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

Federal Register

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Thursday, May 11, 2023

Presidential Documents

Title 3—

The President

Proclamation 10574 of May 7, 2023

Honoring the Victims of the Tragedy in Allen, Texas

By the President of the United States of America

A Proclamation

As a mark of respect for the victims of the senseless acts of violence perpetrated on May 6, 2023, in Allen, Texas, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, May 11, 2023. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

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

[FR Doc. 2023–10214
Filed 5–10–23; 8:45 am]
Billing code 3395–F3–P

Rules and Regulations

Federal Register
Vol. 88, No. 91
Thursday, May 11, 2023

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1777

[Docket No RUS–21–WATER–0017]

RIN 0572–AC55

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

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule; confirmation and response to comment.

SUMMARY: Rural Development's Rural Utilities Service (hereinafter ''the Agency''), of the United States Department of Agriculture (USDA), published in the **Federal Register** on February 1, 2023, a final rule with request for comments for 7 CFR 1777 Section 306C Water and Waste Disposal (WWD) Loans and Grants Programs. Through this action, RUS is confirming the final rule as it was published and providing a response to the public comment received.

DATES: The final rule published February 1, 2023, at 88 FR 6609 is confirmed as of May 2, 2023.

FOR FURTHER INFORMATION CONTACT: Steve Polacek, Acting Assistant Administrator, Water and Environmental Programs, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250; telephone (202) 205–9805; email *steve.polacek@usda.gov.*

SUPPLEMENTARY INFORMATION: The Agency published a final rule with request for comments in the **Federal Register** on February 1, 2023, at 88 FR 6609. The final rule made necessary revisions to Section 306C WWD Loans and Grants program regulations to implement changes recommended by Government Accountability Office (GAO) Audit Report GAO 18–309, ''Drinking Water and Wastewater Infrastructure Opportunities Exist to Enhance Federal Agency Needs Assessment and Coordination on Tribal Projects'' (Audit Report) issued on May 15, 2018, and available at: *https://www.gao.gov/products/gao-18-309.* The Agency is also implementing other changes to clarify terminology and policies, update scoring criteria, and allow the program to run more efficiently.

The comment period on the final rule closed April 3, 2023. The Agency received one comment that was not responsive to the policy updates being adopted through this rulemaking. Therefore, the Agency confirms the rule without change.

Andrew Berke,
Administrator, Rural Utilities Service.

[FR Doc. 2023–09916 Filed 5–10–23; 8:45 am]
BILLING CODE 3410–15–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Docket No. 1805]

RIN 7100–AG58

Regulation A: Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') has adopted final amendments to its Regulation A to reflect the Board's approval of an increase in the rate for primary credit at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically increased by formula as a result of the Board's primary credit rate action.

DATES:

Effective date: This rule (amendments to part 201 (Regulation A)) is effective May 11, 2023.

Applicability date: The rate changes for primary and secondary credit were applicable on May 4, 2023.

FOR FURTHER INFORMATION CONTACT: M. Benjamin Snodgrass, Senior Counsel (202–263–4877), Legal Division, or Courtney Demartini, Lead Financial Institution & Policy Analyst (202–379–8109), Division of Monetary Affairs; for users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services, please call 711 from any telephone, anywhere in the United States; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to review and determination of the Board.

On May 3, 2023, the Board voted to approve a 0.25 percentage point increase in the primary credit rate, thereby increasing the primary credit rate from 5 percent to 5.25 percent. In addition, the Board had previously approved the renewal of the secondary credit rate formula, the primary credit rate plus 50 basis points. Under the formula, the secondary credit rate increased by 0.25 percentage points as a result of the Board's primary credit rate action, thereby increasing the secondary credit rate from 5.50 percent to 5.75 percent. The amendments to Regulation A reflect these rate changes.

The 0.25 percentage point increase in the primary credit rate was associated with 0.25 percentage point increase in the target range for the federal funds rate (from a target range of 4¾ percent to 5 percent to a target range of 5 percent to 5¼ percent) announced by the Federal Open Market Committee on May 3, 2023, as described in the Board's amendment of its Regulation D published elsewhere in this issue of the **Federal Register**.

Administrative Procedure Act

In general, the Administrative Procedure Act (''APA'')[1] imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to Congressionally-delegated authority): (1) publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment

[1] 5 U.S.C. 551 *et seq.*

on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.'' [2] Section 553(d) of the APA also provides that publication at least 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule.[3] The APA further provides that the notice, public comment, and delayed effective date requirements of 5 U.S.C. 553 do not apply ''to the extent that there is involved . . . a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.'' [4]

Regulation A establishes the interest rates that the twelve Reserve Banks charge for extensions of primary credit and secondary credit. The Board has determined that the notice, public comment, and delayed effective date requirements of the APA do not apply to these final amendments to Regulation A. The amendments involve a matter relating to loans and are therefore exempt under the terms of the APA. Furthermore, because delay would undermine the Board's action in responding to economic data and conditions, the Board has determined that ''good cause'' exists within the meaning of the APA to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to the final amendments to Regulation A.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[5] As noted previously, a general notice of proposed rulemaking is not required if the final rule involves a matter relating to loans. Furthermore, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

[2] 5 U.S.C. 553(b)(3)(A).

[3] 5 U.S.C. 553(d).

[4] 5 U.S.C. 553(a)(2).

[5] 5 U.S.C. 603, 604.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995,[6] the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

For the reasons set forth in the preamble, the Board is amending 12 CFR chapter II as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.,* 347a, 347b, 347c, 348 *et seq.,* 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[3]

(a) *Primary credit.* The interest rate at each Federal Reserve Bank for primary credit provided to depository institutions under § 201.4(a) is 5.25 percent.

(b) *Secondary credit.* The interest rate at each Federal Reserve Bank for secondary credit provided to depository institutions under § 201.4(b) is 5.75 percent.

* * * * *

[3] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

By order of the Board of Governors of the Federal Reserve System.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2023–10021 Filed 5–10–23; 8:45 am]

BILLING CODE 6210–02–P

[6] 44 U.S.C. 3506; *see* 5 CFR part 1320, appendix A.1.

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R–1806]

RIN 7100–AG59

Regulation D: Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') has adopted final amendments to its Regulation D to revise the rate of interest paid on balances (''IORB'') maintained at Federal Reserve Banks by or on behalf of eligible institutions. The final amendments specify that IORB is 5.15 percent, a 0.25 percentage point increase from its prior level. The amendment is intended to enhance the role of IORB in maintaining the federal funds rate in the target range established by the Federal Open Market Committee (''FOMC'' or ''Committee'').

DATES:

Effective date: This rule (amendments to part 204 (Regulation D)) is effective May 11, 2023.

Applicability date: The IORB rate change was applicable on May 4, 2023.

FOR FURTHER INFORMATION CONTACT: M. Benjamin Snodgrass, Senior Counsel (202–263–4877), Legal Division, or Courtney Demartini, Lead Financial Institution & Policy Analyst (202–379–8109); for users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services, please call 711 from any telephone, anywhere in the United States; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

For monetary policy purposes, section 19 of the Federal Reserve Act (''Act'') imposes reserve requirements on certain types of deposits and other liabilities of depository institutions.[1] Regulation D, which implements section 19 of the Act, requires that a depository institution meet reserve requirements by holding cash in its vault, or if vault cash is insufficient, by maintaining a balance in an account at a Federal Reserve Bank (''Reserve Bank'').[2] Section 19 also provides that balances maintained by or

[1] 12 U.S.C. 461(b). In March 2020, the Board set all reserve requirement ratios to zero percent. See Interim Final Rule, 85 FR 16525 (Mar. 24, 2020); Final Rule, 86 FR 8853 (Feb. 10, 2021).

[2] 12 CFR 204.5(a)(1).

on behalf of certain institutions in an account at a Reserve Bank may receive earnings to be paid by the Reserve Bank at least once each quarter, at a rate or rates not to exceed the general level of short-term interest rates.[3] Institutions that are eligible to receive earnings on their balances held at Reserve Banks (''eligible institutions'') include depository institutions and certain other institutions.[4] Section 19 also provides that the Board may prescribe regulations concerning the payment of earnings on balances at a Reserve Bank.[5] Prior to these amendments, Regulation D established IORB at 4.9 percent.[6]

II. Amendment to IORB

The Board is amending § 204.10(b)(1) of Regulation D to establish IORB at 5.15 percent. The amendment represents a 0.25 percentage point increase in IORB. This decision was announced on May 3, 2023, with an effective date of May 4, 2023, in the Federal Reserve Implementation Note that accompanied the FOMC's statement on May 3, 2023. The FOMC statement stated that the Committee decided to raise the target range for the federal funds rate to 5 to 5¼ percent.

The Federal Reserve Implementation Note stated, ''The Board of Governors of the Federal Reserve System voted unanimously to raise the interest rate paid on reserve balances to 5.15 percent, effective May 4, 2023.''

As a result, the Board is amending § 204.10(b)(1) of Regulation D to establish IORB at 5.15 percent.

III. Administrative Procedure Act

In general, the Administrative Procedure Act (''APA'')[7] imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to Congressionally-delegated authority): (1) publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.''[8] Section 553(d) of the APA also provides that publication at least 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule.[9]

The Board has determined that good cause exists for finding that the notice, public comment, and delayed effective date provisions of the APA are unnecessary, impracticable, or contrary to the public interest with respect to these final amendments to Regulation D. The rate change for IORB that is reflected in the final amendment to Regulation D was made with a view towards accommodating commerce and business and with regard to their bearing upon the general credit situation of the country. Notice and public comment would prevent the Board's action from being effective as promptly as necessary in the public interest and would not otherwise serve any useful purpose. Notice, public comment, and a delayed effective date would create uncertainty about the finality and effectiveness of the Board's action and undermine the effectiveness of that action. Accordingly, the Board has determined that good cause exists to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to this final amendment to Regulation D.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[10] As noted previously, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995,[11] the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 461, 601, 611, and 3105.

■ 2. Section 204.10 is amended by revising paragraph (b)(1) to read as follows:

§ 204.10 Payment of interest on balances.

* * * * *

(b) * * *

(1) For balances maintained in an eligible institution's master account, interest is the amount equal to the interest on reserve balances rate (''IORB rate'') on a day multiplied by the total balances maintained on that day. The IORB rate is 5.15 percent.

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2023–10022 Filed 5–10–23; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0189; Airspace Docket No. 23–ASO–02]

RIN 2120–AA66

Amendment of Class E Airspace; Shelbyville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface for Bomar Field/Shelbyville Municipal Airport, Shelbyville, Tennessee, as an airspace evaluation determined an update for this airport necessary. This action also updates this airport's geographic coordinates, as well as the geographic coordinates of Ellington Airport. In addition, this action removes the Shelbyville VOR/DME from the description and updates the description header.

DATES: Effective 0901 UTC, August 10, 2023. The Director of the Federal

[3] 12 U.S.C. 461(b)(1)(A) and (b)(12)(A).

[4] See 12 U.S.C. 461(b)(1)(A) & (b)(12)(C); *see* also 12 CFR 204.2(y).

[5] See 12 U.S.C. 461(b)(12)(B).

[6] See 12 CFR 204.10(b)(1).

[7] 5 U.S.C. 551 *et seq.*

[8] 5 U.S.C. 553(b)(3)(A).

[9] 5 U.S.C. 553(d).

[10] 5 U.S.C. 603, 604.

[11] 44 U.S.C. 3506; see 5 CFR part 1320 Appendix A.1.

Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours a day, 365 days a year.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it amends Class E airspace in Shelbyville, TN, to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2023–0189 in the **Federal Register** (88 FR 13739; March 6, 2023), amending Class E airspace at Bomar Field/Shelbyville Municipal Airport, Shelbyville, Tennessee. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

Subsequent to publication, the FAA found that Ellington Airport was nadvertently omitted from the airspace description. This action corrects the error.

Incorporation by Reference

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, incorporated by reference in 14 CFR 71.1 annually. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending Class E airspace extending upward from 700 feet above the surface for Bomar Field/Shelbyville Municipal Airport, Shelbyville, Tennessee, as an airspace evaluation determined an update for this airport necessary. This action also updates this airport's geographic coordinates, as well as the geographic coordinates of Ellington Airport. In addition, this action removes the Shelbyville VOR/DME from the description, as it is not necessary to describe the airspace, and updates the description headers by removing the city names of each airport line. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a.

This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant the preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO TN E5 Shelbyville, TN

Bomar Field/Shelbyville Municipal Airport, TN

(Lat. 35°33′34″ N, long. 86°26′33″ W)

Ellington Airport, TN

(Lat. 35°30′25″ N, long. 86°48′14″ W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the Bomar Field/Shelbyville Municipal and within 4 miles on each side of the 195° bearing from the airport, extending from the 9-mile radius to 14.5-miles south of the airport, and within 4 miles each side of the 359° bearing from the airport, extending from the 9-mile radius to 12-miles north of the airport, and within a 9-mile radius of Ellington Airport.

Issued in College Park, Georgia, on April 29, 2023.

Lisa E. Burrows,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–10054 Filed 5–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0512; Airspace Docket No. 22–AAL–59]

RIN 2120–AA66

Revocation of Very High Frequency (VHF) Omnidirectional Range (VOR) Federal Airway V–489; Galena, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Alaskan Very High Frequency (VHF) Omnidirectional Range (VOR) Federal Airway V–489. The FAA is taking this action due to automated flight plan conflicts between New York Air Route Traffic Control Center (ARTCC) and Anchorage ARTCC when pilots file V–489 in flight plans.

DATES: Effective date 0901 UTC, August 10, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it proposes to revoke Alaskan VOR Airway V–489.

History

The FAA published a NPRM for Docket No. FAA 2023–0512 in the **Federal Register** (88 FR 14516; March 9, 2023), proposing to revoke Alaskan VOR Federal Airway V–489. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Two comments were received, and both offered alternative solutions to resolve the automated flight plan conflicts between New York ARTCC and Anchorage ARTCC.

Once commentor suggested that air traffic control require pilots to use the term Domestic V–489 when wanting to arrive in the New York area or Alaskan V–489 when wanting to arrive in Alaska. This suggestion, while appreciated, would not resolve the automation conflicts. The conflicts arise when a pilot electronically files their flight plan and V–489 is included in the routing. Automated flight plans that include the Domestic V–489 routinely appear in the Anchorage ARTCC computer system when they are intended for New York ARTCC.

Another commentor suggested to rename one or both VOR routes and to revoke the domestic V–489. The FAA considered both alternative solutions and determined that revoking the Alaskan V–489 would provide the most benefit. The Alaskan V–489 is rarely used and offers indirect routing between the Galena, AK (GAL), VOR/Distance Measuring Equipment (VOR/DME) and the Tanana, AK (TAL), VOR/DME navigational aids (NAVAID). Additionally, two other routes, Alaskan VOR Federal airway V–488 and Area Navigation (RNAV) route T–225, offer direct routing between the Galena, AK, VOR/DME and the Tanana, AK, VOR/DME NAVAIDs. Revoking the Alaskan V–489 would resolve the automated flight plan conflicts and reduce the complexity of route structures within Alaskan airspace. Further, unlike the Alaskan V–489, the domestic V–489 is routinely used by pilots in the New York and New Jersey area.

Incorporation by Reference

Alaskan VOR Federal Airways are published in paragraph 6010(b) of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by revoking Alaskan VOR Federal airway V–489 in its entirety. The domestic VOR Federal airway V–489 remains unchanged.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that the action revoking Alaskan VOR Federal Airway V–489 in Galena, AK, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–

6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5.i., which categorically excludes from further environmental impact review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima, and paragraph 5–6.5k, which categorically excludes from further environmental review the publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(b) Alaskan VOR Federal Airways.

* * * * *

V–489 [Remove]

* * * * *

Issued in Washington, DC, on May 4, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–09876 Filed 5–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1233; Airspace Docket No. 22–AEA–14]

RIN 2120–AA66

Amendment of Class D and Class E Airspace, and Revocation of Class E Airspace; Quantico, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace, removes Class E airspace designated as an extension to a Class D surface area, establishes a Class D airspace extension, and amends Class E airspace extending upward from 700 feet above the surface at Quantico MCAF (Turner Field), Quantico, VA, as an airspace evaluation determined an update is necessary. In addition, this action removes the BROOKE Very High-Frequency Omnidirectional Range Collocated Tactical Air (VORTAC) from the Class E airspace extending upward from 700 feet above the surface in the legal description, removes the extension to the south, increases the radius of the Class E airspace. This action updates the airport's geographic coordinates and replaces the terms Notice to Airmen with Notice to Air Missions and Airport/Facility Directory with Chart Supplement in the descriptions.

DATES: Effective 0901 UTC, August 10, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours a day, 365 days a year.

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

FOR FURTHER INFORMATION CONTACT: John Goodson, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5966.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it amends Class D and E airspace and revokes Class E airspace descriptions in Quantico, VA, to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2022–1233 in the **Federal Register** (88 FR 12870; March 1, 2023), amending Class D and Class E airspace, and revoking Class E airspace at Quantico MCAF (Turner Field), Quantico, VA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class D and Class E airspace designations are published in Paragraphs 5000, 6004, and 6005, respectively, of FAA Order JO 7400.11, incorporated by reference in 14 CFR 71.1 annually. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would subsequently be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending Class D airspace for Quantico MCAF (Turner Field), Quantico, VA. The Class D airspace is amended by establishing an extension of airspace extending from the 4-mile radius of the airfield and within a 5.4-mile radius of the airfield extending clockwise from the 168° bearing to the 209° bearing from the airfield. The geographical coordinates of the airfield will be updated to coincide with the FAA's database. In addition, this action replaces the terms Notice to Airmen with Notice to Air Missions and Airport/Facility Directory with Chart Supplement in the legal description.

Also, this action removes Class E airspace designated as an extension to a Class D surface area for Quantico MCAF (Turner Field), Quantico, VA, as the extensions are now included in the Class D legal description.

The Class E airspace extending upward from 700 feet above the surface is amended by increasing the radius to 7.7-miles (previously 6.3-miles), removing the extension to the south, and removing the BROOKE VORTAC from the Class E airspace header and Class E airspace legal description, as it is unnecessary in describing the airspace. Also, the geographical coordinates of the airfield are updated to coincide with the FAA's database. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a.

This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances warrant the preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AEA VA D Quantico, VA [Amended]

Quantico MCAF (Turner Field), VA
(Lat. 38°30′13″ N, long. 77°18′18″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of Quantico MCAF (Turner Field) and a 5.4-mile radius of the airfield extending clockwise from the 168° bearing to the 209° bearing from the airfield. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Designated as an Extension to Class D or E Surface Area.

* * * * *

AEA VA E4 Quantico, VA [Removed]

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

* * * * *

AEA VA E5 Quantico, VA [Amended]

Quantico MCAF (Turner Field), VA
(Lat. 38°30′13″ N, long. 77°18′18″ W)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of Quantico MCAF (Turner Field).

Issued in College Park, Georgia, on May 4, 2023.

Lisa E. Burrows,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–09877 Filed 5–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0235; Airspace Docket No. 22–ANM–52]

RIN 2120–AA66

Revocation of Segments of V–330 and Establishment T–470 Near Boise, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the portion of the Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airway V–330 between the Boise VOR with Tactical Air Navigation (VORTAC) and the intersection of Liberator VOR 084° radial and Burley VOR/Distance Measuring Equipment (DME) 323° radial. This action also establishes United States Area Navigation (RNAV) route T–470. These actions are due to the planned decommissioning of the Liberator, ID (LIA), VOR.

DATES: Effective date 0901 UTC, August 10, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the

FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2022–0235 in the **Federal Register** (88 FR 7899; February 7, 2023), proposing to amend VOR Federal Airway V–330 and establish RNAV route T–470. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Differences From the NPRM

The NPRM that published in the **Federal Register**, contained typographical errors in the proposal section. In the preamble of the NPRM the navigational aids (NAVAID) Wildhorse, Burley, Idaho Falls, and Muddy Mountain were incorrectly described as VORs. All four of these NAVAIDs are VOR/DME. This change does not affect the route descriptions.

Incorporation by Reference

VOR Federal Airways are published in paragraph 6010 of FAA Order JO 7400.11 and United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022 and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending VOR Federal airway V–330. V–330 is currently made up of two separate portions. The first navigates between the Wildhorse, OR, VOR/DME; and the intersection of the Liberator VOR 084° radial and the Burley VOR/DME 323° radial. The second portion navigates between the Idaho Falls, ID, VOR/DME; and the Muddy Mountain, WY, VOR/DME. This action amends the first portion only. The second portion remains unchanged.

In the first portion, the FAA revokes two contiguous segments. The first is the segment between the Boise VORTAC and the intersection of the Boise VORTAC 130° radial and Liberator VOR 084° radial. The second is between the intersection of the Boise VORTAC 130° radial and Liberator VOR 084° radial and the intersection of the Liberator VOR 084° radial and the Burley VOR/DME 323° radial. The VOR Federal Airway action is described below.

V–330: As amended, V–330 extends between the Wildhorse, OR, VOR/DME and the Boise, ID, VORTAC. V–330 also extends between the Idaho Falls, ID, VOR/DME and the Muddy Mountain, WY, VOR/DME.

This action also amends 14 CFR part 71 by establishing RNAV T-route T–470 in the vicinity of Boise, ID. The new route is described below.

T–470: RNAV route T–470 extends between the ALKAL, ID, Fix; the KINZE, ID, Fix; the VIPUC, WY, Fix; the IDECA, WY, Fix; the DEDNE, WY, waypoint (WP); the DEKKR, WY, WP; the SWEAT, WY, Fix; and the CHOMP, WY, Fix.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that the actions of (1) revoking the portion of the VOR Federal airway V–330 between the Boise VORTAC and the intersection of Liberator VOR 084° radial and Burley VOR/DME 323° radial, and (2) establishing United States Area Navigation (RNAV) route T–470 qualify for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5.i., which categorically excludes from further environmental impact review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–330 [Amended]

From Wildhorse, OR; to Boise, ID. From Idaho Falls, ID; Jackson, WY; Dunoir, WY; Riverton, WY; to Muddy Mountain, WY.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

T–470 ALKAL, ID to CHOMP, WY [ADDED]

ALKAL, ID	FIX	(Lat. 43°00′58.35″ N, long. 115°19′41.26″ W)
KINZE, ID	FIX	(Lat. 43°04′51.80″ N, long. 114°23′19.23″ W)
VIPUC, WY	FIX	(Lat. 43°21′09.64″ N, long. 112°14′44.08″ W)
IDECA, WY	FIX	(Lat. 42°51′31.06″ N, long. 110°16′25.75″ W)
DEDNE, WY	WP	(Lat. 42°30′56.06″ N, long. 109°35′23.93″ W)
DEKKR, WY	WP	(Lat. 42°21′25.98″ N, long. 109°02′18.06″ W)
SWEAT, WY	FIX	(Lat. 42°26′35.02″ N, long. 108°27′10.31″ W)
CHOMP, WY	FIX	(Lat. 42°36′23.25″ N, long. 106°45′30.94″ W)

* * * * *

Issued in Washington, DC, on May 4, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–09875 Filed 5–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31483; Amdt. No. 4057]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective May 11, 2023. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 11, 2023.

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

For Examination

1. U.S. Department of Transportation, Docket Ops-M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

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

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone (405) 954–1139.

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

Lists of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on April 14, 2023.

Thomas J. Nichols,

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

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 18 May 2023

Greensboro, NC, KGSO, ILS Y OR LOC Y RWY 32, Orig–B
Greensboro, NC, KGSO, ILS Z OR LOC Z RWY 32, Orig–B

Effective 15 June 2023

Hazlehurst, GA, KAZE, RNAV (GPS) RWY 15, Amdt 2
Hazlehurst, GA, KAZE, RNAV (GPS) RWY 33, Orig
Hazlehurst, GA, KAZE, Takeoff Minimums and Obstacle DP, Amdt 1
Jasper, GA, KJZP, RNAV (GPS) RWY 34, Amdt 1
Statesboro, GA, KTBR, Takeoff Minimums and Obstacle DP, Orig
Valparaiso, IN, KVPZ, ILS OR LOC RWY 27, Amdt 3C
Valparaiso, IN, KVPZ, RNAV (GPS) RWY 18, Amdt 1
Valparaiso, IN, KVPZ, RNAV (GPS) RWY 27, Orig–C
Norton, KS, KNRN, NDB RWY 16, Amdt 2B, CANCELED
Norton, KS, KNRN, NDB RWY 34, Amdt 2A, CANCELED
Charlevoix, MI, KCVX, Takeoff Minimums and Obstacle DP, Amdt 5
Traverse City, MI, KTVC, ILS OR LOC RWY 28, Amdt 15
Columbus, NE, KOLU, LOC RWY 14, Amdt 9
Columbus, NE, KOLU, RNAV (GPS) RWY 14, Amdt 1
Columbus, NE, KOLU, RNAV (GPS) RWY 32, Amdt 1
Newark, NJ, KEWR, GLS RWY 4L, Amdt 2
Newark, NJ, KEWR, GLS RWY 4R, Amdt 2
Newark, NJ, KEWR, GLS RWY 11, Amdt 1
Newark, NJ, KEWR, ILS OR LOC RWY 4R, ILS RWY 4R (CAT II), ILS RWY 4R (CAT III), Amdt 14
Newark, NJ, KEWR, ILS OR LOC RWY 11, Amdt 3
Newark, NJ, KEWR, RNAV (GPS) RWY 11, Amdt 1
Newark, NJ, KEWR, RNAV (GPS) Y RWY 4R, Amdt 2
Newark, NJ, KEWR, RNAV (RNP) Z RWY 4R, Amdt 1
Newark, NJ, KEWR, VOR RWY 11, Amdt 2G, CANCELED
Connellsville, PA, KVVS, LOC RWY 5, Amdt 4C
Connellsville, PA, KVVS, RNAV (GPS) RWY 5, Orig–C
Sioux Falls, SD, KFSD, RNAV (GPS) RWY 3, Amdt 1E
Chattanooga, TN, KCHA, ILS OR LOC RWY 2, Amdt 8
Chattanooga, TN, KCHA, ILS OR LOC RWY 20, ILS RWY 20 (CAT II), Amdt 37
Chattanooga, TN, KCHA, RNAV (GPS) RWY 2, Amdt 1B
Chattanooga, TN, KCHA, RNAV (GPS) RWY 15, Amdt 1A
Chattanooga, TN, KCHA, RNAV (GPS) RWY 20, Amdt 1B
Chattanooga, TN, KCHA, RNAV (GPS) RWY 33, Amdt 2
Chattanooga, TN, KCHA, VOR RWY 33, Amdt 17B, CANCELED
Fort Hood/Killeen, TX, KGRK, VOR RWY 15, Amdt 3C
Brigham City, UT, KBMC, OGDEN ONE, Graphic DP
Brigham City, UT, KBMC, Takeoff Minimums and Obstacle DP, Amdt 7
Monticello, UT, U64, RNAV (GPS) RWY 16, Orig
Monticello, UT, U64, RNAV (GPS) RWY 34, Orig
Monticello, UT, U64, Takeoff Minimums and Obstacle DP, Orig
Port Townsend, WA, 0S9, RNAV (GPS)–A, Amdt 1
Spokane, WA, KGEG, ILS OR LOC RWY 3, ILS RWY 3 (SA CAT I), ILS RWY 3 (CAT II), ILS RWY 3 (CAT III), Amdt 7B
Spokane, WA, KGEG, ILS OR LOC RWY 21, ILS RWY 21 (SA CAT I), ILS RWY 21 (CAT II), ILS RWY 21 (CAT III), Amdt 24A
Spokane, WA, KGEG, Takeoff Minimums and Obstacle DP, Amdt 8
Spokane, WA, KGEG, VOR RWY 3, Amdt 15
Spokane, WA, KGEG, VOR RWY 21, Orig–A
Boyceville, WI, 3T3, Takeoff Minimums and Obstacle DP, Amdt 1

Huntington, WV, KHTS, RNAV (GPS) RWY 12, Amdt 4

[FR Doc. 2023–10043 Filed 5–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31484; Amdt. No. 4058]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective May 11, 2023. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 11, 2023.

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

For Examination

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

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

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

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

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

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone: (405) 954–1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on April 14, 2023.

Thomas J. Nichols,

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

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

* * * *Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
18–May–23 ..	MI	Traverse City	Cherry Capital	3/3643	3/30/23	RNAV (GPS) RWY 28, Orig–A.
18–May–23 ..	MI	Traverse City	Cherry Capital	3/3645	3/30/23	RNAV (GPS) RWY 36, Orig–A.
18–May–23 ..	MI	Traverse City	Cherry Capital	3/3647	3/30/23	VOR–A, Amdt 21.

[FR Doc. 2023–10044 Filed 5–10–23; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1272

[Docket No. CPSC–2023–0021]

Marking of Toy, Look-Alike, and Imitation Firearms

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: The Federal Energy Management Improvement Act Update transferred the authority for regulating the marking of toy, look-alike, and imitation firearms from the Department of Commerce to the Consumer Product Safety Commission. The Commission is issuing this direct final rule to adopt the Department of Commerce rule for the marking of toy, look-alike, and imitation firearms, with non-substantive and conforming changes.

DATES: The rule is effective June 26, 2023, unless CPSC receives a significant adverse comment by June 12, 2023. If CPSC receives such a comment, it will publish a notice in the **Federal Register** withdrawing this direct final rule before its effective date. The incorporation by reference of publications listed in this rule is approved by the Director of the Federal Register as of June 26, 2023.

ADDRESSES: You can submit comments, identified by Docket No. CPSC–2023–0021, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *www.regulations.gov.* Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC does not accept comments submitted by email, except as described below.

Mail/Hand Delivery/Courier/Confidential Written Submissions: CPSC encourages you to submit comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *www.regulations.gov.* If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Docket: For access to the docket to read background documents or comments received, go to: *www.regulations.gov,* and insert the docket number, CPSC–2023–0021, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Salman Sarwar, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7682; email: *ssarwar@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 4 of the Federal Energy Management Improvement Act of 1988 made it unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless the firearm contains, or has affixed to it, a marking approved by the Secretary of Commerce. 15 U.S.C. 5001. In 1989, the Department of Commerce promulgated regulations implementing this law at 15 CFR part 1150. 54 FR 19356 (May 5, 1989). In 2013, the Department of Commerce moved those regulations to 15 CFR part 272. 78 FR 4764 (January 23, 2013).

The Department of Commerce regulations incorporate by reference ASTM F589–85, Standard Consumer Safety Specification for Non-Powder Guns, which ''establishes performance requirements and test methods intended to provide a reasonable degree of safety in the normal use of non-powder guns and projectiles.'' ASTM F589–85, section 3.1; 15 CFR 272.1(b). That 1985 ASTM standard also addresses ''the misuse of non-powder guns and specifies the minimum warnings and instructions that are to be provided in literature and on labels and packages.'' *Id.* section 3.2. ASTM later issued revised versions of F589, but the Department of Commerce did not incorporate the revisions into its regulations.

The Department of Commerce regulations also describe requirements for the use of blaze orange coloring on toy, look-alike, or imitation firearms. 15 CFR 272.3. Those regulations incorporate by reference the federal color standard, Federal Standard 595B, December 1989, color number 12199 (Fed–Std–595B 12199). 15 CFR 272.3(e). In February 2017, the General Services Administration cancelled Federal Standard 595B and it was replaced with

SAE International's Aerospace Material Specification (AMS) Standard 595A, Colors Used in Government Procurement. The AMS standard defines a color index system used by, but not limited to, government activities in a format suitable for color identification, color selection, color matching, and quality control inspection. It also describes the designation and use of color media that are available to conduct these activities. The Department of Commerce, however, did not update its regulations after the cancellation of Federal Standard 595B, so those regulations continue to incorporate by reference that federal standard.

In August 2022, the President signed into law the Federal Energy Management Improvement Act Update.[1] That law transferred implementation and enforcement of 15 U.S.C. 5001 from the Department of Commerce to CPSC. This direct final rule creates a new 16 CFR part 1272 that adopts the substance of the existing Department of Commerce rule for the marking of toy, look-alike, and imitation firearms with only non-substantive and conforming changes.[2]

B. Description of the Rule

This direct final rule creates a new part 1272, ''Marking of Toy, Look-Alike, and Imitation Firearms.'' Part 1272 adopts in substance the Department of Commerce regulation found in 15 CFR part 272.

Part 1272 contains nomenclature and other non-substantive and conforming technical changes as described below.

- The incorporation by reference of ASTM F589–85 in § 1272.1(b) has been retained, with updates to provide current information reflecting the availability of the voluntary standard for public inspection, and to follow the current guidance of the Office of the Federal Register (OFR) for incorporating a voluntary standard by reference. Incorporation of the 1985 version of the ASTM F589 standard is being retained for consistency with the Department of Commerce regulation.
- ''Secretary of Commerce'' in § 1272.3 has been changed to ''Consumer Product Safety Commission.''
- The incorporation by reference in § 1272.3(e) has been updated from Federal Standard 595B–85 to reference SAE International's standard AMS STD 595A–17, Colors Used in Government Procurement. The current version incorporated in the rule is AMS STD 595A–17. The color 12199 referenced in FED STD 595B is identical to color 12199 in AMS STD 595A–17. Thus, this change of the color standard incorporated in the regulation is not substantive.
- The contact information for submitting a waiver request under § 1272.4 has been changed to CPSC.

C. Incorporation by Reference

Sections 1272.1 and 1272.3 of the direct final rule incorporate by reference ASTM F589–85 and AMS STD–595A–17, respectively. The OFR has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, this preamble summarizes the provisions of ASTM F589–85 and AMS STD 595A–17 that the Commission incorporates by reference into 16 CFR part 1272. These standards are reasonably available to interested parties. A read-only copy of ASTM F589–85 is available for viewing, at no cost, on ASTM's website at: *www.astm.org/READINGLIBRARY/.* Interested parties can purchase a copy of ASTM F589–85 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; telephone (610) 832–9585; *www.astm.org.*

A read-only copy of AMS STD 595A–17 is available for viewing until the direct final rule takes effect, at no cost, on SAE's website at: *https://www.sae.org/standards/reading-room.* Once the rule takes effect, a read-only copy of the standard will continue to be available for viewing, at no cost, at the same web address. Interested parties can purchase a copy of SAE AMS STD 595A–17, *Colors Used in Government Procurement,* approved February 10, 2017, from SAE International, 400 Commonwealth Dr., Warrendale, PA 15096; telephone (888) 875–3976; *www.sae.org.*

Interested parties can also schedule an appointment to inspect a copy of the standards at Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: (301) 504–7479; email: *cpsc-os@cpsc.gov.*

D. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551–559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency ''for good cause finds'' that notice and comment are ''impracticable, unnecessary, or contrary to the public interest.'' *Id.* 553(b)(B). The Commission concludes that because this rule adopts the substantive requirements of the Commerce regulation found in 15 CFR part 272 with only non-substantive and conforming changes, notice and comment are not necessary. The existing Commerce regulation has been in effect for over 30 years and stakeholders have been subject to the requirements of the regulation. CPSC is merely adopting the existing regulation in response to Congress transferring the authority for regulating markings on toy, look-alike, and imitation firearms under 15 U.S.C. 5001 from the Department of Commerce to CPSC.

In Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and not expected to generate significant adverse comments. *See* 60 FR 43108 (August 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the ''unnecessary'' prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this notification, the rule will become effective on June 26, 2023. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be ''one where the commenter explains why the rule would be inappropriate,'' including a showing that challenges ''the rule's underlying premise or approach,'' or that the rule ''would be ineffective or unacceptable without a change.'' 60 FR 43108, 43111 (August 18, 1995). As noted, this rule adopts the existing Commerce regulation without making substantive changes, and thus any public comments should address only this specific action.

If the Commission receives a significant adverse comment, the Commission will withdraw this direct

[1] Public Law 117–167, div. B, title II, 10246(e), Aug. 9, 2022, 136 Stat. 1492.

[2] The Commission voted 4–0 to approve publication of this notice.

final rule. Depending on the comment and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and to prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in section D. Direct Final Rule Process of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply.

F. Effective Date

Unless the Commission receives a significant adverse comment by June 12, 2023, the rule will become effective on June 26, 2023. The requirements of 16 CFR part 1272 apply to look-alike and imitation firearms manufactured or imported after the effective date.

G. Certification

Look-alike and imitation firearms are subject to the new 16 CFR part 1272. Section 14(a)(1) of the Consumer Product Safety Act (CPSA) requires manufacturers of non-children's products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, to certify that the products comply with all applicable CPSC requirements based on a test of each product, or on a reasonable testing program. 15 U.S.C. 2063(a)(1). Such certification is known as general conformity certification (GCC). Look-alike and imitation firearms that are not children's products are subject to the requirement to issue a GCC.

Toy guns are children's products currently regulated under CPSC's mandatory toy standard. Specifically, toy guns are subject to the requirements for toy gun markings contained in section 4.30 of ASTM F963–17 that are incorporated by reference at 16 CFR 1250.2. The requirements of section 4.30 are in turn based on the requirements in the Department of Commerce regulation at 15 CFR part 272. Section 14(a)(2) of the CPSA requires the manufacturer or private labeler of a children's product that is subject to a children's product safety rule to certify, based on a third-party conformity assessment body's testing, that the product complies with the applicable children's product safety rule. *Id.* 2063(a)(2). Such certification is referred to as a children's product certificate (CPC). Section 14(a)(3) also requires the Commission to publish a notice of requirements (NOR) for a third-party conformity assessment body (*i.e.,* testing laboratory) to obtain accreditation to assess conformity with a children's product safety rule. *Id.* 2063(a)(3)(A).

In accordance with section 14(a)(3)(B)(vi) of the CPSA, the Commission previously published an NOR for accreditation of third party conformity assessment bodies for testing toy imitation firearms under section 4.30 for the required toy gun markings. 76 FR 46598 (Aug. 3, 2011); 15 U.S.C. 2063(a)(3)(B)(vi). The NOR provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for toy gun markings under section 4.30 of ASTM F963. The NORs for all mandatory standards for children's products are listed in the Commission's rule, ''Requirements Pertaining to Third Party Conformity Assessment Bodies,'' codified in 16 CFR part 1112. Specifically, the NOR for section 4.30 of ASTM F963–17 is codified at 16 CFR 1112.15(b)(32)(ii)(CC). Toy guns subject to the toy gun marking requirements of section 4.30 of ASTM F967–17 are currently required to certify, based on third party testing by a CPSC-accepted laboratory, that the toy gun complies with the requirements of section 4.30. Issuance of this rule does not impact the requirement for certification of toys guns under section 4.30 of ASTM F967–17. That requirement remains unchanged and manufacturers are expected to continue complying with it.

H. Preemption

15 U.S.C. 5001(g) provides that the provisions of that section shall supersede any provision of state or local laws or ordinances which provide for markings or identification inconsistent with provisions of 5001(g), provided that no State shall:

• prohibit the sale or manufacture of any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898, or

• prohibit the sale (other than prohibiting the sale to minors) of traditional B–B, paint ball, or pellet-firing air guns that expel a projectile through the force of air pressure.

15 U.S.C. 5001(g). Therefore, new 16 CFR part 1272 will preempt any state or local laws in accordance with 5001(g).

I. Environmental Considerations

Commission rules are categorically excluded from any requirement to prepare an environmental assessment or an environmental impact statement where they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

J. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs determines whether a rule qualifies as a ''major rule.''

Pursuant to the CRA, OMB's Office of Information and Regulatory Affairs has determined that this rule does not qualify as a ''major rule,'' as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1272

Consumer protection, Imports, Incorporation by reference, Law enforcement, Safety.

■ For the reasons stated in the preamble, the Commission amends title 16 of the CFR to add part 1272 to read as follows:

PART 1272—MARKING OF TOY, LOOK-ALIKE, AND IMITATION FIREARMS

Authority: 15 U.S.C. 5001.

§ 1272.1 Applicability.

This part applies to toy, look-alike, and imitation firearms (''devices'') having the appearance, shape, and/or configuration of a firearm and produced or manufactured and entered into commerce on or after May 5, 1989, including devices modelled on real firearms manufactured, designed, and produced since 1898. This part does not apply to:

(a) Non-firing collector replica antique firearms, which look authentic and may be a scale model but are not intended as toys modelled on real firearms designed, manufactured, and produced prior to 1898;

(b) Traditional B–B, paint-ball, or pellet-firing air guns that expel a projectile through the force of compressed air, compressed gas or mechanical spring action, or any combination thereof, as described in ASTM F589–85, Standard Consumer Safety Specification for Non-Powder Guns. ASTM F589–85, Standard Consumer Safety Specification for Non-Powder Guns, approved June 28, 1985, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Consumer Product Safety Commission (CPSC) and at the National Archives and Records Administration (NARA). Contact CPSC at: Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email *cpsc-os@cpsc.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* A read-only copy of the standard is available for viewing on the ASTM website at *www.astm.org/READINGLIBRARY/.* You may obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; telephone (610) 832–9585; *www.astm.org.*

(c) Decorative, ornamental, and miniature objects having the appearance, shape and/or configuration of a firearm, including those intended to be displayed on a desk or worn on bracelets, necklaces, key chains, and so on, provided that the objects measure no more than thirty-eight (38) millimeters in height by seventy (70) millimeters in length, the length measurement excluding any gun stock length measurement.

§ 1272.2 Prohibitions.

No person shall manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm (''device'') covered by this part as set forth in § 1272.1 unless such device contains, or has affixed to it, one of the markings set forth in § 1272.3, or unless this prohibition has been waived by § 1272.4.

§ 1272.3 Approved markings.

The following markings are approved by the Consumer Product Safety Commission:

(a) A blaze orange (AMS STD 595A–17 color 12199) or orange color brighter than that specified by the AMS standard color number, solid plug permanently affixed to the muzzle end of the barrel as an integral part of the entire device and recessed no more than 6 millimeters from the muzzle end of the barrel.

(b) A blaze orange (AMS STD 595A–17 color 12199) or orange color brighter than that specified by the AMS standard color number, marking permanently affixed to the exterior surface of the barrel, covering the circumference of the barrel from the muzzle end for a depth of at least 6 millimeters.

(c) Construction of the device entirely of transparent or translucent materials which permits unmistakable observation of the device's complete contents.

(d) Coloration of the entire exterior surface of the device in white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple, either singly or as the predominant color in combination with other colors in any pattern.

(e) SAE AMS STD 595A–17, Colors Used in Government Procurement, approved February 10, 2017, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Consumer Product Safety Commission (CPSC) and at the National Archives and Records Administration (NARA). Contact CPSC at: Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email *cpsc-os@cpsc.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* A read-only copy of the standard is available for viewing on the SAE website at *https://www.sae.org/standards/reading-room.* You may obtain a copy from SAE International, 400 Commonwealth Dr., Warrendale, PA 15096; telephone (888) 875–3976; *www.sae.org.*

§ 1272.4 Waiver.

The prohibitions set forth in § 1272.2 may be waived for any toy, look-alike, or imitation firearm that will be used only in the theatrical, movie, or television industry. A request for such a waiver should be made, in writing, by email to *RegulatoryEnforcement@cpsc.gov* and by physical mail to U.S. Consumer Product Safety Commission, Office of Compliance and Field Operations, Regulatory Enforcement Division, 7500 Lindbergh Dr., Unit-A, Gaithersburg, MD 20879–5413. The request must include a sworn affidavit which states that the toy, look-alike, or imitation firearm will be used only in the theatrical, movie, or television industry. A sample of the item must be included with the physically mailed request.

§ 272.5 Preemption.

In accordance with section 4(g) of the Federal Energy Management Improvement Act of 1988 (15 U.S.C. 5001(g)), the provisions of section 4(a) of that Act and the provisions of this part supersede any provision of State or local laws or ordinances which provides for markings or identification inconsistent with the provisions of section 4 of that Act or the provisions of this part.

Pamela J. Stone,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2023–09999 Filed 5–10–23; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2023–0374]

RIN 1625–AA08

Special Local Regulation; Wando River and Cooper River, Charleston and Mount Pleasant, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for the Lowcountry Splash on certain navigable waters of the Wando River and Cooper River in Charleston and Mount Pleasant, SC. This action is necessary to provide for the safety of life on navigable waters during this open water swim event. This regulation restricts persons and vessels from entering certain waters of the Wando River and Cooper River, unless authorized by the Captain of the Port (COTP) Charleston or a designated represented.

DATES: This rule is effective from 7 a.m. through 11 a.m. on May 13, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0374 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Thomas J. Welker, Sector Charleston, Waterways Management Division, U.S. Coast Guard; telephone (843) 740–3184, email *Thomas.j.welker@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. This regulation is typically enforced annually under § 100.704 of this part. However, this year the event will take place one week prior to the dates published in Table 1 to § 100.704. The Coast Guard and the event sponsor did not identify this change until the days before the event, therefore the Coast Guard does not have adequate time to publish an NPRM and consider public comments before the event. Furthermore, we must establish this special local regulation by May 13, 2023, because it is necessary to protect the safety of the public, and event participants in the waters of the Wando River and Cooper River during the swim event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to protect the safety of the public, and event participants in the waters of the Wando River and Cooper River during the swim event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the Lowcountry Splash swim event on May 13, 2023, present a safety concern for participants and non-participant vessels transiting in the vicinity during the event. This rule is needed to protect participants and the general public within the regulated area during the event.

IV. Discussion of the Rule

This rule establishes a special local regulation from 7 a.m. until 11 a.m. on May 13, 2023. The special local regulation will cover all navigable waters extending 50-yards in front and behind, and 100-yards on either side of event participants and safety vessels. The duration of the zone is intended to protect participants and the general public within the regulated area during the event. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on (1) Non-participant vessels will be able to transit surrounding areas as the regulated area will only impact a small portion of the Wando River and Cooper River; (2) Non-participant vessels may enter, transit through, anchor in, or remain within the regulated area during the enforcement period if authorized by the COTP or a designated representative; (3) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Marine Safety Information Bulletin and safety information broadcast; and (4) the regulated area is limited in duration in that it will be enforced for no more than four hours.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting four hours. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for the Record supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

Harbors, Marine safety, Navigation (water), Security measures, Security.

For the reasons stated in the preamble, the Coast Guard is amending 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T07–0374 to read as follows:

§ 100.T07–0374 Lowcountry Splash, Wando River and Cooper River, Charleston and Mount Pleasant, SC.

(a) *Regulated area.* The regulations in this section apply to the following area: All waters of 50-yards in front of lead safety vessel preceding the first swim participants, 50-yards behind the safety vessel trailing the last swim participants, and at all times extending 100-yards on either side of safety vessels and swim participants. The Lowcountry Splash swim event begins on the Wando River, on Daniel Island, Charleston, SC, and finishes at the Harbor Resort Marina on the Cooper River in Mount Pleasant, SC.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Charleston (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a participants in the race.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port Charleston or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 7 a.m. to 11 a.m. on May 13, 2023.

