns positive when considering the impact of reduction in prices experienced in the out years after the compliance date of the proposed standard, which is supported by the positive net present value over the 30-years of shipment. The simple payback period is 1.5 years for high-energy chargers, 4.4 years for medium-energy chargers, 4.0 years for low-energy chargers, 4.1 years for open-placement wireless chargers, and 3.8 years for fixed-location wireless chargers. The fraction of consumers experiencing a net LCC cost is 1.6 percent for high-energy chargers, 30.5 percent for medium-energy chargers, 39.0 percent for low-energy chargers, 6.8 percent for open-placement wireless chargers, and 13.9 percent for fixed-location wireless chargers.

At TSL 2, the projected change in INPV ranges from a decrease of $3,659 million to a decrease of $214 million, which correspond to changes of −4.6 percent and −0.3 percent, respectively. DOE estimates that industry must invest $398 million to comply with standards set at TSL 2. DOE estimates that approximately 27 percent of low energy wired battery chargers, approximately 46 percent of medium energy wired battery chargers shipments, approximately 26 percent of high energy wired battery charger shipments, approximately 92 percent of fixed location wireless battery charger shipments, and approximately 93 percent of open location wireless battery charger shipments would meet the efficiency levels analyzed at TSL 2 in 2027.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that at a standard set at TSL 2 for battery chargers would be economically justified. At this TSL, a majority of consumers either experience a net benefit or are not impacted by the proposed rule, and the average LCC savings for consumers are positive or a minimally negative $0.03. The average incremental product costs for all battery chargers are very small relative to the costs of the applications using the battery charger, which are likely greater by several factors of 10 for some applications (*e.g.,* the cost of a smartphone is several hundreds of dollars, whereas the incremental cost of a more efficient battery charger for smartphones is a few dollars at most). Furthermore, due to price trends reducing incremental costs, the average LCC savings will grow in years beyond 2027 and fewer consumers would actually experience a net cost. In particular, the average LCC for fixed-location wireless chargers becomes positive after only 1 year beyond the first year of compliance. 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. The standard levels at TSL 2 are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing $2.1 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and $3.8 billion (using a 3-percent discount rate) or $1.8 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 battery chargers 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 battery chargers at TSL 2. The proposed amended energy conservation standards for battery chargers, which are expressed as active mode energy, or standby or off modes power, are shown in Table V.29.

TABLE V.29—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR BATTERY CHARGERS

Product class	Battery energy E_{batt} (Wh)	Maximum active mode energy E_a (Wh)	Maximum standby mode power P_{sb}* (W)	Off mode power P_{off} (W)
1a Fixed-Location Wireless	≤100	1.718*Ebatt + 8.5	1.5	0
1b Open-Placement Wireless	N/A	N/A	0.8 (P_{nb} only)	0
2a Low-Energy	≤100	1.222*Ebatt + 4.980	0.00098*Ebatt + 0.4	0

TABLE V.29—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR BATTERY CHARGERS—Continued

Product class	Battery energy E_{batt} (Wh)	Maximum active mode energy E_a (Wh)	Maximum standby mode power P_{sb}* (W)	Off mode power P_{off} (W)
2b Medium-Energy	100–1000	1.367*Ebatt + −9.560.		
2c High-Energy	>1000	1.323*Ebatt + 34.361.		

* Standby mode power is the sum of no-battery mode power and maintenance mode power, unless noted otherwise.

2. Annualized Benefits and Costs of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is (1) the annualized national economic value (expressed in 2021$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs, and (2) the annualized monetary value of the climate and health benefits from emission reductions.

Table V.30 shows the annualized values for battery chargers under TSL 2, expressed in 2021$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and 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 $89 million per year in increased equipment costs, while the estimated annual benefits are $457 million in reduced equipment operating costs, $120 million in climate benefits, and $178 million in health benefits. In this case. The net benefit would amount to $665 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is $81 million per year in increased equipment costs, while the estimated annual benefits are $500 million in reduced operating costs, $120 million in climate benefits, and $215 million in health benefits. In this case, the net benefit would amount to $754 million per year.

TABLE V.30—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR BATTERY CHARGERS

[TSL 2]

	Million 2021$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	500	487	516
Climate Benefits*	120	120	120
Health Benefits**	215	215	215
Total Benefits†	834	821	850
Consumer Incremental Product Costs	81	90	71
Net Benefits	754	731	779
7% discount rate			
Consumer Operating Cost Savings	457	447	469
Climate Benefits* (3% discount rate)	120	120	120
Health Benefits**	178	178	178
Total Benefits†	754	744	766
Consumer Incremental Product Costs	89	98	79
Net Benefits	665	646	687

Note: This table presents the costs and benefits associated with battery chargers shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the AEO2022 Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC–GHG (see section IV.L of this NOPR). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this proposed rule, DOE has reverted to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. See section IV.L of this document for more details.