Dated: May 5, 2023.

F.J. DelRosso,

Captain, U.S. Coast Guard, Captain of the Port Sector Charleston.

[FR Doc. 2023–10084 Filed 5–10–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2022–0371]

RIN 1625–AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AICW) and Miami Beach Channel, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the West 79th Street Bridge across the Atlantic Intracoastal Waterway (AICW), mile 1084.6, at Miami, Florida, and the East 79th Street Bridge across Miami Beach Channel, mile 2.20, at Miami Beach, Florida. This action will place the West and East 79th Street Bridges on a once an hour opening schedule during peak traffic hours, Monday through Friday, except Federal holidays. This action is intended to assist with reducing vehicular traffic congestion in the area.

DATES: This rule is effective June 12, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov.* Type the docket number (USCG–2022–0371) in the ''SEARCH'' box and click ''SEARCH''. In the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Jennifer Zercher, Bridge

Management Specialist, Seventh Coast Guard District; telephone 305–415–6740, email *Jennifer.N.Zercher@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code
FDOT Florida Department of Transportation
FL Florida
AICW Atlantic Intracoastal Waterway

II. Background Information and Regulatory History

On June 7, 2022, the Coast Guard published a Notice of Proposed Rulemaking entitled, ''Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AICW) and Miami Beach Channel, Miami, FL'' in the **Federal Register** (87 FR 34601). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this regulatory change. During the comment period that ended July 22, 2022, we received one hundred twenty-six comments, and those comments are addressed in Section IV of this Final Rule.

On September 20, 2022, the Coast Guard published a Test Deviation entitled ''Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AICW) and Miami Beach Channel, Miami, FL'' in the **Federal Register** (87 FR 59298). There we stated why we issued the Test Deviation and invited comments on our proposed regulatory action related to this regulatory change. During the comment period that ended December 29, 2022, we received two hundred two comments, and those comments are addressed in Section IV of this Final Rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The West 79th Street Bridge across the AICW, mile 1084.6, at Miami, FL is a double-leaf bascule bridge with a 21-foot vertical clearance (25 feet charted at the center span) at mean high water in the closed position. The normal operating schedule for the bridge is set forth in 33 CFR 117.261 (mm-1). The East 79th Street Bridge across the Miami Beach Channel, mile 2.20, at Miami Beach, FL is a double-leaf bascule bridge with a 21-foot vertical clearance at mean high water in the closed position. The normal operating schedule for the bridge is set forth in 33 CFR 117.304. Navigation on the waterways consists of recreational and commercial mariners.

North Bay Village, with the support of the bridge owner, Florida Department of Transportation, requested the Coast Guard consider allowing the drawbridges to remain closed to navigation during morning and evening rush hour with top of the hour openings provided at pre-determined times. North Bay Village requested this change to assist with alleviating vehicle traffic congestion in the area.

IV. Discussion of Comments, Changes and the Final Rule

During the NPRM comment period, 126 were received. One hundred fifteen comments were in support of the proposed change. Comments in general supported the change with multiple comments asking for further restrictions. Comments to further restrict navigation included not opening during daylight hours and opening once an hour. The Coast Guard feels additional operating restrictions on these waterways would create an unreasonable obstruction across navigable waters of the United States which is contrary to federal law. Eight comments had no opinion on the proposed change but provided general comments on the operation of the bridges. Comments were made that the bridges are not being properly maintained and have frequent failures. These comments were outside the scope of the NPRM, and the comments were made available to the bridge owner. Three comments opposed the proposed change. The comments stated the bridge should not open hourly because it is during rush hour. These commenters misunderstood the bridge operation, however, because this action will reduce the drawbridge openings by only allowing the bridge to open hourly verses the current schedule of twice an hour.

During the Test Deviation comment period, 202 comments were received. One hundred seventy-eight comments were in support of the test deviation and proposed changes. Like the NPRM comments, most appeared to be part of a mass mailing campaign by residents and North Bay Village employees and included identical or very similar comments. One North Bay Village employee stated the bridges should be permanently closed to navigation and nine others wanted additional restrictions which included not opening during rush hour. Comments to permanently close or allow the drawbridge not to open during rush hour would create an unreasonable obstruction across navigable waters of the United States and is contrary to federal law. Seven comments had no opinion on the proposed change but mentioned the bridge failures, and that a new bridge should be considered. These comments were outside the scope of the test deviation and the comments were made available to the bridge owner. Eight comments were duplicate entries.

We did not make changes to the regulatory text as a result of these comments. We did, however, make a change to the numbering scheme within 117.261.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the fact that vessels can still transit the bridges at designated times throughout the day, and vessels that can transit under the bridges without an opening may do so at any time.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Government

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 00170.1. Revision No. 01.3

■ 2. Amend § 117.261 by redesignating paragraph (nn) as paragraph (oo) and adding new paragraph (nn) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(nn) West 79th Street Bridge, mile 1084.6, at Miami, Florida. The draw shall operate as follows:

(1) Monday through Friday (except on Federal holidays):

(i) 7 a.m. to 10 a.m. the draw need only open on the hour.

(ii) 10 a.m. to 4 p.m. the draw need only open on the hour and half hour.

(iii) 4 p.m. to 7 p.m. the draw need only open on the hour.

(iv) 7 p.m. to 7 a.m. the draw shall open on signal.

(2) Saturday, Sunday, and Federal holidays the draw shall open on signal.

* * * * *

■ 3. Revise § 117.304 to read as follows

§ 117.304 Miami Beach Channel.

The draw of the East 79th Street Bridge, mile 2.20, at Miami Beach, Florida. The draw shall operate as follows:

(a) Monday through Friday (except on Federal holidays):

(1) 7 a.m. to 10 a.m. the draw need only open on the hour.

(2) 10 a.m. to 4 p.m. the draw need only open on the hour and half hour.

(3) 4 p.m. to 7 p.m. the draw need only open on the hour.

(4) 7 p.m. to 7 a.m. the draw shall open on signal.

(b) Saturday, Sunday, and Federal holidays the draw shall open on signal.

Dated: May 4, 2023.

Brendan C. McPherson,

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

[FR Doc. 2023–10096 Filed 5–10–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2010–0071; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BE61

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Slickspot Peppergrass (Lepidium papilliferum); Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), are correcting one amendatory

instruction in a final rule that published in the **Federal Register** on May 4, 2023. That rule finalizes the designation of critical habitat for the threatened slickspot peppergrass (*Lepidium papilliferum*) under the Endangered Species Act of 1973, as amended (Act).

DATES: Effective June 5, 2023.

FOR FURTHER INFORMATION CONTACT: Lisa Ellis, State Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S Vinnell Way, Room 368, Boise, ID 83709; telephone 208–378–5243. 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:

In the final rule that published in the **Federal Register** on May 4, 2023, at 88 FR 28874, the following correction is made:

§ 17.96 [Corrected]

■ On page 28905, in the first column, amendment 3 is corrected to read, ''3. Amend § 17.96(a) by adding an entry for ''Family Brassicaceae: *Lepidium papilliferum* (slickspot peppergrass)'' after the entry for ''Family Brassicaceae: *Leavenworthia texana* (Texas golden gladecress)'' to read as follows:''

Susan L. Wilkinson,

Acting Chief, Policy and Regulations Branch, U.S. Fish and Wildlife Service.

[FR Doc. 2023–10089 Filed 5–10–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220919–0193]

RTID 0648–XC894

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Closure of the Angling Category Gulf of Mexico Incidental Trophy Fishery for 2023

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the Angling category Gulf of Mexico incidental fishery for large medium and giant (''trophy'' (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater)) Atlantic bluefin tuna (BFT). This action applies to Highly Migratory Species (HMS) Angling and HMS Charter/Headboat permitted vessels when fishing recreationally.

DATES: Effective 11:30 p.m., local time, May 9, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Ann Williamson, *ann.williamson@noaa.gov,* 301–427–8503, Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, or Nicholas Velseboer, *nicholas.velseboer@noaa.gov,* 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements, such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

Under § 635.28(a)(1), NMFS files a closure action with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on and after the effective date and time of a closure action for that category, for the remainder of the fishing year, until the opening of the subsequent quota period or until such date as specified.

The 2023 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2023. The Angling category season opened January 1, 2023, and continues through December 31, 2023. The Angling category baseline quota is 297.4 metric tons (mt), of which 9.2 mt is suballocated for the harvest of large medium and giant (trophy) BFT by vessels fishing under the Angling category quota, with 2.3 mt allocated for each of the following areas: North of 42° N lat. (the Gulf of Maine area); south of 42° N lat. and north of 39°18′ N lat. (the southern New England area); south of 39°18′ N lat., and outside of the Gulf of Mexico (the southern area); and the Gulf of Mexico region. Trophy BFT measure 73 inches (185 cm) curved fork length or greater. This action applies to the Gulf of Mexico.

Angling Category Large Medium and Giant Gulf of Mexico ''Trophy'' Fishery Closure

Based on landings data from the NMFS Automated Catch Reporting System, as well as average catch rates and anticipated fishing conditions, NMFS projects the Angling category Gulf of Mexico incidental trophy BFT subquota of 2.3 mt has been reached and exceeded. Therefore, retaining, possessing, or landing large medium or giant (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) BFT in the Gulf of Mexico by persons aboard HMS Angling and HMS Charter/Headboat permitted vessels (when fishing recreationally) must cease at 11:30 p.m. local time on May 9, 2023. This closure will remain effective through December 31, 2023. This action applies to HMS Angling and HMS Charter/Headboat permitted vessels when fishing recreationally for BFT, and is taken consistent with the regulations at § 635.28(a)(1). This action is intended to prevent further overharvest of the Angling category Gulf of Mexico incidental trophy BFT subquota.

If needed, subsequent Angling category adjustments will be published in the **Federal Register**. Information regarding the Angling category fishery for Atlantic tunas, including daily retention limits for BFT measuring 27 inches (68.5 cm) to less than 73 inches (185 cm), and any further Angling category adjustments, is available at *https://hmspermits.noaa.gov* or by calling 978–281–9260. Fishermen aboard HMS Angling and HMS Charter/Headboat permitted vessels may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://*

www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/.

HMS Angling and HMS Charter/Headboat permitted vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *https://hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling 888–872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons. Specifically, the regulations implementing the 2006 Consolidated HMS FMP and its amendments provide for inseason adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing for prior notice and opportunity to comment is impracticable and contrary to the public interest as this fishery is currently underway and delaying this action could result in further excessive trophy BFT landings that may result in future potential quota reductions for the Angling category, depending on the magnitude of a potential Angling category overharvest. NMFS must close the Gulf of Mexico incidental trophy BFT fishery before additional landings of these sizes of BFT occur. Taking this action does not raise conservation and management concerns. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

For all of the above reasons, the AA also finds that pursuant to 5 U.S.C. 553(d), there is good cause to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: May 5, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–10023 Filed 5–8–23; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 230508–0124]

RIN 0648–BL66

Fisheries Off West Coast States; West Coast Salmon Fisheries; 2023 Specifications and Management Measures

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

ACTION: Final rule.

SUMMARY: Through this final rule, NMFS establishes fishery management measures for the 2023 ocean salmon fisheries off Washington, Oregon, and California, and the 2024 salmon seasons opening earlier than May 16, 2024, under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The fishery management measures vary by fishery and by area, and establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the U.S. Exclusive Economic Zone (EEZ) (3–200 nautical miles (nm); 5.6–370.4 kilometers (km)) off Washington, Oregon, and California. The management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian, non-Indian commercial, and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement, comply with applicable law, and to provide fishing opportunity for inside fisheries (fisheries occurring in state waters).

DATES: This final rule is effective from 0001 hours Pacific daylight time, May 16, 2023, until the effective date of the 2024 management measures, as published in the **Federal Register**.

ADDRESSES: The documents cited in this document are available on the Pacific Fishery Management Council's (Council's) website (*www.pcouncil.org*).

FOR FURTHER INFORMATION CONTACT: Shannon Penna at 562–980–4239, Email: *Shannon.Penna@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries in the EEZ off the coasts of Washington, Oregon, and California are managed under a framework fishery management plan (FMP). Regulations at 50 CFR part 660, subpart H, provide the mechanism for making preseason and inseason adjustments to the management measures within limits set by the FMP by notification in the **Federal Register**. Regulations at 50 CFR 660.408 govern the establishment of annual management measures.

Through this rule, NMFS is implementing the management measures for the 2023 and early 2024 ocean salmon fisheries that were recommended by the Council at its April 1 to 7, 2023, meeting and transmitted to NMFS on April 18, 2023.

Process Used To Establish 2023 Management Measures

The Council announced its annual preseason management process for the 2023 ocean salmon fisheries on the Council's website at *www.pcouncil.org* (December 9, 2022), and in the **Federal Register** on December 12, 2021 (87 FR 76027). NMFS published an additional notice of opportunity to submit public comments on the 2023 ocean salmon fisheries in the **Federal Register** on January 12, 2023 (88 FR 2061). These notices announced the availability of Council documents, the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures, and instructions on how to comment on the development of the 2023 ocean salmon fisheries. The agendas for the March and April Council meetings were published in the **Federal Register** (88 FR 10095, February 16, 2023, and 88 FR 16239, March 16, 2023), and posted on the Council's website prior to the meetings.

In accordance with the FMP, the Council's Salmon Technical Team (STT) and economist prepared four reports for the Council, its advisors, and the public. All four reports were made available on the Council's website upon their completion. The first of the reports, ''Review of 2022 Ocean Salmon Fisheries,'' was prepared in February when the first increment of scientific information necessary for crafting management measures for the 2023 and early 2024 ocean salmon fisheries became available. The first report summarizes biological and socio-economic data from the 2022 ocean salmon fisheries and assesses the performance of the fisheries with respect to the 2022 management objectives for salmon stocks and stock complexes as well as provides historical information for comparison. The second report, ''Preseason Report I Stock Abundance Analysis and Environmental Assessment Part 1 for 2023 Ocean Salmon Fishery Regulations'' (PRE I), provides the 2023 salmon stock abundance projections and analyzes how the stocks and Council management goals would be affected if the 2022 management measures (the No-Action Alternative under the National Environmental Policy Act (NEPA)) were continued for the 2023/2024 fishing season. The completion of PRE I is the initial step in developing and evaluating the full suite of preseason alternatives.

Following completion of the first two reports, the Council met from March 4 to 10, 2023, to develop 2023 management alternatives for proposal to the public and consideration under NEPA. The Council proposed three alternatives for commercial and recreational fisheries management, and three alternatives for treaty Indian fisheries management for analysis and public comment. These alternatives consisted of various combinations of management measures designed to ensure that stocks of coho and Chinook salmon meet conservation goals, to provide for ocean harvests of more abundant stocks, to provide equitable sharing of harvest among ports and gear sectors, and to provide for the exercise of Indian tribal treaty fishing rights. After the March Council meeting, the Council's STT and economist prepared a third report, ''Preseason Report II Proposed Alternatives and Environmental Assessment Part 2 for 2023 Ocean Salmon Fishery Regulations'' (PRE II), which analyzes the effects of the proposed 2023 management alternatives. As requested in public comment, the no-action alternative was included in a comparison of the impacts to Klamath River Fall Chinook salmon (KRFC) and Sacramento River Fall Chinook salmon (SRFC) by management area, month, and salmon gear sector across the alternatives in Appendix tables A–2 and A–3.

The Council sponsored public hearings in person to receive testimony on the proposed alternatives on March 20, 2023, for Washington and Oregon, and on March 21, 2023, for California. In addition, the states of Washington, Oregon, and California sponsored meetings in various forums that also collected public testimony. The Council also received public testimony at both the March and April meetings, and received written comments at the Council office and electronic submissions via the Council's electronic portal and via *www.regulations.gov*.

The Council met from April 1 to 7, 2023, to adopt its final 2023 ocean salmon management recommendations; which it did on April 6, 2023. Following the April Council meeting, the Council's STT and economist prepared a fourth report, ''Preseason Report III Analysis of Council-Adopted Management Measures for 2023 Ocean Salmon Fisheries'' (PRE III), which analyzes the environmental and socioeconomic effects of the Council's final recommendations (the Council's Proposed Action under NEPA). The Council transmitted the recommended management measures to NMFS on April 18, 2023, and published them on its website (*www.pcouncil.org*).

At its March and April meetings, the Council heard testimony from members of several federally recognized tribes including tribes with treaty rights for salmon harvest; additional tribal comments were submitted in writing. Tribes expressed concerns over the uncertainty of forecasts for some stocks in 2023 and urged the Council to be conservative in setting the salmon seasons. Some Tribes suggested additional measures to improve estimation of stock composition and impact rates in lower Columbia River fisheries. Tribes also expressed concerns over the underutilization of hatcheries as a salmon recovery tool while ensuring the operation of the hatcheries minimizing any potential risks to natural-origin fish.

Under the FMP, the ocean salmon management cycle begins May 16 and continues through May 15 of the following year. This final rule is effective on May 16, 2023, consistent with the FMP. Fisheries that begin prior to May 16, 2023, are governed by the final rule implementing the salmon fishery management measures for the 2022 ocean salmon season (87 FR 29690, May 16, 2022). The majority of fisheries recommended by the Council for 2023 begin May 16, 2023, and are authorized under this rule. Salmon fisheries scheduled to begin before May 16, 2023 under the 2022 rule, are:

• Commercial ocean salmon fisheries from the U.S./Canada border to the U.S./Mexico border,

• Recreational ocean salmon fisheries from Cape Falcon, OR, to Humbug Mountain, OR,

• Recreational ocean salmon fisheries from the Oregon/California border to the U.S./Mexico border, and

• Treaty Indian troll ocean salmon fisheries north of Cape Falcon.

Several fisheries scheduled to open between March 15, 2023, and May 15, 2023, have been modified through inseason action to close the fisheries in response to updated salmon stock forecast information for 2023. For purposes of analyzing the impacts of these fisheries on individual stocks relative to the applicable objectives in the FMP, Council analysts assumed fisheries between March 15 to May 15, 2023, would be conducted under the 2022 management measures as modified by the subsequent inseason actions under 50 CFR 660.409.

National Environmental Policy Act

The environmental assessment (EA) for this action comprises the Council's documents described above (PRE I, PRE II, and PRE III), providing an analysis of environmental and socioeconomic effects under NEPA. The EA and its related Finding of No Significant Impact are posted on the NMFS West Coast Region website (*www.fisheries.noaa.gov/region/west-coast*).

Resource Status

Stocks of Concern

The FMP requires that the fisheries be managed to meet escapement-based annual catch limits (ACLs), Endangered Species Act (ESA) consultation requirements, obligations of the Pacific Salmon Treaty (PST) between the U.S. and Canada, and other conservation objectives detailed in the FMP. In addition, under the MSA, all regulations must be consistent with other applicable laws. Because the ocean salmon fisheries are mixed-stock fisheries, ''weak stock'' management is required to avoid exceeding limits for the stocks with the most constraining limits. Abundance forecasts for individual salmon stocks can vary significantly from one year to the next; therefore, the stocks that constrain the fishery in one year may differ from those that constrain the fishery in the next. For 2023, several stocks will constrain fisheries; these are described below.

Fisheries south of Cape Falcon are limited in 2023 primarily by conservation concerns for KRFC, SRFC, and the ESA-listed Oregon Coast natural (OCN) coho salmon Evolutionarily Significant Unit (ESU), and the ESA-listed California Coastal (CC) Chinook salmon ESU. In 2018, NMFS determined that the KRFC stock was overfished, as defined under the MSA and the FMP. KRFC has not been rebuilt, thus continues to be managed under a rebuilding plan (85 FR 75920, November 27, 2020). In addition to KRFC, three coho salmon stocks (Queets River natural coho salmon, Strait of Juan de Fuca natural coho salmon, and Snohomish River natural coho salmon) were determined in 2018 to be overfished and continue to be managed under rebuilding plans (86 FR 9301, February 12, 2021). Meeting conservation objectives for these three coho salmon stocks will not constrain fisheries in 2023.

Fisheries north of Cape Falcon are limited by conservation requirements for ESA-listed lower Columbia River (LCR) natural tule Chinook salmon. The limitations imposed in order to protect this stock are described below. The alternatives and the Council's adopted management measures for 2023 were designed to avoid exceeding these limitations.

KRFC (non-ESA-listed): Abundance for this non-ESA-listed stock in the last decade has been historically low, and the stock continues to meet the criteria for overfished based on spawning escapement in 2019, 2020, and 2021. The FMP defines ''overfished'' status in terms of a 3-year geometric mean escapement level and whether it is below the minimum stock size threshold (MSST). The KRFC salmon stock has been below its conservation objective in 7 of the last 8 years, and has been managed under *de minimus* exploitation rates that apply when forecast escapement is below the level associated with maximum sustainable yield (S_{MSY}) since 2020. Based on the current harvest control rule, given the 2023 abundance forecast, the lowest level of *de minimis* fishing this year applies, *i.e.,* a total allowable exploitation rate of 10 percent (including all ocean and river fisheries, including tribal fisheries). This will constrain fisheries south of Cape Falcon. The Council's recommended management measures are forecast to result in a spawning escapement of 23,615 KRFC natural spawners, which is below the stock's minimum stock size threshold (MSST) (30,525). A natural-area escapement of 23,615 adults would represent the 12th lowest value over the past 45 years of data. Fisheries managed under the Council's recommended management measures for 2023 for the ocean areas south of Cape Falcon are projected to impact 0 KRFC salmon.

SRFC (non-ESA-listed): SRFC abundance in recent years has been low compared with its conservation objective. In 2021, NMFS declared the SRFC salmon stock rebuilt (87 FR 25429) due to several years of higher escapements. However, low flows and high temperatures in the Sacramento River associated with drought in recent years have adversely affected the stock, escapements in recent years have once again been low. Spawner abundance has been below the S_{MSY} value of 122,000 in 6 of the last 8 years. The 2022 SRFC escapement was 61,850 Chinook salmon, which is one-half of the S_{MSY} of 122,000 and the third lowest escapement since 1970. The 3-year geometric mean of spawners is now 102,155 (2020, 2021, and 2022) as compared with the MSST of 91,500 at which the stock would meet the criteria of overfished. The 2023 forecast is one of the lowest on record. Of additional concern with respect to the forecast, forecasts have been higher than the post-season estimates in 6 of the last 8 years by an average of 41 percent. The low forecast for 2023 combined with the recent significant overforecasts increase the risk that SRFC could become overfished again. Taking these factors into consideration, the Council has recommended management measures that are forecast to result in a spawning escapement of 165,000 SRFC natural spawners (although it does not account for the potential forecast error), which is above the escapement goal floor of 122,000. Additionally, according to the STT's projections, only 93 SRFC salmon would be impacted by the fisheries conducted under the Council's recommended 2023 management measures for the ocean management areas south of Cape Falcon.

CC Chinook salmon—ESA-listed Threatened: The CC Chinook salmon ESU has been listed as threatened under the ESA since 1999. As considered in the most recent biological opinion addressing the effects of the fishery on CC Chinook salmon, fisheries are managed to avoid exceeding a 16 percent age-4 ocean harvest rate on KRFC salmon. This measure is used as a surrogate for impacts to CC Chinook salmon, for which information on fishery impacts is extremely limited. The post-season assessment of the 2022 ocean fisheries indicated that the take limit for CC Chinook salmon described in the current biological opinion and Incidental Take Statement had been exceeded. Therefore, in the guidance letter it provided to the Council at its March meeting, NMFS stated that the Council should implement additional measures to avoid exceedance in 2023. Specifically, the guidance letter stated that the Council should (1) manage the 2023 ocean salmon fisheries for a buffered preseason age-4 KRFC rate of 10 percent, and (2) provide for inseason management measures to ensure impacts remain within preseason projections.

The recommended 2023 management measures close Chinook salmon directed commercial and recreational fisheries off the California coast, close commercial salmon fishing in coastal waters south of mid-Oregon, and allow only for recreational fisheries targeting coho salmon off the coast of Oregon. The resulting projected KRFC age-4 ocean harvest rate from these fisheries is 0.3 percent, well below a KRFC age-4 ocean harvest rate of 10 percent. Fisheries south of Cape Falcon scheduled to open prior to May 16, 2024, could be modified through inseason action following Council consideration of these early season fisheries in the context of the 2024 preliminary management measures and stock abundance forecasts for 2024.

NMFS has reinitiated consultation on the effects of the fisheries on CC Chinook salmon, and anticipates completing this consultation before commencement of 2024 fisheries. NMFS has determined that, consistent with sections 7(a)(2) and 7(d) of the ESA, the fisheries conducted under the 2023 management measures will not jeopardize the CC Chinook salmon ESU, would not adversely modify designated critical habitat, and will not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

OCN coho salmon (ESA-listed threatened): OCN coho salmon is an aggregate coho salmon stock that largely corresponds to the Oregon coast coho salmon ESU and is a component of the Oregon Production Index (OPI) area coho salmon. Allowable fishery impacts on OCN coho salmon are determined annually using a matrix that considers parental escapement and OPI smolt-to-jack survival. The maximum allowable exploitation rate for 2023 salmon fisheries is a combined marine/freshwater exploitation rate not to exceed 20 percent. In 2023, OCN coho salmon is the limiting coho salmon stock for south of Cape Falcon. The adopted management measures result in a projected exploitation rate of 19.8 percent compared with the maximum allowed 20 percent total exploitation rate (*i.e.,* marine exploitation rate of 14.1 percent and a freshwater exploitation rate of 5.8 percent as rounded to the nearest tenth of a percent).

LCR Chinook salmon (ESA-listed threatened): The LCR Chinook salmon ESU comprises a spring component, a ''far-north'' migrating bright component, and a tule component. The bright and tule components both have fall run timing. There are twenty-one separate populations within the tule component of this ESU. Unlike the spring or bright populations of the ESU, LCR tule populations are caught in large numbers in Council fisheries, as well as fisheries to the north and in the Columbia River. Therefore, this component of the ESU is the one most likely to constrain Council fisheries in the area north of Cape Falcon. Council fisheries are managed subject to an abundance-based management (ABM) framework that NMFS analyzed in a 2012 biological opinion, after accounting for anticipated impacts in northern fisheries and freshwater fisheries that are outside the action area. Applying the ABM framework to the 2023 preseason abundance forecast, the total LCR tule exploitation rate for all salmon fisheries is limited to a maximum of 38 percent. Fisheries will be constrained north of Cape Falcon in 2023 such that, when combined with all other salmon fisheries in the ocean and in the Columbia River below Bonneville Dam, the ESA requirement is met.

Other Resource Issues

Southern Resident Killer Whale (SRKW) (ESA-listed endangered): The SRKW distinct population segment (DPS) was listed under the ESA as endangered in 2005 (70 FR 69903, November 18, 2005). After convening and receiving recommendations from a SRKW ad-hoc workgroup, the Council adopted and transmitted to NMFS Amendment 21 to the FMP that includes management measures to address the effects of the fisheries on SRKW. In April 2021, after concluding in a biological opinion that fisheries managed under the FMP including Amendment 21 was not likely to jeopardize SRKW or adversely affect SRKW critical habitat, NMFS approved the Amendment (86 FR 51017, September 14, 2021). The FMP as amended establishes a Chinook salmon annual abundance management threshold below which the Council and NMFS would implement specific measures to limit the effects of the ocean salmon fishery on Chinook salmon prey availability for SRKWs. These measures include time and area closures, a quota limitation for the north of Cape Falcon management area, and temporal shifts in fishing. Amendment 21 provides that the Chinook salmon abundance threshold may need to be updated from the value calculated at the time of the amendment to reflect new scientific information as it becomes available. At its November 2022 meeting, the Council adopted a change to the Chinook salmon abundance threshold for north of Cape Falcon management area that is used as a management measure to address the effect of Council-area ocean salmon fisheries on the Chinook salmon prey base of SRKW that was implemented under Amendment 21 (Decision Summary Document, November 15, 2023 PFMC). The change incorporated recent updates to two models used to calculate the threshold (FRAM 2022,[1] Shelton et al. 2021). The STT provided a report reviewing the updates to the models to aid the Council in determining the appropriate numerical value of the threshold (November 2022, Agenda Item D.2.a, Supplemental STT Report 2). The updated Chinook salmon abundance threshold is 623,000 Chinook salmon. This new value was reported to the Council in the above-reference preseason reports as required by the FMP.

The Council considered the Chinook salmon abundance relative to the provisions of Amendment 21 when developing the recommended 2023 annual management measures. Because the pre-season estimate of the abundance of Chinook salmon in 2023 (889,900) exceeds the threshold in the FMP (623,000), the Council did not recommend implementation of the additional management measures included in the FMP under Amendment 21 (Preseason Report III; PFMC 2023). The 2023 management measures are consistent with the FMP including Amendment 21.

ACLs and Status Determination Criteria

ACLs are required for all stocks or stock complexes in the fishery that are not managed under an international agreement, listed under the ESA, or designated as hatchery stocks. For salmon, these reference points are defined in terms of spawner escapement. ACLs are set for two Chinook salmon stocks, SRFC and KRFC, and one coho salmon stock, Willapa Bay natural coho salmon. The Chinook salmon stocks are indicator stocks for the Central Valley Fall Chinook salmon complex, and the Southern Oregon/Northern California Chinook salmon complex, respectively. The Far North Migrating Coastal Chinook salmon complex (FNMC) includes a group of Chinook salmon stocks that are caught primarily in fisheries north of Cape Falcon and other fisheries that occur north of the U.S./Canada border. No ACL is set for FNMC stocks because they are managed subject to provisions of the PST between the U.S. and Canada (the MSA provides an international exception from ACL requirements that applies to stocks or stock complexes subject to management under an international agreement, which is defined as ''any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the U.S. is a party'' (50 CFR 600.310(h)(1)(ii)). The Columbia Upper River Bright Fall and Summer Chinook salmon stocks are also managed under the provisions of the PST. Other Chinook salmon stocks caught in fisheries north of Cape Falcon are ESA-listed or hatchery produced, and are managed consistent with ESA consultations or hatchery goals. Willapa Bay natural coho salmon is the only coho salmon stock for which an ACL is set, as the other coho salmon stocks in the FMP are either ESA-listed, hatchery produced, or managed under the PST.

ACLs for salmon stocks are escapement-based, which means they establish a number of adults that must escape the fisheries to return to the spawning grounds. ACLs are set based on the annual potential spawner abundance forecast and a fishing rate reduced to account for scientific uncertainty. In addition to ACLs, SRFC and KRFC have conservation objectives expressed in terms of escapement goals that were developed prior to the requirement for ACLs. Where the conservation objectives exceed the ACLs, the Council designs fisheries to achieve the conservation objectives. In developing the 2023 management measures, the Council considered the factors for SRFC and KRFC discussed in sections above.

For SRFC in 2023, the overfishing limit (OFL) is S_{OFL} = 169,767 (potential spawner abundance forecast) multiplied by $1 - F_{MSY}$ $(1 - 0.78)$ or 37,349 returning spawners (F_{MSY} is the fishing mortality rate that would result in maximum sustainable yield—MSY). S_{ABC} (the spawner escapement that is associated with the acceptable biological catch) is 169,767 multiplied by $1 - F_{ABC}$ $(1 - 0.70)$ (F_{MSY} reduced for scientific uncertainty = 0.70) or 50,930. The S_{ACL} is set equal to S_{ABC}, *i.e.,* 50,930 spawners. The adopted management measures provide for a projected SRFC spawning escapement of 164,964.

For KRFC in 2023, S_{OFL} is 26,238 (potential spawner abundance forecast) multiplied by $1 - F_{MSY}$ $(1 - 0.71)$, or 7,609 returning spawners. S_{ABC} is 26,238 multiplied by $1 - F_{ABC}$ $(1 - 0.68)$ (F_{MSY} reduced for scientific uncertainty = 0.68) or 8,396 returning spawners. S_{ACL} is set equal to S_{ABC}, *i.e.,* 8,396 spawners. The adopted management measures provide for a projected KRFC spawning escapement of 23,615.

For Willapa Bay natural coho salmon in 2023, S_{OFL} = 59,417 (potential

[1] Salmon modeling and analysis workgroup. 2022. FRAM Documentation. *https://framverse.github.io/fram_doc/* built October 14, 2022.

spawner abundance forecast) multiplied by $1 - F_{MSY}$ $(1 - 0.74)$ or 15,448 returning spawners. S_{ABC} is 59,417 multiplied by $1 - F_{ABC}$ $(1 - 0.70)$ (F_{MSY} reduced for scientific uncertainty = 0.70) or 17,825. S_{ACL} is set equal to S_{ABC}, *i.e.,* 17,825 spawners. The adopted management measures provide for a projected Willapa Bay natural coho salmon spawning escapement of 22,066.

In summary, fisheries managed under the Council's recommended 2023 management measures are expected to result in escapements greater than required to meet the ACLs for all three stocks with defined ACLs.

Public Comments

The Council invited written comments on developing 2023 salmon management measures in their notice announcing public meetings and hearings (87 FR 76027, December 12, 2022). At its March meeting, the Council developed three alternatives for 2023 commercial and recreational salmon management measures having a range of quotas, season structure, and impacts, from the least restrictive in Alternative I to the most restrictive in Alternative III, as well as three alternatives for 2023 North of Cape Falcon treaty Indian troll salmon management measures. These alternatives are described in detail in PRE II. Subsequently, comments were taken at three public hearings held in March, staffed by representatives of the Council and NMFS. The Council received 59 written comments via their electronic portal and 19 oral comments on 2023 ocean salmon fisheries including members of the public that commented several times. The three public hearings were attended by a total of 93 people; 28 people provided oral comments. Comments came from individual fishers, fishing associations, fish buyers, processors, the general public, and conservation organizations. Written and oral comments addressed the 2023 management alternatives described in PRE II and generally expressed preferences for a specific alternative or for particular season structures. All written comments were made available via the Council's online briefing books for the March and April 2023 Council meetings. In addition to comments collected at the public hearings and those submitted directly to the Council, several people provided oral comments at the March and April 2023 Council meetings. Written and oral comments received were considered by the Council, which includes a representative from NMFS, in developing the recommended management measures transmitted to NMFS on April 18, 2022. NMFS also invited comments to be submitted directly to the Council or to NMFS, via the Federal Rulemaking Portal (*www.regulations.gov*) in a notice (88 FR 2061, January 12, 2023); NMFS received no comments via the Federal Rulemaking Portal.

Comments on alternatives for commercial salmon fisheries. Many written comments were from commercial salmon fishermen located on the coast of California. Of those written comments, the majority supported Alternative I. Those testifying on north of Cape Falcon commercial salmon fisheries at the Washington hearing supported the 85,000 total allowable catch for Chinook salmon in Alternative I and an allocation schedule more consistent with long term catch percentage averages for tule Chinook salmon. They expressed concern about the negative economic impact of recent decreases in quota but were encouraged by this year's forecasts and the potential boost to ocean fisheries. Those testifying on south of Cape Falcon commercial salmon fisheries at the Oregon hearing supported Alternative I. Those testifying on south of Cape Falcon commercial salmon fisheries at the California hearing largely supported a full closure given the low forecasts for California salmon stocks. The Council adopted commercial fishing measures north and south of Cape Falcon that are within the range of the alternatives considered.

Comments on alternatives for recreational fisheries. Many written comments did not identify the fishery being commented on, either by geography or sector. Those that did submit written comments specifically on recreational fisheries supported Alternative I almost unanimously. Those testifying on north of Cape Falcon favored Alternative I and opening the ocean recreational fishing as early as possible with a season structure that will allow for a stable season lasting into September. In addition, several written and oral comments supported the opportunity for a ''bubble'' fishery for Tillamook Bay, OR. Those commenting on fisheries south of Cape Falcon were in favor of both Alternative I and II, with those in California supporting a closure of all areas. Several comments addressed the structure of the rollover of any surplus mark-selective coho salmon quota in the Cape Falcon to the Oregon/California border area. Commenters felt that it would be a better option to allow the transfer of quota between recreational and commercial fisheries on an impact neutral basis, prioritizing the needs of the recreational fishery. The Council adopted recreational fishing measures north and south of Cape Falcon that are within the range of alternatives considered.

Additional comments were made regarding the closure of fisheries in southern Oregon from Cape Falcon to Humbug Mountain. Key comments were summarized for response.

Comment 1: The three alternatives did not allow the EA to evaluate, nor provide public review, of anything other than a complete closure. The Council should have considered at least one alternative with an open season.

Response: NMFS reviewed the alternatives proposed in public comments for the 2023 season and concluded that the proposals are very similar to the fisheries that were in place for the south of Cape Falcon area in 2022, and are thus part of the No-Action Alternative. Therefore, the suggested alternative was effectively evaluated as the No-Action Alternative, which is comprised of the prior year's management measures, in this case the 2022 measures. In PRE I, the effects of the No-Action Alternative with the current year's (2023) salmon forecasts are evaluated so that the Council can consider the effects of those fishing regimes on the achievement of conservation objectives and other FMP provisions under 2023 forecasts. Those forecasts reflect the effect of environmental conditions and other factors influencing the survival of salmon stocks returning in 2023 that may have been different than those affecting salmon stocks returning in 2022. As requested by one commenter, impacts of the No-Action Alternative, inclusive of the fishery suggested by the commenter, was included in a comparison of the impacts to KRFC and SRFC by management area, month, and salmon gear sector across the alternatives in Appendix tables A–2 and A–3 of PRE–II.

Comment 2: Open a bubble fishery for Tillamook Bay.

Response: The commenter proposed a bubble fishery that would extend the area around Tillamook Bay in particular to provide opportunity to catch hatchery spring Chinook salmon. In the past, bubble fisheries have been used to allow limited fishing with very low impacts on constraining stocks where Chinook salmon retention inside the bubble was limited to marked fish. Although a bubble fishery would provide opportunities to access hatchery spring-run Chinook salmon destined for Tillamook Bay, there is no way to model the impacts solely within the bubble. It is only possible to model the impacts as if the entire south of Cape Falcon area to the southern end of the Heceta Bank area was open. When the requested bubble area was open in the past, all of the data for catch in that area was mixed with ocean fisheries data. As a result, it is impossible to model and evaluate potential impacts of the bubble fishery alone. Fishing opportunities are available inside Tillamook Bay and the river to harvest fish returning to that area including Tillamook River spring Chinook salmon without accruing impacts to SRFC and KRFC stocks. Additionally, the proposed bubble fishery is entirely in Oregon state waters. The Council weighed the proposal together with the collective public comments and advice from the Council advisory bodies, and concluded that the expected harvest and opportunity from the proposed bubble fishery did not provide the level of benefit that the alternatives with greater spatial and temporal access to coho salmon did for the limited level of KRFC and SRFC impacts accrued.

The control rules for KRFC and SRFC describe maximum allowable exploitation rates at any given level of abundance. The FMP provides that the Council may recommend lower exploitation rates as needed to address uncertainties or other year specific circumstances (PFMC 2022). The Council recommended more conservative management measures that result in lower exploitation rates after considering the uncertainties, low 2023 abundance forecasts and other information described previously in this Rule.

Comments on SRKW. NMFS and the Council received comments from several non-governmental organizations (NGOs) regarding SRKW, with one NGO providing 43,745 supporting signatures. Some comments directed at the 2023 annual management measures requested restrictions beyond those included in the Council's alternatives for 2023 ocean salmon management measures, requesting further restriction of catch limits, limiting size of quotas, limiting season lengths, reducing salmon bycatch, and closing additional areas to fishing. The majority of these comments reiterated comments NMFS previously addressed in the final EA for FMP Amendment 21 (*https://www.fisheries.noaa.gov//action/amendment-21-pacific-coast-salmon-fishery-management-plan*) and in the notice of agency decision (86 FR 51017, September 14, 2021); these comments are critical of Amendment 21 rather than the specifics of the 2023 management measures. In other comments, the NGOs expressed concern that the preseason forecast is biased high and would prefer management measures that would make more Chinook salmon available as prey for SRKW. The Council developed the management measures consistent with the FMP including Amendment 21, which NMFS evaluated consistent with NEPA, and in an ESA biological opinion concluding fisheries managed according to the provisions are not likely to jeopardize SRKW.

The Council, including the NMFS representative, took all of these comments into consideration. The Council's final recommendation generally includes aspects of all three alternatives, while taking into account the best available scientific information, best use of limited opportunity given impacts to stocks of concern, and ensuring that fisheries are consistent with impact limits and accountability measures for ESA-listed species, ACLs, PST obligations, MSA requirements, and tribal fishing rights. The Council and NMFS also considered comments on the NEPA analysis in preparing the final EA.

2023 Specifications and Management Measures

The Council's recommended ocean harvest levels and management measures for the 2023 fisheries are designed to apportion the burden of protecting the weak stocks identified and discussed in PRE I equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs. NMFS finds the Council's recommendations to be responsive to the goals of the FMP, the requirements of the resource, and the socioeconomic factors affecting resource users. The recommendations are consistent with the requirements of the MSA, U.S. obligations to Indian tribes with federally recognized fishing rights, and U.S. international obligations regarding Pacific salmon. The Council's recommended management measures are consistent with the proposed actions analyzed in NMFS' ESA consultations for those ESA-listed species that may be affected by Council fisheries, and are otherwise consistent with ESA obligations. Accordingly, NMFS, through this final rule, approves and implements the Council's recommendations.

North of Cape Falcon, 2023 management measures for non-Indian commercial troll and recreational fisheries have slightly increased quotas for Chinook salmon compared to 2022 due to the increased forecasts of Columbia River hatchery tule Chinook salmon. This includes a combined production of returning lower Columbia River hatchery Chinook salmon and Spring Creek Hatchery Chinook salmon. The 2023 coho salmon quotas are slightly decreased but similar to the 2022 quota due to similar abundance forecasts for Columbia River and coastal Washington coho salmon stocks and constrained by low forecasts for Thompson River natural coho salmon. Overall, north of Cape Falcon non-Indian commercial and recreational total allowable catch (TAC) in 2023 is 78,000 Chinook salmon and 190,000 coho salmon marked with a healed adipose fin clip. The commercial troll fishery, north of Cape Falcon, will have a May-June Chinook salmon only fishery with a quota of 26,000 Chinook salmon, and a July-September fishery with a quota of 13,000 Chinook salmon or 30,400 marked coho salmon. The recreational fishery, north of Cape Falcon, will have a June-September fishery with a TAC of 39,000 Chinook salmon and 159,600 marked coho salmon, with subarea quotas.

Quotas for the 2023 treaty-Indian commercial troll fishery north of Cape Falcon are 45,000 Chinook salmon and 57,000 coho salmon in ocean management areas and Washington State Statistical Area 4B combined. These quotas provide a slightly higher amount of Chinook salmon and substantially more coho salmon than in 2022. The treaty-Indian commercial fisheries include a May-June fishery with a quota of 22,500 Chinook salmon, and a July-September fishery, with quotas of 22,500 Chinook salmon and 57,000 coho salmon.

South of Cape Falcon, 2023 commercial troll and recreational fishery management measures are designed to meet conservation and management goals for KRFC and SRFC spawning escapement and to not exceed the ESA-take limits for CC Chinook salmon and OCN Chinook salmon. Overall, south of Cape Falcon non-Indian commercial TAC for coho salmon is 10,000. For the recreational fishery, overall coho salmon TAC is 110,000 coho salmon marked with a healed adipose fin clip (marked), and 25,000 coho salmon in the non-mark-selective coho salmon fishery.

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons that begin before mid-May of the same year. Therefore, this action also establishes the 2024 fishing season that opens earlier than May 16. The Council recommended, and NMFS concurs, that the commercial and recreational seasons will open in 2024 as indicated under the ''Season Description'' headings (in ''Section 1.

Commercial Management Measures for 2023 Ocean Salmon Fisheries'' and ''Section 2. Recreational Management Measures for 2023 Ocean Salmon Fisheries'') of this final rule. At the March and/or April 2024 meeting, NMFS may take inseason action, if recommended by the Council, to adjust the commercial and recreational seasons prior to the effective date of the 2024 management measures, which are expected to be effective in mid-May 2024. The Council recommended, and NMFS concurs, that the Treaty Indian ocean troll seasons will open in 2024 as indicated under the ''Season Description'' headings (in ''Section 3. Treaty Indian Management Measures for 2023 Ocean Salmon Fisheries''). In 2024, the Treaty Indian ocean troll season will open May 1, consistent with all preseason regulations in place for Treaty Indian Troll fisheries during May 16–June 30, 2023. This opening could be modified following Council review at its March and/or April 2024 meetings.

Sections 1, 2, and 3 below set out the final specifications and management measures for the ocean salmon fishery for 2023 and, as specified, for 2024. Section 1 governs commercial fisheries; Section 2 governs recreational fisheries; and Section 3 governs Treaty Indian Fisheries. Also, Section 4 below provides requirements for halibut retention; Section 5 provides geographical landmarks; and Section 6 specifies notice procedures for inseason modifications. These measures were recommended by the Council and approved by NMFS. Those elements of the measures set forth below that refer to fisheries implemented prior to May 16, 2023, were promulgated in our 2022 rule (87 FR 29690, May 16, 2022) and modified by inseason action at the March and April 2022 Council meetings (88 FR 21112, April 10, 2023), and are included for information only and to provide continuity for the public and for states adopting conforming regulations each May that refer to the Federal rule for the same year.

Section 1. Commercial Management Measures for 2023 Ocean Salmon Fisheries

Parts A, B, and C of this section contain restrictions that must be followed for lawful participation in the fishery. Part A identifies each fishing area and provides the geographic boundaries from north to south, the open seasons for the area, the salmon species allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies requirements, definitions, restrictions, and exceptions.

Fisheries may need to be adjusted through inseason action to meet NMFS ESA consultation standards, FMP requirements, other management objectives, or upon receipt of new allocation recommendations from the California Fish and Game Commission.

A. Season Description

North of Cape Falcon, OR

—U.S./Canada border to Cape Falcon

May 1–15, 2023.

May 16 through the earlier of June 29, or 26,000 Chinook salmon. No more than 6,890 of which may be caught in the area between the U.S./Canada border and the Queets River, and no more than 6,040 of which may be caught in the area between Leadbetter Point and Cape Falcon (see C.8).

May 16–June 21; open 7 days per week (see C.1); then

June 22–June 29.

In the area between the U.S./Canada border and the Queets River the landing and possession limit is 70 Chinook salmon per vessel per landing week (Thursday–Wednesday) and June 22–29. Landing limits will be evaluated weekly inseason (see C.1, C.6).

In the area between the Queets River and Leadbetter Point the landing and possession limit is 150 Chinook salmon per vessel per landing week (Thursday–Wednesday) and June 22–29. Landing limits will be evaluated weekly inseason (see C.1, C.6).

In the area between Leadbetter Point and Cape Falcon the landing and possession limit is 60 Chinook salmon per vessel per landing week (Thursday–Wednesday) and June 22–29. Landing limits will be evaluated weekly inseason (see C.1, C.6).

All salmon, except coho salmon (see C.4, C.7). Chinook salmon minimum size limit of 27 inches (68.5 cm) total length (see B). See compliance requirements (see C.1) and gear restrictions and definitions (see C.2, C.3).

When it is estimated that approximately 50 percent of the overall Chinook salmon quota or any Chinook salmon subarea guideline has been landed, inseason action may be considered to ensure the quota and subarea guidelines are not exceeded. If the Chinook salmon quota is exceeded, the excess will be deducted from the all-salmon season (see C.5).

In 2024, the season will open May 1 consistent with all preseason regulations in place in this area and subareas during May 16–June 30, 2023, including subarea salmon guidelines and quotas and weekly vessel limits except as described below for vessels fishing or in possession of salmon north of Leadbetter Point. This opening could be modified following Council review at its March and/or April 2024 meetings.

July 1 through the earlier of September 30, or 13,000 Chinook salmon or 30,400 marked coho salmon (see C.8).

Open 7 days per week. All salmon. Chinook salmon minimum size limit of 27 inches (68.5 cm) total length. Coho salmon minimum size limit of 16 inches (40.6 cm) total length (see B, C.1). All coho salmon must be marked with a healed adipose fin clip (see C.8.d). No chum salmon retention north of Cape Alava, WA, in August and September (see C.4, C.7). See compliance requirements (see C.1) and gear restrictions and definitions (see C.2, C.3).

Landing and possession limit of 150 marked coho salmon per vessel per landing week (Thursday–Wednesday). Landing limits will be evaluated weekly inseason (C.1).

When it is estimated that approximately 50 percent of the overall Chinook salmon quota has been landed, inseason action may be considered to ensure the quota is not exceeded.

A non-selective coho salmon fishery that is impact neutral relative to the preseason assessment may be considered through inseason management action later in the season.

For all commercial troll fisheries north of Cape Falcon: Mandatory closed areas include Salmon Troll Yelloweye Rockfish Conservation Area (YRCA), Cape Flattery, and Columbia Control Zones. Vessels must land and deliver their salmon within 24 hours of any closure of this fishery. Vessels may not land fish east of the Sekiu River or east of Tongue Point, OR. Vessels fishing or in possession of salmon north of Leadbetter Point must land and deliver all species of fish in a Washington port and must possess a Washington troll and/or salmon delivery license. For delivery to Washington ports south of Leadbetter Point, vessels must notify Washington Department of Fish and Wildlife (WDFW) at 360–249–1215 prior to crossing the Leadbetter Point line with area fished, total Chinook salmon, coho salmon, and halibut catch aboard, and destination with approximate time of delivery. During any single trip, only one side of the Leadbetter Point line may be fished (see C.11).

Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver all species of fish within the area and south of Leadbetter Point, except that

Oregon permitted vessels may also land all species of fish in Garibaldi, OR. All Chinook salmon caught north of Cape Falcon and being delivered by boat to Garibaldi, OR must meet the minimum legal total length of 28 inches (71.1 cm) for Chinook salmon for south of Cape Falcon seasons unless the season in waters off Garibaldi, OR have been closed for Chinook salmon retention for more than 48 hours (see C.1).

Under state law, vessels must report their catch on a state fish receiving ticket. Oregon State regulations require all fishers landing salmon into Oregon from any fishery between Leadbetter Point and Cape Falcon to notify the Oregon Department of Fish and Wildlife (ODFW) within one hour of delivery or prior to transport away from the port of landing by either calling 541–857–2546 or sending notification via email to *nfalcon.trollreport@odfw.oregon.gov*. Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts (see C.8).

Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW at 360–249–1215 with area fished, total Chinook salmon, coho salmon, and halibut catch abroad, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW at 360–249–1215 with area fished, total Chinook salmon, coho salmon, and halibut catch aboard, and destination (see C.11). Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts (see C.8).

South of Cape Falcon, OR

—Cape Falcon to Humbug Mountain

September 1–October 31 (see C.9.a).

Open 7 days per week. All salmon, through the earlier of September 30 or reaching the 10,000 non mark-selective coho salmon quota; all salmon except coho salmon thereafter (see C.4, C.7). Coho salmon minimum size limit of 16 inches (40.6 cm) total length, and Chinook salmon minimum size limit of 28 inches (71.1 cm) total length (see B, C.1). All vessels fishing in the area must land their salmon in the State of Oregon. See gear restrictions and definitions (see C.2, C.3). Beginning October 1, open shoreward of the 40-fathom (73-meter) regulatory line (see C.5.f).

No more than 75 Chinook salmon allowed per vessel per landing week (Thursday–Wednesday), (see C.8.f).

Coho salmon quota of 10,000 non-mark selective. No more than 75 coho salmon allowed per vessel per landing week (Thursday–Wednesday). Vessel limits may be modified inseason (see C.8.f).

Any remainder of the mark-selective coho salmon quota from Cape Falcon to Humbug Mountain recreational fishery may be transferred inseason to the Cape Falcon to Humbug Mountain troll fishery on an impact neutral basis. Recreational fishery needs will be prioritized for this transfer (see C.8.h).

In 2024, the season will be open March 15 for all salmon except coho salmon. Chinook salmon minimum size limit of 28 inches (71.1 cm) total length. Gear restrictions are the same as in 2023. This opening could be modified following Council review at its March 2024 meeting.

—Humbug Mountain to Oregon/California border (Oregon Klamath Management Zone (KMZ))

Closed in 2023.

In 2024, the season will open March 15 for all salmon except coho salmon. Chinook salmon minimum size limit of 28 inches (71.1 cm) total length. Gear restrictions are the same as in 2023. This opening could be modified following Council review at its March 2024 meeting.

—Oregon/California border to Humboldt South Jetty (California KMZ)

Closed in 2023.

In 2024, the season will open May 1 through the earlier of May 31, or a 3,000 Chinook salmon quota. Chinook salmon minimum size limit of 27 inches (68.5 cm) total length. Landing and possession limit of 20 Chinook salmon per vessel per day (see C.8.f). Open 5 days per week (Friday–Tuesday). All salmon except coho salmon (see C.4, C.7). Any remaining portion of Chinook salmon quotas may be transferred inseason on an impact neutral basis to the next open quota period (see C.8.b). All fish caught in this area must be landed within the area, within 24 hours of any closure of the fishery (see C.6), and prior to fishing outside the area (see C.10). See compliance requirements (see C.1) and gear restrictions and definitions (see C.2, C.3). Klamath Control Zone closed (see C.5.e). See California State regulations for an additional closure adjacent to the Smith River. This opening could be modified following Council review at its March or April 2024 meetings.

—Humboldt South Jetty to Latitude 40°10′ N

Closed in 2023.

When the fishery is closed between the Oregon/California border and Humbug Mountain, vessels with fish on board caught in the areas open to salmon fishing off California may seek temporary mooring in Brookings, OR prior to landing in California only if such vessels first notify the Chetco River Coast Guard Station via VHF channel 22A between the hours of 0500 and 2200 and provide with vessel name, number of fish on board, and estimated time of arrival (see C.6).

—Latitude 40°10′ N to Point Arena (Fort Bragg)

Closed in 2023.

In 2024, the season will open April 16 for all salmon except coho salmon (see C.4, C.7). Chinook salmon minimum size limit of 27 inches (68.5 cm) total length (see B). See compliance requirements (see C.1) and gear restrictions and definitions (see C.2, C.3). All salmon must be landed in California and north of Point Arena (see C.6, C.11). Landing and possession limits may be considered inseason (see C.8.g). This opening could be modified following Council review at its March 2024 meeting.

—Point Arena to Pigeon Point (San Francisco)

Closed in 2023.

In 2024, the season will open on May 1 for all salmon except coho salmon (see C.4, C.7). Chinook salmon minimum size limit of 27 inches (68.5 cm) total length (see B, C.1). See compliance requirements (see C.1) and gear restrictions and definitions (see C.2, C.3). Landing and possession limits may be considered inseason (see C.8.g). This opening could be modified following Council review at its March or April 2024 meeting.

—Point Reyes to Point San Pedro (Fall Area Target Zone)

Closed in 2023.

—Pigeon Point to the U.S./Mexico border (Monterey)

Closed in 2023.

In 2024, the season will open on May 1 for all salmon except coho salmon (see C.4, C.7). Chinook salmon minimum size limit of 27 inches (68.5 cm) total length (see B). See compliance requirements (see C.1) and gear restrictions and definitions (see C.2, C.3). Landing and possession limits may be considered inseason (see C.8.g). This opening could be modified following Council review at its March or April 2024 meeting.

California State regulations require all salmon be made available to a California Department of Fish and Wildlife

(CDFW) representative for sampling immediately at port of landing. Any person in possession of a salmon with a missing adipose fin, upon request by an authorized agent or employee of the CDFW, shall immediately relinquish the head of the salmon to the State (California Fish and Game Code § 8226).

B. Minimum Size (Inches) (See C.1)

TABLE 1—MINIMUM SIZE LIMITS FOR SALMON IN THE 2023 COMMERCIAL OCEAN SALMON FISHERIES

Area (when open)	Chinook		Coho		Pink
	Total length (in)	Head-off (in)	Total length (in)	Head-off (in)	
North of Cape Falcon, OR	27.0	20.5	16	12	None.
Cape Falcon to Humbug Mountain	28.0	21.5	16	12	None.
Humbug Mountain to OR/CA border	28.0	21.5	....	....	None.
OR/CA border to Humboldt South Jetty	....	....	....	....	
Lat. 40°10′0″ N to Point Arena	....	....	....	....	
Point Arena to Pigeon Point	....	....	....	....	
Pigeon Point to U.S./Mexico border	....	....	....	....	

Metric equivalents: 28.0 in = 71.1 cm, 27.0 in = 68.5 cm, 26 in = 66 cm, 21.5 in = 54.6 cm, 20.5 in = 52.1 cm, 19.5 in = 49.5 cm, 16.0 in = 40.6 cm, and 12.0 in = 30.5 cm.

C. Requirements, Definitions, Restrictions, or Exceptions

C.1. Compliance With Minimum Size or Other Special Restrictions

All salmon on board a vessel must meet the minimum size, landing/possession limit, or other special requirements for the area being fished and the area in which they are landed if the area is open or has been closed less than 48 hours for that species of salmon. Salmon may be landed in an area that has been closed for a species of salmon more than 48 hours only if they meet the minimum size, landing/possession limit, or other special requirements for the area in which they were caught. Salmon may not be filleted prior to landing.

Any person who is required to report a salmon landing by applicable state law must include on the state landing receipt for that landing both the number and weight of salmon landed by species. States may require fish landing/receiving tickets be kept on board the vessel for 90 days or more after landing to account for all previous salmon landings.

C.2. Gear Restrictions

a. Salmon may be taken only by hook and line using single point, single shank, barbless hooks.

b. Cape Falcon to the Oregon/California border: no more than 4 spreads are allowed per line.

c. Oregon/California border to U.S./Mexico border: no more than 6 lines are allowed per vessel, and barbless circle hooks are required when fishing with bait by any means other than trolling.

C.3. Gear Definitions

Trolling: Fishing from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

Troll fishing gear: One or more lines that drag hooks behind a moving fishing vessel engaged in trolling. In that portion of the fishery management area off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

Spread: A single leader connected to an individual lure and/or bait.

Circle hook: A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

C.4. Vessel Operation in Closed Areas With Salmon on Board

a. Except as provided under C.4.b below, it is unlawful for a vessel to have troll or recreational gear in the water while in any area closed to fishing for a certain species of salmon while possessing that species of salmon; however, fishing for species other than salmon is not prohibited if the area is open for such species, and no salmon are in possession.

b. When Genetic Stock Identification (GSI) samples will be collected in an area closed to commercial salmon fishing, the scientific research permit holder shall notify NOAA Office of Law Enforcement, U.S. Coast Guard (USCG), CDFW, WDFW, ODFW, and Oregon State Police at least 24 hours prior to sampling and provide the following information: the vessel name, date, location and time collection activities will be done. Any vessel collecting GSI samples in a closed area shall not possess any salmon other than those from which GSI samples are being collected. Salmon caught for collection of GSI samples must be immediately released in good condition after collection of samples.

C.5. Control Zone Definitions

a. *Cape Flattery Control Zone*—The area from Cape Flattery (48°23′00″ N lat.) to the northern boundary of the U.S. EEZ; and the area from Cape Flattery south to Cape Alava (48°10′00″ N lat.) and east of 125°05′00″ W long.

b. *Salmon Troll YRCA*—The area in Washington Marine Catch Area 3 from 48°00.00′ N lat.; 125°14.00′ W long. to 48°02.00′ N lat.; 125°14.00′ W long. to 48°02.00′ N lat.; 125°16.50′ W long. to 48°00.00′ N lat.; 125°16.50′ W long. and connecting back to 48°00.00′ N lat.; 125°14.00′ W long.

c. *Grays Harbor Control Zone*—The area defined by a line drawn from the Westport Lighthouse (46°53′18″ N lat., 124°07′01″ W long.) to Buoy #2 (46°52′42″ N lat., 124°12′42″ W long.) to Buoy #3 (46°55′00″ N lat., 124°14′48″ W long.) to the Grays Harbor north jetty (46°55′36″ N lat., 124°10′51″ W long.).

d. *Columbia Control Zone*—An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N lat., 124°06′50″ W long.) and the green lighted Buoy #7 (46°15′09″ N lat., 124°06′16″ W long.); on the east, by the Buoy #10 line that bears north/south at 357° true from the south jetty at 46°14′00″ N lat.,124°03′07″ W long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N lat., 124°05′20″ W long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N lat., 124°04′05″ W long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

e. *Klamath Control Zone*—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N lat. (approximately 6 nm (11 km) north of the Klamath River mouth); on the west by 124°23′00″ W long. (approximately 12 nm (22 km) off shore); and on the south by 41°26′48″ N lat. (approximately 6 nm (11 km) south of the Klamath River mouth).

f. Waypoints for the 40-fathom (73-meter) regulatory line from Cape Falcon to Humbug Mountain (50 CFR 660.71 (o)(12)–(62)), when in place.

C.6. Notification When Unsafe Conditions Prevent Compliance With Regulations

If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the USCG and receive acknowledgment of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate number of salmon (by species) on board, the estimated time of arrival, and the specific reason the vessel is not able to meet special management area landing restrictions.

In addition to contacting the USCG, vessels fishing south of the Oregon/California border must notify CDFW within 1 hour of leaving the management area by calling 800–889–8346 and providing the same information as reported to the USCG. All salmon must be offloaded within 24 hours of reaching port.

C.7. Incidental Halibut Harvest

Permit applications for incidental harvest for halibut during commercial salmon fishing must be obtained from the NMFS West Coast Region (WCR) Permits Office.

a. Pacific halibut retained must be no less than 32 inches (81.3 cm) in total length (with head on).

b. During the salmon troll season, incidental harvest is authorized only during April, May, and June, and after June 30 if quota remains and if announced on the NMFS hotline (phone: 800–662–9825 or 206–526–6667). WDFW, ODFW, and CDFW will monitor landings. If the landings are projected to exceed the preseason allocation for this fishery or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to prohibit retention of halibut in the non-Indian salmon troll fishery. See the most current Pacific Halibut Catch Sharing Plan (88 FR 14066, March 7, 2023) for more details.

c. Incidental Pacific halibut catch regulations in the commercial salmon troll fishery adopted for 2023, prior to any 2023 inseason action, will be in effect when incidental Pacific halibut retention opens on April 1, 2023, unless otherwise modified by inseason action at the March 2023 Council meeting.

Beginning May 16, 2023, through the end of the 2023 salmon troll fishery, and beginning April 1, 2024, until modified through inseason action or superseded by the 2024 management measures, permit holders may land or possess no more than one Pacific halibut per two Chinook salmon, except one Pacific halibut may be possessed or landed without meeting the ratio requirement, and no more than 35 halibut may be possessed or landed per trip.

d. ‘‘C-shaped’’ YRCA is an area to be voluntarily avoided for salmon trolling. NMFS and the Council request salmon trollers voluntarily avoid this area in order to protect yelloweye rockfish. The area is defined in the Pacific Council Halibut Catch Sharing Plan in the North Coast subarea (Washington marine area 3), with the following coordinates in the order listed:

48°18′ N lat.; 125°18′ W long.
48°18′ N lat.; 124°59′ W long.
48°11′ N lat.; 124°59′ W long.
48°11′ N lat.; 125°11′ W long.
48°04′ N lat.; 125°11′ W long.
48°04′ N lat.; 124°59′ W long.
48°00′ N lat.; 124°59′ W long.
48°00′ N lat.; 125°18′ W long.
And connecting back to 48°18′ N lat.; 125°18′ W long.

C.8. Inseason Management

In addition to standard inseason actions or modifications already noted under the Season Description heading above, the following inseason guidance applies:

a. Chinook salmon remaining from the May through June non-Indian commercial troll harvest guideline north of Cape Falcon may be transferred to the July through September harvest guideline if the transfer would not result in exceeding preseason impact expectations on any stocks.

b. Chinook salmon remaining from May, June, and/or July non-Indian commercial troll quotas in the Oregon or California KMZ may be transferred to the Chinook salmon quota for the next open period if the transfer would not result in exceeding preseason impact expectations on any stocks.

c. NMFS may transfer salmon between the recreational and commercial fisheries north of Cape Falcon if there is agreement among the areas' representatives on the Salmon Advisory Subpanel (SAS), and if the transfer would not result in exceeding preseason impact expectations on any stocks.

d. The Council will consider inseason recommendations for special regulations for any experimental fisheries annually in March; proposals must meet Council protocol and be received in November the year prior.

e. If retention of unmarked coho salmon (adipose fin intact) is permitted by inseason action, the allowable coho salmon quota will be adjusted to ensure preseason projected impacts on all stocks is not exceeded.

f. Landing limits may be modified inseason to sustain season length and keep harvest within overall quotas.

g. Landing limits in California may be implemented and/or modified inseason to sustain season length and keep harvest within preseason expectations.

h. Deviations from the allocation of allowable ocean harvest of coho salmon in the area south of Cape Falcon may be allowed to meet consultation standards for ESA-listed stocks (FMP 5.3.2). Therefore, any rollovers that result in a deviation from the south of Cape Falcon coho salmon allocation schedule between sectors would still fall underneath this exemption.

C.9. State Waters Fisheries

Consistent with Council management objectives:

a. The state of Oregon may establish additional late-season fisheries in state waters.

b. The state of California may establish limited fisheries in selected state waters.

c. Check state regulations for details.

C.10. For the purpose of California Fish and Game Code, Section 8232.5, the definition of the KMZ for the ocean salmon season shall be that area from Humbug Mountain, Oregon, to the Southern KMZ Boundary.

C.11. Latitudes for geographical reference of major landmarks along the West Coast are listed in Section 5 of this final rule.

Section 2. Recreational Management Measures for 2023 Ocean Salmon Fisheries

Parts A, B, and C of this section contain restrictions that must be followed for lawful participation in the fishery. Part A identifies each fishing area and provides the geographic boundaries from north to south, the open seasons for the area, the salmon species allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies special requirements, definitions, restrictions, and exceptions.

Fisheries may need to be adjusted through inseason action to meet NMFS ESA consultation standards, FMP requirements, other management objectives, or upon receipt of new allocation recommendations from the California Fish and Game Commission.

A. Season Description

North of Cape Falcon, OR

—U.S./Canada border to Cape Alava (Neah Bay Subarea)

June 17 through earlier of September 30, or 16,600 marked coho salmon subarea quota, with a subarea guideline of 8,710 Chinook salmon (see C.5).

Open 7 days per week. All salmon except no chum salmon beginning August 1; two salmon per day, of which only one may be a Chinook salmon. All coho salmon must be marked with a healed adipose fin clip. See minimum size limits (see B). See gear restrictions and definitions (see C.1, C.2, C.3).

An impact neutral non-selective coho salmon fishery may be considered through inseason management action later in the season.

Beginning August 1, no Chinook salmon retention east of the Bonilla-Tatoosh line (see C.4.a) during Council managed ocean fishery. Inseason management may be used to sustain season length and keep harvest within the overall Chinook salmon and coho salmon recreational TACs for north of Cape Falcon (see C.5).

—Cape Alava to Queets River (La Push Subarea)

June 17 through earlier of September 30, or 4,150 marked coho salmon subarea quota, with a subarea guideline of 1,440 Chinook salmon (see C.5).

Open 7 days per week. All salmon, except no chum salmon beginning August 1; two salmon per day, of which only one may be a Chinook salmon. All coho salmon must be marked with a healed adipose fin clip. See minimum size limits (see B). See gear restrictions and definitions (see C.1, C.2, C.3).

Inseason management may be used to sustain season length and keep harvest within the overall Chinook salmon and coho salmon recreational TACs for north of Cape Falcon (see C.5).

An impact neutral non-selective coho salmon fishery may be considered through inseason management action later in the season.

October 3 through earlier of October 7, or 150 Chinook salmon quota (see C.5) in the area north of 47°50′00″ N lat. and south of 48°00′00″ N lat. Chinook salmon only, one Chinook salmon per day. See minimum size limits (see B). See gear restrictions and definitions (see C.1, C.2, C.3).

Fishery may be closed if extreme freshwater temperature and/or flow events occur in the Quillayute basin in September.

—Queets River to Leadbetter Point (Westport Subarea)

June 24 through earlier of September 30, or 59,050 marked coho salmon subarea quota, with a subarea guideline of 17,210 Chinook salmon (see C.5).

Open 7 days per week. All salmon, two salmon per day, of which only one may be a Chinook salmon. All coho salmon must be marked with a healed adipose fin clip. See gear restrictions and definitions (see C.1, C.2, C.3). Chinook salmon minimum size limit of 22 inches (55.9 cm) total length (see B).

An impact neutral non-selective coho salmon fishery may be considered through inseason management action later in the season.

Inseason management may be used to sustain season length and keep harvest within the overall Chinook salmon and coho salmon recreational TACs for north of Cape Falcon (see C.5).

—Leadbetter Point to Cape Falcon (Columbia River Subarea)

June 24 through earlier of September 30, or 79,800 marked coho salmon subarea quota, with a subarea guideline of 11,490 Chinook salmon (see C.5).

Open 7 days per week. All salmon, two salmon per day, of which only one may be a Chinook salmon. All coho salmon must be marked with a healed adipose fin clip. See gear restrictions and definitions (see C.1, C.2, C.3). Chinook salmon minimum size limit of 22 inches (55.9 cm) total length (see B).

An impact neutral non-selective coho salmon fishery may be considered through inseason management action later in the season.

Columbia Control Zone closed (see C.4.c). Inseason management may be used to sustain season length and keep harvest within the overall Chinook salmon and coho salmon recreational TACs for north of Cape Falcon (see C.5).

South of Cape Falcon, OR

Mark-selective coho salmon fishery:

—Cape Falcon to Oregon/California border

June 17 through the earlier of August 31, or 110,000 marked coho salmon quota (see C.6).

Open 7 days per week. All salmon except Chinook salmon, two salmon per day. All retained coho salmon must be marked with a healed adipose fin clip (see C.1). See minimum size limits (see B). See gear restrictions and definitions (see C.2, C.3).

Any remainder of the mark-selective coho salmon quota may be transferred inseason on an impact neutral basis to the recreational and/or commercial troll quotas for the non-selective coho salmon fishery from Cape Falcon to Humbug Mountain. Recreational needs will be prioritized for this transfer (see C.5).

—Cape Falcon to Humbug Mountain

September 1–October 31 (see C.6).

Open 7 days per week. All salmon except coho salmon, except as described in the non-mark-selective coho salmon fishery (see C.5), one fish per day (see C.1). Chinook salmon minimum size limit of 24 inches (61.0 cm) total length (see B). See gear restrictions and definitions (see C.2, C.3). Beginning October 1, open only shoreward of the 40-fathom (73-meter) regulatory line (see C.5.g).

In 2024, the season will open March 15 for all salmon except coho salmon, two salmon per day (see C.1). Chinook salmon minimum size limit of 24 inches (61 cm) total length (see B); and the same gear restrictions as in 2023 (see C.2, C.3). This opening could be modified following Council review at its March 2024 meeting.

Non-mark-selective coho salmon fishery:

—Cape Falcon to Humbug Mountain

September 1 through the earlier of September 30, or 25,000 non-mark-selective coho salmon quota (see C.6). Open days may be modified inseason.

Open 7 days per week. All salmon, two salmon per day only one of which may be a Chinook salmon (see C.1). See minimum size limits (see B). See gear restrictions and definitions (see C.2, C.3).

For recreational fisheries from Cape Falcon to Humbug Mountain: Fishing in the Stonewall Bank YRCA is restricted to trolling only on days the all depth recreational halibut fishery is open (call the halibut fishing hotline 1–800–662–9825 for specific dates) (see C.3.b, C.4.d).

—Oregon/California Border to latitude 40°10′ N (California KMZ)

Closed in 2023.

In 2024, season opens May 1 for all salmon except coho salmon, two salmon per day (see C.1). Chinook salmon minimum size limit of 20 inches (50.8 cm) total length (see B). See compliance requirements (see C.1) and gear restrictions and definitions (see C.2, C.3). Bag limits may be modified in season. This opening could be modified following Council review at its March or April 2024 meeting.

—Latitude 40°10′ N to Point Arena (Fort Bragg)

Closed in 2023.

In 2024, season opens April 6 for all salmon except coho salmon, two salmon per day (see C.1). Chinook salmon minimum size limit of 20 inches (50.8 cm) total length (see B). See compliance requirements (see C.1) and gear restrictions and definitions (see C.2, C.3). Bag limits may be modified in season. This opening could be modified following Council review at its March or April 2024 meeting.

—Point Arena to Pigeon Point (San Francisco)

Closed in 2023.

In 2024, season opens April 6 for all salmon except coho salmon, two salmon per day (see C.1). Chinook salmon minimum size limit of 24 inches (61.0 cm) total length (see B). See compliance requirements (see C.1) and gear restrictions and definitions (see C.2, C.3). Bag limits may be modified in season. This opening could be modified following Council review at its March or April 2024 meeting.

—Pigeon Point to U.S./Mexico Border (Monterey)

Closed in 2023.

In 2024, season opens April 6 for all salmon except coho salmon, two salmon per day (see C.1). Chinook salmon minimum size limit of 24 inches (61.0 cm) total length (see B). See compliance requirements (see C.1) and gear restrictions and definitions (see C.2, C.3). Bag limits may be modified in season. This opening could be modified following Council review at its March or April 2024 meeting.

California State regulations require all salmon be made available to a CDFW representative for sampling immediately at port of landing. Any person in possession of a salmon with a missing adipose fin, upon request by an authorized agent or employee of the CDFW, shall immediately relinquish the head of the salmon to the state (California Code of Regulations Title 14 Section 1.73).

B. Minimum Size (Total Length in Inches) (See C.1)

TABLE 2—MINIMUM SIZE LIMITS FOR SALMON IN THE 2023 RECREATIONAL SALMON FISHERIES

Area (when open)	Chinook (in)	Coho (in)	Pink
North of Cape Falcon (Westport and Columbia River)	22.0	16.0	None.
North of Cape Falcon (Neah Bay and La Push)	24.0	16.0	None.
Cape Falcon to Humbug Mountain	24.0	16.0	None.
Humbug Mountain to Oregon/California border	24.0	16.0	None.
Oregon/California border to Point Arena	....	....	
Point Arena to Pigeon Point	....	....	
Pigeon Point to U.S./Mexico border	....	....	

Metric equivalents: 24.0 in = 61.0 cm, 22.0 in = 55.9 cm, 20.0 in = 50.8 cm, and 16.0 in = 40.6 cm.

C. Requirements, Definitions, Restrictions, or Exceptions

C.1. Compliance With Minimum Size and Other Special Restrictions

All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught. Salmon may not be filleted or salmon heads removed prior to landing.

Ocean Boat Limits: Off the coast of Washington, Oregon, and California, each fisher aboard a vessel may continue to use angling gear until the combined daily limits of Chinook and coho salmon for all licensed and juvenile anglers aboard have been attained (additional state restrictions may apply).

C.2. Gear Restrictions

Salmon may be taken only by hook and line using barbless hooks. All persons fishing for salmon, and all persons fishing from a boat with salmon on board must meet the gear restrictions listed below for specific areas or seasons.

a. *U.S./Canada border to Point Conception, CA:* No more than one rod may be used per angler; and no more than two single point, single shank, barbless hooks are required for all fishing gear.

b. *Latitude 40°10′ N to Point Conception, CA:* Single point, single shank, barbless circle hooks (see gear definitions below) are required when fishing with bait by any means other than trolling, and no more than two such hooks shall be used. When angling with two hooks, the distance between the hooks must not exceed 5 inches (12.7 cm) when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). Circle hooks are not required when artificial lures are used without bait.

C.3. Gear Definitions

a. *Recreational fishing gear:* Off Oregon and Washington, angling tackle consists of a single line that must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington. Off California, the line must be attached to a rod and reel held by hand or closely attended; weights directly attached to a line may not exceed 4 pounds (1.8 kg). While fishing off California north of Point Conception, no person fishing for salmon, and no person fishing from a boat with salmon on board, may use more than one rod and line. Fishing includes any activity which can reasonably be expected to result in the catching, taking, or harvesting of fish.

b. *Trolling:* Angling from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

c. *Circle hook:* A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

C.4. Control Zone Definitions

a. *The Bonilla-Tatoosh Line:* A line running from the western end of Cape Flattery to Tatoosh Island Lighthouse (48°23′30″ N lat., 124°44′12″ W long.) to the buoy adjacent to Duntze Rock (48°24′37″ N lat., 124°44′37″ W long.), then in a straight line to Bonilla Point (48°35′39″ N lat., 124°42′58″ W long.) on Vancouver Island, British Columbia.

b. *Grays Harbor Control Zone:* The area defined by a line drawn from the Westport Lighthouse (46°53′18″ N lat., 124°07′01″ W long.) to Buoy #2 (46°52′42″ N lat., 124°12′42″ W long.) to Buoy #3 (46°55′00″ N lat., 124°14′48″ W long.) to the Grays Harbor north jetty (46°55′36″ N lat., 124°10′51″ W long.).

c. *Columbia Control Zone:* An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N lat., 124°06′50″ W long.) and the green lighted Buoy #7 (46°15′09″ N lat., 124°06′16″ W long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N lat., 124°03′07″ W long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N lat., 124°05′20″ W long. and then along the north jetty to the point of intersection with the Buoy #10 line; and on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N lat., 124°04′05″ W long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

d. *Stonewall Bank YRCA:* The area defined by the following coordinates in the order listed:

44°37.46′ N lat.; 124°24.92′ W long.
44°37.46′ N lat.; 124°23.63′ W long.
44°28.71′ N lat.; 124°21.80′ W long.
44°28.71′ N lat.; 124°24.10′ W long.
44°31.42′ N lat.; 124°25.47′ W long.

And connecting back to 44°37.46′ N lat.; 124°24.92′ W long.

e. *Klamath Control Zone:* The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N lat. (approximately 6 nm (11 km) north of the Klamath River mouth); on the west by 124°23′00″ W long. (approximately 12 nm (22 km) offshore); and, on the south by 41°26′48″ N lat. (approximately 6 nm (11 km) south of the Klamath River mouth).

C.5. Inseason Management

Regulatory modifications may become necessary inseason to meet preseason management objectives such as quotas, harvest guidelines, and season duration. In addition to standard inseason actions or modifications already noted under the Season Description heading above, the following inseason guidance applies:

a. Actions could include modifications to bag limits, or days open to fishing, and extensions or reductions in areas open to fishing.

b. Coho salmon may be transferred inseason among recreational subareas north of Cape Falcon to help meet the recreational season duration objectives (for each subarea) after conferring with representatives of the affected ports and the Council's SAS recreational representatives north of Cape Falcon, and if the transfer would not result in exceeding preseason impact expectations on any stocks.

c. Chinook salmon and coho salmon may be transferred between the recreational and commercial fisheries north of Cape Falcon if there is agreement among the representatives of the SAS, and if the transfer would not result in exceeding preseason impact expectations on any stocks.

d. Fishery managers may consider inseason action modifying regulations restricting retention of unmarked (adipose fin intact) coho salmon. To remain consistent with preseason expectations, any inseason action shall consider, if significant, the difference between observed and preseason forecasted (adipose-clipped) mark rates. Such a consideration may also include a change in bag limit of two salmon, no more than one of which may be a coho salmon.

e. Marked coho salmon remaining from the Cape Falcon to Oregon/California Border: recreational mark-selective coho salmon quota may be transferred inseason to the Cape Falcon to Humbug Mountain non-mark-selective recreational fishery or the Cape Falcon to Humbug Mountain commercial troll fishery if the transfer would not result in exceeding preseason impact expectations on any stocks.

f. Deviations from the allocation of allowable ocean harvest of coho salmon in the area south of Cape Falcon may be allowed in order to meet consultation standards for ESA-listed stocks (FMP 5.3.2). Therefore, any rollovers that result in a deviation from the south of Cape Falcon coho salmon allocation schedule between sectors would still fall underneath this exemption.

g. Waypoints for the 40-fathom regulatory line from Cape Falcon to Humbug Mountain (50 CFR 660.71(0)(12)–(62)), when in place.

C.6. Additional Seasons in State Territorial Waters

Consistent with Council management objectives, the states of Washington, Oregon, and California may establish limited seasons in state waters. Check state regulations for details.

Section 3. Treaty Indian Management Measures for 2023 Ocean Salmon Fisheries

Parts A, B, and C of this section contain requirements that must be followed for lawful participation in the fishery.

Overall Chinook salmon and/or coho salmon TACs may need to be reduced or fisheries adjusted to meet NMFS ESA guidance, FMP requirements, upon conclusion of negotiations in the North of Falcon forum, or upon receipt of preseason catch and abundance expectations for Canadian and Alaskan fisheries.

In 2024, the season will open May 1, consistent with all preseason regulations in place for Treaty Indian Troll fisheries during May 16–June 30, 2023. All catch in May 2024 applies against the 2024 Treaty Indian Troll fisheries quota. This opening could be modified following Council review at its March and/or April 2024 meetings.

A. Season Descriptions

May 1 through the earlier of June 30, or 22,500 Chinook salmon quota.

All salmon may be retained except coho salmon. If the Chinook salmon quota is exceeded, the excess will be deducted from the later all-salmon season (see C.5). See size limit (see B) and other restrictions (see C).

July 1 through the earlier of September 15, or 22,500 Chinook salmon quota or 57,000 coho salmon quota.

All salmon. See size limit (see B) and other restrictions (see C).

B. Minimum Size (Inches)

TABLE 3—MINIMUM SIZE LIMITS FOR SALMON IN THE 2023 TREATY INDIAN OCEAN SALMON FISHERIES

Area (when open)	Chinook		Coho		Pink
	Total length (in)	Head-off (in)	Total length (in)	Head-off (in)	
North of Cape Falcon	24.0	18.0	16.0	12.0	None.

Metric equivalents: 24.0 in 61.0 cm, 18.0 in 45.7 cm, 16.0 in 40.6 cm, 12.0 in 30.5 cm.

C. Requirements, Definitions, Restrictions, or Exceptions

C.1. Tribe and Area Boundaries

All boundaries may be changed to include such other areas as may hereafter be authorized by a Federal court for that tribe's treaty fishery.

S'KLALLAM—Washington State Statistical Area 4B (defined to include those waters of Puget Sound easterly of a line projected from the Bonilla Point light on Vancouver Island to the Tatoosh Island light, thence to the most westerly point on Cape Flattery and westerly of a line projected true north from the fishing boundary marker at the mouth of the Sekiu River [Washington Administrative Code 220–301–030]).

MAKAH—Washington State Statistical Area 4B and that portion of the Fishery Management Area (FMA) north of 48°02′15″ N lat. (Norwegian Memorial) and east of 125°44′00″ W long.

QUILEUTE—A polygon commencing at Cape Alava, located at lat. 48°10′00″ N, long. 124°43′56.9″ W; then proceeding west approximately 40 nm (74 km) at that latitude to a northwestern point located at lat. 48°10′00″ N, long. 125°44′00″ W; then proceeding in a southeasterly direction mirroring the coastline at a distance no farther than 40 nm (74 km) from the mainland Pacific coast shoreline at any line of latitude, to a southwestern point at lat. 47°31′42″ N, long. 125°20′26″ W; then proceeding east along that line of latitude to the Pacific coast shoreline at lat. 47°31′42″ N, long. 124°21′9.0″ W.

HOH—That portion of the FMA between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N lat. (Quinault River) and east of 125°44′00″ W long.

QUINAULT—A polygon commencing at the Pacific coast shoreline near Destruction Island, located at lat. 47°40′06″ N, long. 124°23′51.362″ W; then proceeding west approximately 30 nm (55.6 km) at that latitude to a northwestern point located at lat. 47°40′06″ N, long. 125°08′30″ W; then proceeding in a southeasterly direction mirroring the coastline no farther than 30 nm (55.6 km) from the mainland Pacific coast shoreline at any line of latitude, to a southwestern point at lat. 46°53′18″ N, long. 124°53′53″ W; then proceeding east along that line of latitude to the Pacific coast shoreline at lat. 46°53′18″ N, long. 124°7′36.6″ W.

C.2. Gear Restrictions

a. Single point, single shank, barbless hooks are required in all fisheries.

b. No more than eight fixed lines per boat.

c. No more than four hand held lines per person in the Makah area fishery (Washington State Statistical Area 4B and that portion of the FMA north of 48°02′15″ N lat. (Norwegian Memorial) and east of 125°44′00″ W long.).

C.3. Quotas

a. The quotas include troll catches by the S'Klallam and Makah Tribes in Washington State Statistical Area 4B from May 1 through September 15.

b. The Quileute Tribe may continue a ceremonial and subsistence fishery during the time frame of October 1 through October 15 in the same manner as in 2004–2015. Fish taken during this fishery are to be counted against treaty troll quotas established for the 2024 season (estimated harvest during the October ceremonial and subsistence fishery: 20 Chinook salmon; 40 coho salmon).

C.4. Area Closures

a. The area within a 6 nm (11 km) radius of the mouths of the Queets River (47°31′42″ N lat.) and the Hoh River (47°45′12″ N lat.) will be closed to commercial fishing.

b. A closure within 2 nm (3.7 km) of the mouth of the Quinault River (47°21′00″ N lat.) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

C.5. Inseason Management

In addition to standard inseason actions or modifications already noted under the ''Season Description'' heading above, the following inseason guidance is provided by NMFS:

a. Chinook remaining from the May through June treaty-Indian ocean troll harvest guideline north of Cape Falcon may be transferred to the July through September harvest guideline on a fishery impact equivalent basis.

Section 4. Halibut Retention

Under the authority of the Northern Pacific Halibut Act, NMFS promulgated regulations governing the Pacific halibut fishery, which appear at 50 CFR part 300, subpart E. On March 7, 2023, NMFS published a final rule announcing the International Pacific Halibut Commission's (IPHC) regulations, including season dates, management measures, TAC for each IPHC management area including the U.S. West Coast (Area 2A), and Catch Sharing Plan for the U.S. waters off of Alaska (88 FR 14966, March 7, 2023). The Area 2A Catch Sharing Plan, in combination with the IPHC regulations, provides that vessels participating in the salmon troll fishery in Area 2A, which have obtained the appropriate permit, may retain halibut caught incidentally during authorized periods in conformance with provisions published with the annual salmon management measures. A salmon troller may participate in the halibut incidental catch fishery during the salmon troll season or in the directed commercial fishery targeting halibut, but not both.

The following measures have been approved by the IPHC and implemented by NMFS. During authorized periods, the operator of a vessel that has been issued an incidental halibut harvest permit may retain Pacific halibut caught incidentally in Area 2A while trolling for salmon. Halibut retained must be no less than 32 inches (81.3 cm) in total length, measured from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail, and must be landed with the head on.

Permit applications for incidental harvest must be obtained from the WCR Permits Office (phone: 562–980–4238 or *wcr-permits@noaa.gov*). Applicants must apply prior to March 1 for 2023 permits. Incidental harvest is authorized only during April, May, and June of the 2023 salmon troll seasons and after June 30 in 2023 if the quota remains and if announced on the NMFS hotline (phone: 800–662–9825 or 206–526–6667). WDFW, ODFW, and CDFW will monitor landings. If the landings are projected to exceed the 45,497 pound (20,637 kg) preseason allocation or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to prohibit retention of halibut in the non-Indian salmon troll fishery.

Incidental halibut harvest regulations, including season dates, management measures, and TAC for each IPHC management area, are listed under C.7 of Section 1: Commercial Management Measures for 2023 Ocean Salmon Fisheries.

Section 5. Geographical Landmarks

Wherever the words ''nautical miles off shore'' are used in this document, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this document are at the following locations:

U.S./Canada border	49°00′00″ N lat.
Cape Flattery, WA	48°23′00″ N lat.
Cape Alava, WA	48°10′00″ N lat.
Queets River, WA	47°31′42″ N lat.
Leadbetter Point, WA	46°38′10″ N lat.
Cape Falcon, OR	45°46′00″ N lat.
South end Heceta Bank Line, OR.	43°58′00″ N lat.
Humbug Mountain, OR	42°40′30″ N lat.

Oregon-California border	42°00′00″ N lat.
Humboldt South Jetty, CA	40°45′53″ N lat.
40°10′ line (near Cape Mendocino, CA).	40°10′00″ N lat.
Horse Mountain, CA	40°05′00″ N lat.
Point Arena, CA	38°57′30″ N lat.
Point Reyes, CA	37°59′44″ N lat.
Point San Pedro, CA	37°35′40″ N lat.
Pigeon Point, CA	37°11′00″ N lat.
Point Sur, CA	36°18′00″ N lat.
Point Conception, CA	34°27′00″ N lat.
U.S./Mexico border	34°27′00″ N lat.

Section 6. Inseason Notice Procedures

Notice of inseason management actions will be provided by a telephone hotline administered by the West Coast Region, NMFS, 800–662–9825 or 206–526–6667, and by USCG Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be published in the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or USCG broadcasts for current information for the area in which they are fishing.

Classification

NMFS is issuing this rule pursuant to section 305(d) of the MSA. In a previous action taken pursuant to section 304(b), the Council designed the FMP to authorize NMFS to take this action pursuant to MSA section 305(d). See 50 CFR 660.408. These regulations are being promulgated under the authority of 16 U.S.C. 1855(d) and 16 U.S.C. 773(c).

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

The Assistant Administrator for Fisheries finds good cause under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for public comment, as such procedures would be impracticable and contrary to the public interest.

The annual salmon management cycle begins May 16 and continues through May 15 of the following year. May 16 was chosen because it provides the minimally necessary time required to complete the necessary environmental and economic analyses and regulatory documentation following the April Council meeting in time for the Secretary of Commerce to approve and implement the Council's annual recommendation. In addition, these harvests constitute a relatively small portion of the annual catch, allowing for the majority of the season to be governed by the new management measures rule. Analysis by the Council's Salmon Technical Team determined that the pre-May 16 salmon harvests would constitute a relatively small portion of the annual catch. The time frame of the preseason process for determining the annual modifications to ocean salmon fishery management measures depends on when the pertinent biological data are available. Salmon stocks are managed to meet annual spawning escapement goals or specific exploitation rates. Achieving either of these objectives requires designing management measures that are appropriate for the ocean abundance predicted for that year. These pre-season abundance forecasts, which are derived from previous years' observed spawning escapement, vary substantially from year to year and are not available until February because spawning escapement continues through the fall.

The preseason planning and public review process associated with developing Council recommendations is initiated in February as soon as the forecast information becomes available. The public planning process requires coordination of management actions of four states, numerous Indian tribes, and the Federal Government, all of which have management authority over the stocks. This complex process includes the affected user groups, as well as the general public. The process is compressed into a 2-month period culminating with the April Council meeting at which the Council adopts a recommendation that is forwarded to NMFS for review, approval, and implementation of fishing regulations effective on May 16. Providing the opportunity for prior notice and public comments on the Council's recommended measures through a proposed and final rulemaking process would require 30 to 60 days in addition to the 2-month period required for the development of the regulations. Delaying implementation of annual fishing regulations, which are based on the current stock abundance projections, for an additional 60 days would require that fishing regulations for May and June be set in the previous year, without the benefit of information regarding current stock abundance. For the 2023 fishing regulations, the current stock abundance was not available to the Council until February. In addition, information related to northern fisheries and stock status in Alaska and Canada which is important to assess the amount of available salmon available to southern U.S. ocean fisheries is not available until mid-to late March. Because a substantial amount of fishing normally occurs during late May and June, managing the fishery with measures developed using the prior year's data could have significant adverse effects on the managed stocks, including ESA-listed stocks. Although salmon fisheries that open prior to May 16 are managed under measures developed the previous year, as modified by the Council at its March and April meetings, relatively little harvest occurs during that period (*e.g.,* on average, 10 percent of commercial and recreational harvest occurred prior to May 1 during the years 2011 through 2018). Allowing the much more substantial harvest levels normally associated with the late-May and June salmon seasons to be promulgated under the prior year's regulations would impair NMFS' ability to protect weak and ESA-listed salmon stocks, and to provide harvest opportunities where appropriate. The choice of May 16 as the beginning of the regulatory season balances the need to gather and analyze the data needed to meet the management objectives of the salmon FMP and the need to manage the fishery using the best available scientific information.

If the 2023 measures are not in place on May 16, salmon fisheries will not open as scheduled. This would result in lost fishing opportunities, negative economic impacts, and confusion for the public as the state fisheries adopt concurrent regulations that conform to the Federal management measures.

In addition, these measures were developed with significant public input. Public comment was received and considered by the Council and NMFS throughout the process of developing these management measures. As described above, the Council took comments at its March and April meetings and heard summaries of comments received at public meetings held between the March and April meetings for each of the coastal states. NMFS also invited comments in a notice published prior to the March Council meeting, and considered comments received by the Council through its representative on the Council.

Based upon the above-described need to have these measures effective on May 16, and the fact that there is limited time available to implement these new measures after the final Council meeting in April, and before the commencement of the 2023 ocean salmon fishing year on May 16, NMFS has concluded it would be impracticable and contrary to the public interest to provide an opportunity for prior notice and public comment under 5 U.S.C. 553(b)(B).

The Assistant Administrator for Fisheries also finds that good cause exists under 5 U.S.C. 553(d)(3), to waive the 30-day delay in the date of effectiveness of this final rule. As previously discussed, data were not available until February, and management measures were not finalized until mid-April. These measures are essential to conserve threatened and endangered ocean salmon stocks as well as potentially overfished stocks, and to provide for the harvest of more abundant stocks. Delaying the date of effectiveness of these measures by 30 days could compromise the ability of some stocks to attain their conservation objectives, preclude harvest opportunity, and negatively impact anticipated international, state, and tribal salmon fisheries, thereby undermining the purposes of this agency action and the requirements of the MSA.