† Total 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.

D. Reporting, Certification, and Sampling Plan

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For battery chargers, the certification template reflects the general certification requirements specified at 10 CFR 429.12 and the product-specific requirements specified at 10 CFR 429.39. 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,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in OMB has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this proposed regulatory action constitutes a ''significant regulatory action within the scope of section 3(f)(1)'' of E.O. 12866. Accordingly, pursuant to section 6(a)(3)(C) of E.O. 12866, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the proposed regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments are summarized in this preamble and further detail can be found in the technical support document for this rulemaking.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*). DOE has prepared the following IRFA for the products that are the subject of this rulemaking.

For manufacturers of battery chargers, the Small Business Administration (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 battery chargers 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 BCs. 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 battery chargers 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, as well as the online

presence of identified businesses in order to determine whether they might 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 BCs, but that rather sell sourced BCs with other products or relabel sourced BCs to sell separately.

From these sources, DOE identified 296 unique businesses associated with at least one covered BC model and that fall under SBA's employee threshold for this rulemaking. While each of these small businesses certify models with DOE's CCD, DOE has only been able to identify a small number of domestic battery charger manufacturing facilities and therefore does not expect that many of the small businesses manufacture battery chargers, even if they may be OEM manufacturers of battery charger applications. From this list, DOE was able to identify three domestic small business manufacturers of battery chargers covered by this rulemaking—all operating in the high energy industry subsector.

DOE requests comment on the number of small businesses identified that manufacture battery chargers covered by this rulemaking.

4. Description and Estimate of Compliance Requirements for Small Entities

DOE has estimated that conversion costs would be proportional to the annual revenue attributable to battery chargers that do not meet the standards. In way of a maximum-costs estimate—if, as a result of standards, one of the small businesses were to need to redesign all of their battery charger 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. DOE estimated the high energy subsector average annual R&D expenditure to be approximately 3.6 percent of annual revenue. DOE also expects that small businesses, under the same circumstances, would incur capital conversion costs equivalent to 75 percent of an additional annual capital expenditure—in the form of new tooling, plastic molding, and additional quality control equipment—across the compliance period. DOE estimated the high energy industry average annual capital expenditure to be 3.0 percent annual of non-compliant battery charger revenue. Therefore, DOE conservatively estimates that small manufacturers may incur conversion costs of up to 5.85 percent of revenue attributable to battery charger sales across the two-year compliance period.

TABLE VI.1—SMALL BUSINESS IMPACTS

Small business	Estimated annual revenue	Estimated product conversion costs	Estimated capital conversion costs	Total conversion cost as a percentage of annual revenue (%)
Small Business 1	$13,130,000	$472,700	$295,425	5.85
Small Business 2	10,890,000	392,000	245,025	5.85
Small Business 3	40,470,000	1,456,900	910,575	5.85

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 battery chargers 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 2. In reviewing alternatives to the proposed rule, DOE examined energy conservation standards set at lower efficiency levels. While selecting TSL 1, would reduce the possible impacts on small businesses, it would come at the expense of a significant reduction in energy savings. TSL 2 achieves approximately 300 percent of the energy savings compared to the energy savings at TSL 1. DOE additionally estimates that TSL 1 would result in a lower net present value of consumer benefits than TSL 2 to the order of approximately $2,568 million.

Based on the presented discussion, establishing standards at TSL 2 balances the benefits of the energy savings at TSL 2 with the potential burdens placed on BCs 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 E, and 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act

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

OMB Control Number 1910–1400, Compliance Statement Energy/Water Conservation Standards for Appliances, is currently valid and assigned to the certification reporting requirements applicable to covered equipment, including battery chargers.

DOE's certification and compliance activities ensure accurate and comprehensive information about the

energy and water use characteristics of covered products and covered equipment sold in the United States. Manufacturers of all covered products and covered equipment must submit a certification report before a basic model is distributed in commerce, annually thereafter, and if the basic model is redesigned in such a manner to increase the consumption or decrease the efficiency of the basic model such that the certified rating is no longer supported by the test data. Additionally, manufacturers must report when production of a basic model has ceased and is no longer offered for sale as part of the next annual certification report following such cessation. DOE requires the manufacturer of any covered product or covered equipment to establish, maintain, and retain the records of certification reports, of the underlying test data for all certification testing, and of any other testing conducted to satisfy the requirements of part 429, part 430, and/or part 431. Certification reports provide DOE and consumers with comprehensive, up-to date efficiency information and support effective enforcement.