To enhance the fishing industry's notification of these new measures, and to minimize the burden on the regulated community required to comply with the new regulations, NMFS is announcing the new measures over the telephone hotline (800–662–9825 or 206–526–6667) used for inseason management actions and is posting the regulations on its West Coast Region website (*www.fisheries.noaa.gov/region/west-coast*). NMFS is also advising the states of Washington, Oregon, and California of the new management measures. These states announce the seasons for applicable state and federal fisheries through their own public notification systems.

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

This action contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), and which have been approved by the Office of Management and Budget (OMB) under control number 0648–0433. The current information collection approval expires on February 29, 2024. The public reporting burden for providing notifications if landing area restrictions cannot be met is estimated to average 15 minutes per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This final rule was developed after meaningful consultation with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

Authority: 16 U.S.C. 773–773k; 1801 *et seq.*

Dated: May 8, 2023.

Samuel D. Rauch, III,

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

[FR Doc. 2023–10090 Filed 5–10–23; 8:45 am]

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Proposed Rules

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531, 532, 534, and 930

RIN 3206–AO39

Advancing Pay Equity in Governmentwide Pay Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is proposing revisions to the criteria for making salary determinations based on salary history to advance pay equity in the General Schedule pay system, Prevailing Rate Systems, Administrative Appeals Judge pay system, and Administrative Law Judge pay system.

DATES: Comments must be received on or before June 12, 2023.

ADDRESSES: You may submit comments, identified by RIN number ''3206–AO39,'' and title using the following method:

Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Carey Jones by telephone at (202) 606–2858 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is proposing revisions to the criteria for making salary determinations based on salary history to advance pay equity in the General Schedule (GS) pay system, Prevailing Rate Systems, Administrative Appeals Judge (AAJ) pay system, and Administrative Law Judge (ALJ) pay system.

For the purpose of this proposed notice, ''salary history'' refers to the salary a job candidate is currently receiving (*i.e.,* their existing salary) or the salary the candidate has been paid in a previous job (*i.e.,* prior salary). In the hiring practices of some employers, when an individual applies to a job and is being considered for employment, the employer may ask questions about the individual's salary history (if not otherwise prohibited from doing so). These questions may be raised when the candidate's salary is being negotiated. For example, the employer may make a tentative job offer to the individual that includes the salary for the position and the individual rejects the initial job offer stating that the salary is too low and shares information on their salary history to negotiate higher compensation. Or the employer could ask the job candidate questions to determine what salary to include in the initial job offer. Another scenario is that a job candidate may voluntarily provide their salary history without being asked before a job or salary offer is made by the employer, which the employer may then use to determine the initial job or salary offer. Such salary negotiation practices using a job candidate's salary history are currently allowed under the Federal Government's GS pay system, Prevailing Rate Systems, AAJ pay system, and ALJ pay system.

However, setting pay based on an individual's salary history may maintain or exacerbate pay inequity a job candidate experienced in their current or previous employment. Nationally, women earn less than men, on average, and this pay gap varies by race and ethnicity. Data is available on the Department of Labor Women's Bureau website.[1] As will be discussed later in this Supplementary Information, gender and race/ethnicity pay gaps also exist in the Federal Government's civil service, though such gaps are typically smaller than in the private sector.

The Federal Government's civilian personnel management systems are required to adhere to a set of merit system principles established in law at 5 U.S.C. 2301. Included in the merit system principles that apply to the Federal Government's civil service systems are the following:

[1] Department of Labor Women's Bureau. ''Earnings and Ratios.'' *https://www.dol.gov/agencies/wb/data/earnings.*

- 5 U.S.C. 2301(b)(2)—''All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.''
- 5 U.S.C. 2301(b)(3)—''Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.''

The Federal Government strives to be a model employer, one that values diversity, equity, inclusion, and accessibility (DEIA). OPM is proposing these regulations to advance pay equity in pay setting for Federal employees. For individuals receiving their first appointment as a civilian employee of the Federal Government, agencies would not be able to set pay based on salary history, which could vary between equally qualified candidates. Agencies would be able to consider a competing job offer, but only within limitations specified in the regulations. Agencies would also be required to have policies regarding setting pay based on a previous Federal salary for employees who have previous civilian service in the Federal Government.

Background

Advancing Diversity, Equity, Inclusion, and Accessibility in the Federal Government

On June 25, 2021, President Biden signed Executive Order (E.O.) 14035 (86 FR 34593), titled ''Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce.'' To address any pay inequities and advance equal pay, section 12 of E.O. 14035 required the Director of OPM to review Governmentwide regulations and, as appropriate and consistent with applicable law, consider prohibiting the use of an applicant's salary history to set pay or when setting pay for a Federal employee. On March 15, 2022, the President issued E.O. 14069 (87 FR 15315), titled ''Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency.'' Section 1 of that

E.O. (describing the policy objectives of the E.O.) notes that OPM anticipates issuing a proposed rule that would address the use of salary history in the hiring and pay-setting processes for Federal employees, consistent with E.O. 14035. OPM has reviewed the pay-setting regulations governing the GS pay system, Prevailing Rate Systems, AAJ pay system, and ALJ pay system, and is issuing this proposed rule in response to E.O. 14035 and pursuant to its regulatory authority in 5 U.S.C. 5333, 5338, 5343(c), 5372(c), and 5372b(b), consistent with the merit system principles discussed above.

These proposed regulations are one of many actions OPM, agencies, and the Administration are taking to advance DEIA in the Federal workforce. In November 2021, the White House issued a Governmentwide DEIA strategic plan.[2] It includes an equity roadmap, which states that the Federal Government must provide all employees, including employees who may experience multiple forms of discrimination, with equal opportunities to advance in their careers and grow as leaders by mitigating any potential biases or barriers to professional development and promotion. It also states that as an employer, the Government has the responsibility to take steps to advance fair outcomes and access to services. The roadmap has examples, which include establishing policies that do not rely solely on salary history to set pay and regularly conducting pay equity audits to assess whether similarly situated individuals are equitably compensated for similar work.

OPM's strategic goals for FY 2022–2026 state the agency's aspirations to meet its mission and address national problems, needs, challenges, and opportunities on behalf of the American people.[3] These regulations if finalized as currently proposed would support OPM's first strategic goal to position the Federal Government as a model employer and advance DEIA by supporting efforts to (1) achieve a Federal workforce that is drawn from the diversity of America, exhibited at all levels of Government; and (2) embrace the future of work with model policies and initiatives in hiring, talent development, competitive pay, benefits, and workplace flexibilities.

2014 Governmentwide Strategy To Advance Pay Equality in the Federal Government

OPM is building on previous work focused on the issue of gender pay equality, which emphasizes equal pay between women and men with the same jobs and is similar to gender pay equity, which analyzes systemic reasons for wage disparities. In 2014, OPM issued a Governmentwide Strategy to Advance Pay Equality in the Federal Government in response to a 2013 Presidential memorandum.[4] OPM analyzed workforce data reported by agencies to OPM central data systems and produced three overall types of statistical reports: workforce snapshot data, regression-decomposition data analysis, and dynamic data on certain personnel actions such as use of pay-setting flexibilities for new hires and promotion and quality step increase actions (an additional discretionary increase in pay based on outstanding performance). OPM calculated the gender pay gap, which is the percentage difference between the average salaries of men and women, for 1992, 2002, and 2012. OPM also collected information agencies provided in response to an OPM data call memorandum.

OPM employed multivariate regression-decomposition analysis to determine which factors most influenced the gender pay gap. Application of decomposition methods allowed OPM to decompose the pay gap into an explained portion (*i.e.,* portion attributable to the factors included in the analysis) and an unexplained portion. The occupation factor had by far the largest impact on the explained portion of the pay gap. In 2012, 76 percent of the explained portion of the gender pay gap for the white-collar population was explained by occupation. (The term ''white collar'' refers to employees who agencies code using the ''professional'', ''administrative'', ''technical'', ''clerical'', or ''other white collar'' occupational category data element in data reported to OPM.) No other factor accounted for more than 10 percent of the explained portion of the gap. OPM identified possible theoretical explanations for the unexplained portion of the pay gap including discrimination, prior work experience outside the Federal Government, and caregiving responsibilities (*e.g.,* elder care or age of children being cared for). (Some of these possible explanations were also identified in a 2009 Government Accountability Office report.)[5]

The 2013 Presidential memorandum required each agency to provide OPM information on and an analysis of all agency-specific policies and practices for setting starting salaries for new employees. Some agencies reported that their policies on the superior qualifications and special needs pay-setting authority required the use of a job candidate's existing salary, or that existing salary must be considered when setting pay of a new GS employee. In response, OPM revised its fact sheet on the superior qualifications and special needs pay-setting authority to remind agencies that existing salary is only one factor an agency may use when setting pay under this authority and to clarify the regulatory criteria. (This authority is explained in the ''GS Basic Pay Setting'' section below.)

OPM worked with agencies to implement a number of other recommendations in the Governmentwide strategy, which are summarized in a 2015 memorandum.[6] OPM implemented all of the recommendations between 2014 and 2016. OPM's actions are also summarized in Appendix VI to GAO's 2020 report ''Gender Pay Differences: The Pay Gap for Federal Workers Has Continued to Narrow, but Better Data on Promotions Are Needed.''[7]

Federal Government Pay Gaps

OPM has been periodically updating its pay gap data analysis since issuing the 2014 Governmentwide strategy. Based on September 2021 Enterprise Human Resources Integration (EHRI)[8] data covering nonseasonal, full-time,

[2] The White House. ''Governmentwide Strategic Plan to Advance Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce,'' November 2021. *https://www.whitehouse.gov/wp-content/uploads/2021/11/Strategic-Plan-to-Advance-Diversity-Equity-Inclusion-and-Accessibility-in-the-Federal-Workforce-11.23.21.pdf.*

[3] Office of Personnel Management. ''Strategic Plan Fiscal Years 2022–2026.'' March 2022. *https://www.opm.gov/about-us/strategic-plan/03454-fy2022-2026-strategicplan-lookbook-508pdf.pdf.*

[4] Office of Personnel Management. ''Governmentwide Strategy on Advancing Pay Equality in the Federal Government,'' April 2014. *https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/reports/Governmentwide-Strategy-on-Advancing-Pay-Equality-in-the-Federal-Government.pdf.*

[5] Government Accountability Office. ''Women's Pay: Gender Pay Gap in the Federal Workforce Narrows as Differences in Occupation, Education, and Experience Diminish.'' April 2009. *https://www.gao.gov/products/gao-09-279.*

[6] Office of Personnel Management. ''Additional Guidance on Advancing Pay Equality in the Federal Government,'' July 2015. *https://www.chcoc.gov/content/additional-guidance-advancing-pay-equality-federal-government.*

[7] Government Accountability Office. ''Gender Pay Differences: The Pay Gap for Federal Workers Has Continued to Narrow, but Better Data on Promotions Are Needed,'' December 2020. *https://www.gao.gov/products/gao-21-67* (GAO notes on its website that the one recommendation from the report for the Equal Employment Opportunity Commission was implemented and has been closed. There were no recommendations for OPM.)

[8] Office of Personnel Management. ''About Our Data (EHRI–SDM).'' *https://www.fedscope.opm.gov/datadefn/aehri_sdm.asp.*

permanent Executive branch employees, on average for all race/ethnicity groups combined, women are paid 94 cents for every dollar paid to a man—a gender pay gap of six percent. This raw, unadjusted gender pay gap of 6 percent is before considering any factors that might explain the gap, such as occupation. For comparison purposes, OPM looked at data from the Current Population Survey Annual Social and Economic Supplements conducted by the Census Bureau. That data showed a national 16 percent gender pay gap in 2021, based on the median earnings of men and women who worked full-time, year-round.[9] We note this comparison is not perfect because the Federal pay gap is computed using average salaries instead of median salaries.

OPM also conducted some analysis regarding pay gaps for groups of employees identified by both gender and race/ethnicity. OPM calculated pay gaps comparing (1) women to men in the same racial/ethnic group to understand disparities by gender and (2) men and women in each racial/ethnic group compared to White men to understand overlapping disparities by gender and race/ethnicity. This analysis revealed that pay gaps varied significantly depending on the specific population. For example, there is a raw, unadjusted gender pay gap of −0.4 percent between men and women in the Black/African American racial ethnic group (that is, the average salaries for Black/African American women are 0.4 percent above the average salaries for Black/African American men), but there is a raw, unadjusted pay gap of 15.6 percent between Black/African American men and White men, and a raw, unadjusted pay gap of 15.2 percent between Black/African American women and White men. As another example, there is a raw, unadjusted gender pay gap of 11.2 percent between men and women in the American Indian/Alaskan Native racial/ethnic group, but a raw, unadjusted pay gap of 18 percent between American Indian/Alaskan Native men and White men, and a raw, unadjusted pay gap of 27.2 percent between American Indian/Alaskan Native women and White men. OPM will be releasing more information on its pay gap data analysis results separately.

Many factors may contribute to the overall gender and race/ethnicity pay gaps in the Federal Government. In conducting its data analysis, OPM observed evidence of some of these factors at play. For example, more women than men occupy positions classified at lower GS grades with lower pay, while more men than women occupy positions classified at higher GS grades with higher pay and in higher-paying Senior Executive Service positions. Data indicated that, for each GS grade, women and men had close to the same average position in range (average step position). Factors such as length in service, quality step increases, and—most significantly for this regulation—how pay is set upon personnel actions such as appointment or promotion affect an employee's step position.

OPM found that the size of the gender pay gap varied by occupation. For Executive branch employees in occupational series with more than 100 employees, the average salary percentage for women was 95–99.9 percent of the average salary for men in 42 percent of the occupational series analyzed (199 out of 473 occupational series). The average salary percentage for women was less than 95 percent of the average salary for men in 28 percent of the occupational series analyzed (131 out of 473 occupational series). The average salary for women exceeded the male average salary in 30 percent of the occupational series analyzed (143 out of 473 occupational series). OPM also calculated population-weighted averages. To make this calculation, OPM first computed the raw, unadjusted pay gap for each occupation. Then OPM computed a weighted average of those individual occupation pay gaps, weighting the average based on the size of each occupation subpopulation as a percentage of the total population. This weighted average can shed light on the effect of the varying distribution of men and women across subpopulation categories. The population-weighted average should be compared to the overall raw average. The population-weighted average gender pay gap based on pay gaps in individual occupations was two percent. This indicates the distribution of men and women across occupational categories is a major factor contributing to the gender pay gap. In other words, there are more men than women in higher-paying occupations (*i.e.,* occupational segregation).

OPM's findings are consistent with research on the national workforce. A November 2020 research paper[10] also found that the gender pay gap varied significantly by occupation. There was no gender pay gap in some occupations, but gender pay gaps as large as 45 percent in others. The researchers found larger gender pay gaps in occupations that were more competitive and hazardous, occupations that reward longer hours of work, and those that have a larger proportion of women workers.

Pay Transparency

A literature review suggests that pay transparency can help reduce gender pay gaps. For example, Mercer, a human resources consulting firm, states in its 2020 report, ''The Case for Pay Transparency,'' a combination of pay transparency and data analysis can result in ''fairer pay equity outcomes.''[11] When an online recruitment platform for full-time engineering jobs in the United States began providing job candidates the median salary that firms offer for similar candidates, it eliminated the extent to which women ask for lower salaries than comparable men.[12]

Researchers found that employers posted wages more often following salary history bans, such as those mentioned in the ''State Laws'' section of this Supplementary Information. The rate of posting salaries in online help wanted ads increased ''sharply'' the quarter after a salary history ban went into effect. ''The national share of online help wanted ads listing salary information increased by around a quarter of all ads following the introduction of salary history bans in a dozen states.''[13]

OPM already posts the GS and other Governmentwide pay tables that OPM administers on its public website.[14] The Defense Civilian Personnel Advisory Service in the Department of Defense maintains a website with all Federal Wage System (FWS) wage schedules.[15] (Most but not all prevailing rate system employees are consolidated under the FWS.) In 2014, OPM worked with agencies to promote posting of GS

[9] U.S. Census Bureau. ''Figure 6. Female-to-Male Earnings Ratio and Median Earnings of Full-Time, Year-Round Workers 15 Years and Older by Sex: 1960 to 2021.'' *https://www.census.gov/content/dam/Census/library/visualizations/2022/demo/p60-276/figure6.pdf.*

[10] Foster, T., Murray-Close, M., Landivar, L., & de Wolf, M. ''An Evaluation of the Gender Wage Gap Using Linked Survey and Administrative Data,'' November 2020. *https://www.census.gov/library/working-papers/2020/adrm/CES-WP-20-34.html.*

[11] Mercer, LLC. ''The Case for Pay Transparency,'' 2020. *https://www.mercer.us/content/dam/mercer/attachments/north-america/us/us-2020-the-case-for-pay-transparency.pdf.*

[12] Roussille, N. ''The Central Role of the Ask Gap in Gender Pay Inequality,'' July 2022. *https://ninaroussille.github.io/files/Roussille_askgap.pdf.*

[13] Bessen, J., Meng, C., and Denk, E. ''Perpetuating Inequality: What Salary History Bans Reveal About Wages.'' February 2021. *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3628729.*

[14] Office of Personnel Management. ''Salaries & Wages.'' *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/.*

[15] Defense Civilian Personnel Advisory Service. ''Wage and Salary.'' *https://wageandsalary.dcpas.osd.mil/BWN/WageIndex/.*

equivalent-level salary tables or rate ranges on public websites and to make them available to job candidates.

Agencies are required by law and regulation to post starting pay on competitive service job announcements, which also helps with transparency. Under 5 U.S.C. 3330, OPM must establish and keep current a comprehensive list of all announcements of vacant positions in the competitive service within each agency that are to be filled by appointment for more than one year and for which applications are being (or will soon be) accepted from outside the agency's workforce. The law states that the ''rate of pay'' must be included for any position listed. OPM's regulations implementing this law for competitive service positions are in 5 CFR 330.104. Regarding salary, the regulations state that the vacancy must contain the starting pay. OPM maintains USAJOBS [16] as a web-based job board to meet its legal obligation. Any position listed must include, among other things, a brief description of the position, including its title, tenure, location, and rate of pay. USAJOBS displays the starting salary in the search results and the full salary range in the job announcement. USAJOBS requires that agencies include a minimum and maximum salary.[17] For example, the agency would post the step 1 rate (the minimum rate) and the step 10 rate (maximum rate) for a GS grade, including any additional locality payment or special rate supplement for the position. After issuing the 2014 Governmentwide strategy, OPM added a frequently asked question about how pay is set for employees new to the Federal Government in the Help section of the USAJOBS website.[18]

These proposed regulations cover positions that are in the competitive and excepted service. However, most excepted service positions are not required to be posted on USAJOBS. Agencies filling excepted service positions are responsible for determining how to advertise positions. Typically, job announcements for excepted service positions can be found on individual agency websites.

State Laws

As of the date this **Federal Register** notice was drafted, 21 states have laws or executive orders that address whether and to what extent hiring employers may seek, use, or discuss an applicant's salary history.[19] In a July 2020 paper regarding salary history bans, such as those in state laws, the authors indicated: ''The stated motivation of these pay history inquiry bans is to reduce pay path dependence for historically disadvantaged groups that systematically earned lower pay in the past. Specifically, policymakers contend that banning pay history inquiries will prevent employers from unintentionally perpetuating pay disparities by basing salary offers on past pay.'' [20] The salary history prohibitions in Michigan, North Carolina, and Pennsylvania only apply to state agencies. The prohibitions in other states generally apply to both public and private employers, with some limitations and exclusions.

The provisions in the state laws and executive orders, however, vary widely. Some states—including Colorado (Senate Bill 19–085), Illinois (820 ILCS 112/10), Nevada (SB 293), and North Carolina (Executive Order No. 93)—prohibit employers from both seeking a job applicant's salary history and from relying on that salary in setting pay. Most states, however, allow some exceptions to their salary history bans, including allowing an employer to set pay based on prior salary history if the applicant voluntarily discloses it. But these laws often impose additional restrictions, including, for example, only allowing an employer to rely on an applicant's voluntarily-disclosed salary history if doing so does not create an unlawful pay differential. (For example, see § 3–304.2 in Maryland's Equal Pay for Equal Work law in Labor and Employment Article Title 3, Subtitle 3.)

OPM Review of Governmentwide Regulations

As required by section 12(a) of E.O. 14035, and as described above, OPM reviewed the regulations on Governmentwide pay systems to identify whether any changes could address pay equity in the Federal workforce—consistent with the merit system principles set forth in statute at 5 U.S.C. 2301. Through this proposed regulation, OPM is taking action to address the treatment of a candidate's salary history when setting pay upon an employee's first appointment in the Federal Government. Currently, OPM's regulations do not require a Federal job applicant to share their salary history for an agency to make a hiring or pay-setting decision. (For the purpose of this rule, an applicant is a person who has asked to be considered for a job with an agency and is not currently employed by any agency. A candidate is a person who an agency is considering for a job with the agency and the person is not currently employed by any agency.) Current OPM regulations, however, specifically allow agencies to request an applicant's salary history and apply it as a factor in setting initial pay in certain situations after determining that the candidate has superior qualifications or the agency has a special need for the candidate's services. These proposed regulations change that policy—under these regulations, agencies may not consider an applicant's salary history when setting pay for newly appointed Federal employees in certain pay systems. OPM is thus proposing revisions to the criteria for making salary determinations based on salary history in certain pay-setting regulations for the GS pay system, Prevailing Rate Systems, AAJ pay system, and ALJ pay system. (The proposed regulatory changes for each of these pay systems is explained below.)

OPM is not proposing to revise the regulations on setting pay for Senior Executive Service (SES) positions. Those regulations do not include consideration of salary history in setting pay. The regulations in 5 CFR 534.404(a) state, in part, ''In setting a new senior executive's rate of basic pay, an agency must consider the nature and quality of the individual's experience, qualifications, and accomplishments as they relate to the requirements of the SES position, as well as the individual's current responsibilities.'' Further, we note that, as of September 2021, the gender pay gap for SES positions on average for all race/ethnicity groups combined was less than 1 percent.

Similarly, OPM does not propose revising the regulations on setting pay for Senior-Level (SL) and Scientific or Professional (ST) positions. The regulations in 5 CFR 534.506(a) state, in part, ''In setting a new senior professional's rate of basic pay, an agency must consider the nature and quality of the individual's experience, accomplishments, and any unique skills, qualifications, or competencies

[16] Office of Personnel Management. ''USAJOBS.'' *www.usajobs.gov.*

[17] Office of Personnel Management. ''Job Announcement Playbook.'' *https://usajobs.github.io/ATP-Support/job-announcement-playbook/details/overview/#salary.*

[18] Office of Personnel Management. ''How is Pay Set for Employees New to the Government?'' *https://www.usajobs.gov/Help/faq/pay/setting/.*

[19] National Women's Law Center. ''Progress in the States for Equal Pay,'' January 2023. *https://nwlc.org/wp-content/uploads/2023/01/Equal-Pay-Progress-in-the-States-1.12.23.pdf* and University of California, Irvine. ''The Pay Equity Project—Fifty-State Pay Equity Law Summary'', November 2021. *https://www.law.uci.edu/centers/pay-equity-project/images/50-state-law-chart.pdf.*

[20] Sran, G., Vetter, F. & Walsh, M. ''Employer Responses to Pay History Inquiry Bans,'' July 2020. *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3587736.*

the individual possesses as they relate to requirements of the senior professional position and its impact on the agency's performance.'' The regulations do not mention consideration of salary history. Further, we note that, as of September 2021, the gender pay gap for SL/ST positions on average for all race/ethnicity groups combined was less than 1 percent.

GS Basic Pay Setting

The GS classification and pay system under 5 U.S.C. chapter 53, subchapter III, covers most civilian Federal employees in professional, technical, administrative, and clerical occupations. The GS system is designed with standardized classification criteria for determining the grade levels of positions, and each GS grade has a range of pay consisting of 10 step rates. OPM may prescribe regulations necessary for the administration of GS pay rates under 5 U.S.C. 5338. The GS system has standardized rules for setting pay within a grade's rate range for employees entering Federal service for the first time, returning to Federal employment, and receiving promotions or other position changes within the Federal Government. These standardized rules help to promote equitable treatment among employees. Where there is pay-setting flexibility, agencies must apply such flexibilities in neutral ways so as not to disadvantage any individual based on protected characteristics, consistent with 5 U.S.C. 2301(b)(2).

New GS employees are usually hired at the step 1 rate of the applicable GS grade for their position. An agency may use a discretionary authority in 5 CFR 531.212 to set a newly appointed GS employee's rate of basic pay above the minimum of the rate range based on the candidate's superior qualifications or a special agency need. After an agency has determined that a candidate has superior qualifications or that the agency has a special need for the candidate's services under the criteria in 5 CFR 531.212(b), the agency must determine the step rate at which to set the employee's pay in the rate range for the grade of the employee's position. An agency may set pay at any rate within the rate range, up to the maximum rate (step 10). The current regulations at 5 CFR 531.212(c) state that an agency may consider one or more of nine specified factors or other relevant factors in making this step rate determination. One of these factors is the candidate's existing salary, recent salary history, or salary documented in a competing job offer. Other factors include significant disparities between Federal and non-Federal salaries for the skills and competencies required in the position to be filled and the success of recent efforts to recruit candidates for the same or similar positions. An agency must document the justification for each use of this pay flexibility in writing, and an official at least one level higher than the employee's supervisor must approve the decision before the candidate enters on duty. OPM provides guidance to agencies on this authority in a fact sheet.[21] Agencies may have more specific policies to supplement OPM's regulations and guidance.

OPM proposes revising 5 CFR 531.212(c) to prohibit an agency from considering a job candidate's salary history (defined as existing salary or prior salary) in setting pay when using the GS superior qualifications and special needs pay-setting authority. The proposed regulations would require an agency to consider how pay has been set for other employees who had similar qualifications (based on the level, type, or quality of the candidate's skills or competencies or other qualities and experiences) who have been newly appointed to positions that are similar to the candidate's position (based on the position's occupational series, grade level, organization, geographic location, or other job-relevant factors), if applicable. The regulations would continue to allow an agency to consider the salary in a competing job offer. The competing job offer could be based on salaries for the skills and competencies required in the position to be filled. However, the regulations would require an agency to consider at least one other factor specified in 5 CFR 531.212(c)(2) (in addition to how pay has been set for other employees) if the agency is considering a competing job offer when setting pay under this authority. A determination based on more than one factor provides a stronger justification and mitigates any potential pay inequity from considering a competing job offer that may have been based on the candidate's salary history.

Another pay flexibility agencies may use when setting GS pay is the maximum payable rate (MPR) rule. This rule allows an agency to set an employee's pay at a rate above the rate that would be established using normal rules, based on the employee's ''highest previous rate'' earned in a previous Federal civilian job. The rule may be used in various personnel actions including upon reemployment, promotion, or demotion. OPM also provides guidance on this authority in a fact sheet.[22]

OPM proposes adding in 5 CFR 531.221 that an agency must establish a policy regarding use of the GS maximum payable rate rule that includes elements specified in the regulations, such as considering how pay has been set for employees performing similar work in the organization (based on the position's occupational series, grade level, types of duties, or other job-relevant factors). Requiring agencies to have a policy regarding their use of this discretionary pay authority will provide transparency and support consistent use among employees. The policy would be used to clarify if the agency uses the rule, in what situations, and how the agency will set pay in those situations. For example, the policy could specify whether the agency will always set pay at the maximum payable rate upon demotion and, if not, how much pay will be set below the maximum payable rate (*e.g.,* two steps below the maximum payable rate), as long as the employee's rate is not lower than the rate to which the employee is otherwise entitled (*i.e.,* pay cannot be set below the step 1 rate upon voluntary demotion to a lower grade).

Prevailing Rate Systems Pay Administration

The prevailing rate system under 5 U.S.C. chapter 53, subchapter IV, is a uniform pay-setting system that covers FWS appropriated fund and nonappropriated fund employees who are paid by the hour. Under 5 U.S.C. 5343(c)(5), OPM must prescribe regulations governing the administration of pay on appointment, transfer, promotion, demotion, and other similar changes in employment status. Generally, a new appointment to a prevailing rate position must be made at the minimum (step 1) rate of the grade of the employee's position. Under 5 CFR 532.403, an agency may make an appointment at a rate above the minimum rate of the appropriate grade of a prevailing rate schedule in recognition of an appointee's special qualifications. Subchapter S8 of the FWS Appropriated Fund Operating Manual and Subchapter S8 of the FWS Nonappropriated Fund Operating Manual[23] provide the example of when

[21] Office of Personnel Management. ''Superior Qualifications and Special Needs Pay-Setting Authority.'' *https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/superior-qualifications-and-special-needs-pay-setting-authority/.*

[22] Office of Personnel Management. ''Maximum Payable Rate Rule.'' *https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/maximum-payable-rate-rule/.*

[23] Office of Personnel Management. (2022). *Subchapter S8 Pay Administration. https://*

Continued

an applicant has skills and experience of an exceptional or highly specialized nature in the employee's trade or craft. However, the regulations and operating manuals currently do not address how an agency determines the appropriate rate at which to set pay for an appointee who has special qualifications.

OPM proposes to revise 5 CFR 532.403 so that an agency would not be able to consider the appointee's pay history (defined as existing pay or prior pay) in determining the rate at which to set pay. (In the FWS regulations, the term ''pay history'' is proposed, but has the same general meaning as ''salary history.'') An agency would be required to consider how pay has been set for employees who had similar qualifications (based on the level, type, or quality of the appointee's skills or competencies or other qualities and experiences) and have been newly appointed to positions that are similar to the appointee's position (based on the position's occupational series, grade level, organization, geographic location, or other job-relevant factors), if applicable. An agency could consider other relevant factors such as the level, type, or quality of the appointee's skills and competencies or the pay documented in a competing job offer, except that an agency must consider an additional relevant factor if considering a competing job offer.

Under 5 CFR 532.405, when an employee in a prevailing rate system is reemployed, reassigned, transferred, promoted, or changed to a lower grade, the agency may fix the employee's pay at any rate of the new grade which does not exceed the employee's highest previous rate. OPM proposes adding that an agency must establish a policy governing use of this authority that includes elements specified in the regulations, such as considering how pay has been set for employees performing similar work in the organization (based on the position's occupational series, grade level, types of duties, or other job-relevant factors). This revision is consistent with how OPM proposes revising the GS maximum payable rate rule as described above.

Administrative Appeals Judge Pay Administration

The duties of AAJs involve reviewing decisions of ALJs appointed under 5 U.S.C. 3105 and rendering final administrative decisions. Pursuant to 5 U.S.C. 5108, such positions are not classifiable above GS–15. OPM may prescribe regulations for how pay is set for AAJs under 5 U.S.C. 5372b(b). The AAJ pay system has six rates of basic pay—AA–1, 2, 3, 4, 5 and 6. Upon initial appointment, an agency must set the rate of basic pay of an AAJ at the minimum rate AA–1 of the AAJ pay system, unless the AAJ is appointed without a break in service from a GS position, or the employee is eligible for a higher rate because of prior service or superior qualifications. (See 5 U.S.C. 5372b and 5 CFR part 534, subpart F.) OPM provides guidance on the AAJ pay system in a fact sheet.[24]

An agency may offer an AAJ applicant with prior Federal service a rate up to the lowest rate of basic pay of the AAJ pay system that equals or exceeds the employee's highest previous rate of basic pay in a Federal civil service position, not to exceed the rate of basic pay for AA–6. OPM proposes adding in 5 CFR 534.604 that an agency must establish a policy regarding use of this provision that includes elements specified in the regulations, including that the policy must require consideration of how pay has been set for other AAJs if the agency decides to use this authority. This is consistent with the proposed revisions to the GS and prevailing rate pay system rules described above.

An agency may offer an AAJ applicant with superior qualifications who is not a current Federal employee a higher than minimum rate when such a rate is clearly necessary to meet the needs of the Government. An agency may pay a higher than minimum rate of pay that is next above the applicant's existing pay or earnings, up to the maximum rate AA–6. OPM proposes several revisions to this authority in § 534.604. Agencies would be able to set pay at any rate within the AAJ pay system. OPM proposes adding language that would require an agency to document the superior qualifications of the applicant, the need of the Government for the applicant's services, consideration of how pay has been set for administrative appeals judges who had similar qualifications (based on the level, type, or quality of the appointee's skills or competencies or other qualities and experiences) and have been newly appointed to positions that are similar to the applicant's position (based on the position's occupational series, grade level, organization, geographic location, or other job-relevant factors), if applicable, and an explanation of the factors that were used to justify the rate at which the employee's pay is set. Factors an agency could consider include the success of recent efforts to recruit for the same or similar AAJ positions or significant disparities between Federal and non-Federal salaries for the skills and competencies required in the position to be filled. This documentation would allow an agency to evaluate for equity purposes how pay has been set and reconstruct the action if necessary. An agency would not be able to consider an applicant's or former AAJ's salary history (defined as existing salary or prior salary).

Administrative Law Judge Pay System

ALJs are individuals appointed under 5 U.S.C. 3105 for administrative proceedings conducted in accordance with 5 U.S.C. 556 and 557. The ALJ pay system has three levels of basic pay: AL–1, AL–2, and AL–3. Pay level AL–3 has six rates of basic pay. (See 5 U.S.C. 5372(c) for OPM's authority to issue regulations governing ALJ pay and the implementing regulations in 5 CFR part 930, subpart B.) OPM provides guidance on the ALJ pay system in a fact sheet.[25]

Upon appointment to a position at level AL–3, an ALJ is paid at the minimum rate unless the agency chooses to set pay at a higher rate based on prior service or superior qualifications. OPM proposes revising 5 CFR 930.205 to add that, before an agency sets pay based on the ALJ's highest previous Federal rate of basic pay, the agency must establish a policy that includes certain elements specified in the regulations, including that the policy must require consideration of how pay has been set for other ALJs if the agency decides to use this authority. OPM also proposes revisions to the regulations on setting pay based on the ALJ applicant's superior qualifications in § 930.205. Agencies would be able to submit a request to OPM to set pay at any rate within the AL–3 level. Agencies' requests to OPM would be required to include: (1) the applicant's or former ALJ's superior qualifications; (2) how pay has been set for administrative law judges who had similar qualifications (based on the level, type, or quality of the appointee's skills or competencies or other qualities

www.opm.gov/policy-data-oversight/pay-leave/pay-systems/federal-wage-system/appropriated-fund-operating-manual/subchapter8.pdf and *Subchapter S8 Pay Administration. https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/federal-wage-system/nonappropriated-fund-operating-manual/subchapter8.pdf.*

[24] Office of Personnel Management. ''Administrative Appeals Judge Pay System.'' *https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/administrative-appeals-judge-pay-system/.*

[25] Office of Personnel Management. ''Administrative Law Judge Pay System.'' *https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/administrative-law-judge-pay-system/.*

and experiences) and have been newly appointed to positions that are similar to the ALJ's position (based on the position's occupational series, grade level, organization, geographic location, or other job-relevant factors), if applicable; and (3) the proposed rate of basic pay and justification for that rate. Agencies would not be able to consider an applicant's or former ALJ's salary history (defined as existing salary or prior salary). Other factors an agency could consider include the success of recent efforts to recruit for the same or similar ALJ positions or significant disparities between Federal and non-Federal salaries for the skills and competencies required in the position to be filled. OPM is also proposing minor revisions to reflect changes resulting from Executive Order 13843 ''Excepting Administrative Law Judges from the Competitive Service'' (83 FR 32755), signed July 10, 2018.

Expected Impact of This Proposed Rule

A. Statement of Need

OPM is issuing this proposed rule pursuant to its authority to issue regulations governing the GS, FWS, AAJ, and ALJ pay systems in 5 U.S.C. 5333, 5338, 5343, 5372, and 5372b. The purpose of these regulations is to advance pay equity and DEIA in the Federal Government and position the Federal Government as a model employer. As stated previously, based on September 2021 data covering nonseasonal, full-time, permanent Executive branch employees, gender and racial pay gaps persist. Because setting pay based on a candidate's salary history could potentially perpetuate a pay rate that was inequitable, the Federal Government is taking steps to address the treatment of salary history and establish policies that support equitable pay determinations. Currently, certain regulations allow agencies to request an applicant's salary history and apply it as a factor in setting initial pay in certain situations, including when an applicant volunteers their salary history without prompting. Agencies also are not required by OPM's current regulations to consider how pay has been set for employees performing similar work or candidates who had similar qualifications, if applicable, when using pay-setting flexibilities. In addition, agencies are not required to have policies regarding use of an employee's highest previous Federal rate to set pay.

B. Impact

This proposed rule would prohibit agencies from setting pay based on an applicant's salary history. Agencies would need to consider other factors, such as how pay has been set for employees who had similar qualifications (based on the level, type, or quality of the candidate's skills or competencies or other qualities and experiences) and have been newly appointed to positions that are similar to the candidate's position (based on the position's occupational series, grade level, organization, geographic location, or other job-relevant factors), if applicable. When setting pay based on prior Federal salary for current employees, agencies would be required to have a policy that supports consistency in setting pay for employees.

This rule applies to Federal civilian employees in the GS, prevailing rate, AAJ, and ALJ pay systems. Based on data regarding nonseasonal, full-time, permanent Executive branch employees reported to OPM's EHRI database as of September 2021, there were over 1.3 million GS employees, approximately 160,000 FWS appropriated fund prevailing rate employees, about 1,700 ALJs, and 63 AAJs in the Federal Government. This included approximately 97,000 new hires in the GS pay system, 13,000 new FWS appropriated fund hires, 17 new hires in the ALJ pay system, and 3 new hires in the AAJ pay system. (Nonappropriated fund FWS prevailing rate employees are not reported to EHRI.)

In fiscal year 2021, 9.5 percent of new GS employees (9,216 individual pay actions/authorizations) had their pay set using the superior qualifications and special needs pay-setting authority in 5 CFR 531.212. Of all the authorizations, 21.5 percent were authorized for employees in the 06XX Medical, Hospital, Dental, and Public Health occupational family, 17.4 percent were authorized for employees in the 08XX Engineering and Architecture occupational family, 12.1 percent were authorized for employees in the 03XX General Administrative, Clerical, and Office Services occupational family, and 10.6 percent were authorized for employees in the 22XX Information Technology occupational family. The authority was used more frequently (on a percentage basis) for men than for women: 11.2 percent of non-seasonal full-time permanent (NSFTP) GS new hires who were men had their pay set using the superior qualifications and special needs pay-setting authority, but only 7.9 percent of NSFTP GS hires who were women had their pay set using the superior qualifications and special needs pay-setting authority. Of the four occupational families having the majority of the superior qualifications and special needs pay-setting authorizations, the occupations that are overwhelmingly male dominated are also the occupational families that have the greatest percentage of new hires with pay set under the superior qualifications and special needs pay-setting authority. In the 08XX occupational family (Engineering and Architecture), 21 percent of new hires are women, and 79 percent of new hires are men. About 29 percent of new hires in the 08XX occupational family have their pay set using the superior qualifications and special needs pay-setting authority. In the 22XX occupational family (Information Technology), 24 percent of new hires are women, and 76 percent of new hires are men. About 22 percent of new hires in the 22XX occupational family have their pay set using the superior qualifications and special needs pay-setting authority. In the 06XX occupational family (Medical, Hospital, Dental, and Public Health), 79 percent of new hires are women, and 21 percent of new hires are men, but only about 9 percent of new hires have their pay set using the superior qualifications and special needs pay-setting authority. Lastly, in the 03XX occupational family (General Administrative, Clerical, and Office Services), 54 percent of new hires are women, and 46 percent of new hires are men, but only about 8 percent of new hires have their pay set under the superior qualifications and special needs pay-setting authority.

Agencies used the authority in 5 CFR 532.403(b) to set pay above the minimum rate of the appropriate grade for around 210 appointees in the prevailing rate system with superior qualifications in fiscal year 2021. During the same period, one agency set pay above the minimum rate for an ALJ applicant based on their superior qualifications under 5 CFR 930.205(f)(2) with OPM approval. (Agencies must seek OPM pre-approval to use this pay-setting flexibility for ALJs.) No agencies reported setting pay under 5 CFR 534.604 based on an AAJ's superior qualifications.

After an agency has determined that a candidate for a GS position has superior qualifications or that the agency has a special need for the candidate's services under the criteria in 5 CFR 531.212(b) for the discretionary superior qualifications and special needs pay-setting authority, the agency must determine the step rate at which to set the employee's pay in the rate range for the grade of the employee's position. The current regulations at 5 CFR 531.212(c) state that an agency may consider one or more of nine specified factors or other relevant factors in making this step rate determination, which may include the candidate's existing pay or recent salary history. Because this pay authority is delegated to agencies and agency written justifications for its use are not reported to EHRI, OPM does not have information regarding which factor or factors were used to justify the rate at which each new employee's pay is set under the superior qualifications and special needs pay-setting authority.

Because we lack this data, we are not able to predict with specificity how proposed changes to the regulations could affect the rate at which pay is set for candidates based on their superior qualifications. The pay flexibilities the regulations cover are discretionary, and agencies may set pay at any rate within the specified rate range based on certain parameters.

OPM does not have data on agency use of the other pay flexibilities that this proposed regulation would revise (that is, the GS maximum payable rate rule in 5 CFR 531.221–223, the authority in 5 CFR 930.205(f)(1) to set pay based on an ALJ applicant's highest previous Federal rate of basic pay, the authority in 5 CFR 532.405 to set pay for a prevailing rate employee based on their highest previous rate, or the authority in 5 CFR 534.604 to set pay based on an AAJ applicant's highest Federal previous rate of basic pay). OPM does not anticipate that the proposed changes would result in a change in how frequently the pay flexibilities are used.

C. Costs

This proposed rule would affect the operations of more than 80 Federal agencies—ranging from cabinet-level departments to small independent agencies—that have employees under the GS, prevailing rate, ALJ, and AAJ pay systems. We estimate that this rule would require individuals employed by these agencies to spend time updating agency policies and procedures for the pay flexibilities the proposed regulations would revise. For this cost analysis, the assumed average salary rate of Federal employees performing this work will be the rate in 2023 for GS–14, step 5, from the Washington, DC, locality pay table ($150,016 annual locality rate and $71.88 hourly locality rate). We assume the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of $143.76 per hour.

To comply with the regulatory changes in the proposed rule, affected agencies would need to review the rule and update their policies and procedures. We estimate that, in the first year following publication of a final rule, this would require an average of 160 hours of work by employees with an average hourly cost of $143.76 per hour. This would result in estimated costs in that first year of implementation of about $23,000 per agency, and about $1.8 million Governmentwide. There are costs associated with administering the pay flexibilities in this proposed rule, but not necessarily an increase in administrative costs for agencies that are already using these pay flexibilities.

D. Benefits

Numerous studies employing different approaches suggest salary history bans have helped reduce the gender pay gap, largely by improving wages for women. For example, an April 2020 paper found evidence that women's earnings have increased relative to men's earnings in states with salary history bans.[26] The researchers used Census Bureau Basic Monthly Current Population Survey data from 2006 to the end of 2019 in states and cities that enacted salary history bans through January 2019. The estimated increase in earnings was larger for women who had switched jobs recently. There was also evidence that salary history bans are associated with increases in the gender earnings ratio, or the ratio of women's earnings to men's earnings.

Salary history bans can also help close racial/ethnic pay gaps. A February 2021 paper found that employers increased pay for job changers, particularly for women and people of color, following enactment of salary history bans.[27] The researchers used Census Bureau Basic Monthly Current Population Survey data from January 2013 to February 2020. The authors wrote that ''although salary history bans may have been intended primarily to benefit women, they appear to play a substantial and positive role for other disadvantaged groups.''

Salary history bans have also been shown to improve wages and job mobility for workers who began their careers during a recession, with women and people of color experiencing the greatest benefits. When an inexperienced job market entrant seeks employment during a recession, increased competition forces them to accept lower wages than they would tolerate during an economic boom. The ensuing wage disparity between recession job entrants and non-recession job entrants is called scarring. A 2021 paper found that salary history bans increase job mobility, hourly wages, and weekly earnings for workers who entered the labor market during a recession, helping to mitigate the scarring effect.[28]

Further, ending the practice of employers asking job applicants for salary history may help to attract and retain diverse and qualified talent and enhance employers' talent pools.[29] A 2021 field experiment found that when employers were not allowed to access the compensation history of job applicants, employers collected more information to evaluate applicants and hired qualified workers with lower past average wages (that may include women or people of color).[30] In addition, to the extent that it will enhance the equal treatment and compensation of similarly-situated workers—curbing inequitable pay decisions—a salary history ban can promote the values of equity, human dignity, and fairness within the Federal workforce described in E.O. 13563. Salary history bans can also promote more equitable and fairer pay-setting practices that are based on workers' skills, experience, or meeting a special agency need—and eliminate reliance on the pay decisions of previous employers for which there is no context and that may have been arbitrary or potentially discriminatory.

E. Regulatory Alternatives

Agencies are required to set pay at the minimum of the rate range for new GS, prevailing rate, AAJ, and ALJ employees unless the agency chooses to set pay above the minimum based on one of the pay flexibilities that are available in regulations. To advance pay equity for new hires, one regulatory alternative could be eliminating pay flexibilities to set pay above the minimum rate of the applicable rate range. This option, however, would be detrimental to agencies and job candidates. Agencies use pay flexibilities to set pay above the

[26] Hansen, B. & McNichols, D. ''Information and the Persistence of the Gender Wage Gap: Early Evidence from California's Salary History Ban.'' National Bureau of Economic Research, April 2020. *https://www.nber.org/system/files/working_papers/w27054/w27054.pdf.*

[27] Ibid, page 11, footnote 13.

[28] Mask, J. ''Salary History Bans and Healing Scars from Past Recessions.'' Jul 15, 2021. *https://mask2.people.uic.edu/Research/Mask2020.pdf.*

[29] National Women's Law Center. ''Asking for Salary History Perpetuates Pay Discrimination from Job to Job.'' March 2022. *https://nwlc.org/wp-content/uploads/2020/12/Asking-for-Salary-History-2022.pdf.*

[30] Moshe A. Barach & John J. Horton, 2021. ''How Do Employers Use Compensation History? Evidence from a Field Experiment,'' Journal of Labor Economics, vol 39(1), pages 193–218. *https://www.journals.uchicago.edu/doi/epdf/10.1086/709277.*

minimum rate to recruit candidates with superior qualifications or when agencies have a special need for the candidate's services. Candidates may reject employment if the offered salary is below their expectations.

Another option would be to allow agencies to set pay based on a candidate's salary history if it is provided voluntarily and without prompting. Section 12 of E.O. 14035 required the Director of OPM to consider whether to prohibit agencies from using an applicant's salary history to set pay unless salary history is raised without prompting by the applicant or employee. As explained in the ''State Laws'' section, there are states that allow this type of exception to a salary history ban. OPM considered this option. However, preliminary research indicates there may be negative effects from allowing employers to set pay based on voluntarily provided salary history. One recent study found that men are more likely to disclose their salaries than women and that women reported higher psychological costs of disclosing.[31] It also found that workers with higher salaries are more likely to disclose than lower-paid workers. If men with higher salaries are more likely to disclose their salaries than women with lower salaries, this could have the effect of exacerbating the gender pay gap. Further, and importantly, prohibiting agencies from considering prior salary history even when volunteered can be more effectively administered. Allowing agencies to consider prior salary history when volunteered could lead to questions and disputes about what it means for such information to be volunteered. There are also concerns about notifying applicants regarding this type of policy, especially when these regulations apply to both the competitive and the excepted service, which, as previously discussed, have different job posting requirements. Further, prohibiting agencies from considering a candidate's salary history will not necessarily hamper the Federal Government's ability to compete for talent because agencies would still be able to consider relevant factors when setting pay, such as significant disparities between Federal and non-Federal salaries for the skills and competencies required in the position to be filled, as well as any competing salary offers that a candidate may have.

[31] Agan, A., Cowgill, B. & Gee, L. ''Do Workers Comply with Salary History Bans? A Survey on Voluntary Disclosure, Adverse Selection, and Unraveling.'' AEA Papers and Proceedings, May 2020, 110: 215–219. *https://www.aeaweb.org/articles?id=10.1257/pandp.20201123.*

Lastly, OPM could maintain the status quo and not propose regulations to change salary determinations based on salary history. As previously explained in the ''Benefits'' section, preliminary evidence suggests that state laws restricting use of salary history are providing employees with greater pay equity. Because the Federal Government should serve as a model employer to the public and private sectors in establishing policies that advance pay equity, regulatory change is needed to help advance pay equity for Federal employees.

F. Request for Comments

OPM requests comments on the implementation and impacts of this proposed rule. Such information will be useful for better understanding the effect of these regulations on pay-setting by Federal agencies. The type of information in which OPM is interested includes, but is not limited to, the following:

- What data should the Federal Government consider when measuring the effects of greater pay equity achieved through a salary history ban, including effects on Federal worker turnover?
- As OPM continues to work with agencies to analyze and refine data in this issue area, what factors should OPM consider for positions of high occupational segregation (wherein women and men often tend to work in different occupations, and the occupations that are predominantly held by women pay less and are valued less, compared to those predominantly held by men at the same level of skill or education)?
- Is there any research we should consider regarding what impact structured pay systems have on pay equity, and what impact pay policies that allow organizations to set pay above the minimum rate of the rate range for new employees based on specified criteria have on pay equity?
- As explained in the Regulatory Alternatives section, OPM determined that it should prohibit Federal agencies from relying on prior salary history even if the candidate voluntarily provides it. What are the advantages and disadvantages to this position, and what are possible justifications for allowing an exception to the prior salary history prohibition? What information, if any, exists on whether such an exception would be consistent with the goals of this regulation?
- What information should agencies provide to applicants or candidates on the pay-setting flexibilities that they use to set starting salaries above the minimum rate of the rate range? At what stage in the hiring process should agencies provide this information?
- Is there any research or evidence on the best way to inform applicants or candidates regarding the pay-setting flexibilities employers use to set starting salaries? For example, should this information be included in a job opportunity announcement? Should employers post their policies on their websites?
- Is there any additional social science research or other evidence OPM should consider that suggests that limiting reliance on salary history (1) advances equity and/or has other workplace benefits or (2) has resulted in specific workforce or workplace costs?
- Are there additional ways that the Federal Government can be a model employer with respect to pay equity?

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

Regulatory Review

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any one year. While this rule does not reach the economic effect of $100 million or more under Executive Order 12866, this rule is still designated as a ''significant regulatory action,'' under Executive Order 12866.

E.O. 13132, Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E.O. 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in section 3(a) and (b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local or tribal governments of more than $100 million annually. Thus, no written assessment of unfunded mandates is required.

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in Title 5 CFR Parts 531, 532, 534, and 930

Administrative practice and procedure, Computer technology, Freedom of information, Government employees, Hospitals, Law enforcement officers, Motor vehicles, Reporting and recordkeeping requirements, Students, Wages.

U.S. Office Of Personnel Management.

Steve Hickman,

Federal Register Liaison.

Accordingly, OPM is proposing to amend 5 CFR parts 531, 532, 534, and 930 as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

■ 1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Public Law 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335 and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304, 5305, and 5941(a); E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

Subpart B—Determining Rate of Basic Pay

■ 2. In § 531.212—

■ a. Revise paragraph (c) introductory text;

■ b. Redesignate paragraphs (c)(1) through (c)(10) as (c)(2)(i) through (c)(2)(x);

■ c. Add a new paragraph (c)(1) and (c)(2) introductory text;

■ d. Revise newly redesignated paragraphs (c)(2)(ii) and (c)(2)(x); and

■ e. Revise paragraph (e)(2)(ii).

The revisions and additions read as follows:

§ 531.212 Superior qualifications and special needs pay-setting authority.

* * * * *

(c) *Pay rate determination.* To determine the step at which to set an employee's payable rate of basic pay using the superior qualifications and special needs pay-setting authority, an agency must consider:

(1) How pay has been set for employees who had similar qualifications (based on the level, type, or quality of the candidate's skills or competencies or other qualities and experiences) and who have been newly appointed to positions that are similar to the candidate's position (based on the position's occupational series, grade level, organization, geographic location, or other job-relevant factors), if applicable; and

(2) One or more of the following factors, as applicable in the case at hand:

* * * * *

(ii) The salary documented in a competing job offer (taking into account the location where the salary would be earned and comparing the salary to payable rates of basic pay in the same location), except that then an agency must consider at least one additional factor under this paragraph (c)(2);

* * * * *

(x) Other relevant factors, except that an agency may not consider the candidate's salary history (*i.e.,* existing salary or prior salary).

* * * * *

(e) * * *

(2) * * *

(ii) An explanation of the factors and supporting documentation under paragraph (c) of this section which were used to justify the rate at which the employee's pay is set. The written documentation must explain how the factors directly relate to the rate approved; and

* * * * *

■ 3. In § 531.221, add paragraph (a)(6) to read as follows:

§ 531.221 Maximum payable rate rule.

(a) * * *

(6) Before setting pay under this section, an agency must establish a policy on its use of the maximum payable rate rule that includes—

(i) Designation of officials with the authority to approve and set pay under this section;

(ii) Any situations in which the agency must use the authority;

(iii) Any situations in which the agency may exercise its discretion in using the authority;

(iv) The factors the designated officials may or must consider in determining the step at which to set the employee's pay between the employee's entitlement under any other applicable pay-setting rule and the employee's maximum payable rate, which must include how pay has been set for other employees performing similar work in the organization (based on the position's occupational series, grade level, types of duties, or other job-relevant factors); and

(v) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action.

* * * * *

PART 532—PREVAILING RATE SYSTEMS

■ 4. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Subpart D—Pay Administration

■ 5. In § 532.403, revise paragraph (b) to read as follows:

§ 532.403 New appointments.

* * * * *

(b) An agency may make a new appointment at a rate above the minimum rate of the appropriate grade in recognition of an appointees' special qualifications. In determining the rate at which to set the appointee's pay:

(1) An agency must consider how pay has been set for employees who had similar qualifications (based on the level, type, or quality of the appointee's skills or competencies or other qualities and experiences) and who have been newly appointed to positions that are similar to the appointee's position (based on the position's occupational series, grade level, organization, geographic location, or other job-relevant factors), if applicable;

(2) An agency may not consider the appointee's pay history (*i.e.,* existing pay or prior pay); and

(3) An agency must consider other relevant factors (*e.g.,* the level, type, or quality of the appointee's skills or competencies; significant disparities between Federal and non-Federal salaries for the skills and competencies required in the position to be filled; or the pay documented in a competing job offer (taking into account the location where the pay would be earned and comparing it to payable rates of basic pay in the same location), except that an agency must consider an additional relevant factor if considering the pay documented in a competing job offer).

* * * * *

■ 6. In 532.405, add paragraph (e) to read as follows:

§ 532.405 Use of highest previous rate.

* * * * *

(e) Before setting pay under this section, an agency must establish a policy regarding use of employees' highest previous rates. The policy must include the following elements:

(1) Designation of officials with the authority to approve and set pay under this section;

(2) Any situations in which the agency must use an employee's highest previous rate;

(3) Any situations in which the agency may exercise its discretion in using an employee's highest previous rate;

(4) The factors the designated officials may or must consider in determining the step at which to set the employee's pay between the employee's entitlement under any other applicable pay-setting rule and the employee's highest previous rate, which must include how pay has been set for other employees performing similar work in the organization (based on the position's occupational series, grade level, types of duties, or other job-relevant factors); and

(5) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action.

PART 534—PAY UNDER OTHER SYSTEMS

■ 7. The authority citation for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 3161(d), 5307, 5351, 5352, 5353, 5376, 5382, 5383, 5384, 5385, 5541, 5550a, sec. 1125 of the National Defense Authorization Act for FY 2004, Pub. L. 108–136, 117 Stat. 1638 (5 U.S.C. 5304, 5382, 5383, 7302; 18 U.S.C. 207); and sec. 2 of Pub. L. 110–372, 122 Stat. 4043 (5 U.S.C. 5304, 5307, 5376).

Subpart F—Pay for Administrative Appeals Judge Positions

■ 8. In § 534.604—

■ a. Revise paragraph (b);

■ b. Redesignate paragraphs (c) and (d) as paragraphs (f) and (g), respectively; and

■ c. Add new paragraphs (c), (d), and (e).

The revision and additions read as follows:

§ 534.604 Pay administration.

* * * * *

(b) Upon initial appointment, an agency must set the rate of basic pay of an administrative appeals judge at the minimum rate AA–1 of the administrative appeals judge pay system, except as provided in paragraphs (c), (d), and (e) of this section.

(c) An agency must set the pay of an employee under the General Schedule pay system who is appointed to an administrative appeals judge position without a break in service at the lowest rate of basic pay of the administrative appeals judge pay system that equals or exceeds the rate of basic pay the employee received immediately prior to such appointment, not to exceed the rate of basic pay for AA–6. If the resulting basic pay increase is less than one-half of the dollar value of the employee's next within-grade increase, the agency must set the employee's rate of basic pay at the next higher rate of basic pay in the basic rate range of the administrative appeals judge pay system, not to exceed the rate of basic pay for AA–6.

(d) An agency may offer an administrative appeals judge applicant with prior Federal service a rate up to the lowest rate of basic pay of the administrative appeals judge pay system that equals or exceeds the employee's highest previous rate of basic pay in a Federal civil service position, not to exceed the rate of basic pay for AA–6. Before setting pay under this paragraph, an agency must establish a policy that includes the following elements:

(1) Designation of officials with the authority to approve and set pay under this paragraph;

(2) Whether use of this authority is discretionary or mandatory;

(3) The other factors the designated officials may or must consider in determining the rate at which to set the applicant's pay, which must include how pay has been set for other administrative appeals judges; and

(4) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action.

(e) An agency may offer an administrative appeals judge applicant with superior qualifications who is not a current Federal employee a higher than minimum rate up to the maximum rate AA–6 when such a rate is clearly necessary to meet the needs of the Government. Superior qualifications for applicants include, but are not limited to, having legal practice before the hiring agency, having practice in another forum with legal issues of concern to the hiring agency, or having an outstanding reputation among others in the field. An agency must document all of the following:

(1) The superior qualifications of the applicant;

(2) The need of the Government for the applicant's services;

(3) Consideration of how pay has been set for administrative appeals judges who had similar qualifications (based on the level, type, or quality of the applicant's skills or competencies or other qualities and experiences) and who have been newly appointed to positions that are similar to the applicant's position (based on the position's occupational series, organization, geographic location, or other job-relevant factors), if applicable; and

(4) An explanation of the factors which were used to justify the rate at which the employee's pay is set, except an agency may not consider an applicant's or former administrative appeals judge's salary history (*i.e.,* existing salary or prior salary).

* * * * *

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart B—Administrative Law Judge Program

■ 9. The authority citation for subpart B continues to read as follows:

Authority: 5 U.S.C. 1104(a), 1302(a), 1305, 3105, 3301, 3304, 3323(b), 3344, 4301(2)(D), 5372, 7521, and E.O. 10577, 3 CFR, 1954–1958 Comp., p. 219.

■ 10. In § 930.201, revise paragraph (e)(5) to read as follows:

§ 930.201 Coverage.

* * * * *

(e) * * *

(5) Approve personnel actions related to pay for administrative law judges under § 930.205(c), (g), (h), and (k);

* * * * *

■ 11. In § 930.205—

■ a. In paragraph (e), remove the words ''paragraph (f)'' and add ''paragraphs (f) and (g)'' in their place;

■ b. Revise paragraph (f);

■ c. Redesignate paragraphs (g) through (j) as paragraphs (h) through (k), respectively; and

■ d. Add a new paragraph (g).

The revisions and addition read as follows:

§ 930.205 Administrative law judge pay system.

* * * * *

(f) When an applicant to an administrative law judge position at AL–3 has prior Federal service, the agency may set pay at a higher than minimum rate up to the lowest rate of basic pay that equals or exceeds the applicant's highest previous Federal rate of basic pay, not to exceed the maximum rate F. Before setting pay under this paragraph, an agency must establish a policy regarding use of this pay setting authority that includes the following elements:

(1) Designation of officials with the authority to approve and set pay under this paragraph;

(2) Whether use of this authority is discretionary or mandatory;

(3) The factors the designated officials may or must consider in determining the rate at which to set the applicant's pay, which must include how pay has been set for other administrative law judges; and

(4) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action.

(g) With prior OPM approval, an agency may offer a higher than minimum rate, up to the maximum rate F, to an administrative law judge applicant or a former administrative law judge with superior qualifications who is eligible for appointment to a position at AL–3. An agency request to OPM must include:

(1) A description of the superior qualifications (as defined in § 930.202) of the applicant or former administrative law judge;

(2) How pay has been set for administrative law judges who had similar qualifications (based on the level, type, or quality of the applicant's or former administrative law judge's skills or competencies or other qualities and experiences) and who have been newly appointed to positions that are similar to the administrative law judge's position (based on the position's occupational series, organization, geographic location, or other job-relevant factors), if applicable; and

(3) The proposed rate of basic pay and a justification for that rate, except an agency may not consider an applicant's or former administrative law judge's salary history (*i.e.,* existing salary or prior salary).

* * * * *

[FR Doc. 2023–09564 Filed 5–10–23; 11:15 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2022–1740; Notice No. 25–23–01–SC]

Special Conditions: The Boeing Company Model 777 Series Airplanes; Passenger Seats With Pretensioner Restraint Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Boeing Company (Boeing) Model 777 series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is pretensioner restraint systems installed on passenger seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send comments on or before June 26, 2023.

ADDRESSES: Send comments identified by Docket No. FAA–2022–1740 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://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.
- *Docket:* Background documents or comments received may be read at *https://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go 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.

FOR FURTHER INFORMATION CONTACT: Shannon Lennon, Cabin Safety, AIR–624, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3209; email *shannon.lennon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the proposed special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments, and will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these special conditions based on the comments received.

Privacy

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

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, 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 the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

Background

On September 30, 2021, Boeing applied for an amendment to Type Certificate No. T00001SE for Boeing Model 777 series airplanes. These airplanes, currently approved under Type Certificate No. T00001SE, are twin-engine, transport-category airplanes with maximum seating for 495 passengers and a maximum takeoff weight of 775,000 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing must show that Model 777 series airplanes meet the applicable provisions of the regulations listed in Type Certificate No. T00001SE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for Boeing Model 777 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 777 series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

Boeing Model 777 series airplanes will incorporate the following novel or unusual design feature:

Forward-facing seats incorporating a shoulder harness with pretensioner device, otherwise known as a pretensioner restraint system, which is intended to protect the occupants from head injuries.

Discussion

Boeing will install, in Model 777 series airplanes, forward-facing seats that incorporate a shoulder harness with a pretensioner system, for head-injury protection, at each seat place.

Shoulder harnesses have been widely used on flight-attendant seats, flight-deck seats, in business jets, and in general-aviation airplanes to reduce occupant head injury in the event of an emergency landing. Special conditions, pertinent regulations, and published guidance relate to other restraint systems. However, the use of pretensioners in the restraint system on transport-airplane seats is a novel design.

The pretensioner restraint system utilizes a retractor that eliminates slack in the shoulder harness and pulls the occupant back into the seat prior to impact. This has the effect of reducing forward translation of the occupant, reducing head arc, and reducing loads in the shoulder harness.

Pretensioner technology involves a step-change in loading experienced by the occupant for impacts below and above that at which the device deploys, because activation of the shoulder harness, at the point at which the pretensioner engages, interrupts upper-torso excursion. Such excursion could result in the head-injury criteria (HIC) being higher at an intermediate impact condition than that resulting from the maximum impact condition corresponding to the test conditions specified in § 25.562. See condition 1 in these special conditions.

The ideal triangular maximum-severity pulse is defined in Advisory Circular (AC) 25.562–1B, ''Dynamic Evaluation of Seat Restraint Systems and Occupant Protection on Transport Airplanes.'' For the evaluation and testing of less-severe pulses for purposes of assessing the effectiveness of the pretensioner setting, a similar triangular pulse should be used with acceleration, rise time, and velocity change scaled accordingly. The magnitude of the required pulse should not deviate below the ideal pulse by more than 0.5g until 1.33 t1 is reached, where t1 represents the time interval between 0 and t1 on the referenced pulse shape, as shown in AC 25.562–1B. This is an acceptable method of compliance to the test requirements of the special conditions.

Additionally, the pretensioner might not provide protection, after actuation, during secondary impacts. Therefore, the case where a small impact is followed by a large impact should be addressed. If the minimum deceleration severity at which the pretensioner is set to deploy is unnecessarily low, the protection offered by the pretensioner may be lost by the time a second, larger impact occurs.

Conditions 1 through 4 ensure that the pretensioner system activates when intended, to provide the necessary protection of occupants. This includes protection of a range of occupants under various accident conditions. Conditions 5 through 10 address maintenance and reliability of the pretensioner system, including any outside influences on the mechanism, to ensure it functions as intended.

The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these proposed special conditions are applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would apply to the other model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, and 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 777 series airplanes.

In addition to the requirements of § 25.562, forward-facing passenger seats with pretensioner restraint systems must meet the following:

(1) Head Injury Criteria (HIC)

The HIC value must not exceed 1000 at any condition at which the pretensioner does or does not deploy, up to the maximum severity pulse that corresponds to the test conditions specified in § 25.562. Tests must be performed to demonstrate this, taking into account any necessary tolerances for deployment.

When an airbag device is present in addition to the pretensioner restraint system, and the anthropomorphic test device (ATD) has no apparent contact with the seat/structure but has contact with an airbag, a HIC unlimited scored in excess of 1000 is acceptable, provided the HIC15 score (calculated in accordance with 49 CFR 571.208) for that contact is less than 700.

ATD head contact with the seat or other structure, through the airbag, or contact subsequent to contact with the airbag, requires a HIC value that does not exceed 1000.

(2) Protection During Secondary Impacts

The pretensioner activation setting must be demonstrated to maximize the probability of the protection being available when needed, considering secondary impacts.

(3) Protection of Occupants Other Than 50th Percentile

Protection of occupants for a range of stature from a 2-year-old child to a 95th percentile male must be shown. For shoulder harnesses that include pretensioners, protection of occupants other than a 50th percentile male may be shown by test or analysis. In addition, the pretensioner must not introduce a hazard to passengers due to the following seating configurations:

(a) The seat occupant is holding an infant.

(b) The seat occupant is a child in a child-restraint device.

(c) The seat occupant is a pregnant woman.

(4) Occupants Adopting the Brace Position

Occupants in the traditional brace position when the pretensioner activates must not experience adverse effects from the pretensioner activation.

(5) Inadvertent Pretensioner Actuation

(a) The probability of inadvertent pretensioner actuation must be shown to be extremely remote (*i.e.,* average probability per flight hour of less than 10^{-7}).

(b) The system must be shown not to be susceptible to inadvertent pretensioner actuation as a result of wear and tear, nor inertia loads resulting from in-flight or ground maneuvers likely to be experienced in service.

(c) The seated occupant must not be seriously injured as a result of inadvertent pretensioner actuation.

(d) Inadvertent pretensioner actuation must not cause a hazard to the airplane, nor cause serious injury to anyone who may be positioned close to the retractor or belt (*e.g.,* seated in an adjacent seat or standing adjacent to the seat).

(6) Availability of the Pretensioner Function Prior to Flight

The design must provide means for a crewmember to verify the availability of the pretensioner function prior to each flight, or the probability of failure of the pretensioner function must be demonstrated to be extremely remote (*i.e.,* average probability per flight hour of less than 10^{-7}) between inspection intervals.

(7) Incorrect Seat Belt Orientation

The system design must ensure that any incorrect orientation (twisting) of the seat belt does not compromise the pretensioner protection function.

(8) Contamination Protection

The pretensioner mechanisms and controls must be protected from external contamination associated with that which could occur on or around passenger seating.

(9) Prevention of Hazards

The pretensioner system must not induce a hazard to passengers in case of fire, nor create a fire hazard, if activated.

(10) Functionality After Loss of Power

The system must function properly after loss of normal airplane electrical power and after a transverse separation in the fuselage at the most critical location. A separation at the location of the system does not have to be considered.

Issued in Des Moines, Washington on May 5, 2023.

Suzanne A. Masterson,

Acting Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2023–10071 Filed 5–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0939; Project Identifier MCAI–2022–00743–E]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corp. Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Pratt & Whitney Canada Corp. (P&WC) Model PW307D engines. This proposed AD was prompted by a root cause analysis of an event involving an uncontained failure of a high-pressure turbine (HPT) 1st-stage disk, on an International Aero Engines AG Model V2533–A5 engine, that resulted in high-energy debris penetrating the engine cowling and an aborted takeoff. This proposed AD would require removing certain HPT 2nd-stage disks from service and would also prohibit installation of certain HPT 2nd-stage disks on any affected engine. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by June 26, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0939; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0939; Project Identifier MCAI–2022–00743–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 proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Barbara Caufield, Aviation Safety Engineer, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2022–31, dated June 9, 2022 (Transport Canada AD CF–2022–31) (referred to after this as the MCAI), to correct an unsafe condition on P&WC Model PW307D engines with serial numbers (S/Ns) CM0226 and CM0238, and with an installed HPT 2nd-stage disk, part number (P/N) 30P3182–01 with S/Ns A004D8X1 and A004E9K3, respectively. The MCAI states that on March 18, 2020, an Airbus Model A321–231 airplane, powered by International Aero Engines AG (IAE) Model V2533–A5 engines, experienced an uncontained HPT 1st-stage disk failure that resulted in an aborted takeoff and high-energy debris penetrating the engine cowling.

In response to the March 2020 uncontained HPT 1st-stage disk failure, the FAA issued a series of ADs, including Emergency AD 2020–07–51, Amendment 39–21110 (85 FR 20402, April 13, 2020) (AD 2020–07–51). Since the FAA issued AD 2020–07–51, IAE determined that the failure of the V2533–A5 engine was due to an undetected subsurface material defect in the HPT 1st-stage disk that may affect the life of the part. In coordination with IAE, P&WC performed a records review and analysis of PW307A and PW307D engine parts made of similar material and identified two additional affected HPT 2nd-stage disks (S/Ns A004D8X1 and A004E9K3), installed on PW307D engines. These two additional HPT 2nd-stage disks may have a material defect which could reduce the life of the part. As such, the affected HPT 2nd-stage disks must be removed from service. The FAA is proposing this AD to prevent failure of the HPT 2nd-stage disks, which could result in damage to the engine, damage to the airplane, and loss of the airplane.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require removing certain part-numbered HPT 2nd-stage disks from service and would prohibit the installation of these HPT 2nd-stage disks onto any engine.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 2 engines installed on airplanes of U.S. Registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace high pressure turbine (HPT) 2nd-stage disk ..	10 work-hours × $85 per hour = $850.	$176,000	$176,850	$353,700

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney Canada Corp.: Docket No. FAA–2023–0939; Project Identifier MCAI–2022–00743–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 26, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pratt & Whitney Canada Corp. (P&WC) Model PW307D engines.

(d) Subject

Joint Aircraft Service Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a root cause analysis of an event involving an International Aero Engines AG Model V2533–A5 engine, which experienced an uncontained failure of a high pressure turbine (HPT) 1st-stage disk that resulted in high-energy debris penetrating the engine cowling. The FAA is issuing this AD to prevent failure of the HPT 2nd-stage disk. The unsafe condition, if not addressed, could result in uncontained HPT disk failure, damage to the engine, damage to the airplane, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

For engines with an HPT 2nd-stage disk, part number (P/N) 30P3182–01, with serial number (S/N) A004D8X1 or A004E9K3 installed, within 100 engine cycles after the effective date of this AD, remove the HPT 2nd-stage disk from service.

(h) Installation Prohibition

After the effective date of this AD, do not install any HPT 2nd-stage disk having P/N 30P3182–01 with S/N A004D8X1 or A004E9K3 on any engine.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(j) Additional Information

For more information about this AD, contact Barbara Caufield, Aviation Safety Engineer, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; email: *barbara.caufield@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued on May 3, 2023.

Michael Linegang,

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

[FR Doc. 2023–09887 Filed 5–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0732; Airspace Docket No. 23–ASW–10]

RIN 2120–AA66

Amendment of Class E Airspace; Sonora, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Sonora, TX. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Sonora non-directional beacon (NDB).

DATES: Comments must be received on or before June 26, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0732 and Airspace Docket No. 23–ASW–10 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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 go 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.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

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. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or dely. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post 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–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by modifying the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile (decreased from a 7.1-mile) radius of Sonora Municipal Airport, Sonora, TX.

This action is the result of an airspace review caused by the decommissioning of the Sonora NDB which provided navigation information for the instrument procedures at this airport.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Sonora, TX [Amended]

Sonora Municipal Airport, TX
(Lat 30°35′09″ N, long 100°38′55″ W)

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

* * * * *

Issued in Fort Worth, Texas, on May 4, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–09927 Filed 5–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 50, 55, 58, and 200

[Docket No. FR–6272–P–01]

RIN 2506–AC54

Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard; Extension of Comment Period

AGENCY: Office of the Secretary, U.S. Department of Housing and Urban Development (HUD).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 24, 2023, HUD published in the **Federal Register** a notice of proposed rulemaking entitled ''Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard

Exposure; Building to the Federal Flood Risk Management Standard,'' which would revise HUD's regulations governing floodplain management and the protection of wetlands to implement the Federal Flood Risk Management Standard (FFRMS). The proposed rule provided for a 60-day comment period, which would have ended May 23, 2023. HUD has determined that a 14-day extension of the comment period, until June 6, 2023, is appropriate. This extension will allow interested persons additional time to analyze the proposal and prepare their comments.

DATES: The comment period for the proposed rule published on March 24, 2023, at 88 FR 17755, is extended. Comments should be received on or before June 6, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments: Facsimile (FAX) comments are not acceptable.

Public Inspection of Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kristin L. Fontenot, Director, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410–8000. For inquiry by phone or email, contact Lauren Hayes Knutson, Director, Environmental Planning Division, Office of Environment and Energy, Office of Community Planning and Development, at 202–402–4270 (this is not a toll-free number), or email to: *EnvironmentalPlanningDivision@hud.gov.* For questions regarding the Minimum Property Standards, contact Elissa Saunders, Director, Office of Single Family Program Development, 202–708–2121. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: On March 24, 2023, at 88 FR 17755, HUD published a notice of proposed rulemaking entitled ''Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard,'' proposing to revise HUD's regulations governing floodplain management and the protection of wetlands to implement the Federal Flood Risk Management Standard (FFRMS). Consistent with Executive Order 13690, ''Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input,'' the rule proposes revisions to HUD's regulations to improve the resilience of HUD-assisted or financed projects to the effects of climate change and natural disasters and provide for greater flexibility in the use of HUD assistance in floodways under certain circumstances. Among other revisions, the rule would provide a process for determining the FFRMS Floodplain that would establish a preference for the climate-informed science approach (CISA), and it would revise HUD's floodplain and wetland regulations to streamline them, improve overall clarity, and modernize standards. This proposed rule would also revise HUD's Minimum Property Standards for one-to-four unit housing under HUD mortgage insurance and under low-rent public housing programs to require that the lowest floor in both newly constructed and substantially improved structures located within the 1-percent-annual-chance (100-year) floodplain be built at least 2 feet above the base flood elevation as determined by best available information, and it would revise a categorical exclusion when HUD performs environmental reviews, and update various HUD environmental regulations to permit online posting of public notices.

While the proposed rule had a 60-day comment period, HUD has received feedback from multiple commenters requesting additional time to review and provide comments on this rule. Therefore, HUD is extending the deadline for comments for an additional 14 days.

Aaron Santa Anna,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2023–09930 Filed 5–10–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2023–0158]

RIN 1625–AA08

Special Local Regulation; Lower East River & New York Harbor 4th of July Fireworks, Manhattan, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposes establishing a special local regulation on the navigable waters of the lower East

River and New York Harbor, NY, for vessel management for the annual 4th of July fireworks display. This special local regulation allows the Coast Guard to control vessel movement and prohibit all vessel traffic from entering the fireworks barge buffer zone, and establish four separate viewing areas. This rule is necessary to provide for the safety of life on the navigable waters immediately before, during, and after a fireworks display that involves multiple barge launch sites on a highly congested waterway. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 12, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0158 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Marine Science Technician First Class Ian Rose, Waterways Management Division, U.S. Coast Guard; telephone 718–354–2250, email *D01-SMB-SecNY-Waterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port New York
DHS Department of Homeland Security
FR Federal Register
LLNR Light List Number
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
§ Section
SLR Special Local Regulation
U.S.C. United States Code

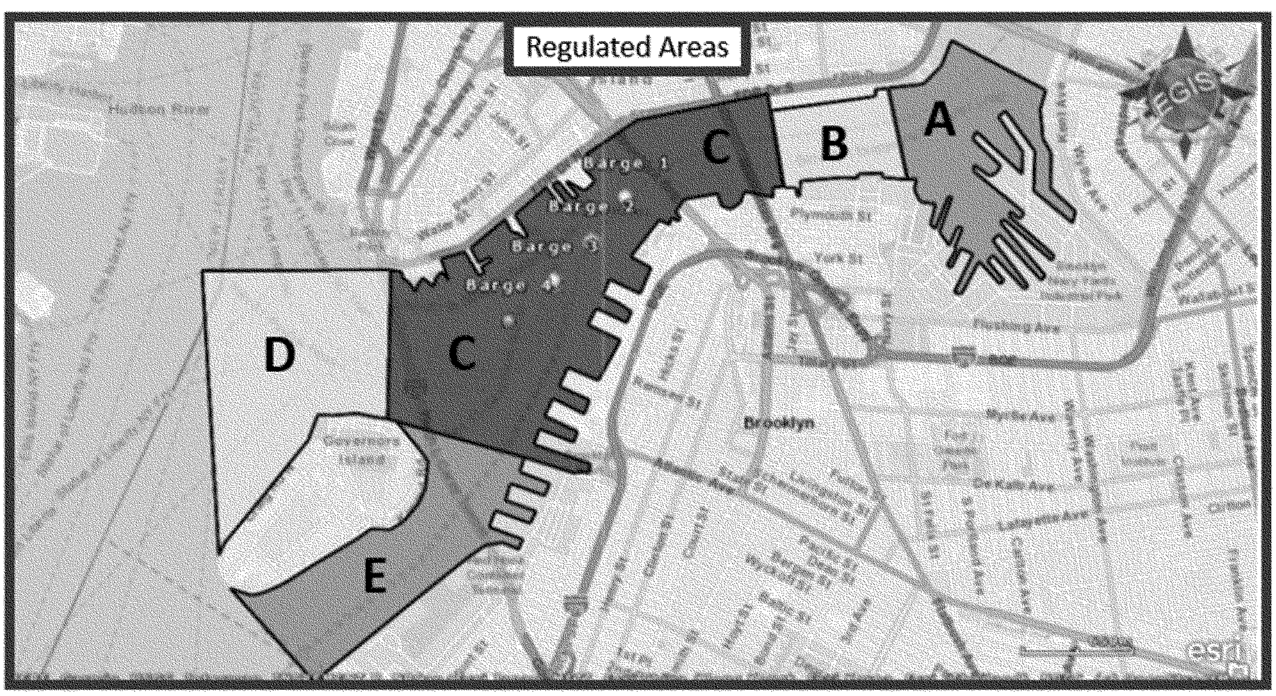
II. Background, Purpose, and Legal Basis

On February 9, 2023, the Coast Guard received a request for the annual 4th of July fireworks display to be held on the Lower East River and in the New York Harbor. The Captain of the Port New York (COTP) has determined that this event in close proximity to marine traffic poses a significant risk to public safety and property. The proposed special local regulation mimics those limited access areas established for 4th of July in previous years. As in years prior, a buffer zone will be set around the barges and four viewing areas that will separate vessels based on length. Multiple firework displays will commence simultaneously, producing a relatively large fallout zone over the East River when the East River and New York Harbor experiences heavy vessel congestion necessitating the need to control of vessel movement immediately before, during, and after this display.

The combination of multiple simultaneous fireworks displays on the East River, where a significant increase of recreational vessel traffic is anticipated, has the potential to result in serious injuries or fatalities. This proposed rule would establish a buffer zone around the barges in show position and four separate viewing areas separating vessels by size to protect the safety of all waterway users, including event participants and spectators. The proposed rulemaking aims to ensure the safety of participants, non-participants, and transiting vessels on the navigable waters near the fireworks display and the spectator zone before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under the authority of 46 U.S.C. 70041.

III. Discussion of Proposed Rule

The Coast Guard proposes establishing a special local regulation subject to enforcement annually from 5:30 through 11:30 p.m. on July 4 or July 5. This special local regulation creates five regulated areas: a buffer zone around each firework display barge and four viewing areas. As shown in the illustration below, the buffer zone, area ''C'', will exclude all nonparticipating vessels from the area surrounding the barges immediately before, during, and after the display. The four separate viewing areas, areas ''A'', ''B'', ''D'', and ''E'', will separate vessels based on the vessel's length.



(Illustration showing locations of regulated areas)

The duration of the enforcement times is intended to ensure the safety of vessels, participants, spectators, and those transiting the area during the fireworks display. Navigation rules, 33 CFR part 83, will apply at all times within the areas. The Coast Guard will provide notice of the special local regulation by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the special local regulation's size, location, and duration. In addition, although this rule restricts access to the waters encompassed by the special local regulation, the effect of this rule will not be significant because the local waterway users will be notified in advance via a public Broadcast Notice to Mariners and Local Notice to Mariners. The entities most likely affected are commercial vessels and pleasure crafts engaged in recreational activities.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator. The maritime public will be advised in advance of this special local regulation via Broadcast Notice to Mariners and Local Notice to Mariners.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated area lasting six hours or less that would limit persons or vessels from transiting a portion of the lower East River and New York Harbor during the scheduled event. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0158. in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

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

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.111 to read as follows:

§ 100.111 Lower East River and New York Harbor 4th of July Fireworks, Manhattan, NY.

(a) *Regulated areas.* The regulations in this section apply to the following areas:

(1) *Area ALPHA:* All navigable waters of the East River bound by a line connecting the following coordinates: from 40°42′46″ N 73°58′34″ W (near Grand St. Manhattan), to 40°42′38″ N 73°58′12″ W, along the shore to 40°42′22″ N, 073°58′45″ W (near Little Street, Brooklyn, NY), to 40°42′37″ N, 073°58′50″ W (the corner of Pier 42, Manhattan, NY), then along the shoreline back to the point of origin.

(2) *Area BRAVO:* All navigable waters of the East River bound by a line connecting the following points: from 40°42′37″ N, 073°58′50″ W (near Pier 42, Manhattan, NY), to 40°42′22″ N, 073°58′45″ W (near Little Street, Brooklyn, NY), along the shore to 40°42′19″ N 73°59′15″ W (near Pearl Street, Brooklyn, NY), to 40°42′33″ N 73°59′18″ W (near Jefferson Street, Manhattan, NY) then along the shoreline to the point of origin.

(3) *Area CHARLIE:* All navigable waters of the East River bound by a line connecting the following points: beginning at 40°42′33″ N 73°59′18″ W (near Jefferson Street, Manhattan, NY), to 40°42′19″ N 73°59′15″ W (near Pearl Street, Brooklyn, NY), along the shore to 40°41′28″ N 74°00′19″ W (Pier 8, Brooklyn, NY), to 40°41′34.728″ N 74°00′54″ W (near Governors Island Ferry Slip), to 40°42′03″ N 74°00′55″ W (near Battery Park, Manhattan, NY), then along the shoreline back to the point of origin.

(4) *Area DELTA:* All navigable waters of the East River bound by a line connecting the following points from 40°42′03″ N 74°00′55″ W (near Battery Park, Manhattan, NY), to 40°41′35″ N 74°00′54″ W (near the Governors Island Ferry Slip), along the shoreline of Governors Island to 40°41′09″ N 74°01′36″ W, then north to 40°42′03″ N, 074°01′40″ W, then back to the point of origin.

(5) *Area ECHO:* All navigable waters of the East River bound by a line connecting the following points beginning at 40°41′34″ N, 74°0′51″ W (near Governors Island) to 40°41′28″ N 74°00′19″ W (Pier 8, Brooklyn, NY), to 40°40′44″ N 74°01′10″ W (Red Hook), to 40°41′03″ N 74°01′32″ W, then along the shore back to the point of origin.

(b) *Definitions.* As used in this section:

Designated Representative is any Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer or other officer operating a Coast Guard vessel and a Federal, State and local officer designated by or assisting the Captain of the Port (COTP) New York in the enforcement of this section.

Official Patrol Vessel means any Coast Guard, Coast Guard Auxiliary, Federal, State or local law enforcement vessel assigned or approved by the COTP New York to assist in the enforcement of this section.

Spectator means a person or vessel not registered with the event sponsor as participants or official patrol vessels.

(c) *Regulations.* (1) In accordance with the special local regulations in § 100.35, entry into, transiting, or anchoring within the regulated areas described in paragraph (a) of this section is prohibited, unless authorized by the COTP or a designated representative.

(2) All vessels that are authorized by the COTP or a designated representative to enter the regulated areas established by this section must adhere to the following restrictions:

(i) Area ALPHA access is limited to vessels less-than or equal to 20 meters (65.6 ft) in length.

(ii) Area BRAVO access is limited to vessels over 20 meters (65.6 ft) in length.

(iii) All vessels are prohibited from entering area CHARLIE without permission from the COTP or a designated representative after 6 p.m. Commercial passenger vessels that need to transit through the Charlie Section enroute to their designated viewing areas must receive authorization from the Coast Guard Patrol Commander. Commercial passenger vessels must pass as close to the pierhead as possible and must transit through the zone no later than 7:30 p.m. Vessels must operate at the minimum speed necessary to maintain safe course while crossing through the Charlie Section and take all direction that may be provided by the Coast Guard.

(iv) Area DELTA access is limited to vessels over 20 meters (65.6 ft) in length.

(v) Area ECHO access is limited to vessels less-than or equal to 20 meters (65.6 ft) in length.

(vi) Vessels desiring to utilize any of these limited access areas must enter the area by 7:30 p.m.

(3) During periods of enforcement all persons and vessels in the limited access areas must comply with all lawful orders and directions from the COTP New York or the COTP New York's designated representative.

(4) Vessel operators desiring to enter or operate within a limited access area should contact the COTP New York at 718–354–4088 or on VHF 16 to obtain permission.

(5) Spectators or other vessels must not anchor, block, loiter or impede the transit of event participants or official patrol vessels in the limited access area during the effective dates and times unless authorized by COTP New York or designated representative.

(6) The COTP or a representative will inform the public through local notice to mariners. Broadcast Notices to Mariners, or both, of the enforcement period for the regulated area as well as any changes of the enforcement times.

(d) *Enforcement periods.* This section will be subject to enforcement annually from 5:30 through 11:30 p.m. on July 4. In the event the fireworks display is postponed due to inclement weather or other causes, this section will be enforced annually from 5:30 to 11:30 p.m. on July 5.

Dated: May 4, 2023.

Z. Merchant,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2023–10070 Filed 5–10–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230505–0123]

RIN 0648–BM18

Pacific Halibut Fisheries; Catch Sharing Plan; Rulemaking To Modify the 2023–2027 Halibut Individual Fishing Quota (IFQ) Vessel Harvest Limitations in IFQ Regulatory Areas 4A, 4B, 4C, and 4D

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to revise regulations for the commercial individual fishing quota (IFQ) Pacific halibut (halibut) fisheries for 2023 through 2027. This proposed rule would remove limits on the maximum amount of halibut IFQ that may be harvested by a vessel, commonly known as vessel use caps, in IFQ Regulatory Areas 4A (Eastern Aleutian Islands), 4B (Central and Western Aleutian Islands), 4C (Central Bering Sea), and 4D (Eastern Bering Sea). This action is needed to continue to provide additional flexibility and stability to IFQ participants in Areas 4A, 4B, 4C, and 4D while a longer term modification of vessel use caps is considered. This action is intended to promote the goals and objectives of the IFQ Program, the Northern Pacific Halibut Act of 1982 (Halibut Act), and other applicable laws.

DATES: Submit comments on or before June 12, 2023.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket number NOAA–NMFS–2023–0055, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0055 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *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).

Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (RIR) (herein referred to as the ''Analysis'') prepared for this action are available from *www.regulations.gov* or from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.*

FOR FURTHER INFORMATION CONTACT: Alicia M. Miller, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

The International Pacific Halibut Commission (IPHC) promulgates regulations governing the North Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary of Commerce. NMFS publishes the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62. The 2023 IPHC annual management measures published on March 7, 2023 (88 FR 14066).

The Halibut Act, 16 U.S.C. 773c(a)–(b), provides the Secretary of Commerce with general responsibility for carrying out the Convention and the Halibut Act, including the authority to adopt regulations necessary to carry out the purposes and objectives of the Convention. The Halibut Act, 16 U.S.C. 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, IPHC regulations. Regulations the Council recommends may be implemented by NMFS only after approval by the Secretary of Commerce.

The Council has exercised its authority to develop halibut management programs for the subsistence, sport, and commercial halibut fisheries. The Secretary of Commerce exercised authority to implement the commercial IFQ halibut fishery management program, also known as ''the IFQ Program'' (58 FR 59375, November 9, 1993). The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679.

The halibut IFQ fishery is managed in specific areas defined by the IPHC. These IFQ regulatory areas are: Area 2A (California, Oregon, and Washington); Area 2B (British Columbia); Area 2C (Southeast Alaska), Area 3A (Central Gulf of Alaska), Area 3B (Western Gulf of Alaska), and Area 4 (subdivided into five Areas, 4A through 4E, in the Bering Sea and Aleutian Islands of Western Alaska). These Areas are described in Figure 15 to 50 CFR part 679. The halibut IFQ fishery is limited to persons holding quota share (QS). There are also limits—commonly known as ''vessel use caps''—on how much halibut IFQ a vessel may harvest each year in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E. Throughout this preamble, the term vessel use cap refers to regulations applicable to the halibut IFQ fishery (section 679.42(h)(1)).

As relevant to this action, a Community Quota Entity (CQE) is authorized to hold halibut QS in Area 4B. Halibut IFQ derived from QS held by a CQE is subject to vessel use caps (section 679.42(h)(1)(ii)). NMFS also allocates halibut to the Western Alaska Community Development Quota (CDQ Program) in Areas 4B, 4C, 4D, and 4E (section 679.31(a)(2)), but those allocations are not subject to a vessel use cap and are not affected by this rulemaking.

Background

This proposed rule would implement regulations to temporarily remove vessel use caps in Areas 4A, 4B, 4C, and 4D for 2023 through 2027. Vessel use caps were recommended by the Council and implemented by NMFS as part of the IFQ Program (58 FR 59375, November 9, 1993) as regulations that were in addition to, and not in conflict with, those adopted by the IPHC, consistent with the Halibut Act (16 U.S.C. 773c(c)). The following sections describe the IFQ Program; halibut IFQ vessel use caps; the rationale and effects of temporarily removing vessel use caps in Areas 4A, 4B, 4C, and 4D; and the regulations that would be implemented under this proposed rule.

IFQ Program

Commercial halibut and sablefish fisheries in Alaska are subject to regulation under the IFQ Program and the CDQ Program (50 CFR part 679). A key objective of the IFQ Program is to support the social and economic character of the fisheries and the coastal fishing communities where many of these fisheries are based. For more information about the IFQ Program, please refer to Section 2.3 of the Analysis. Because this rule is specific to the halibut IFQ fishery, reference to the IFQ Program in this preamble is specific to halibut unless otherwise noted.

Under the IFQ Program, access to the commercial halibut fisheries is limited to those persons holding QS, which is the limited access permit NMFS uses to calculate a person's IFQ each year. Halibut QS is designated for a specific geographic area of harvest, a specific vessel operation type (catcher vessel (C/V) or catcher/processor), and for a specific range of vessel sizes that may be used to harvest the halibut (vessel category). Out of the four vessel categories of halibut QS, category A shares are designated for catcher/processors that process their catch at sea (*e.g.,* freezer longline vessels) and do not have a vessel length designation, whereas category B, category C, and category D shares are designated to be fished on C/Vs that meet specific length designations (section 679.40(a)(5)).

NMFS annually issues IFQ permits to each QS holder. IFQ permits authorize permit holders to harvest a specified amount of a particular IFQ species in an area from a specific operation type and vessel category, consistent with the QS they hold. IFQ is expressed in pounds (lb) and is based on the amount of QS held by the permit holder in relation to the total QS pool for each area with an assigned catch.

The IFQ Program also establishes: (1) limits on the maximum amount of QS that a person could use (*i.e.,* be used to receive annual IFQ) (section 679.42(f)); (2) limits on the number of small amounts of indivisible QS units, known as QS blocks, that a person can hold (section 679.42(g)); (3) limits on the ability of IFQ assigned to one C/V vessel category (vessel category B, C, or D IFQ) to be fished on a different (larger) vessel category with some limited exceptions (section 679.42(a)(2)); and (4) limits on the maximum amount of halibut IFQ that may be harvested by a vessel during an IFQ fishing year (section 679.42(h)). Only qualified individuals and initial recipients of QS are eligible to hold C/V QS, and they are required to be on the vessel when the IFQ is being fished, with a few limited exceptions (section 679.41(h)(2)). All of these limitations were established to retain the owner-operator nature of the C/V halibut IFQ fisheries, limit consolidation of QS, and ensure the annual IFQ is not harvested on a small number of larger vessels.