Revised certification data would be required for battery chargers were this NOPR to be finalized as proposed; however, DOE is not proposing amended certification or reporting requirements for battery chargers in this NOPR. Instead, DOE may consider proposals to establish certification requirements and reporting for battery chargers under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings that establish energy conservation standards for consumer products or industrial equipment. 10 CFR part 1021, subpart D, appendix B5.1. DOE anticipates that this rulemaking qualifies for categorical exclusion B5.1 because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in categorical exclusion B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. 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 *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

Although this proposed rule does not contain a Federal intergovernmental

mandate, it may require expenditures of $100 million or more in any one year by the private sector. Such expenditures may include: (1) investment in research and development and in capital expenditures by battery charger 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 battery chargers, 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(m), this proposed rule would establish amended energy conservation standards for battery chargers that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified, as required by 42 U.S.C 6295(o)(2)(A) and 6295(o)(3)(B). A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this proposed rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this 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 proposes amended energy conservation standards for battery chargers, 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.[61] 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

[61] 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 December 2, 2022).

Department's analyses. DOE is in the process of evaluating the resulting report.[62]

VII. Public Participation

A. Participation in the Webinar

The time and date of the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://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 an interest in the topics addressed in this NOPR, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit to *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar/public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will a general overview of the topics addressed in this rulemaking, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the Docket section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the 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.

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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

[62] The report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.*

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 feedback on DOE's approach of establishing these higher efficiency CSLs and welcomes stakeholders to submit any data on the actual market distribution of these higher efficiency CSLs.

(2) DOE requests stakeholder feedbacks on these analyzed incremental costs as well as any topic covered in chapter 5 of the NOPR TSD. DOE also welcomes stakeholders to submit their own cost-efficiency results, should there be any.

(3) DOE requests comment on how the proposed energy conservation standards might affect domestic battery charger manufacturing.

(4) DOE requests comment on possible impacts on manufacturing capacity stemming from amended energy conservation standards.

(5) DOE requests comment on potential impacts on fit, function, and utility of the battery chargerss from the proposed standard.

(6) DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of battery chargers associated with multiple DOE standards or product-specific regulatory actions of other Federal agencies.

(7) DOE requests comment on the number of small businesses identified that manufacture battery chargers covered by this rulemaking.

(8) DOE requests comment on the estimated product conversion costs of small businesses that manufacture or sell battery chargers covered by this 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, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on March 3, 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 March 3, 2023.

Treena V. Garrett,

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

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the 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 § 430.32 by revising paragraph (z)(1) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(z) *Battery chargers.* (1)(i) Battery chargers manufactured on or after June 13, 2018, and before [*date two years after publication of the final rule*], must have a unit energy consumption (UEC) less than or equal to the prescribed ''Maximum UEC'' standard when using the equations for the appropriate product class and corresponding rated battery energy as shown in the following table:

Product class	Product class description	Rated battery energy (E_{batt}**)	Special characteristic or battery voltage	Maximum UEC (kWh/year) (as a function of E_{batt}**)
1	Low-Energy	≤5 Wh	Inductive Connection*.	3.04.
2	Low-Energy, Low-Voltage	<100 Wh	<4 V	$0.1440*E_{batt} + 2.95$.
3	Low-Energy, Medium-Voltage	<100 Wh	4–10 V	For E_{batt}<10 Wh, 1.42; For E_{batt}≥10 Wh, $0.0255*E_{batt} + 1.16$.
4	Low-Energy, High-Voltage	<100 Wh	>10 V	$0.11*E_{batt} + 3.18$.
5	Medium-Energy, Low-Voltage	100–3000 Wh	<20 V	$0.0257*E_{batt} + 0.815$.

Product class	Product class description	Rated battery energy (E_{batt}**)	Special characteristic or battery voltage	Maximum UEC (kWh/year) (as a function of E_{batt}**)
6	Medium-Energy, High-Voltage	100–3000 Wh	≥20 V	0.0778*E_{batt} + 2.4.
7	High-Energy	>3000 Wh		0.0502*E_{batt} + 4.53.

* Inductive connection and designed for use in a wet environment (*e.g.,* electric toothbrushes).
** E_{batt} = Rated battery energy as determined in 10 CFR part 429.39(a).

(ii) Battery chargers manufactured on or after *[date two years after publication of the final rule],* must meet the following active mode energy, standby mode power, and off mode power standards:

Product class	Battery energy E_{batt} (Wh)	Maximum active mode energy E_a (Wh)	Maximum standby mode power P_{sb}* (W)	Off mode power P_{off} (W)
1a Fixed-Location Wireless	≤100	1.718*Ebatt + 8.5	1.5	0
1b Open-Placement Wireless	N/A	N/A	0.8 (P_{nb} only)	0
2a Low-Energy	≤100	1.222*Ebatt + 4.980	0.00098*Ebatt + 0.4	0
2b Medium-Energy	100–1000	1.367*Ebatt + −9.560.		
2c High-Energy	>1000	1.323*Ebatt + 34.361.		

* Standby mode power is the sum of no-battery mode power and maintenance mode power, unless noted otherwise.

* * * * *

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Vol. 88, No. 50

Wednesday, March 15, 2023

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