Halibut IFQ Vessel Use Caps

The IFQ Program vessel use caps limit the maximum amount of halibut that can be harvested on any one vessel. The limits are intended to help ensure that a minimum number of vessels are engaged in the halibut IFQ fishery and to address concerns about the socio-economic impacts of consolidation under the IFQ Program. For additional detail on vessel use caps, see the preamble to the proposed rule for the IFQ Program (57 FR 57130, December 3, 1992).

This proposed rule refers to halibut catch limits, commercial halibut allocations, and vessel use caps in pounds (lb) and metric tons (mt). Net pounds and net metric tons are defined as the weight of halibut from which the gills, entrails, head, and ice and slime have been removed.

Relevant to this proposed rule, for Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, vessels cannot be used to harvest more halibut IFQ than one-half percent of the combined total catch limits of halibut (section 679.42(h)(1)). Applying this regulation to 2023 yields a vessel use cap of 89,030 lb (40.4 mt). This vessel use cap applies to vessels harvesting IFQ halibut in Areas 4A, 4B, 4C, 4D, and 4E. Notably, however, halibut harvested in Area 4E is currently entirely allocated under the CDQ Program and CDQ is not subject to vessel use caps. For that reason, Area 4E is not included in this proposed rule.

Applicable to Area 4B for this proposed action, a CQE is authorized to hold halibut QS in Area 4B on behalf of the community of Adak, Alaska (79 FR 8870, February 14, 2014). A CQE is a NMFS-approved non-profit organization that represents small, remote, coastal communities that meet specific criteria to purchase and hold C/V halibut QS on behalf of an eligible community. The CQE holds QS and leases the IFQ derived from the underlying QS. Any vessel harvesting halibut IFQ derived from the QS held by the CQE representing the community of Adak is subject to the vessel use cap regulations at § 679.42(h)(1)(ii), which limit a vessel to harvest no more than 50,000 lb (22.7 mt), in addition to those set forth at § 679.42(h)(1) introductory text and § 679.42(h)(i).

Rationale and Effects of Temporarily Removing Vessel Use Caps in Areas 4A, 4B, 4C, and 4D

At its February 2023 meeting, the Council reviewed an analysis of proposed regulatory changes to remove vessel use caps applicable to the halibut IFQ fisheries in Areas 4A, 4B, 4C, and 4D from 2023 through 2027 (Sections 1 and 2.2.3 of the Analysis). The Council requested this proposed rule to provide continued temporary flexibility to IFQ participants in IPHC Area 4 while the Council analyzes longer term adjustments to vessel use through the Council and public review process. The Council's selection of 2027 as the sunset date for this exemption does not signal any shift from the Council's intent to move the longer-term action through the Council process as efficiently as possible, but rather to provide enough time to develop and implement the longer-term solution and to minimize the likelihood that there is a gap between this temporary exemption and a subsequent permanent action.

NMFS proposes this rule to provide flexibility to vessels operating in Area 4 between 2023 and through 2027. This action is expected to facilitate the harvest of halibut allocated under the IFQ program in Area 4 and provide harvest flexibility and stability to vessels operating in Area 4. This action is needed because a relatively large proportion of vessels participating in Areas 4A, 4B, 4C, and 4D halibut IFQ fisheries are operating near the current vessel use cap, thereby limiting the amount of additional IFQ that could be harvested on vessels operating in those areas (Section 2.2.3 of the Analysis). Additionally, this action is expected to provide flexibility to the CQE representing the community of Adak, Alaska, because the minimum number of vessels needed under current use caps exceeds the number of vessels owned by residents of the community (Section 2.3.1.3 of the Analysis). Vessel use cap limits are a core component of the IFQ Program that are designed to prevent consolidation and help protect entry level opportunities. As such, the

Council expressed concerns about vessel operators becoming reliant on the flexibility provided by this action and intends to develop a more tailored, longer-term solution, that will provide a better balance between the intent of vessel use cap provision and the evolving circumstances in Area 4A, 4B, 4C, and 4D.

Sections 2.2.3 and 2.4 of the Analysis provide details on the efficacy of the rulemakings in 2020, 2021, and 2022 that temporarily removed vessel use caps in Area 4. The Analysis also includes a broader discussion of the range of factors considered for this proposed rule and the anticipated effects of removing the vessel use caps in Areas 4A, 4B, 4C, and 4D, for both CQE and non-CQE-associated vessels for the 2023 to 2027 fishing years. IFQ halibut harvested in Area 4 has declined in recent years, particularly in Area 4B. Compounding circumstances, including a decline in active processors, longer distances to travel to deliver to a processor, and high operating costs, have likely contributed to fewer vessels participating in Area 4 fisheries. Information provided to the Council from stakeholders also emphasized that the decline in crab stocks has impacted the viability of local processing markets in Area 4 and that this temporary measure will help to improve and incentivize local access to the fishery and provide stability for fishermen in the near term. Additionally, the Council previously initiated a longer-term action in June 2022 to make more measured changes to halibut vessel use caps in Area 4; however, the Council recognized that action will take time to move through the Council and public review process and that flexibility is needed more immediately to provide additional stability to halibut IFQ participants in the interim.

The Council did not recommend, and this proposed rule does not include, measures to relieve the vessel use caps for the sablefish IFQ fishery, or for other halibut IFQ areas, due to the larger number of vessels that are currently active in the sablefish IFQ fishery and these other halibut areas. As noted above, Area 4E was not included because halibut harvested in Area 4E is entirely allocated under the CDQ Program; therefore, vessel use caps are not constraining and not included in this action. Detailed information indicating that halibut harvests in other IFQ areas would not be constrained under the current vessel use caps is available in Section 2.3.1.4 of the Analysis.

The proposed regulatory amendments in this rule would add a regulation that would temporarily remove vessel use caps in Areas 4A, 4B, 4C, and 4D in the 2023 through 2027 fishing years. This proposed rule would provide flexibility to facilitate harvest of the halibut resource and is responsive to the Council request to implement this action beginning in the 2023 fishing year.

This proposed rule would not modify other elements of the IFQ Program. Specifically, this proposed rule would not—

- Increase or otherwise modify the annual halibut catch limits adopted by the IPHC and implemented by NMFS (88 FR 14066, March 7, 2023);
- Modify any other conservation measures recommended by the IPHC and implemented by NMFS, nor any other conservation measures implemented by NMFS independent of the IPHC; or
- Modify other limitations on the use of QS and IFQ described in the previous sections of this preamble.

Proposed Regulations

This proposed rule would add a provision at § 679.42(h)(1)(iii) to remove vessel use caps for vessels harvesting IFQ halibut in Areas 4A, 4B, 4C, and 4D from 2023 through 2027 fishing years. Because vessel use caps are applied under existing regulations at the fishery level, including harvest in all areas, the proposed regulations clarify that harvest of IFQ halibut in regulatory Areas 4A, 4B, 4C, and 4D is excluded from the calculation of vessel use caps in Areas 2C, 3A, or 3B from 2023 through 2027.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Halibut Act (16 U.S.C. 773c) allows the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the allocation and catch of halibut in the United States portion of Convention waters provided those regulations do not conflict with IPHC regulations. This proposed action is consistent with the Council's authority to allocate halibut catch among fishery participants in Convention waters off Alaska.

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

A Regulatory Impact Review was prepared to assess costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by Section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact this proposed rule, if adopted, would have on small entities. The IRFA describes the action; the reasons why this proposed rule is proposed; the objectives and legal basis for this proposed rule; the number and description of directly regulated small entities to which this proposed rule would apply; the recordkeeping, reporting, and other compliance requirements of this proposed rule; and the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. The description of the proposed action, its purpose, and the legal basis are explained in the preamble and are not repeated here.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

Number and Description of Small Entities Regulated by This Proposed Rule

This proposed rule would directly regulate the owners and operators of vessels that harvest halibut IFQ in IFQ Areas 4A, 4B, 4C, or 4D. As of 2021 (the most recent year of gross revenue data), there were 98 unique vessels that harvested halibut IFQ in Areas 4A, 4B, 4C, or 4D. Based on average annual gross revenue data, including affiliations, all but one of these vessels that landed halibut in 2021 are considered small entities based on the applicable $11 million threshold. Additional details are included in Sections 2.6 in the Analysis prepared for this proposed rule (see **ADDRESSES**).

Impacts of This Action on Small Entities

This action, if adopted, could better facilitate harvest of IFQ in Area 4 during the 2023 through 2027 fishing seasons.

Although it is difficult to discern the entire scope of impact of the regulatory exemptions implemented for the 2020–2022 fishing seasons, harvest rates achieved in 2020–2022 relative to prior years (2006–2019) indicate the regulatory flexibilities implemented in 2020, 2021, and 2022 (both the temporary transfer provisions as well the vessel use cap exemptions) had some positive impact on the harvest rates, as described in Section 2.4.2 of the Analysis (See **ADDRESSES**).

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The RFA requires identification of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. The Council considered one action alternative. No other alternatives were considered. This action is the same as the action implemented 2022 and 2021 and similar to the action implemented in 2020, which did not include Area 4A.

The status quo alternative would retain the existing vessel use cap restrictions as defined under § 679.42(h). It is possible that existing vessel use caps regulations under the status quo may increase the likelihood that some of the annual halibut allocation is left unharvested in Area 4.

The action alternative would remove limits on the maximum amount of halibut IFQ that may be harvested by a vessel in IFQ regulatory Areas 4A, 4B, 4C, and 4D. The action alternative and the regulations proposed by this action, if adopted, would provide flexibility to IFQ participants in 2023 through 2027 to ensure allocations of halibut IFQ can be harvested by the limited number of vessels operating in these Areas. However, this proposed action could result in a reduction in existing operating vessels (and the associated crew jobs) and opportunities for new entrants in Areas 4A, 4B, 4C, and 4D, due to inability to compete with larger, more efficient, operations that are unconstrained by vessel limitations. Additionally, if there are fewer participants in the fishery, it is possible that landings could consolidate to fewer processors and communities depending on landing location and historic harvester-processor relationships.

Duplicate, Overlapping, or Conflicting Federal Rules

NMFS has not identified any duplication, overlap, or conflict between this proposed rule and existing Federal rules.

Recordkeeping, Reporting, and Other Compliance Requirements

This action does not contain additional recordkeeping, reporting, or other compliance requirements.

Collection-of-Information Requirements

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and Recordkeeping Requirements.

Dated: May 8, 2023.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.42, add paragraph (h)(1)(iii) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(h) * * *

(1) * * *

(iii) Notwithstanding the vessel use caps specified in paragraphs (h)(1) introductory text and (h)(1)(ii) of this section, vessel use caps do not apply to vessels harvesting IFQ halibut in IFQ regulatory Areas 4A, 4B, 4C, and 4D during the 2023 through 2027 fishing years. IFQ halibut harvested in regulatory Areas 4A, 4B, 4C, and 4D is excluded from the calculation of vessel use caps for IFQ regulatory Areas 2C, 3A, or 3B during the 2023 through 2027 fishing years.

* * * * *

[FR Doc. 2023–10092 Filed 5–10–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 88, No. 91

Thursday, May 11, 2023

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

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Guam Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of public 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 Guam Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a business meeting at 9 a.m. ChST on Friday, June 2, 2023, (7 p.m. ET on Thursday, June 1, 2023) in the Multipurpose Room of the Guam History Museum (193 Chalan Santo Papa Juan Pablo Dos, Hagåtña, Guam 96910). The purpose of the meeting is to collect input from members of the public on potential civil rights topics of study for the Committee's investigation.

DATES: Friday, June 2, 2023, from 9 a.m.–11 a.m. ChST (Thursday, June 1, 2023, from 7 p.m.–9 p.m. ET).

ADDRESSES: Guam History Museum, 193 Chalan Santo Papa Juan Pablo Dos, Hagåtña, Guam 96910; Multipurpose Room.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: Any interested member of the public may attend this committee meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. To request accommodations, please email Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov* at least10 business days prior to the meeting.

Members of the public are 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 Kayla Fajota at *kfajota@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Guam 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 *lschiller@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Introductory Remarks
III. Public Comment
IV. Committee Discussion
V. Next Steps
VI. Adjournment

Dated: May 8, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–10088 Filed 5–10–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Census Household Panel

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 February 6, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau.

Title: Census Household Panel.

OMB Control Number: 0607–XXXX.

Form Number(s): Not yet determined.

Type of Request: Regular submission, New Information Collection Request.

Number of Respondents: 75,000 initial screened sample/15,000 panel members.

Average Hours per Response: 4 hours per year (5 minutes for screening; 20 minutes for monthly collection).

Burden Hours: 66,250.

Needs and Uses: The Census Household Panel will recruit a probability-based nationwide nationally representative survey panel to test the methods to collect data on a variety of topics of interest, and for conducting experimentation on alternative question wording and methodological approaches. The goal of the Census Household Panel is to ensure availability of frequent data collection for nationwide estimates on a variety of topics and a variety of subgroups of the population, meeting standards for transparent quality reporting of the Federal Statistical Agencies and the Office of Management and Budget (OMB).

The initial goal for the size of the Panel is 15,000 panelists and households selected for the Panel will come from the Census Bureau's gold standard Master Address File. This ensures the Panel is rooted in this rigorously developed and maintained frame and available for linkage to administrative records securely maintained and curated by the Census Bureau. Initial invitations to enroll in the Panel will be sent by mail and questionnaires will be mainly internet self-response. The Panel will maintain representativeness by allowing respondents who do not use the internet to respond via in-bound computer-assisted telephone interviewing (CATI). All panelists will receive an incentive for each complete questionnaire. Periodic replenishment samples will maintain representativeness and panelists will be replaced after a period of three years.

Affected Public: Individuals or Households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 8(b), 141, 182 and 193.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–1013.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–10040 Filed 5–10–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–2–2023]

Foreign-Trade Zone (FTZ) 76; Authorization of Production Activity; MannKind Corporation; (Pharmaceuticals: Treprostinil); Danbury, Connecticut

On January 6, 2023, MannKind Corporation submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 76B, in Danbury, Connecticut.

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 (88 FR 2323, January 13, 2023). On May 8, 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: May 8, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–10056 Filed 5–10–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Termination of a Selected National Voluntary Laboratory Accreditation Program (NVLAP) Service

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology's (NIST) National Voluntary Laboratory Accreditation Program (NVLAP) announces the termination of the Wood-Based Products Testing Laboratory Accreditation Program (LAP) offered by NVLAP. The Wood-Based Products Testing LAP includes the following areas of testing: chemical, physical, mechanical, fire performance, formaldehyde, and treated-wood characteristics.

DATES: The Wood-Based Products Testing LAP will be terminated upon publication of this notice.

ADDRESSES: Dana Leaman, Chief, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899–2140; email: *nvlap@nist.gov.*

FOR FURTHER INFORMATION CONTACT: Dana Leaman, Chief, National Voluntary Laboratory Accreditation Program, (301) 975–4016; email: *nvlap@nist.gov.*

SUPPLEMENTARY INFORMATION: NIST administers NVLAP under regulations found in 15 CFR part 285. NVLAP provides an unbiased third-party evaluation and recognition of laboratory performance, as well as expert technical assistance to upgrade that performance, by accrediting calibration and testing laboratories found competent to perform specific calibrations or tests.

NVLAP is comprised of a set of Laboratory Accreditation Programs (LAPs) that are established on the basis of requests and demonstrated need. Each LAP includes specific test and/or calibration standards and related methods and protocols assembled to satisfy the unique needs for accreditation in the field of testing or calibration.

Under 15 CFR part 285, the Chief of NVLAP may terminate a LAP when it is determined that a need no longer exists to accredit laboratories for the services covered under the scope of the LAP. The Wood-Based Products Testing LAP includes the following areas of testing: chemical, physical, mechanical, fire performance, formaldehyde, and treated-wood characteristics. The purpose of this program is to supply unbiased third-party evaluation and attestation of testing competence of manufacturer and independent testing laboratories in the given fields. A review of the Wood-Based Products Testing LAP revealed that there are no longer any laboratories enrolled in the program. Given this lack of participation, it is unnecessary and not cost effective to continue this LAP. As a result of this review, the Chief of NVLAP has determined there is no longer exists a need to continue the Wood-Based Products Testing LAP. NVLAP will no longer grant or renew accreditations under the terminated program effective upon publication of this notice.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–10063 Filed 5–10–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC985]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 74 assessment Webinar VII for Gulf of Mexico red snapper.

SUMMARY: The SEDAR 74 assessment of Gulf of Mexico red snapper will consist of a Data workshop, a series of assessment webinars, and a Review workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 74 Assessment Webinar VII will be held from 9 a.m. to 12 p.m. Eastern, May 31, 2023.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR**

FURTHER INFORMATION CONTACT) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; phone: (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion for the webinar are as follows:

Participants will discuss modeling approaches for use in the assessment of Gulf of Mexico red snapper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: May 8, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–10079 Filed 5–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC892]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off the Coast of Delaware

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from Ørsted Wind Power North America, LLC (Ørsted) and its designees, Garden State Offshore Energy, LLC (Garden State) and Skipjack Offshore Energy, LLC (Skipjack), for the re-issuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates. The initial IHA authorized take of marine mammals incidental to marine site characterization surveys in coastal waters off of Delaware and New Jersey. The project has been delayed and none of the work covered in the initial IHA has been conducted. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHA. NMFS is, therefore, issuing a second identical IHA to cover the incidental take analyzed and authorized in the initial IHA.

DATES: This authorization is effective from May 10, 2023, through May 9, 2024. The initial IHA was effective from May 10, 2022, through May 9, 2023. Ørsted has requested issuance with new effective dates of May 10, 2023, through May 9, 2024.

ADDRESSES: An electronic copy of the final 2022 IHA previously issued to Ørsted, Ørsted's application, and the **Federal Register** notices proposing and issuing the initial IHA may be obtained by visiting *https://www.fisheries.noaa.gov/action/incidental-take-authorization-orsted-wind-power-north-america-llc-marine-site.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Alyssa Clevenstine, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On September 16, 2021, NMFS published final notice of our issuance of an IHA authorizing take of 16 species of marine mammals incidental to marine site characterization surveys in coastal waters off of Delaware in the areas of the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS)-A 0482 and 0519 and along potential export cable routes to landfall locations in Delaware and New Jersey (87 FR 30182). The effective dates of that IHA were May 10, 2022, through May 9, 2023. On February 23, 2023, Ørsted informed NMFS that the project was delayed. None of the work identified in the initial IHA (*i.e.,* geophysical, geotechnical, and geohazard data collection) has occurred. Ørsted submitted a request to re-issue the IHA, which would be effective from May 10, 2023, through May 9, 2024, in order to conduct the marine site characterization survey work that was analyzed and authorized through the previously issued IHA.

Summary of Specified Activity and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA.

As part of their overall marine site characterization survey operations, Ørsted plans to conduct high-resolution geophysical (HRG) and geotechnical surveys in Lease Areas OCS–A 0482 and 0519, and the associated export cable route areas. The purpose of the marine site characterization surveys is to collect data concerning seabed (geophysical, geotechnical, and geohazard), ecological, and archeological conditions within the footprint of offshore wind facility development. Surveys are also conducted to support engineering design and to map Unexploded Ordnance (UXO).

The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described for the initial IHA. The mitigation and monitoring are also as prescribed in the initial IHA.

Species that have the potential to be taken by the planned activities can be found in the initial 2022 **Federal Register** notices (87 FR 15922; 87 FR 30182). A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the initial 2022 IHA for Ørsted's construction work (87 FR 30182), Ørsted's application, the **Federal Register** notice of the proposed IHA (87 FR 15922), and all associated references and documents.

On August 1, 2022, NMFS announced proposed changes to the existing NARW vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered NARWs from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921). Should a final vessel speed rule be issued and become effective during the effective period of this IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule would become effective immediately upon the effective date of any final vessel speed rule and, when notice is published of the effective date, NMFS would also notify COSW if the measures in the speed rule were to supersede any of the measures in the MMPA authorization such that they were no longer applicable.

Determinations

Ørsted will conduct activities as analyzed in the initial 2022 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the initial IHA and no new information has emerged that would change those findings. The issued 2023 IHA includes identical required mitigation, monitoring, and reporting measures as the initial IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information 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; and (4) Ørsted'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.

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 with respect to environmental consequences 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 determined that the application of this categorical exclusion remains appropriate for this IHA.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS Office of Protected Resources previously determined that issuance of the initial 2022 IHA falls within the scope of activities analyzed in NMFS Greater Atlantic Regional Fisheries Office's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

Authorization

NMFS has issued an IHA to Ørsted for marine site characterization survey activities associated with the specified activity from May 10, 2023, through May 9, 2024. All previously described mitigation, monitoring, and reporting requirements from the initial 2022 IHA are incorporated.

Dated: May 5, 2023.

Kimberley Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–09947 Filed 5–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Proposal To Find That Michigan Has Satisfied Conditions on Earlier Approval

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce, Environmental Protection Agency.

ACTION: Notice of proposed finding; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) (the Federal agencies) invite public comment on the Federal agencies' proposed finding that Michigan has satisfied all conditions the agencies established as part of their 1997 approval of the state's coastal nonpoint pollution control program (coastal nonpoint program). The Coastal Zone Act Reauthorization Amendments (CZARA) directs states and territories with coastal zone management programs previously approved under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs, which must be submitted to the Federal agencies for approval. Prior to making such a finding, NOAA and the EPA invite public input on the two Federal agencies' rationale for this proposed finding.

DATES: Comments are due by June 12, 2023.

ADDRESSES: Copies of the proposed findings document may be found on *www.regulations.gov* (search for NOAA–NOS–2022–0017) and NOAA's Coastal Nonpoint Pollution Control Program website at *https://coast.noaa.gov/czm/pollutioncontrol/.*

Comments may be submitted by:

• *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *regulations.gov* and enter NOAA–NOS–2022–0017 in the Search box, then click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Joelle Gore, Chief, Stewardship Division (N/OCM6), Office for Coastal Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910; phone (240) 428–7096; ATTN: Michigan Coastal Nonpoint Program.

Instructions: 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 personally identifiable information (for example, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the commenter will be publicly accessible. NOAA and EPA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). 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 Federal agencies will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system).

FOR FURTHER INFORMATION CONTACT: Allison Castellan, Office for Coastal Management, NOS, NOAA, (202) 596–5039, *allison.castellan@noaa.gov;* or Paul Thomas, U.S. EPA Region 5, Water Division, (312) 866–7742, *thomas.paul@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 6217(a) of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. 1455b(a), requires that each state (or territory) with a coastal zone management program previously approved under section 306 of the Coastal Zone Management Act must prepare and submit to the Federal agencies a coastal nonpoint pollution control program for approval. Because Michigan administers a federally approved coastal zone management program, Michigan originally submitted its coastal nonpoint program to the Federal agencies for approval in 1995. The Federal agencies provided public notice of and invited public comment on their proposal to approve, with conditions, the Michigan program (61 FR 57673). The Federal agencies approved the program by letter dated September 24, 1997, subject to the conditions specified in the letter (62 FR 58940). The Federal agencies propose to find, and invite public comment on the proposed findings, that Michigan has satisfied the conditions associated with the earlier approval of its coastal nonpoint program.

The proposed findings document for Michigan's program is available at *www.regulations.gov* (search for NOAA–NOS–2022–0017) and information on the Coastal Nonpoint Program in general is available on the NOAA website at *https://coast.noaa.gov/czm/pollutioncontrol/.*

Radhika Fox,

Assistant Administrator, Office of Water, Environmental Protection Agency.

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–10074 Filed 5–10–23; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC986]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ecosystem Advisory Subpanel (EAS) will hold an online meeting, which is open to the public.

DATES: The online meeting will be held Wednesday, May 31, 2023, from 9 a.m. to 12 p.m., Pacific Daylight Time.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements, will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the EAS to discuss the outcomes of the May 15 and 17, 2023, online meeting of the Pacific Council's Ad Hoc Ecosystem Workgroup (EWG). The EWG is discussing further work on Fishery Ecosystem Plan Initiative 4, concerning mechanisms to integrate ecosystem and climate information into Pacific Council decision making and is providing an update on its work at the June 2023 Pacific Council meeting. Based on its discussion during this meeting, the EAS intends to submit a report to the Pacific Council at its June 2023 meeting to comment on the Initiative 4 update and related activities.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: May 8, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–10080 Filed 5–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC992]

Marine Mammals; File No. 26774

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that John P. Wise, Sr., Ph.D., University of Louisville, Department of Pharmacology, 500 S Preston St., Suite 1319, Louisville, KY 40202 has applied in due form for a permit to receive, import, and export parts from marine mammals, sea turtles, sawfish, and sharks for scientific research purposes.

DATES: Written, telefaxed, or email comments must be received on or before June 12, 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. 26774 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. 26774 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: Jennifer Skidmore or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to receive, import, and export parts from all marine mammals and sea turtles, as well as endangered sawfish and sharks under NMFS' jurisdiction to: (1) determine concentrations of metals and other environmental contaminants in these species; and (2) establish a resource of marine mammal, sea turtle, sawfish, and shark cell lines for use as model systems in the investigation of various factors related to the health of these protected species and as comparative tools to human studies (toxicity of metals, virology, *etc.*). Import and export authority is requested worldwide and the number of animals requested per taxa group or species is outlined in the application.

No take of live animals would be authorized. Sources of foreign and domestic parts may include subsistence harvests, captive animals, other authorized researchers or curated collections, bycatch from legal commercial fishing operations, and foreign stranded animals. Once the cell lines are established, they may be transferred to other researchers, including export to worldwide locations. The cell lines would not be sold for profit or used for commercial purposes. The permit would be valid for 5 years from the date of issuance.

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: May 8, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–10059 Filed 5–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC995]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of web conference.

SUMMARY: The North Pacific Fishery Management Council's (Council) Pacific Northwest Crab Industry Advisory Committee (PNCIAC) will meet May 30, 2023.

DATES: The meeting will be held on Tuesday, May 30, 2023, from 9 a.m. to 11 a.m., Alaska Time.

ADDRESSES: The meeting will be a web conference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/2996.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via video conference are given under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sarah Marrinan, Council staff; phone: (907) 271–2809; email: *sarah.marrinan@noaa.gov.* For technical support, please contact our admin Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, May 30, 2023

The Committee will discuss several topics including: (a) Crab Plan Team recap, (b) Crab Specifications, (c) BBRKC area closures initial review, (d) C-shares active participation, (e) facility and IPQ use caps, (f) crab rationalization program review discussion, and (g) other business. The agenda is subject to change, and the latest version will be posted *https://meetings.npfmc.org/Meeting/Details/2996* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone, or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2996.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2996.*

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

Dated: May 8, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–10081 Filed 5–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC977]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey Off North Carolina in the Northwest Atlantic Ocean

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Lamont-Doherty Earth Observatory (L–DEO) to incidentally harass marine mammals during survey activities associated with a marine geophysical survey off North Carolina in the Northwest Atlantic Ocean.

DATES: This Authorization is effective from May 5, 2023 through May 4, 2024.

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, 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-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On October 12, 2022, NMFS received a request from L–DEO for an IHA to take marine mammals incidental to a marine geophysical survey off the coast of North Carolina in the northwest Atlantic Ocean. The application was deemed adequate and complete on January 13, 2023. L–DEO requested authorization for the take of 30 species of marine mammals by Level B harassment and, for 2 of these species, by Level A harassment. The proposed IHA was published on March 23, 2023 (88 FR 17646). Neither L–DEO, nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Activity

Overview

Researchers from the University of Texas at Austin (UT) and L–DEO, with funding from the NSF, and in collaboration with international and domestic researchers including the United States Geological Survey (USGS), propose to conduct research, including high-energy seismic surveys using airguns as the acoustic source, from the research vessel (R/V) *Marcus G. Langseth* (*Langseth*). The survey will occur off North Carolina in the northwestern Atlantic Ocean during spring/summer 2023. The multi-channel seismic (MCS) reflection survey will occur within the Exclusive Economic Zone (EEZ) of the United States and in international waters, in depths ranging from 200 to 5,500 meters (m). To complete this survey, the R/V *Langseth* will tow an 18-airgun array consisting of Bolt airguns ranging from 40–360 cubic inch (in^3) each on two strings spaced 6 m apart, with a total discharge volume of 3,300 in^3. The acoustic source will be towed at 6 m deep along the survey lines, while the receiving system will consist of a 5 kilometer (km) solid-state hydrophone streamer towed at a depth of 6 m and a 600 m long solid-state hydrophone streamer towed at a depth of 2 to 3 m.

Dates and Duration

The survey is expected to last for 33 days, with approximately 28 days of seismic operations, 3 days of piston coring and heat flow measurements, and 2 days of transit. R/V *Langseth* will likely leave from and return to port in Norfolk, VA, during spring/summer 2023.

Specific Geographic Region

The survey will occur within ~31–35° N lat., ~72–75° W long. off the coast of North Carolina in the Northwest Atlantic Ocean. The closest point of approach of the survey area to the coast will be approximately 40 km (from Cape Hatteras, North Carolina). The region where the survey is planned to occur is depicted in Figure 1; the tracklines could occur anywhere within the polygon shown in Figure 1. Representative survey tracklines are shown, however, some deviation in actual tracklines, including the order of survey operations, could be necessary for reasons such as science drivers, poor data quality, inclement weather, or mechanical issues with the research vessel and/or equipment. The surveys are planned to occur within the EEZ of the U.S. and in international waters, in depths ranging from 200–5,500 m deep.

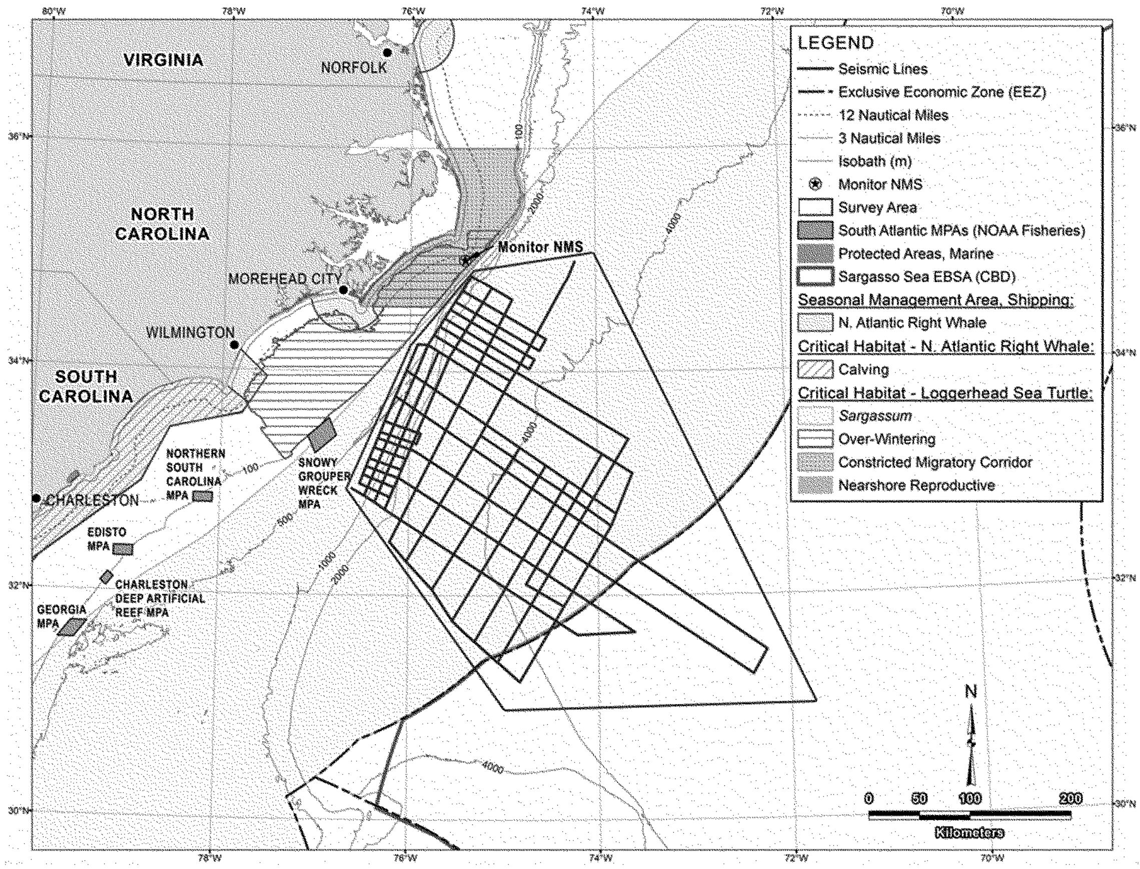


Figure 1 -- Location of the North Carolina seismic surveys, marine conservation areas, and marine critical habitat in the Northwest Atlantic Ocean. Representative survey tracklines are included in the figure; however, the tracklines could occur anywhere within the survey area. MPA = marine protected area; EBSA = Ecologically or Biologically Significant Marine Areas. CBD = Convention on Biological Diversity.

A detailed description of the planned geophysical survey is provided in the **Federal Register** notice for the proposed IHA (88 FR 17646, March 23, 2023). Since that time, no changes have been made to the planned survey activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of proposed IHA was published to the **Federal Register** on March 23, 2023 (88 FR 17646). That notice described, in detail, L–DEO's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS did not receive any public comments.

Changes From the Proposed IHA to Final IHA

Changes were made between publication of the notice of proposed IHA and this notice of final IHA. Additional reporting has been required to notify NOAA's Southeast Regional Office (SERO) on the start and end date of seismic operations, as well as providing daily observations if any non-seismic activities are conducted between November and April (note that use of airguns is prohibited during this period). Specific language regarding the 10-knot (kn) speed restrictions in Seasonal and Dynamic Management Areas (SMA and DMA) for North Atlantic right whale protection was added under the vessel strike avoidance regulations. Lastly, the contact information for the NMFS North Atlantic Right Whale Sighting Advisory System was corrected.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of L–DEO's application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' 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 (*www.fisheries.noaa.gov/find-species*). NMFS refers the reader to the application and to the aforementioned sources for general information regarding the species listed in Table 1.

Table 1 lists all species or stocks for which take is expected and authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is expected to occur, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

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 stocks managed under the MMPA in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico SARs (*e.g.,* Hayes *et al.,* 2019, 2020, 2022). All values presented in Table 1 are the most recent available (including the draft 2022 SARs) at the time of publication and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-; N	1,396 (0; 1,380; 2016)	22	12.15
Fin whale	*Balaenoptera physalus*	Western North Atlantic	E/D; Y	6,802 (0.24; 5,573; 2016)	11	1.8
Sei whale	*Balaenoptera borealis*	Nova Scotia	E/D; Y	6,292 (1.02; 3,098; 2016)	6.2	0.8
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coast	-/-; N	21,968 (0.31; 17,002; 2016)	170	10.6
Blue whale	*Balaenoptera musculus*	Western North Atlantic	E/D;Y	unk (unk; 402; 1980–2008)	0.8	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	North Atlantic	E/D;Y	4,349 (0.28; 3,451; 2016)	3.9	0
Family Kogiidae:						
Pygmy sperm whale	*Kogia breviceps*	Western North Atlantic	-/-; N	7,750 (0.38; 5,689; 2016)	46	0
Dwarf sperm whale	*Kogia sima*	Western North Atlantic	-/-; N	7,750 (0.38; 5,689; 2016)	46	0
Family Ziphiidae (beaked whales):						
Cuvier's beaked Whale	*Ziphius cavirostris*	Western North Atlantic	-/-; N	5,744 (0.36; 4,282; 2016)	43	0.2
Blainville's beaked Whale	*Mesoplodon densirostris*	Western North Atlantic	-/-; N	10,107 (0.27; 8,085; 2016)	81	0
True's beaked whale	*Mesoplodon mirus*	Western North Atlantic	-/-; N	10,107 (0.27; 8,085; 2016)	81	0
Gervais' beaked whale	*Mesoplodon europaeus*	Western North Atlantic	-/-; N	10,107 (0.27; 8,085; 2016)	81	0
Family Delphinidae:						
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic	-/-; N	39,215 (0.30; 30,627; 2016)	306	9
Short finned pilot whale	*Globicephala macrorhynchus*	Western North Atlantic	-/-;Y	28,924 (0.24; 23,637; 2016)	236	136
Rough-toothed dolphin	*Steno bredanensis*	Western North Atlantic	-/-; N	136 (1.0; 67; 2016)	0.7	0
Bottlenose dolphin	*Tursiops truncates*	Western North Atlantic Offshore.	-/-; N	62,851 (0.23; 51,914; 2016)	519	28
Atlantic white-sided dolphin.	*Lagenorhynchus acutus*	Western North Atlantic	-/-; N	93,233 (0.71; 54,443; 2016)	544	27
Pantropical spotted dolphin.	*Stenella attenuate*	Western North Atlantic	-/-; N	6,593 (0.52; 4,367; 2016)	44	0
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic	-/-; N	39,921 (0.27; 32,032; 2016)	320	0
Spinner dolphin	*Stenella longirostris*	Western North Atlantic	-/-; N	4,102 (0.99; 2,045; 2016)	21	0
Clymene dolphin	*Stenella clymene*	Western North Atlantic	-/-; N	4,237 (1.03; 2,071; 2016)	21	0
Striped dolphin	*Stenella coeruleoalba*	Western North Atlantic	-/-; N	67,036 (0.29; 52,939; 2016)	529	0
Fraser's dolphin	*Lagenodelphis hosei*	Western North Atlantic	-/-; N	unk	unk	0
Risso's dolphin	*Grampus griseus*	Western North Atlantic	-/-; N	35,215(0.19; 30,051; 2016)	301	34
Common dolphin	*Delphinus delphis*	Western North Atlantic	-/-; N	172,947 (0.21; 145,216; 2016).	1,452	390
Melon-headed whale	*Peponocephala electra*	Western North Atlantic	-/-; N	unk	unk	0
Pygmy killer whale	*Feresa attenuate*	Western North Atlantic	-/-; N	unk	unk	0
False killer whale	*Pseudorca crassidens*	Western North Atlantic	-/-; N	1,791 (0.56; 1,154; 2016)	12	0
Killer whale	*Orcinus orca*	Western North Atlantic	-/-; N	unk	unk	0
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-/-; N	95,543 (0.31; 74,034; 2016)	851	164

[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.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, all 30 species in Table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. Species that could potentially occur in the research area but are not likely to be harassed due to the rarity of their occurrence (*i.e.,* are considered extralimital or rare visitors to the waters off North Carolina), or because their known migration through the area does not align with the survey dates, were omitted.

A detailed description of the of the species likely to be affected by the geophysical survey, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (88 FR 17646, March 23, 2023). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
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).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from L–DEO's survey activities have the potential to result in harassment of marine mammals in the vicinity of the survey area. The notice of proposed IHA (88 FR 17646, March 23, 2023) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from L–DEO on marine mammals and their habitat. That information and analysis is not repeated here; please refer to the notice of proposed IHA (88 FR 17646, March 23, 2023).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through the 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. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will primarily be Level B harassment, as use of the described acoustic sources, particularly airgun arrays, is likely to disrupt behavioral patterns of marine mammals. There is also some potential for auditory injury (Level A harassment) to result for low- and high-frequency species due to the size of the predicted auditory injury zones for those species. Auditory injury is less likely to occur for mid-frequency species, due to their relative lack of sensitivity to the frequencies at which the primary energy of an airgun signal is found, as well as such species' general lower sensitivity to auditory injury as compared to high-frequency cetaceans. As discussed in further detail below, we do not expect auditory injury for low- or mid-frequency cetaceans. The mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable. No mortality is anticipated as a result of these activities. Below, we describe how the 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 take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by temporary threshold shift (TTS) as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

L–DEO's survey includes the use of impulsive seismic sources (*e.g.,* airguns), and therefore the 160 dB re 1 μPa is applicable for analysis of Level B harassment.

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). L–DEO's survey includes the use of impulsive seismic sources (*e.g.,* airguns).

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI, 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds 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.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate.

The survey will entail the use of a 18-airgun array with a total discharge of 3300 in^3 at a tow depth of 6 m. L–DEO model results are used to determine the 160 dB_{rms} radius for the 18-airgun array in water depth ranging from 200–5500 m. Received sound levels were predicted by L–DEO's model (Diebold *et al.,* 2010) as a function of distance from L–DEO's full 36 airgun array (versus the smaller array planned for use here). Models for the 36-airgun array used a 12-m tow depth, versus the 6-m tow depth planned for this survey. This modeling approach uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant velocity half-space (infinite homogeneous ocean layer, unbounded by a seafloor). In addition, propagation measurements of pulses from the 36-airgun array at a tow depth of 6 m have been reported in deep water (~1600 m), intermediate water depth on the slope (~600–1100 m), and shallow water (~50 m) in the Gulf of Mexico in 2007–2008 (Tolstoy *et al.,* 2009; Diebold *et al.,* 2010).

For deep and intermediate water cases, the field measurements cannot be used readily to derive the harassment isopleths, as at those sites the calibration hydrophone was located at a roughly constant depth of 350–550 m, which may not intersect all the SPL isopleths at their widest point from the sea surface down to the maximum relevant water depth (~2,000 m) for marine mammals. At short ranges, where the direct arrivals dominate and the effects of seafloor interactions are minimal, the data at the deep sites are suitable for comparison with modeled levels at the depth of the calibration hydrophone. At longer ranges, the comparison with the model—constructed from the maximum SPL through the entire water column at varying distances from the airgun array—is the most relevant.

In deep and intermediate water depths at short ranges, sound levels for direct arrivals recorded by the calibration hydrophone and L–DEO model results for the same array tow depth are in good alignment (see Figures 12 and 14 in Appendix H of the NSF–USGS PEIS). Consequently, isopleths falling within this domain can be predicted reliably by the L–DEO model, although they may be imperfectly sampled by measurements recorded at a single depth. At greater distances, the calibration data show that seafloor-reflected and sub-seafloor-refracted arrivals dominate, whereas the direct arrivals become weak and/or incoherent (see Figures 11, 12, and 16 in Appendix H of the NSF–USGS PEIS). Aside from local topography effects, the region around the critical distance is where the observed levels rise closest to the model curve. However, the observed sound levels are found to fall almost entirely below the model curve. Thus, analysis of the Gulf of Mexico calibration measurements demonstrates that although simple, the L–DEO model is a robust tool for conservatively estimating isopleths.

The survey will acquire data with the 18-airgun array at a tow depth of 6 m. For deep water (>1,000 m), we use the deep-water radii obtained from L–DEO model results down to a maximum water depth of 2,000 m for the 18-airgun array. The radii for intermediate water depths (100–1,000 m) are derived from the deep-water ones by applying a correction factor (multiplication) of 1.5, such that observed levels at very near offsets fall below the corrected mitigation curve (see Figure 16 in Appendix H of PEIS).

L–DEO's modeling methodology is described in greater detail in the IHA application. The estimated distances to the Level B harassment isopleth for the airgun configuration are shown in Table 4.

TABLE 4—PREDICTED RADIAL DISTANCES FROM THE R/V LANGSETH SEISMIC SOURCE TO ISOPLETH CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Airgun configuration	Tow depth (m)	Water depth (m)	Predicted distances (in m) to the level B harassment threshold
18 airguns, 3300 in^3	6	>1000 m	[a] 2,886
		100–1000 m	[b] 4,329

[a] Distance is based on L–DEO model results.
[b] Distance is based on L–DEO model results with a 1.5 × correction factor between deep and intermediate water depths.

Table 5 presents the modeled PTS isopleths for each marine mammal hearing group based on L–DEO modeling incorporated in the companion User Spreadsheet (NMFS 2018).

TABLE 5—MODELED RADIAL DISTANCE TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

	LF	MF	HF
PTS SEL_{cum}	**101.9**	0	0.5
PTS Peak	23.3	**11.2**	**116.9**

Note: The largest distance (in bold) of the dual criteria (Sound Exposure Level (SEL) cum or Peak) was used to estimate threshold distances and potential takes by Level A harassment.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L–DEO using the Nucleus software program and the NMFS User Spreadsheet, described below. The acoustic thresholds for impulsive sounds (*e.g.,* airguns) contained in the Technical Guidance were presented as dual metric acoustic thresholds using both SEL_{cum} and peak sound pressure metrics (NMFS, 2016a). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL_{cum} thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The SEL_{cum} for the 18-airgun array is derived from calculating the modified farfield signature. The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance (right) below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, it has been recognized that the source level from the theoretical farfield signature is never physically achieved at the source when the source is an array of multiple airguns separated in space (Tolstoy *et al.,* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.,* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the large array effect near the source and is calculated as a point source, the farfield signature is not an appropriate measure of the sound source level for large arrays. See the application for further detail on acoustic modeling.

Auditory injury is unlikely to occur for mid-frequency cetaceans given very small modeled zones of injury for those species, in context of distributed source dynamics. The source level of the array is a theoretical definition assuming a point source and measurement in the far-field of the source (MacGillivray, 2006). As described by Caldwell and Dragoset (2000), an array is not a point source, but one that spans a small area. In the far-field, individual elements in arrays will effectively work as one source because individual pressure peaks will have coalesced into one relatively broad pulse. The array can then be considered a "point source." For distances within the near-field, *i.e.,* approximately 2–3 times the array dimensions, pressure peaks from individual elements do not arrive simultaneously because the observation point is not equidistant from each element. The effect is destructive interference of the outputs of each element, so that peak pressures in the near-field will be significantly lower than the output of the largest individual element. Here, the relevant peak isopleth distances will in all cases be expected to be within the near-field of the array where the definition of source level breaks down. Therefore, actual locations within this distance of the array center where the sound level exceeds the relevant peak SPL thresholds would not necessarily exist. In general, Caldwell and Dragoset (2000) suggest that the near-field for airgun arrays is considered to extend out to approximately 250 m.

In order to provide quantitative support for this theoretical argument, we calculated expected maximum distances at which the near-field would transition to the farfield (Table 5). For a specific array, one can estimate the distance at which the near-field transitions to the farfield by:

$$D = \frac{L^2}{4\lambda}$$

with the condition that $D >> \lambda$, and where D is the distance, L is the longest dimension of the array, and λ is the wavelength of the signal (Lurton, 2002). Given that λ can be defined by:

$$\lambda = \frac{v}{f}$$

where f is the frequency of the sound signal and v is the speed of the sound in the medium of interest, one can rewrite the equation for D as:

$$D = \frac{fL^2}{4v}$$

and calculate D directly given a particular frequency and known speed of sound (here assumed to be 1,500 meters per second in water, although this varies with environmental conditions).

To determine the closest distance to the arrays at which the source level predictions in Table 5 are valid (*i.e.,* maximum extent of the near-field), we calculated D based on an assumed frequency of 1 kHz. A frequency of 1 kHz is commonly used in near-field/farfield calculations for airgun arrays (Zykov and Carr, 2014; MacGillivray, 2006; NSF and USGS, 2011), and based on representative airgun spectrum data and field measurements of an airgun array used on the *Langseth,* nearly all (greater than 95 percent) of the energy from airgun arrays is below 1 kHz (Tolstoy *et al.,* 2009). Thus, using 1 kHz as the upper cut-off for calculating the maximum extent of the near-field should reasonably represent the near-field extent in field conditions.

If the largest distance to the peak sound pressure level threshold was equal to or less than the longest dimension of the array (*i.e.,* under the array), or within the near-field, then received levels that meet or exceed the threshold in most cases are not expected to occur. This is because within the near-field and within the dimensions of the array, the source levels specified in Appendix A of L–DEO's application are overestimated and not applicable. In fact, until one reaches a distance of approximately three or four times the near-field distance, the average intensity of sound at any given distance from the array is still less than that based on calculations that assume a directional point source (Lurton, 2002). The 3,300-in^3 airgun array planned for use during the survey has an approximate diagonal of 18.6 m, resulting in a near-field distance of approximately 58 m at 1 kHz (NSF and USGS, 2011). Field measurements of this array indicate that the source behaves like multiple discrete sources, rather than a directional point source, beginning at approximately 400 m (deep site) to 1 km (shallow site) from the center of the array (Tolstoy *et al.,* 2009), distances that are actually greater than four times the calculated 58-m near-field distance. Within these distances, the recorded received levels were always lower than would be predicted based on calculations that assume a directional point source, and increasingly so as one moves closer towards the array (Tolstoy *et al.,* 2009). Given this, relying on the calculated distance (58 m) as the distance at which we expect to be in the near-field is a conservative approach since even beyond this distance the acoustic modeling still overestimates the actual received level. Within the near-field, in order to explicitly evaluate the likelihood of exceeding any particular acoustic threshold, one would need to consider the exact position of the animal, its relationship to individual array elements, and how the individual acoustic sources propagate and their acoustic fields interact. Given that within the near-field and dimensions of the array source levels will be below those assumed here, we believe exceedance of the peak pressure threshold will only be possible under highly unlikely circumstances.

In consideration of the received sound levels in the near-field as described above, we expect the potential for Level A harassment of mid-frequency cetaceans to be minimal, even before the likely moderating effects of aversion and/or other compensatory behaviors (*e.g.,* Nachtigall *et al.,* 2018) are considered. We do not believe that Level A harassment is a likely outcome for any low- or mid-frequency cetacean and do not propose to authorize any Level A harassment for these species.

The Level A and Level B harassment estimates are based on a consideration of the number of marine mammals that could be within the area around the operating airgun array where received levels of sound ≥160 dB re 1 μParms are predicted to occur (see Table 1). The estimated numbers are based on the densities (numbers per unit area) of marine mammals expected to occur in the area in the absence of seismic surveys. To the extent that marine mammals tend to move away from seismic sources before the sound level reaches the criterion level and tend not to approach an operating airgun array, these estimates likely overestimate the numbers actually exposed to the specified level of sound.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016; Roberts and Halpin, 2022) represent the best available information regarding marine mammal densities in the survey area. The density data presented by Roberts *et al.* (2016 and 2022) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *https://seamap.env.duke.edu/models/Duke/EC/*. Marine mammal density estimates in the survey area (animals/km^2) were obtained using the most recent model results for all taxa (Roberts *et al.,* 2016 and 2022).

Monthly density grids (*e.g.,* rasters) for each species were overlaid with the Survey Area and values from all grid cells that overlapped the Survey Area (plus a 40 km buffer) were averaged to determine monthly mean density values for each species. Monthly mean density values within the Survey Area were averaged for each of the two water depth categories (intermediate and deep) for the months May to October. The highest mean monthly density estimates for each species were used to estimate take.

Take Estimation

Here, we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and is authorized. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A or Level B harassment, radial distances from the airgun array to the predicted isopleth corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above. Those radial distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the harassment thresholds. The distance for the 160-dB Level B harassment threshold and PTS (Level A harassment) thresholds (based on L–DEO model results) was used to draw a buffer around the area expected to be ensonified (*i.e.,* the survey area). The ensonified areas were then increased by 25 percent to account for potential delays, which is the equivalent to adding 25 percent to the planned line km to be surveyed. The highest mean monthly density for each species was then multiplied by the daily ensonified areas, increased by 25 percent, and then multiplied by the number of survey days (28) to estimate potential takes (see Appendix B of L–DEO's application for more information).

L–DEO generally assumed that their estimates of marine mammal exposures above harassment thresholds equate to take and requested authorization of those takes. Those estimates in turn form the basis for our authorized take numbers. For the species for which NMFS does not expect there to be a reasonable potential for take by Level A harassment to occur, *i.e.,* mid-frequency cetaceans, we have added L–DEO's estimated exposures above Level A harassment thresholds to their estimated exposures above the Level B harassment threshold to produce a total number of incidents of take by Level B harassment that is planned for authorization. Estimated exposures and take numbers for authorization are shown in Table 6.

TABLE 6—ESTIMATED TAKE FOR AUTHORIZATION

Species	Stock	Estimated take		Authorized take		Stock abundance	Percent of stock
		Level B	Level A	Level B	Level A		
North Atlantic right whale.	Western North Atlantic.	0.03	0	0	0	368	n/a
Humpback whale	Gulf of Maine	0.06	0	[1] 2	0	1,396	0.14
Fin whale	Western North Atlantic.	4	0	4	0	6,802	0.06
Sei whale	Nova Scotia	8	0	8	0	6,292	0.13
Minke whale	Canadian East Coast	10	0	10	0	21,968	0.05
Blue whale	Western North Atlantic.	1	0	1	0	402	0.17
Sperm whale	North Atlantic	405	1	406	0	4,349	9.34
Kogia spp.		678	31	678	31	15,500	0.04

TABLE 6—ESTIMATED TAKE FOR AUTHORIZATION—Continued

Species	Stock	Estimated take		Authorized take		Stock abundance	Percent of stock
		Level B	Level A	Level B	Level A		
Cuvier's beaked whale.	Western North Atlantic.	394	2	396	0	5,744	6.89
Mesoplodont Beaked whales.		418	2	420	0	30,321	1.38
Pilot whales		384	1	385	0	15,500	2.48
Rough-toothed dolphin.	Western North Atlantic.	82	0	82	0	136	10.79
Bottlenose dolphin	Western North Atlantic Offshore.	1,473	4	1,477	0	62,851	2.35
Atlantic white-sided dolphin.	Western North Atlantic.	0	0	[1] 14	0	93,233	0.02
Pantropical spotted dolphin.	Western North Atlantic.	114	0	114	0	6,593	1.73
Atlantic spotted dolphin.	Western North Atlantic.	1,232	5	1,237	0	39,921	3.1
Spinner dolphin	Western North Atlantic.	41	0	41	0	4,102	1.00
Clymene dolphin	Western North Atlantic.	79	0	79	0	4,237	1.87
Striped dolphin	Western North Atlantic.	19	0	[1] 45	0	67,036	0.07
Fraser's dolphin	Western North Atlantic.	62	0	[2] 163	0	unk	
Risso's dolphin	Western North Atlantic.	189	0	189	0	35,215	0.54
Common dolphin	Western North Atlantic.	56	0	56	0	172,947	11.99
Melon-headed whale	Western North Atlantic.	58	0	[2] 83	0	3,965	2.15
Pygmy killer whale	Western North Atlantic.	6	0	6	0	unk	
False killer whale	Western North Atlantic.	1	0	[2] 6	0	1,791	0.34
Killer whale	Western North Atlantic.	2	0	[1] 4	0	unk	
Harbor porpoise	Gulf of Maine/Bay of Fundy.	0.01	0	[1] 3	0	95,543	0.00

[1] Take increased to mean group size from the Atlantic Marine Assessment Program for Protected Species (AMAPPS; Palka *et al.,* 2017 and 2021).
[2] Take increased to mean group size from the Ocean Biodiversity Information System (OBIS 2023).

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, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Vessel-Based Visual Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual protected species observers (PSO)) to scan the ocean surface for the presence of marine mammals. The area to be scanned visually includes primarily the shutdown zone (SZ), within which observation of certain marine mammals requires shutdown of the acoustic source, but also a buffer zone and, to the extent possible depending on conditions, the surrounding waters. The buffer zone means an area beyond the SZ to be monitored for the presence of marine mammals that may enter the SZ. During pre-start clearance monitoring (*i.e.,* before ramp-up begins), the buffer zone also acts as an extension of the SZ in that observations of marine mammals within the buffer zone will also prevent airgun operations from beginning (*i.e.,* ramp-up). The buffer zone encompasses the area at and below the sea surface from the edge of the 0–500 m SZ, out to a radius of 1,000 m from the edges of the airgun array (500–1,000 m). This 1,000-m zone (SZ plus buffer) represents the pre-start clearance zone. Visual monitoring of the SZ and adjacent waters is intended to establish and, when visual conditions allow, maintain zones around the sound source that are clear of marine mammals, thereby reducing or eliminating the potential for injury and minimizing the potential for more severe behavioral reactions for animals occurring closer to the vessel. Visual monitoring of the buffer zone is intended to (1) provide additional protection to marine mammals that may be in the vicinity of the vessel during pre-start clearance, and (2) during airgun use, aid in establishing and maintaining the SZ by alerting the visual observer and crew of marine mammals that are outside of, but may approach and enter, the SZ.

L–DEO must use dedicated, trained, NMFS-approved PSOs. The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval.

At least one of the visual and two of the acoustic PSOs (discussed below) aboard the vessel must have a minimum of 90 days at-sea experience working in those roles, respectively, with no more than 18 months elapsed since the conclusion of the at-sea experience. One visual PSO with such experience shall be designated as the lead for the entire protected species observation team. The lead PSO shall serve as primary point of contact for the vessel operator and ensure all PSO requirements per the IHA are met. To the maximum extent practicable, the experienced PSOs should be scheduled to be on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

During survey operations (*e.g.,* any day on which use of the acoustic source is planned to occur, and whenever the acoustic source is in the water, whether activated or not), a minimum of two visual PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Visual monitoring of the pre-start clearance zone must begin no less than 30 minutes prior to ramp-up, and monitoring must continue until 1 hour after use of the acoustic source ceases or until 30 minutes past sunset. Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs shall establish and monitor the shutdown and buffer zones. These zones shall be based upon the radial distance from the edges of the acoustic source (rather than being based on the center of the array or around the vessel itself). During use of the acoustic source (*i.e.,* anytime airguns are active, including ramp-up), detections of marine mammals within the buffer zone (but outside the SZ) shall be communicated to the operator to prepare for the potential shutdown of the acoustic source. Visual PSOs will immediately communicate all observations to the on duty acoustic PSO(s), including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination. Any observations of marine mammals by crew members shall be relayed to the PSO team. During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable.

Visual PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 1 hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (visual and acoustic but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Passive Acoustic Monitoring (PAM)

Acoustic monitoring means the use of trained personnel (sometimes referred to as PAM operators, herein referred to as acoustic PSOs) to operate PAM equipment to acoustically detect the presence of marine mammals. Acoustic monitoring involves acoustically detecting marine mammals regardless of distance from the source, as localization of animals may not always be possible. Acoustic monitoring is intended to further support visual monitoring (during daylight hours) in maintaining an SZ around the sound source that is clear of marine mammals. In cases where visual monitoring is not effective (*e.g.,* due to weather, nighttime), acoustic monitoring may be used to allow certain activities to occur, as further detailed below.

PAM will take place in addition to the visual monitoring program. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustic monitoring can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring will serve to alert visual PSOs (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals vocalize, but it can be effective either by day or by night, and does not depend on good visibility. It will be monitored in real time so that the visual observers can be advised when cetaceans are detected.

The R/V *Langseth* will use a towed PAM system, which must be monitored by at a minimum one on duty acoustic PSO beginning at least 30 minutes prior to ramp-up and at all times during use of the acoustic source. Acoustic PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 1 hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (acoustic and visual but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Survey activity may continue for 30 minutes when the PAM system malfunctions or is damaged, while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional 5 hours without acoustic monitoring during daylight hours only under the following conditions:

- Sea state is less than or equal to BSS 4;
- No marine mammals (excluding delphinids) detected solely by PAM in the applicable EZ in the previous 2 hours;
- NMFS is notified via email as soon as practicable with the time and location in which operations began occurring without an active PAM system; and
- Operations with an active acoustic source, but without an operating PAM system, do not exceed a cumulative total of 5 hours in any 24-hour period.

Establishment of Shutdown and Pre-Start Clearance Zones

An SZ is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, *e.g.,* auditory injury, disruption of critical behaviors. The PSOs will establish a minimum SZ with a 500-m radius. The 500-m SZ will be based on radial distance from the edge of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within or enters this zone, the acoustic source will be shut down.

The pre-start clearance zone is defined as the area that must be clear of marine mammals prior to beginning ramp-up of the acoustic source, and includes the SZ plus the buffer zone. Detections of marine mammals within the pre-start clearance zone will prevent airgun operations from beginning (*i.e.,* ramp-up).

The 500-m SZ is intended to be precautionary in the sense that it will be expected to contain sound exceeding the injury criteria for all cetacean hearing groups, (based on the dual criteria of SEL_{cum} and peak SPL), while also providing a consistent, reasonably observable zone within which PSOs will typically be able to conduct effective observational effort. Additionally, a 500-m SZ is expected to minimize the likelihood that marine mammals will be exposed to levels likely to result in more severe behavioral responses. Although significantly greater distances may be observed from an elevated platform under good conditions, we believe that 500 m is likely regularly attainable for PSOs using the naked eye during typical conditions. The pre-start clearance zone simply represents the addition of a buffer to the SZ, doubling the SZ size during pre-clearance.

An extended SZ of 1,500 m must be enforced for all beaked whales and *Kogia* species. No buffer of this extended SZ is required.

Pre-Start Clearance and Ramp-Up

Ramp-up (sometimes referred to as ''soft start'') means the gradual and systematic increase of emitted sound levels from an airgun array. Ramp-up begins by first activating a single airgun of the smallest volume, followed by doubling the number of active elements in stages until the full complement of an array's airguns are active. Each stage should be approximately the same duration, and the total duration should not be less than approximately 20 minutes. The intent of pre-start clearance observation (30 minutes) is to ensure no protected species are observed within the pre-clearance zone (or extended SZ, for beaked whales and *Kogia* spp.) prior to the beginning of ramp-up. During pre-start clearance period is the only time observations of marine mammals in the buffer zone will prevent operations (*i.e.,* the beginning of ramp-up). The intent of ramp-up is to warn marine mammals of pending seismic survey operations and to allow sufficient time for those animals to leave the immediate vicinity prior to the sound source reaching full intensity. A ramp-up procedure, involving a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source. All operators must adhere to the following pre-start clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the pre-start clearance zone (and extended SZ) for 30 minutes prior to the initiation of ramp-up (pre-start clearance);
- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated prior to reaching the designated run-in;
- One of the PSOs conducting pre-start clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed;
- Ramp-up may not be initiated if any marine mammal is within the applicable shutdown or buffer zone. If a marine mammal is observed within the pre-start clearance zone (or extended SZ, for beaked whales and *Kogia* species) during the 30 minute pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes, and 30 minutes for all mysticetes and all other odontocetes, including sperm whales, beaked whales, and large delphinids, such as pilot whales);
- Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Duration shall not be less than 20 minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed;
- PSOs must monitor the pre-start clearance zone (and extended SZ) during ramp-up, and ramp-up must cease and the source must be shut down upon detection of a marine mammal within the applicable zone. Once ramp-up has begun, detections of marine mammals within the buffer zone do not require shutdown, but such observation shall be communicated to the operator to prepare for the potential shutdown;
- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances;
- If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than that described for shutdown (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual and/or acoustic observation and no visual or acoustic detections of marine mammals have occurred within the applicable SZ. For any longer shutdown, pre-start clearance observation and ramp-up are required. For any shutdown at night or in periods of poor visibility (*e.g.,* BSS 4 or greater), ramp-up is required, but if the shutdown period was brief and constant observation was maintained, pre-start clearance watch of 30 minutes is not required; and
- Testing of the acoustic source involving all elements requires ramp-up. Testing limited to individual source elements or strings does not require ramp-up but does require pre-start clearance of 30 min.

Shutdown

The shutdown of an airgun array requires the immediate de-activation of all individual airgun elements of the array. Any PSO on duty will have the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable SZ. The operator must also establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. When both visual and acoustic PSOs are on duty, all detections will be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs. When the airgun array is active (*i.e.,* anytime one or more airguns is active, including during ramp-up) and (1) a marine mammal appears within or enters the applicable SZ and/or (2) a marine mammal (other than delphinids, see below) is detected acoustically and localized within the applicable SZ, the acoustic source will be shut down. When shutdown is called for by a PSO, the acoustic source will be immediately deactivated and any dispute resolved only following deactivation. Additionally, shutdown will occur whenever PAM alone (without visual sighting), confirms presence of marine mammal(s) in the SZ. If the acoustic PSO cannot confirm presence within the SZ, visual PSOs will be notified but shutdown is not required.

Following a shutdown, airgun activity will not resume until the marine mammal has cleared the SZ. The animal will be considered to have cleared the SZ if it is visually observed to have departed the SZ (*i.e.,* animal is not required to fully exit the buffer zone where applicable), or it has not been seen within the SZ for 15 minutes for small odontocetes, or 30 minutes for all mysticetes and all other odontocetes, including sperm whales, beaked whales, *Kogia* species, and large delphinids, such as pilot whales.

The shutdown requirement is waived for small dolphins if an individual is detected within the SZ. As defined here, the small dolphin group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.,* bow riding). This exception to the shutdown requirement applies solely to specific genera of small dolphins (*Delphinus, Lagenodelphis, Stenella, Steno,* and *Tursiops*).

We include this small dolphin exception because shutdown requirements for small dolphins under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small dolphins are generally the most commonly observed marine mammals in the specific geographic region and will typically be the only marine mammals likely to intentionally approach the vessel. As described above, auditory injury is extremely unlikely to occur for mid-frequency cetaceans (*e.g.,* delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.,* permanent threshold shift).

A large body of anecdotal evidence indicates that small dolphins commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed in those delphinoids (*e.g.,* Barkaszi *et al.,* 2012, Barkaszi and Kelly, 2018). The potential for increased shutdowns resulting from such a measure will require the *Langseth* to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other mid-frequency hearing specialists (*e.g.,* large delphinids) are no more likely to incur auditory injury than are small dolphins, they are much less likely to approach vessels. Therefore, retaining a shutdown requirement for large delphinids will not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a shutdown requirement for large delphinids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the *Langseth*.

Visual PSOs shall use best professional judgment in making the decision to call for a shutdown if there is uncertainty regarding identification (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger SZ).

L–DEO must implement shutdown if a marine mammal species for which take was not authorized, or a species for which authorization was granted but the takes have been met, approaches the Level A or Level B harassment zones. L–DEO must also implement shutdown if any large whale (defined as a sperm whale or any mysticete species) with a calf (defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult) and/or an aggregation of six or more large whales are observed at any distance. Finally, L–DEO must implement shutdown upon detection (visual or acoustic) of a North Atlantic right whale at any distance.

Vessel Strike Avoidance

Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammals from other phenomena, and (2) broadly identify a marine mammal as a whale or other marine mammal.

Vessel speeds must be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.

All vessels must maintain a minimum separation distance of 500 m from North Atlantic right whales and 100 m from sperm whales and all other baleen whales.

All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).

When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

All survey vessels, regardless of size, must observe a 10-kn speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes. These include all Seasonal Management Areas (SMA) established under 50 CFR 224.105 (when in effect), any dynamic management areas (DMA) (when in effect), and Slow Zones. See *www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-*

right-whales for specific detail regarding these areas.

Operational Restrictions

L–DEO must limit airgun use to between May 1 and October 31. Vessel movement and other activities that do not require use of airguns may occur outside of these dates. If any activities (non-seismic) are conducted between November 1 and April 30, daily PSO logs must be sent to the NOAA Southeast Regional Office (SERO). L–DEO must also notify SERO on the start and end date of seismic operations in the survey area via email (*nmfs.ser.research.notification@noaa.gov*).

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Vessel-Based Visual Monitoring

As described above, PSO observations will take place during daytime airgun operations. During seismic survey operations, at least five visual PSOs will be based aboard the *Langseth.* Two visual PSOs will be on duty at all times during daytime hours. Monitoring shall be conducted in accordance with the following requirements:

- The operator shall provide PSOs with bigeye binoculars (*e.g.,* 25 x 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality (*i.e.,* Fujinon or equivalent) solely for PSO use. These shall be pedestal-mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel; and
- The operator will work with the selected third-party observer provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals.

PSOs must have the following requirements and qualifications:

- PSOs shall be independent, dedicated, trained visual and acoustic PSOs and must be employed by a third-party observer provider;
- PSOs shall have no tasks other than to conduct observational effort (visual or acoustic), collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards);
- PSOs shall have successfully completed an approved PSO training course appropriate for their designated task (visual or acoustic). Acoustic PSOs are required to complete specialized training for operating PAM systems and are encouraged to have familiarity with the vessel with which they will be working;
- PSOs can act as acoustic or visual observers (but not at the same time) as long as they demonstrate that their training and experience are sufficient to perform the task at hand;
- NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course;
- PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program;
- PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics; and
- The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Requests shall be granted or denied (with justification) by NMFS within 1 week of receipt of submitted information. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored protected species surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

For data collection purposes, PSOs shall use standardized data collection forms, whether hard copy or electronic. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

- Vessel names (source vessel and other vessels associated with survey) and call signs;
- PSO names and affiliations;
- Dates of departures and returns to port with port name;
- Date and participants of PSO briefings;
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;
- Vessel location (latitude/longitude) when survey effort began and ended and vessel location at beginning and end of visual PSO duty shifts;
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions changed significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
- Factors that may have contributed to impaired observations during each PSO shift change or as needed as environmental conditions changed (*e.g.,* vessel traffic, equipment malfunctions); and
- Survey activity information, such as acoustic source power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, *etc.*).

The following information should be recorded upon visual observation of any protected species:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Vessel location at time of sighting;
- Water depth;
- Direction of vessel's travel (compass direction);
- Direction of animal's travel relative to the vessel;
- Pace of the animal;
- Estimated distance to the animal and its heading relative to vessel at initial sighting;
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;
- Estimated number of animals (high/low/best);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, *etc.*);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach (CPA) and/or closest distance from any element of the acoustic source;
- Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other); and
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a marine mammal is detected while using the PAM system, the following information should be recorded:

- An acoustic encounter identification number, and whether the detection was linked with a visual sighting;
- Date and time when first and last heard;
- Types and nature of sounds heard (*e.g.,* clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal); and
- Any additional information recorded, such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), spectrogram screenshot, and any other notable information.

Reporting

L–DEO must submit a draft comprehensive report to NMFS on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. A final report must be submitted within 30 days following resolution of any comments on the draft report. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the number and nature of exposures that occurred above the harassment threshold based on PSO observations and including an estimate of those that were not detected, in consideration of both the characteristics and behaviors of the species of marine mammals that affect detectability, as well as the environmental factors that affect detectability.

The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airguns were operating. Tracklines should include points recording any change in airgun status (*e.g.,* when the airguns began operating, when they were turned off, or when they changed from full array to single gun or vice versa). Geographic Information Systems (GIS) files shall be provided in Environmental Systems Research Institute (ESRI) shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available to NMFS. A final report must be submitted within 30 days following resolution of any comments on the draft report.

Reporting Species of Concern

Although not anticipated, if a North Atlantic right whale is observed at any time by PSOs or personnel on any project vessels, during surveys or during vessel transit, L–DEO must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System: 877–WHALE–HELP (877–942–5343). North Atlantic right whale sightings in any location must also be reported to the U.S. Coast Guard via channel 16.

Reporting Injured or Dead Marine Mammals

Discovery of injured or dead marine mammals—In the event that personnel involved in survey activities covered by the authorization discover an injured or dead marine mammal, the L–DEO shall report the incident to the Office of Protected Resources (OPR), NMFS and to the NMFS South East Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);

• Observed behaviors of the animal(s), if alive;
• If available, photographs or video footage of the animal(s); and
• General circumstances under which the animal was discovered.

Vessel strike—In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, L–DEO shall report the incident to OPR, NMFS and to the NMFS South East Regional Stranding Coordinator as soon as feasible. The report must include the following information:

• Time, date, and location (latitude/longitude) of the incident;
• Vessel's speed during and leading up to the incident;
• Vessel's course/heading and what operations were being conducted (if applicable);
• Status of all sound sources in use;
• Description of avoidance measures/requirements that were in place at the time of the strike and what additional measure were taken, if any, to avoid strike;
• Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
• Species identification (if known) or description of the animal(s) involved;
• Estimated size and length of the animal that was struck;
• Description of the behavior of the animal immediately preceding and following the strike;
• If available, description of the presence and behavior of any other marine mammals present immediately preceding the strike;
• Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
• To the extent practicable, photographs or video footage of the animal(s).

Actions To Minimize Additional Harm to Live-Stranded (or Milling) Marine Mammals

In the event of a live stranding (or near-shore atypical milling) event within 50 km of the survey operations, where the NMFS stranding network is engaged in herding or other interventions to return animals to the water, the Director of OPR, NMFS (or designee) will advise L–DEO of the need to implement shutdown procedures for all active acoustic sources operating within 50 km of the stranding. Shutdown procedures for live stranding or milling marine mammals include the following: If at any time, the marine mammal the marine mammal(s) die or are euthanized, or if herding/intervention efforts are stopped, the Director of OPR, NMFS (or designee) will advise the IHA-holder that the shutdown around the animals' location is no longer needed. Otherwise, shutdown procedures will remain in effect until the Director of OPR, NMFS (or designee) determines and advises L–DEO that all live animals involved have left the area (either of their own volition or following an intervention).

If further observations of the marine mammals indicate the potential for re-stranding, additional coordination with the IHA-holder will be required to determine what measures are necessary to minimize that likelihood (*e.g.,* extending the shutdown or moving operations farther away) and to implement those measures as appropriate.

Additional Information Requests—if NMFS determines that the circumstances of any marine mammal stranding found in the vicinity of the activity suggest investigation of the association with survey activities is warranted, and an investigation into the stranding is being pursued, NMFS will submit a written request to L–DEO indicating that the following initial available information must be provided as soon as possible, but no later than 7 business days after the request for information:

• Status of all sound source use in the 48 hours preceding the estimated time of stranding and within 50 km of the discovery/notification of the stranding by NMFS; and
• If available, description of the behavior of any marine mammal(s) observed preceding (*i.e.,* within 48 hours and 50 km) and immediately after the discovery of the stranding.

In the event that the investigation is still inconclusive, the investigation of the association of the survey activities is still warranted, and the investigation is still being pursued, NMFS may provide additional information requests, in writing, regarding the nature and location of survey operations prior to the time period above.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 1, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. Where there are meaningful differences between species or stocks they are included as separate subsections below. NMFS does not anticipate that serious injury or mortality will occur as a result of L–DEO's planned survey, even in the absence of mitigation, and no serious injury or mortality is authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section above, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that the majority potential takes will be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus will not result in any adverse impact to the stock as a whole.

We authorized a limited number of instances of Level A harassment of two species (pygmy and dwarf sperm whales, which are members of the high-frequency cetacean hearing group) in the form of PTS, and Level B harassment only of the remaining marine mammal species. Any PTS incurred in marine mammals as a result of the activity is expected to be in the form of a small degree of PTS, and would not result in severe hearing impairment, because of the constant movement of both the *Langseth* and of the marine mammals in the project areas, as well as the fact that the vessel is not expected to remain in any one area in which individual marine mammals will be expected to concentrate for an extended period of time. Additionally, L–DEO will shut down the airgun array if marine mammals approach within 500 m (with the exception of specific genera of dolphins, see Mitigation), further reducing the expected duration and intensity of sound, and therefore the likelihood of marine mammals incurring PTS. Since the duration of exposure to loud sounds will be relatively short it will be unlikely to affect the fitness of any individuals. Also, as described above, we expect that marine mammals would likely move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice of the *Langseth's* approach due to the vessel's relatively low speed when conducting seismic surveys. Accordingly, we expect that the majority of takes will be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007; Ellison *et al.,* 2012).

In addition to being temporary, the maximum expected Level B harassment zone around the survey vessel is 2,886 m for water depths greater than 1,000 m (and up to 4,329 m in water depths of 100 to 1,000 m). Therefore, the ensonified area surrounding the vessel is relatively small compared to the overall distribution of animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the short duration (28 days) and temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the survey area and there are no feeding areas known to be biologically important to marine mammals within the survey area. There is no designated critical habitat for any ESA-listed marine mammals in the survey area.

Marine Mammal Species With Active Unusual Mortality Events UMEs

As discussed above, there are several active UMEs occurring in the vicinity of L–DEO's survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

The mitigation measures are expected to reduce the number and/or severity of takes for all species listed in Table 1, including those with active UMEs, to the level of least practicable adverse impact. In particular they will provide animals the opportunity to move away from the sound source throughout the survey area before seismic survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment. No Level A harassment is anticipated, even in the absence of mitigation measures, or authorized for species with active UMEs.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- The activity is temporary and of relatively short duration (28 days);
- The anticipated impacts of the activity on marine mammals will be temporary behavioral changes due to avoidance of the area around the vessel;
- The availability of alternative areas of similar habitat value for marine mammals to temporarily vacate the survey area during the survey to avoid exposure to sounds from the activity is readily abundant;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the survey will be temporary and spatially limited, and impacts to marine mammal foraging will be minimal;
- The mitigation measures are expected to reduce the number of takes by Level A harassment (in the form of PTS) by allowing for detection of marine mammals in the vicinity of the vessel by visual and acoustic observers; and
- The mitigation measures, including visual and acoustic shutdowns are expected to minimize potential impacts to marine mammals (both amount and severity).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS authorized is below one third of the estimated stock abundance for all species with available abundance estimates (in fact, take of individuals is less than fifteen percent of the abundance of the affected stocks, see Table 6). This is likely a conservative estimate because we assume all takes are of different individual animals, which is likely not the case. Some individuals may be encountered multiple times in a day, but PSOs will count them as separate individuals if they cannot be identified.

NMFS considers it appropriate to make a small numbers finding in the case of a species or stock that may potentially be taken but is either rarely encountered or only expected to be taken on rare occasions. In that circumstance, one or two assumed encounters with a group of animals (meaning a group that is traveling together or aggregated, and thus exposed to a stressor at the same approximate time) should reasonably be considered small numbers, regardless of consideration of the proportion of the stock (if known), as rare encounters resulting in take of one or two groups should be considered small relative to the range and distribution of any stock. In this case, NMFS authorized take resulting from a single exposure of one group each for Fraser's dolphin and killer whale (using average group size), and find that a single incident of take of one group of either of these species represents take of small numbers for that species.

For pygmy killer whale, we authorized six incidents of take by Level B harassment. No abundance information is available for this species in the survey area. Therefore, we refer to other SAR abundance estimates for the species. NMFS estimates that the Hawaii stock of pygmy killer whales has a minimum abundance estimate of 5,885 whales (Carretta *et al.,* 2020). In the Gulf of Mexico, NMFS estimates a minimum abundance of 613 whales for that stock (Hayes *et al.,* 2020). Therefore, NMFS assumes that the estimated take number of six would be small relative to any reasonable estimate of population abundance for the species in the Atlantic.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will 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, in this case with the ESA Interagency Cooperation Division within NMFS' Office of Protected Resources (OPR).

The NMFS Office of Protected Resources ESA Interagency Cooperation Division issued a Biological Opinion under section 7 of the ESA, on the issuance of an IHA to L–DEO under section 101(a)(5)(D) of the MMPA by the NMFS OPR Permits and Conservation Division. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of ESA-listed North Atlantic right whales, blue whales, fin whales, sei whales, and sperm whales.

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), the National Science Foundation prepared an Environmental Analysis (EA) to consider the direct, indirect, and cumulative effects to the human environment from the planned marine geophysical survey off of North Carolina. NSF's EA was made available to the public for review and comment in relation to its suitability for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to L–DEO. In compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216–6, NMFS has reviewed the NSF's EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI). NSF's EA is available at *https://www.nsf.gov/geo/oce/envcomp/north-carolina-2023/LDEO-NC-EA-7-Oct2022.pdf.*

Authorization

NMFS has issued an IHA to L–DEO for the potential harassment of small numbers of 30 marine mammal species incidental to a marine geophysical survey off North Carolina in the Northwest Atlantic Ocean that includes the previously explained mitigation, monitoring and reporting requirements.

Dated: May 5, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–10024 Filed 5–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC996]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of web conference.

SUMMARY: The North Pacific Fishery Management Council's (Council) Bering Sea Fishery Ecosystem Plan Local Knowledge, Traditional Knowledge, and Subsistence Taskforce (LKTKS) meeting will be held on June 22, 2023.

DATES: The meeting will be held on Thursday, June 22, 2023, from 8:30 a.m. to 5 p.m., Alaska Time.

ADDRESSES: The meeting will be a web conference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/2995.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kate Haapala, Council staff; phone: (907) 271–2809 and email: *kate.haapala@noaa.gov.* For technical support, please contact our administrative staff; email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Thursday, June 22, 2023

The LKTKS Taskforce agenda will include: (a) introductions, welcome, and review agenda; (b) review input from April 2023 Council meeting; (c) review and discuss public comment period; (d) discussion on capacity and resources for onramp implementation; (e) public comment; (f) reflections and final recommendations; and (g) other business. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2995* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2995.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2995.* The written comment period will open Friday, June 2, 2023 at 8 a.m. and will be closed on Wednesday, June 21, 2023 at 12 p.m. Alaska Time. An opportunity for oral public testimony will also be provided during the meeting.

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

Dated: May 8, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–10082 Filed 5–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC997]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council is convening an ad-hoc sub-panel of its Scientific and Statistical Committee (SSC) via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Thursday, June 1, 2023, beginning at 9 a.m.

Webinar registration information: https://attendee.gotowebinar.com/register/5510384372857768792.

Call in information: 1 (415) 655–0060, Access Code: 723–991–313.

ADDRESSES:

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scientific and Statistical Committee sub-panel will convene to examine closed-loop simulation results of the Prototype Management Strategy Evaluation (pMSE) for Ecosystem-Based Fishery Management. Operating model scenarios will be based on a Georges Bank 10-stock, 3-fleet operating model with trophic interactions. The sub-panel will formulate suggestions for the pMSE team to improve the final results. The Council may also take these recommendations into account for a potential full MSE in the future.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 8, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–10083 Filed 5–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–214–000]

Columbia Gas Transmission, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on April 21, 2023, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, filed an application under section 7(b) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization for its Greenwood and North Greenwood Storage Fields Abandonment Project (Project). The Project consists of abandoning Columbia's Greenwood and North Greenwood Storage Fields, including all associated facilities and base gas, all located in Steuben County, New York. Columbia states that the Project will serve to lower the overall safety risk to its system and reduce future integrity and location risk in alignment with the Pipeline and Hazardous Materials Safety Administration (PHMSA) Storage Final Rule (Docket 2016–0016).[1] Columbia estimates the total cost of the Project to be $18.5 million, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Water Quality Certification

Columbia's application states that a water quality certificate under section 401 of the Clean Water Act is required for the project from the New York Department of Environmental Conservation (NYSDEC).[2] The request for certification must be submitted to the certifying agency and to the Commission concurrently. Proof of the certifying agency's receipt date must be filed no later than five (5) days after the request is submitted to the certifying agency.

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

[1] 85 FR 8104 (February 12, 2020).

[2] See Columbia's application, Vol. I, Resource Report 1, Section 1.7, Table 1–6.

Public Reference Room. 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 regarding the proposed project should be directed to David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700 by phone at 832–320–5477, or by email at *david_alonzo@tcenergy.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[3] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are two ways to become involved in the Commission's review of this project: you can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on May 26, 2023.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before May 26, 2023.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP23–214–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below. Your written comments must reference the Project docket number (CP23–214–000).

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other method: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[4] 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 26, 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 the your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP23–214–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP23–214–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other method: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of motions to intervene

[3] 18 CFR (Code of Federal Regulations) 157.9.

[4] 18 CFR 385.102(d).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

(option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail at: David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700 or at *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. Service can be via email with a link to the document.

All timely, unopposed [7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on May 26, 2023.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

Dated: May 5, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–10061 Filed 5–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–144–000.
Applicants: Clearwater Wind II, LLC.
Description: Clearwater Wind II, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/5/23.
Accession Number: 20230505–5056.
Comment Date: 5 p.m. ET 5/26/23.

Docket Numbers: EG23–145–000.
Applicants: Johnson County Power, LLC.
Description: Johnson County Power, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
*Filed Date:*5/5/23.
Accession Number: 20230505–5066.
Comment Date: 5 p.m. ET 5/26/23.

Docket Numbers: EG23–146–000.
Applicants: RW Miller Power, LLC.
Description: RW Miller Power, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/5/23.
Accession Number: 20230505–5067.
Comment Date: 5 p.m. ET 5/26/23.

Docket Numbers: EG23–147–000.
Applicants: Jack County Power, LLC
Description: Jack County Power, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/5/23.
Accession Number: 20230505–5069.
Comment Date: 5 p.m. ET 5/26/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2042–044; ER10–1862–038; ER10–1873–018; ER10–1875–018; ER10–1876–019; ER10–1878–018; ER10–1883–018; ER10–1884–018; ER10–1885–018; ER10–1888–018; ER10–1893–038; ER10–1934–038; ER10–1938–039; ER10–1941–018; ER10–1942–036; ER10–1947–019; ER10–2985–042; ER10–3049–043; ER10–3051–043; ER11–4369–023; ER12–1987–016; ER12–2261–017; ER12–2645–011; ER16–2218–024; ER17–696–024; ER19–1127–008; ER20–1699–006; ER23–944–002.
Applicants: Calpine Community Energy, LLC, Johanna Energy Center, LLC, Calpine King City Cogen, LLC, Calpine Energy Solutions, LLC, North American Power Business, LLC, Pastoria Energy Facility L.L.C., Russell City Energy Company, LLC, O.L.S. Energy-Agnews, Inc., North American Power and Gas, LLC, Champion Energy, LLC, Champion Energy Services, LLC, Champion Energy Marketing LLC, Otay Mesa Energy Center, LLC, Calpine Construction Finance Co., L.P., Calpine Gilroy Cogen, L.P., Calpine Power America—CA, LLC, CES Marketing IX, LLC, CES Marketing X, LLC, Creed Energy Center, LLC, Delta Energy Center, LLC, Geysers Power Company, LLC, Gilroy Energy Center, LLC, Goose Haven Energy Center, LLC, Los Esteros Critical Energy Facility, LLC, Los Medanos Energy Center LLC, Metcalf Energy Center, LLC, Power Contract Financing, L.L.C., Calpine Energy Services, L.P.
Description: Notice of Change in Status of Calpine Energy Services, L.P., et al.
Filed Date: 5/1/23.
Accession Number: 20230501–5586.
Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER10–2294–008; ER11–3808–007; ER11–3980–007; ER13–413–008; ER13–534–007; ER13–2103–005; ER13–2414–004; ER15–2330–004; ER16–131–004; ER20–2696–001; ER17–737–001; ER17–2471–005; ER17–2472–005; ER18–301–004; ER18–664–005; ER22–645–001; ER18–2214–002; ER18–2216–002; ER18–2435–004; ER19–1047–003; ER20–2977–001; ER22–1882–002; ER22–2178–002; ER22–2799–001; ER22–2800–001; ER22–2801–001.
Applicants: VESI 25 LLC, VESI 24 LLC, VESI 21 LLC, ORNI 50 LLC, VESI 10 LLC, ORNI 34 LLC, VESIVEC LLC, ORNI 41 LLC, Plumsted 537 LLC, Stryker 22, LLC, Ormat Dixie Valley LLC, Steamboat Hills LLC, Ormesa LLC, ONGP LLC, ORNI 43 LLC, Viridity Energy Solutions Inc., VESI Pomona Energy Storage, Inc., Heber Geothermal Company LLC, ORNI 37 LLC, Mammoth Three LLC, ORNI 47 LLC, Mammoth One LLC, USG Oregon LLC, ORNI 14 LLC, ORNI 39 LLC, ORNI 18 LLC.
Description: Notice of Change in Status of ORNI 18 LLC, et al.
Filed Date: 5/2/23.
Accession Number: 20230502–5280.
Comment Date: 5 p.m. ET 5/23/23.

Docket Numbers: ER10–2381–013; ER11–2206–014; ER11–2207–014; ER11–2209–014; ER11–2210–014; ER11–2211–014; ER11–2855–028; ER11–2856–028; ER11–2857–028; ER11–3727–020; ER12–21–026; ER12–

1711–020; ER13–1150–012; ER13–1151–012; ER13–1991–027; ER13–1992–027; ER18–814–005; ER19–672–005; ER19–843–005; ER19–1061–005; ER19–1063–005; ER19–1200–008; ER20–486–005.

Applicants: Golden Fields Solar III, LLC, Clearway Power Marketing LLC, Solar Borrego I LLC, Solar Alpine LLC, Solar Blythe LLC, Marsh Landing LLC, Carlsbad Energy Center LLC, Desert Sunlight 300, LLC, Desert Sunlight 300, LLC, Alta Wind XI, LLC, Alta Wind X, LLC, High Plains Ranch II, LLC, Agua Caliente Solar, LLC, El Segundo Energy Center LLC, Sun City Project LLC, Sand Drag LLC, Avenal Park LLC, Alta Wind I, LLC, Alta Wind III, LLC, Alta Wind II, LLC, Alta Wind IV, LLC, Alta Wind V, LLC, Walnut Creek Energy, LLC.

Description: Supplement to March 3, 2023, Notice of Change in Status of Agua Caliente Solar, LLC, et al.

Filed Date: 5/2/23.

Accession Number: 20230502–5279.

Comment Date: 5 p.m. ET 5/23/23.

Docket Numbers: ER21–2382–000.

Applicants: Shell Energy North America (US), L.P.

Description: Refund Report: Refund Report to be effective N/A.

Filed Date: 5/5/23.

Accession Number: 20230505–5182.

Comment Date: 5 p.m. ET 5/26/23.

Docket Numbers: ER23–643–002.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to ISA, SA No. 5596; Queue No. AD1–020 to be effective 2/15/2023.

Filed Date: 5/5/23

Accession Number: 20230505–5136

Comment Date: 5 p.m. ET 5/26/23.

Docket Numbers: ER23–1832–000.

Applicants: Homer City Generation, L.P.

Description: Tariff Amendment: Notice of Cancellation of Reactive Service Tariff to be effective 12/31/9998.

Filed Date: 5/4/23.

Accession Number: 20230504–5129

Comment Date: 5 p.m. ET 5/25/23.

Docket Numbers: ER23–1833–000.

Applicants: Bio Energy (Ohio II), LLC.

Description: Tariff Amendment: Bio Energy (Ohio II), LLC Notice of MBR Cancellation to be effective 5/4/2023.

Filed Date: 5/4/23.

Accession Number: 20230504–5130.

Comment Date: 5 p.m. ET 5/25/23.

Docket Numbers: ER23–1834–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC–NCEMC NITSA SA No. 210 (2023) to be effective 5/1/2023.

Filed Date: 5/4/23.

Accession Number: 20230504–5151.

Comment Date: 5 p.m. ET 5/25/23.

Docket Numbers: ER23–1835–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 6899 and CSA, SA No. 6900; Queue No. AD2–091 to be effective 4/5/2023.

Filed Date: 5/5/23.

Accession Number: 20230505–5078.

Comment Date: 5 p.m. ET 5/26/23.

Docket Numbers: ER23–1836–000.

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: Evergreen PV1 LGIA Filing to be effective 4/21/2023.

Filed Date: 5/5/23.

Accession Number: 20230505–5115.

Comment Date: 5 p.m. ET 5/26/23.

Docket Numbers: ER23–1837–000

Applicants: PacifiCorp

Description: § 205(d) Rate Filing: Provisional Large Generator Interconnection Agreement to be effective 5/6/2023.

Filed Date: 5/5/23.

Accession Number: 20230505–5124.

Comment Date: 5 p.m. ET 5/26/23.

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: May 5, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–10066 Filed 5–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3071–008]

Blue Earth County; Notice of Application for Surrender of Exemption, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for surrender of exemption.

b. *Project No.:* P–3071–008.

c. *Date Filed:* April 14, 2023.

d. *Applicant:* Blue Earth County.

e. *Name of Project:* Rapidan Dam Hydroelectric Project.

f. *Location:* The project is located on the Blue Earth River, in Blue Earth County, approximately 10 miles south of Mankato, Minnesota. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Ryan Thilges, P.E., Public Works Director, Blue Earth County, 35 Map Drive, P.O. Box 3083, Mankato, MN 56002–3083. Phone (507) 304–4031 or *ryan.thilges@blueearthcountymn.gov.*

i. *FERC Contact:* Diana Shannon, (202) 502–6136, *diana.shannon@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* June 5, 2023.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–3071–008. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The project is currently inoperable due to flooding in 2019–2020 that damaged the generating equipment. Due to costs associated with returning the project to operation, the applicant believes that continued project operation is no longer in the public interest and therefore, wishes to surrender the project exemption. The applicant proposes to leave the dam and other project features in place. No land-disturbing activities are proposed.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: May 5, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–10062 Filed 5–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2490–031]

Green Mountain Power Corporation; Notice Soliciting Scoping Comments

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.

b. *Project No.:* P–2490–031.

c. *Date Filed:* August 30, 2022.

d. *Applicant:* Green Mountain Power Corporation (GMP).

e. *Name of Project:* Taftsville Hydroelectric Project.

f. *Location:* On the Ottauquechee River in the Village of Taftsville, Windsor County, Vermont.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John Greenan, Green Mountain Power Corporation, 2152 Post Road, Rutland, VT 05701; (802) 770–2195; or *John.Greenan@greenmountainpower.com.*

i. *FERC Contact:* Monte TerHaar at (202) 502–6035; or *monte.terhaar@ferc.gov.*

j. *Deadline for filing scoping comments:* June 5, 2023.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support 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, MD 20852. All filings must clearly identify the following on the first page: Taftsville Hydroelectric Project (P–2490–031).

The Commission's Rules of Practice and Procedure require all interveners 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 intervener 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. The application is not ready for environmental analysis at this time.

l. *Project Description:* (1) an existing 220-foot-long by 16-foot-high concrete gravity dam; (2) a 194-foot-long spillway section with a crest elevation of 637.12 feet National Geodetic Vertical Datum of 1929 (NGVD 29), topped with 18-inch wooden flashboards; (3) an existing 4,600-foot-long, 20.5-acre reservoir at normal water surface elevation 638.6 feet NGVD 29; (4) a powerhouse containing one 0.5-megawatt vertical Kaplan generating unit, with a minimum hydraulic capacity of 95 cubic feet per second (cfs) and maximum hydraulic capacity of 370 cfs; (5) a 200-foot-long tailrace section; (6) a 40-foot-long transmission line connecting the powerhouse to the Distribution Substation; (7) the Distribution Substation and Transmission West Substation; and (8) appurtenant facilities. Approximately 290 feet of the Ottauquechee River, between the dam and tailrace channel, are bypassed during normal operations. The project generates 1,038 megawatt-hours annually.

m. GMP proposes no modifications to the existing project facilities. GMP proposes to continue to operate the project in run-of-river mode, provide a 15 cfs release to the bypassed reach via spillage over the crest of the spillway, seasonally install wooden flashboards, and maintain recreation facilities, as it has under the current license, with modifications to: (1) Use no more than 10% of inflow to refill the impoundment after maintenance drawdowns; (2) Consult with resource agencies prior to conducting maintenance and unplanned drawdowns and repair work; (3) Restrict the removal of trees greater than or equal to 3 inches in diameter at breast height in the project boundary to the period of November 1 through March 31 for protection of the northern-long-eared bat; and (4) Update the historic properties management plan to address and mitigate project effects on historic properties.

n. Copies of the application can be viewed on the Commission's website at *https://www.ferc.gov* using the ''eLibrary'' link. Enter the project's docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov.*

You may also register at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov.*

o. *Scoping Process:* Pursuant to the National Environmental Policy Act (NEPA), Commission staff intends to prepare either an environmental assessment (EA) or an environmental impact statement (EIS) (collectively referred to as the ''NEPA document'') that describes and evaluates the probable effects, including an assessment of the site-specific and cumulative effects, if any, of the proposed action and alternatives. The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission issues an EA or an EIS. At this time, we do not anticipate holding an on-site scoping meeting. Instead, we are soliciting written comments and suggestions on the preliminary list of issues and alternatives to be addressed in the NEPA document, as described in scoping document 1 (SD1), issued May 5, 2023.

Copies of the SD1 outlining the subject areas to be addressed in the NEPA document were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of SD1 may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: May 5, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–10065 Filed 5–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15000–003]

Erie Boulevard Hydropower, L.P.; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 15000–003.

c. *Date filed:* June 30, 2022.

d. *Applicant:* Erie Boulevard Hydropower, L.P. (Erie).

e. *Name of Project:* Franklin Falls Hydroelectric Project (Franklin Falls Project or project).

f. *Location:* The existing project is located on the Saranac River, in the town of St. Armand in Essex County and the town of Franklin in Franklin County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Steven Murphy, Director, U.S. Licensing, Erie Boulevard Hydropower, L.P., 33 West 1st Street South, Fulton, New York 13069; phone: (315) 598–6130; email: *steven.murphy@brookfieldrenewable.com;* and Patrick Storms, Director of Operations, Erie Boulevard Hydropower, L.P., 800 Starbuck Avenue, Suite 201, Watertown, New York 13601; phone: (315) 779–2410; email: *patrick.storms@brookfieldrenewable.com.*

i. *FERC Contact:* Joshua Dub at (202) 502–8138, or *joshua.dub@ferc.gov.*

j. *Deadline for filing scoping comments:* June 5, 2023.[1]

The Commission strongly encourages electronic filing. Please file scoping 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, please send a paper copy via U.S. Postal Service 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: Franklin Falls Hydroelectric Project (P–15000–003).

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 is not ready for environmental analysis at this time.

l. *The Franklin Falls Project consists of the following existing facilities:* (1) a 148-foot-long, 45-foot-high concrete overflow-type dam with a crest elevation of 1,462.88 feet[2] topped with 2-foot-high flashboards; (2) a reservoir with a surface area of 479 acres and a gross storage capacity of 5,580 acre-feet at a pool elevation of 1,464.88 feet; (3) an integrated 28-foot-long gated intake structure located on the dam's south side; (4) a 10.5-foot-diameter, 300-foot-long steel penstock that bifurcates into two 10-foot-diameter, 38-foot-long penstocks; (5) a 43-foot-high surge tank with a 20-foot-diameter steel shaft; (6) a powerhouse containing two turbine-generator units having a total rated capacity of 2.12 megawatts; (7) two 85-

[1] The Commission's Rules of Practice and Procedure provide that if a deadline falls on a Saturday, Sunday, holiday, or other day when the Commission is closed for business, the deadline does not end until the close of business on the next business day. 18 CFR 385.2007(a)(2). Because the 30-day deadline falls on a Sunday (*i.e.,* June 4, 2023), the deadline is extended until the close of business on Monday, June 5, 2023.

[2] All elevations are in National Geodetic Vertical Datum of 1929.

foot-long, 2.3-kilovolt (kV) generator leads; (8) a 2.3/46-kV step-up transformer bank; (9) a 300-foot-long, 46-kV transmission line; (10) a tailrace; and (11) appurtenant facilities.

The Franklin Falls Project operates in a modified run-of-river mode. If inflow exceeds the hydraulic capacity of the units, the project operates continuously at full load. When the inflow is less than the hydraulic capacity of the project, the project is operated in a run-of-river mode utilizing pondage as needed for daily flow regulation and to suit power requirements of the New York Independent System Operator. The project has an average annual generation of 10,349 megawatt-hours.

Erie does not propose changes to project facilities or operation. Erie proposes to continue to: (1) provide a minimum base flow of 245 cubic feet per second (cfs) or inflow, whichever is less, from March 1 through June 1 from the Franklin Falls powerhouse; and from June 2 to March 1 reservoir inflow is released from the powerhouse, as needed for the downstream Saranac Project No. 4472 to maintain a minimum base flow of 165 cfs, or inflow, whichever is less; (2) limit the maximum total drawdown of the Franklin Falls impoundment to 2 feet below the top of the flashboards, or 1 foot below the spillway crest when flashboards are not in use (Erie annually installs flashboards at Franklin Falls by the first week of June, unless flow conditions warrant otherwise); (3) provide a minimum flow to the bypassed reach of 125 cfs or inflow, whichever is less, from March 31 through May 31 for the protection of walleye spawning and incubation (the release schedule may be modified on a year-to-year basis based on water temperatures and the presence/absence of walleye, upon mutual agreement between Erie and the New York State Department of Environmental Conservation); and (4) operate and maintain the hand-carry boat launch and canoe portage.

Erie proposes to modify the project boundary by removing approximately 1.12 acres along the northern shoreline of the project impoundment that are not needed for project operation and adding approximately 0.14 acre to include the project's existing hand-carry boat launch. In addition, Erie proposes to implement its proposed bald eagle management plan, invasive species management plan, and impoundment drawdown plan.

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. Enter the docket number, excluding the last three digits, in the docket number field to access the document (P–15000). At this time, the Commission has suspended access to the Commission's Public Access Room. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

n. 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.

o. *Scoping Process:*

Commission staff will prepare either an environmental assessment (EA) or an environmental impact statement (EIS) that describes and evaluates the probable effects, if any, of the licensee's proposed action and alternatives. The EA or EIS will consider environmental impacts and reasonable alternatives to the proposed action. The Commission's scoping process will help determine the required level of analysis and satisfy the National Environmental Policy Act (NEPA) scoping requirements, irrespective of whether the Commission prepares an EA or an EIS. At this time, we do not anticipate holding on-site scoping meetings. Instead, we are soliciting written comments and suggestions on the preliminary list of issues and alternatives to be addressed in the NEPA document, as described in scoping document 1 (SD1), issued May 5, 2023.

Copies of SD1 outlining the subject areas to be addressed in the NEPA document were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of SD1 may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: May 5, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–10064 Filed 5–10–23; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4472–031]

Union Falls Hydropower, L.P.; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 4472–031.

c. *Date filed:* June 30, 2022.

d. *Applicant:* Union Falls Hydropower, L.P. (Union Falls Hydro).

e. *Name of Project:* Saranac Hydroelectric Project (Saranac Project or project).

f. *Location:* The existing project is located on the Saranac River, in the town of Franklin in Franklin County and the town of Black Brook in Clinton County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Sherri Loon, Coordinator—Operations USA, Kruger Energy, 423 Brunswick Ave., Gardiner, ME 04345; phone: (207) 203–3026; email: *Sherri.Loon@kruger.com;* and Mr. Lewis Loon, General Manager, Operations and Maintenance—USA, Kruger Energy, 432 Brunswick Ave., Gardiner, ME 04345; phone: (207) 203–3027; email: *Lewis.Loon@kruger.com.*

i. *FERC Contact:* Joshua Dub at (202) 502–8138, or *joshua.dub@ferc.gov.*

j. *Deadline for filing scoping comments:* June 5, 2023.[1]

The Commission strongly encourages electronic filing. Please file scoping 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, please send a paper copy via U.S. Postal

[1] The Commission's Rules of Practice and Procedure provide that if a deadline falls on a Saturday, Sunday, holiday, or other day when the Commission is closed for business, the deadline does not end until the close of business on the next business day. 18 CFR 385.2007(a)(2). Because the 30-day deadline falls on a Sunday (*i.e.,* June 4, 2023), the deadline is extended until the close of business on Monday, June 5, 2023.

Service 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: Saranac Hydroelectric Project (P–4472–031).

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 is not ready for environmental analysis at this time.

l. *The Saranac Project consists of the following existing facilities:* (1) a 151-foot-long, 24-foot-high dam having a 147-foot-long spillway section with a crest elevation of 1,408.49 feet [2] topped with 1-foot-high flashboards; (2) an integral, 36-foot-long, gated intake structure at the dam's north side; (3) a reservoir having a surface area of 1,630 acres and a gross storage capacity of 8,900 acre-feet at a pool elevation of 1,409.49 feet; (4) an 11-foot-diameter, 1,433-foot-long steel penstock that bifurcates into two 7-foot-diameter, 71-foot-long penstocks; (5) a surge vent; (6) a powerhouse containing two turbine-generator units with a total rated capacity of 2.6 megawatts; (7) two 4.16-kilovolt (kV) generator leads; (8) a 4.16/46-kV, 3,000-kV-amps step-up transformer bank; (9) a 90-foot-long, 46-kV transmission line; (10) a tailrace; and (11) appurtenant facilities.

The Saranac Project operates in a modified run-of-river mode through the use of a float control for the purpose of generating electric power, with a minimum flow of 30 cubic feet per second (cfs) in the bypassed reach from April 1 through June 30, and a minimum flow of 10 cfs during the remainder of the year. The project has an average annual generation of 745 megawatt-hours.

Union Falls Hydro does not propose changes to project facilities. Union Falls Hydro proposes to: (1) limit the maximum daily drawdown of the project impoundment to no more than 3 inches in a 24-hour period, and limit the total drawdown to 6 inches below the top of the project's flashboards, or below the spillway crest when flashboards are not present; (2) provide a minimum base flow of 165 cfs or inflow, whichever is less, at the dam year-round; (3) increase the minimum flow in the bypassed reach to 30 cfs from December 1 through March 1 and 50 cfs from March 2 through November 30; and (4) install signage for the canoe portage trail and tailrace parking area. In addition, Union Falls Hydro proposes to implement the following proposed plans: bald eagle management plan, invasive species management plan, impoundment drawdown plan, and operation compliance monitoring plan.

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. Enter the docket number, excluding the last three digits, in the docket number field to access the document (P–4472). At this time, the Commission has suspended access to the Commission's Public Access Room. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

n. 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.

o. *Scoping Process:* Commission staff will prepare either an environmental assessment (EA) or an environmental impact statement (EIS) that describes and evaluates the probable effects, if any, of the licensee's proposed action and alternatives. The EA or EIS will consider environmental impacts and reasonable alternatives to the proposed action. The Commission's scoping process will help determine the required level of analysis and satisfy the National Environmental Policy Act (NEPA) scoping requirements, irrespective of whether the Commission prepares an EA or an EIS. At this time, we do not anticipate holding on-site scoping meetings. Instead, we are soliciting written comments and suggestions on the preliminary list of issues and alternatives to be addressed in the NEPA document, as described in scoping document 1 (SD1), issued May 5, 2023.

Copies of SD1 outlining the subject areas to be addressed in the NEPA document were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of SD1 may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: May 5, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–10058 Filed 5–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2589–088]

Marquette Board of Light and Power; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License to Revise Article 403.

b. *Project No.:* 2589–088.

c. *Date Filed:* August 26, 2022.

d. *Applicant:* Marquette Board of Light and Power (licensee).

e. *Name of Project:* Marquette Hydroelectric Project.

f. *Location:* The project is located on the Dead River, near the City of Marquette, in Marquette County, Michigan. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Thomas J. Skewis, Environmental Compliance, Marquette Board of Light and Power, 2200 Wright Street, Marquette, MI 49855, (906) 225–8670, *tskewis@mblp.*

i. *FERC Contact:* Margaret Noonan, (202) 502–8971, *Margaret.Noonan@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* 30 days from the date of notice issuance.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests 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,

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[2] All elevations are in National Geodetic Vertical Datum of 1929.

without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2589–088. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee requests to amend the normal pool elevation of the Tourist Park Development defined in Article 403 of the license. The normal reservoir elevation listed in the license is 637.2 feet National Geodetic Vertical Datum of 1929 (NGVD 29). The proposed reservoir elevation is 638.0 feet NGVD 29 ±0.5 feet. The licensee began operating the reservoir at the proposed elevation during a 3-year test period beginning in 2015, and is now proposing to permanently amend the license.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: May 5, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–10060 Filed 5–10–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10968–01–R1]

2023 Annual Joint Meeting of the Ozone Transport Commission and the Mid-Atlantic Northeast Visibility Union

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; public meeting.

SUMMARY: The United States Environmental Protection Agency (EPA) is announcing the 2023 Annual Joint Meeting of the Ozone Transport Commission (OTC) and the Mid-Atlantic Northeast Visibility Union (MANE–VU). The meeting agenda will include topics regarding reducing ground-level ozone precursors and matters relative to Regional Haze and visibility improvement in Federal Class I areas in a multi-pollutant context.

DATES: The meeting will be held on June 14, 2023, starting at 1:00 p.m. and ending at 3:00 p.m.

Location: Virtual meeting. Further information on the details for the virtual public meeting will be available at *http://otcair.org.*

FOR FURTHER INFORMATION CONTACT:

For documents and press inquiries contact: Ozone Transport Commission, 89 South St., Suite 602, Boston, MA 02111; (617) 259–2005; email: *ozone@otcair.org;* website: *http://www.otcair.org.*

For registration: To register for the virtual meeting, please use the online registration form available at *http://otcair.org,* or contact the OTC at (617) 259–2005 or by email at *ozone@otcair.org.*

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain Section 184 provisions for the Control of Interstate Ozone Air Pollution. Section 184(a) establishes an Ozone Transport Region (OTR) comprised of the States of Connecticut, Delaware, Maine,[1] Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the OTC is to address ground-level ozone formation, transport, and control within the OTR.

The Mid-Atlantic/Northeast Visibility Union (MANE–VU) was formed at in 2001, in response to EPA's issuance of the Regional Haze rule. MANE–VU's members include Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the Penobscot Indian Nation, the St. Regis Mohawk Tribe along with EPA and Federal Land Managers.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (617) 259–2005; by email: *ozone@otcair.org* or via the OTC website at *http://www.otcair.org.*

[1] The geographic scope of Maine within the OTR was subsequently reduced to the portion of Maine encompassing 111 towns and cities comprising the Androscoggin Valley, Down East, and Metropolitan Portland Air Quality Control Regions, commonly referred to as the ''Portland and Midcoast Ozone Areas.'' 87 FR 7734 (February 10, 2022).

Dated: May 8, 2023.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2023–10091 Filed 5–10–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, May 16, 2023 at 10:30 a.m. and its continuation at the conclusion of the open meeting on May 18, 2023.

PLACE: 1050 First Street NE, Washington, DC and virtual (this meeting will be a hybrid meeting.)

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Compliance matters pursuant to 52 U.S.C. 30109.

Investigatory records compiled for law enforcement purposes and production would disclose investigative techniques.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Deputy Secretary of the Commission.

[FR Doc. 2023–10215 Filed 5–9–23; 4:15 pm]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–1780–20]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by July 10, 2023.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–1780–20 Home Health Agency Cost Report

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Home Health Agency Cost Report; *Use:* The Form CMS–1728–20 cost report is used to determine a provider's reasonable cost incurred in furnishing medical services to Medicare beneficiaries and reimbursement due to or from a provider. The Form CMS–1728–20 cost report is also used for annual rate setting and payment refinement activities, including developing a home health market basket. Additionally, the Medicare Payment Advisory Commission (MedPAC) uses the home health cost report data to calculate Medicare margins, to formulate recommendations to Congress regarding the HHA PPS, and to conduct additional analysis of the HHA PPS.

The primary function of the cost report is to implement the principles of cost reimbursement which require that HHAs maintain sufficient financial records and statistical data for proper determination of costs payable under the program. The S series of worksheets collects the provider's location, CBSA, date of certification, operations, and unduplicated census days. The A series of worksheets collects the provider's trial balance of expenses for overhead costs, direct patient care services by level of care, and non-revenue generating cost centers. The B series of worksheets allocates the overhead costs to the revenue and non-revenue generating cost centers using functional statistical bases. The C series of worksheets computes the average cost per visit for HHA services. The D series of worksheets are Medicare specific and are used to determine reimbursement due to the provider or program. The F series of worksheets collect data from a provider's balance sheet and income statement. *Form Number:* CMS–1780–20 (OMB control number: 0938–0022); *Frequency:* Yearly; *Affected Public:* Private Sector—Business or other for-profits, Not-for-profit institutions; *Number of Respondents:* 10,944; *Total Annual Responses:* 10,944; *Total Annual Hours:* 2,134,080. (For policy questions regarding this collection contact LuAnn Piccione at (410) 786–5423.)

Dated: May 5, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–10026 Filed 5–10–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Mother and Infant Home Visiting Program Evaluation: Long-Term Follow-Up, Third Grade Data Collection (Office of Management and Budget #0970–0402)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF), in partnership with the Health Resources and Services Administration, both of the U.S. Department of Health and Human Services (HHS), is proposing to collect data as part of the elementary school phase of the Mother and Infant Home Visiting Program Evaluation (MIHOPE). MIHOPE is a longitudinal study of the effects of Maternal, Infant, and Early Childhood Home Visiting (MIECHV)-funded home visiting on child and family outcomes. The purpose of the MIHOPE Long-Term Follow-Up, Third grade (MIHOPE–3G) data collection, which will focus on children when they are in approximately third grade, is to assess the long-term effects of MIECHV-funded home visiting on families and children when participating children are in elementary school.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: To date, MIHOPE has been collecting data through the time children in the study were in approximately kindergarten. The currently approved materials under this OMB number include those for the kindergarten follow-up. The kindergarten direct data collection with study participants is complete, but some administrative data are still being collected from states and local education agencies.

This request is to complete administrative data collection for the kindergarten follow-up and to conduct the following data collection activities for MIHOPE 3G: (1) child welfare records data collection from states and (2) school records data collection from states and local education agencies. Future information collection requests and related **Federal Register** notices will describe future data collection efforts for this project.

Data collected during the third-grade follow-up study is being used to estimate the effects of MIECHV-funded programs on the following seven domains: (1) maternal health, (2) child health, (3) child development and school performance, (4) child maltreatment, (5) parenting, (6) crime or domestic violence, and (7) family economic self-sufficiency.

Respondents: For MIHOPE–3G, we will seek to obtain child welfare data from 11 states and school records data from up to 48 states and local education agencies. This data will be collected for 4,105 families who are currently participating in MIHOPE.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Remaining Burden for Kindergarten Follow-up					
State and local education agency school records: data file submission	8	1	15.6	125	42
State child welfare records: data file submission	5	1	8.4	42	14
New Request for MIHOPE–3G					
State and local education agency school records: data file submission	48	2	33.75	3,240	1,080
State child welfare records: data file submission	11	[a] 2.1	21.43	495	165

Note: [a] The 2.1 responses is a weighted average that reflects that the study team expects to collect 2 data extracts from 10 states and 3 data extracts from 1 state.

Estimated Total Annual Burden Hours: 1,301.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Social Security Act Title V 511 [42 U.S.C. 711]. As amended by Section 6101 of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–10095 Filed 5–10–23; 8:45 am]

BILLING CODE 4184–74–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1619]

Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on June 16, 2023, from 10 a.m. to 3:30 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of the COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings, including information regarding special accommodations due to a disability, may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2023–N–1619. Please note that late, untimely filed comments will not be considered. The docket will close on June 15, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 15, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before June 2, 2023, will be provided to the subcommittee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is canceled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–1619 for ''Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT: Takyiah Stevenson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 240–402–2507, email: *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The subcommittee will discuss considerations related to dosage optimization of new drug and biological products for pediatric patients with cancer. Dosage optimization is an integral aspect of oncology drug development and is important to maximizing the safety, efficacy, and tolerability of new drugs for pediatric cancers. Unique considerations associated with dosage selection and optimization in pediatric oncology include variability in pharmacokinetic and pharmacodynamic parameters by age and size, the need for age-appropriate formulations, potential for toxicities associated with long-term use, and the rarity of pediatric cancers. Representatives from the European Medicines Agency, the pediatric oncology investigator community, and the pharmaceutical industry have also been invited to present.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before June 2, 2023, will be provided to the subcommittee. Oral presentations from the public will be scheduled between approximately 1:15 p.m. and 2:15 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 24, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 25, 2023.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Takyiah Stevenson (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 8, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–10051 Filed 5–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–P–2229]

Determination That Hydrochlorothiazide Oral Solution, 50 Milligrams per 5 Milliliters, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that hydrochlorothiazide oral solution, 50 milligrams (mg)/5 milliliters (mL), was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Alaina Kupperman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6215, Silver Spring, MD 20993–0002, 301–796–2395, *Alaina.Kupperman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

Hydrochlorothiazide oral solution, 50 mg/5 mL, is the subject of ANDA 088587, held by Roxane Laboratories Inc., and initially approved on July 2, 1984. Hydrochlorothiazide is indicated for: (1) adjunctive therapy in edema associated with congestive heart failure, hepatic cirrhosis, and corticosteroid and estrogen therapy; (2) edema due to various forms of renal dysfunction such as nephrotic syndrome, acute glomerulonephritis, and chronic renal failure; and (3) the management of hypertension either as the sole therapeutic agent or to enhance the effectiveness of other antihypertensive drugs in the more severe form of hypertension.

In a letter dated August 4, 2008, Roxane Laboratories Inc. requested withdrawal of ANDA 088587 for hydrochlorothiazide oral solution. In the **Federal Register** issue of July 21, 2010 (75 FR 42455), FDA announced that it was withdrawing approval of ANDA 088587, effective August 20, 2010.

Hyman, Phelps & McNamara, P.C. submitted a citizen petition dated September 13, 2022 (Docket No. FDA–2022–P–2229), under 21 CFR 10.30, requesting that the Agency determine whether hydrochlorothiazide oral solution, 50 mg/5 mL, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that hydrochlorothiazide oral solution, 50 mg/5 mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that this product was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of hydrochlorothiazide oral solution, 50 mg/5 mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list hydrochlorothiazide oral solution, 50 mg/5 mL, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to this drug product may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: May 8, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–10052 Filed 5–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0743]

Using Artificial Intelligence and Machine Learning in the Development of Drug and Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the publication of a discussion paper entitled ''Using Artificial Intelligence and Machine Learning in the Development of Drug and Biological Products.'' To fulfill its mission of protecting, promoting, and advancing public health, FDA's Center for Drug Evaluation and Research (CDER), in collaboration with the Center for Biologics Evaluation and Research (CBER) and Center for Devices and Radiological Health (CDRH), including the Digital Health Center of Excellence (DHCoE), is issuing this document to facilitate a discussion with stakeholders on the use of artificial intelligence (AI) and machine learning (ML) in drug development to help inform the regulatory landscape in this area.

DATES: Either electronic or written comments on the framework must be submitted by August 9, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 9, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–0743 for ''Using Artificial

Intelligence and Machine Learning in the Development of Drug and Biological Products.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT: Tala Fakhouri, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6330, Silver Spring, MD 20993–0002, 301–837–7407, *Tala.Fakhouri@fda.hhs.gov;* Janice Maniwang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6316, Silver Spring, MD 20993–0002, 301–796–3821, *Janice.Maniwang@fda.hhs.gov;* or Hussein Ezzeldin, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 5246, Silver Spring, MD 20993–0002, 240–402–8629, *Hussein.Ezzeldin@fda.hhs.gov;* or Brendan O'Leary, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5530, Silver Spring, MD 20993–0002, 301–796–6898, *Brendan.OLeary@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA aims to ensure safety and effectiveness while facilitating innovations in the development of drugs. Recent rapid technological innovations in sophisticated data collection and generation tools, combined with robust information management and exchange systems, and advanced computing abilities may prove transformational in the way drugs are developed and used.[1] This evolving ecosystem presents unique opportunities and challenges, and FDA is committed to working across its medical product centers with partners domestically and internationally to ensure that the full potential of these innovations is realized for the benefit of the public.

Developers, manufacturers, regulators, academic groups, and other stakeholders are working to develop a shared understanding of where and how specific innovations, such as AI and ML, can best be utilized across the drug development process, including through the use of AI/ML-enabled tools, which may include devices. FDA is publishing this discussion paper as part of a multifaceted approach to enhance mutual learning and to establish a dialogue with FDA stakeholders on this topic. While AI and ML are not consistently defined across all disciplines and stakeholders, AI can be generally described as a branch of computer science, statistics, and engineering that uses algorithms or models to perform tasks and exhibit behaviors such as learning, making decisions, and making predictions. ML is generally considered a subset of AI that allows ML models to be developed by ML training algorithms through analysis of data, without models being explicitly programmed. Additionally, there are a variety of ML methods and different types of algorithms that may be utilized in a given context. For the purposes of this discussion paper, AI and ML will be referenced together as AI/ML, and references to drug development and the drug development process include a wide scope of activities and phases, including manufacturing and surveillance, among others.

This discussion paper, which considers the application of AI/ML in the broad context of the drug development process, is not FDA guidance or policy, and is not meant to endorse a specific AI/ML use or approach in drug development. Rather, it is an initial communication with stakeholders, including academic groups, that is intended to promote mutual learning and discussion. Specifically, FDA is soliciting feedback on the opportunities and challenges with utilizing AI/ML in the development of drugs, as well as in the development of medical devices intended to be used with drugs. This feedback will provide an additional resource to help inform the regulatory landscape in this area. Additionally, it is beneficial for researchers and technology developers, particularly those new to drug development and human subjects research, to recognize some of the initial thinking and considerations involved with utilizing these technologies, including having familiarity with FDA's current activities, initiatives, practices, and potentially applicable regulations.

II. Electronic Access

Persons with access to the internet may obtain the discussion paper, ''Using Artificial Intelligence and Machine Learning in the Development of Drug and Biological Products: Discussion Paper'' at *https://www.fda.gov/science-research/science-and-research-special-topics/artificial-intelligence-and-machine-learning-aiml-drug-development.*

Dated: May 5, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–09985 Filed 5–10–23; 8:45 am]

BILLING CODE 4164–01–P

[1] See *https://pubmed.ncbi.nlm.nih.gov/35319833/*.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1529]

Agency Information Collection Activities; Proposed Collection; Comment Request; Voluntary Qualified Importer Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with FDA's Voluntary Qualified Importer Program.

DATES: Either electronic or written comments on the collection of information must be submitted by July 10, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 10, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–1529 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Voluntary Qualified Importer Program.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Voluntary Qualified Importer Program

OMB Control Number 0910–0840—Extension

This information collection supports implementation of FDA's Voluntary Qualified Importer Program (VQIP), a voluntary fee-based program that provides expedited review and import entry of human and animal foods into the United States. Program participants may import products to the United States with greater speed and predictability, avoiding unexpected delays at the point of import entry. Importers interested in applying can start their application by submitting a notice of intent to participate after setting up an account through the FDA Industry Systems (FIS) website at *https://www.access.fda.gov,* which includes a VQIP Portal User Guide. To participate, importers must meet eligibility criteria and pay a user fee that covers costs associated with FDA's administration of the program. Consistent with section 743(b)(1) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 379j-31(b)(1)), FDA will publish in the **Federal Register** a schedule of fees applicable to VQIP.

Respondents to the information collection are persons that bring food, or cause food to be brought, from a foreign country into the customs territory of the United States (section 806 of the FD&C Act (21 U.S.C. 384b)) as a VQIP importer. A VQIP importer can be located outside the United States. Persons who may be a VQIP importer include the manufacturer, owner, consignee, and importer of record of a food, provided that the importer can meet all the criteria for participation. To assist respondents with the information collection, we developed the guidance document entitled, ''FDA's Voluntary Qualified Importer Program'' (issued November 2016, finalized March 2022), available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-fdas-voluntary-qualified-importer-program.* The guidance document is prepared in a question-and-answer format and discusses eligibility criteria; includes instruction for completing a VQIP application; explains conditions that may result in revocation of participation as well as criteria for reinstatement; and communicates benefits VQIP importers can expect to receive under the program. The guidance also discusses preparation of the ''Quality Assurance Program (QAP),'' a compilation of written policies and procedures used to ensure adequate control over the safety and security of foods being imported. The guidance document was developed and issued consistent with FDA Good Guidance Practice regulations in 21 CFR part 10.115, which provides for public comment at any time.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Reporting using FIS VQIP portal	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Initial VQIP application	5	1	5	180	900
Application Renewals—subsequent year	6	1	6	20	120
Requests for reinstatement	2	1	2	10	20
Total			13		1040

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

VQIP Participant Records Consistent with Implementing Guidance	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Quality Assurance Program (QAP) preparation	5	1	5	160	800
QAP maintenance and updates	6	1	6	16	96
Total			11		896

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Since our last request for OMB approval of the information collection, we have adjusted our estimate of the number of respondents based on actual participation in the program. We assume the average burden required for the respective reporting and recordkeeping activities for both initial and continued participation in the program remain constant, however we invite comment in this regard.

Dated: May 8, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–10053 Filed 5–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Infant and Maternal Mortality (Formerly the Advisory Committee on Infant Mortality)

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Advisory Committee on Infant and Maternal Mortality (ACIMM or Committee) has scheduled a public meeting. Information about ACIMM and the agenda for this meeting can be found on the ACIMM website at *https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.*

DATES: June 13, 2023, 10:00 a.m. to 5:00 p.m. Eastern Time and June 14, 2023, 9:30 a.m. to 2:00 p.m. Eastern Time.

ADDRESSES: This meeting will be conducted in-person at HRSA Headquarters, 5600 Fishers Lane, Conference Room 5N54, Rockville, MD 20857. The meeting will also be held via webinar. The webinar link and log-in information will be available at ACIMM's website before the meeting: *https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.*

FOR FURTHER INFORMATION CONTACT: Vanessa Lee, MPH, Designated Federal Official, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18N84, Rockville, Maryland 20857; 301–443–0543; or *SACIM@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACIMM is authorized by section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended and governed by provisions of Public Law 92–463, as amended (5 U.S.C. 10), which sets forth standards for the formation and use of Advisory Committees.

ACIMM advises the Secretary of Health and Human Services (Secretary) on department activities, partnerships, policies, and programs directed at reducing infant mortality, maternal mortality and severe maternal morbidity, and improving the health status of infants and women before, during, and after pregnancy. The Committee provides advice on how to coordinate federal, state, local, tribal, and territorial governmental efforts designed to improve infant mortality, related adverse birth outcomes, maternal health, as well as influence similar efforts in the private and voluntary sectors. The Committee provides guidance and recommendations on the policies, programs, and resources required to address the disparities and inequities in infant mortality, related adverse birth outcomes and maternal health outcomes, including maternal mortality and severe maternal morbidity. With its focus on underlying causes of the disparities and inequities seen in birth outcomes for women and infants, ACIMM advises the Secretary on the health, social, economic, and environmental factors contributing to the inequities and proposes structural, policy, and/or systems level changes.

The agenda for the June 13–14, 2023, meeting is being finalized and may include the following topics: an update on the recommendations submitted to the Secretary on improving birth outcomes among American Indian and Alaska Native mothers and infants; further discussion to determine new and continuing priority areas for the Committee, including data and information related to social determinants of health and infant health equity; federal updates; and Committee operations. Agenda items are subject to change as priorities dictate. Refer to the ACIMM website listed above for any updated information concerning the meeting.

Members of the public will have the opportunity to provide written or oral comments. Requests to submit a written statement or make oral comments to ACIMM should be sent to Vanessa Lee, using the email address above at least 3 business days prior to the meeting. Public participants may submit written statements in advance of the scheduled meeting by emailing *SACIM@hrsa.gov.* Oral comments will be honored in the order they are requested and may be limited as time allows.

Individuals who plan to attend and need special assistance or a reasonable accommodation should notify Vanessa Lee at the contact information listed above at least 10 business days prior to the meeting. Since this meeting occurs in a federal government building, attendees must go through a security check to enter the building. Non-U.S. Citizen attendees must notify HRSA of their planned attendance at least 20 business days prior to the meeting in order to facilitate their entry into the building. All attendees are required to present government-issued identification prior to entry.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–10069 Filed 5–10–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities'' unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 11½%, as fixed by the Secretary of the Treasury, is certified for the quarter ended March 31, 2023. This rate is based on the Interest Rates for Specific Legislation, ''National Health Services Corps Scholarship Program (42 U.S.C. 254o(b)(1)(A))'' and ''National Research Service Award Program (42 U.S.C. 288(c)(4)(B)).'' This interest rate will be applied to overdue debt until the Department of Health and Human Services publishes a revision.

David C. Horn,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2023–10025 Filed 5–10–23; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Information Collection: Indian Health Service Medical Staff Credentials Application

AGENCY: Indian Health Service, HHS.

ACTION: Notice and request for comments. Request for revision to a collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) invites the general public to comment on the information collection titled, ''Indian Health Service Medical Staff Credentials Application,'' OMB Control Number 0917–0009, which expires August 31, 2023.

DATES: *Comment Due Date:* July 10, 2023. Your comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

ADDRESSES: Send your written comments, requests for more information on the collection, or requests to obtain a copy of the data collection instrument and instructions to Ms. Lisa Majewski, Associate Director, Quality Assurance and Patient Safety, by email: *lisa.majewski@ihs.gov.*

SUPPLEMENTARY INFORMATION: This notice announces our intent to revise the collection already approved by OMB, and to solicit comments on specific aspects of the information collection. The purpose of this notice is to allow 60 days for public comment to be submitted to the IHS. A copy of the supporting statement is available at *www.regulations.gov* (see Docket ID IHS–2023–0001).

Information Collection Title: ''Indian Health Service Medical Staff Credentials Application, 0917–0009.''

Type of Information Collection Request: Revision of an approved information collection, and retitled to, ''Indian Health Service Medical Staff Credentials and Privileges Records, 0917–0009.''

Form Numbers: 0917–0009.

Need and Use of Information Collection: This collection of information is used to evaluate IHS medical and health care professionals to include: licensed practitioners (LP) applying for medical staff membership, credentialing and privileges at IHS health care facilities. Practitioner credentialing and privileging in the IHS has been identified as a priority area for quality improvement to support patient safety, demonstrate quality of care, and improve practitioner satisfaction.

The IHS policy specifically requires all LP (*i.e.*, Federal employees, contractors, and volunteers) who intend to provide health care services at IHS facilities to be credentialed and privileged PRIOR to providing such care. When a practitioner applies to provide health care services at an IHS clinic or hospital, that application contains two parts. The first is for membership in the medical staff. Criteria for such membership may include type of licensure, education, training, and experience. The second part is for privileges, which define the scope of clinical care that a practitioner can administer and matches the practitioner's current clinical competency. There are certain criteria that practitioners must meet in order to exercise particular privileges in the facilities. These criteria may overlap with criteria for membership on the medical staff, but those for privileges are more specific and must be facility specific to meet the facility's requirements.

The IHS operates health care facilities that provide health care services to American Indians and Alaska Natives. To provide these services, the IHS employs (direct-hire and direct-contract) several categories of fully licensed, registered, or certified individuals permitted by law to independently provide patient care services within the scope of their license, registration, or certification, and in accordance with individually granted clinical privileges when the individual is a credentialed member of the IHS medical staff. Licensed Practitioners who are eligible may become medical staff members, depending on the local health care facility's capabilities and medical staff bylaws.

All LP who provide care at IHS facilities must maintain full, active, unrestricted and current licensure and credentials, and be proficient in their granted privileges in accordance with the facility's medical staff bylaws, accreditation standards, privilege criteria, agency and local policies, and applicable law and guidelines.

National health care standards developed by the Centers for Medicare and Medicaid Services, the Joint Commission, and other accrediting organizations require health care facilities to review, evaluate, and prime source verify credentials of medical staff applicants prior to granting medical staff privileges. Medical credentials specifically include the primary source verified and documented evidence of competence, character, judgment, education and training. In order to meet these standards, IHS health care facilities require all medical staff applicants to provide verifiable information concerning their education, training, licensure, work experience, health status, and current professional conduct and competence and any adverse disciplinary actions taken against them. This information is collected through the agency's current commercial off the shelf credentialing software to make the following application packets electronically available via the internet. The Application packets are: (1) Pre-Application; (2) Initial Application for Membership & Privileges; and (3) Reappointment Application for Membership and Privileges. All these application packets include a Statement of Understanding and Release and Health Attestation Statement for the LP to sign.

Privileges vary across all IHS Areas and clinics, as services and procedures provided and equipment utilized varies across facilities and can change often. Privilege forms are required to be current and modified to reflect only services and procedures provided by that specific facility in order to be in compliance with accreditation standards. The electronic credentialing system allows tailoring the privileging needs to site specifications.

Information collected in the application packets are prime source verified by IHS staff using standard IHS forms (Affiliation, Peer Reference, Insurance, and Education) with the original source of the credential. The credentials review includes, but is not limited to, verifying information from the state medical boards, the Drug Enforcement Administration, Excluded Parties List System/System for Awards Management, National Practitioner Data Bank, Office of Inspector General, colleges or universities, residency programs, peer references, insurance companies, etc.

Once the LP application packet is approved, agency policy requires licensure, registration, and certification requirements and clinical competency be continuously verified on an ongoing basis until the time of the next reappointment. At the time of reappointment (every two to three years), the health care practitioner will go through a similar reappointment process to renew their membership and privilege status. This review evaluates the current competence of the health care providers and verifies whether they are maintaining the licensure or certification requirements of their specialty.

The medical staff credentials and privileges records are stored in two ways: records stored in file folders are stored at the IHS facilities or the Federal Record Center, and computer-based or electronic records are located at the IHS Albuquerque Data Center in Albuquerque, New Mexico.

The IHS is continuing to standardize, transform, and optimize the medical staff credentialing and privileging process into a centrally automated, standardized, electronic/digital, measurable, portable, accessible, and efficient business process to improve the effectiveness of application and re-application to medical staffs, movement of practitioners within the IHS system, and recruitment/retention of high-quality LP.

Affected Public: Individuals and households.

Type of Respondents: Individuals.

The table below provides: Types of data collection instruments, Estimated Number of Respondents, Number of Annual Responses per Respondent, Average Burden per Response, and Total Annual Burden Hours.

Data collection instrument(s)	Estimated number of respondents	Number of annual responses per respondent	Average burden hour per response *	Total annual burden (current) **
Pre-Application Package to Medical Staff	500	1	.50 (30 min)	250
Initial Application Package to Medical Staff and Privileges	878	1	1 (60 min)	878
Reappointment Application Package to Medical Staff and Privileges	2,212	1	0.50 (30 min)	1,106
Affiliation Verification	4,225	1	.25 (15 min)	1,056
Education Verification	3,289	1	.25 (15 min)	822
Malpractice Verification	2,535	1	.25 (15 min)	634
Peer Reference Verification	6,180	1	.25 (15 min)	1,545
Total	19,819			6,291

For ease of understanding:
* Average Burden Hour per Response are provided in actual minutes.
** Total Annual Burden (Current) are provided in hours.

Annual number of respondents and average burden hour were factored based on total IHS providers credentialed and privileged Calendar Year (CY) 22, accreditation requirements with estimates of verification per applicant, and respondent estimate time of completion in the paragraphs above.

There are no capital costs, operating costs, and/or maintenance costs to respondents.

Requests for Comments: Your written comments and/or suggestions are invited on one or more of the following points:

(a) Whether the information collection activity is necessary to carry out an agency function;

(b) Whether the agency processes the information collected in a useful and timely fashion;

(c) The accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information);

(d) Whether the methodology and assumptions used to determine the estimates are logical;

(e) Ways to enhance the quality, utility, and clarity of the information being collected; and

(f) Ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

P. Benjamin Smith,

Deputy Director, Indian Health Service.

[FR Doc. 2023–09998 Filed 5–10–23; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Investigator Award to Support Mentoring of Early Career Researchers From Diverse Backgrounds.

Date: June 15–16, 2023.

Time: 10:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7353, Bethesda, MD 20892, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 5, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10011 Filed 5–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fellowships in Diabetes Endocrinology and Metabolism.

Date: June 12, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7021, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 5, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10009 Filed 5–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group; Genome Research Study Section.

Date: June 1, 2023.

Time: 11:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Human Genome Research Institute, 6700B Rockledge Drive, Room 3188, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3188, Bethesda, MD 20892, (301) 594–4280, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: May 5, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10014 Filed 5–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Schizophrenia and Related Disorders During Mid- to Late-Life (R01 & R21).

Date: June 8, 2023.

Time: 10:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: May 5, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10016 Filed 5–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Institute Council of Research Advocates.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: *https://videocast.nih.gov/.*

Name of Committee: National Cancer Institute Council of Research Advocates.

Date: June 21, 2023.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: Welcome and Chairwoman's Remarks, NCI Director's Update, NCI Updates and Legislative Update.

Place: National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Amy Williams, Acting Director, NCI, Office of Advocacy Relations, National Cancer Institute, NIH, 31 Center Drive, Building 31, Room 10A28, Bethesda, MD 20892, (301) 496–9723, *williaam@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: NCRA: *http://deainfo.nci.nih.gov/advisory/ncra/ncra.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 5, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10008 Filed 5–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, must notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The intramural programs and projects as well as the grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: June 6, 2023.

Open: June 6, 2023, 9:30 a.m. to 1:00 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Building 31, 6C Room A & B, 31 Center Street, Bethesda, MD 20892.

Closed: June 6, 2023, 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 6C Room A & B, 31 Center Street, Bethesda, MD 20892.

Contact Person: Darren D. Sledjeski, Ph.D., Director, Division of Extramural Activities (DEA), National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Bethesda, MD 20892, (301) 451–7766, *darren.sledjeski@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Persons listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *https://www.niams.nih.gov/about/working-groups/advisory-council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 5, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10015 Filed 5–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK–KUH Training Application Review Meeting.

Date: June 7, 2023.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Xiaodu Guo, M.D., Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 5, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10017 Filed 5–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function A Study Section.

Date: June 6–7, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ian Frederick Thorpe, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 903K, Bethesda, MD 20892, (301) 480–8662, *ian.thorpe@nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Community Influences on Health Behavior Study Section.

Date: June 6–7, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Annie Laurie McRee, DRPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 100, Bethesda, MD 20892, (301) 827–7396, *mcreeal@csr.nih.gov*.

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Pathogenic Eukaryotes Study Section.

Date: June 8–9, 2023.

Time: 9:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Jennifer Chien Villa, Ph.D., Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–496–5436, *jennifer.villa@nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Data Management and Analysis Study Section.

Date: June 8–9, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shivakumar V. Chittari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 408–9098, *chittari.shivakumar@nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Language and Communication Study Section.

Date: June 8–9, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.

Contact Person: Rochelle Francine Hentges, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000C, Bethesda, MD 20892, (301) 402–8720, *hentgesrf@mail.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Drug Discovery and Molecular Pharmacology B Study Section.

Date: June 8–9, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aurea D. De Sousa, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, Bethesda, MD 20892, (301) 827–6829, *aurea.desousa@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Clinical Studies of Mental Illness (Collaborative R01).

Date: June 8–9, 2023.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shivakumar V. Chittari, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–408–9098, *chittari.shivakumar@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panels (OD–21–004 and OD–21–003) Involving e-Cigarette/Tobacco Use.

Date: June 8, 2023.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cellular and Molecular Immunology, Innate Immunity, and Inflammation.

Date: June 9, 2023.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Velasco Cimica, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–1760, *velasco.cimica@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 5, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10010 Filed 5–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Genomic Curriculum Development.

Date: June 16, 2023.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Human Genome Research Institute, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sarah Jo Wheelan, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3180, Bethesda, MD 20892, (301) 402–8823, *wheelansj@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: May 5, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10006 Filed 5–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Age Related Disease Mechanism.

Date: June 9, 2023.

Time: 11:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Bldg., Suite

2W200, Bethesda, MD 20892, (301) 496–9667, *prasadnb@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 5, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10013 Filed 5–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Rapid Translation of Epidemiological Findings into Interventions to Prevent Substance Use and Addiction.

Date: June 5, 2023.

Time: 11:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marisa Srivareerat, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, Bethesda, MD 20892, (301) 435–1258, *marisa.srivareerat@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Accelerating the Pace of Drug Abuse Research Using Existing Data.

Date: June 13, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Li Rebekah Feng, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, Rockville, MD 20892, (301) 827–7245, *rebekah.feng@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 8, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10093 Filed 5–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Digestive Diseases and Nutrition C Study Section DDK–C: NIDDK Division of Digestive Diseases and Nutrition (DDN) Mentored K Review Panel.

Date: June 14–16, 2023.

Time: 5:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Peter J. Kozel, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7009, Bethesda, MD 20892 (301) 594–4721, *kozelp@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 5, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10004 Filed 5–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group; Effectiveness of Mental Health Interventions Study Section.

Date: June 5, 2023.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: May 1, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10007 Filed 5–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: June 7–9, 2023.

Time: June 7, 2023, 12:45 p.m. to 5:20 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892 (Hybrid Meeting).

Time: June 8, 2023, 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892 (Hybrid Meeting).

Time: June 9, 2023, 10:00 a.m. to 1:45 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892 (Hybrid Meeting).

Contact Person: Jennifer E. Mehren, Ph.D., Scientific Advisor, Division of Intramural Research Programs, National Institute of Mental Health, National Institutes of Health, 35A Convent Drive, Bethesda, MD 20892–3747, 301–496–3501, *mehrenj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: May 5, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10012 Filed 5–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2023–N013; FXES11130900000C2–201–FF09E32000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews for 67 Southeastern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews under the Endangered Species Act of 1973, as amended, for 67 animal and plant species. A 5-year review is an assessment of the best scientific and commercial data available at the time of the review to ensure the accuracy of the species classification. We are requesting submission of any such information that has become available since the previous status review for each species.

DATES: To ensure consideration of the information in our reviews, we must receive your comments or information on or before July 10, 2023. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information for each species, see the table in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: To request information on specific species, contact the appropriate person in the table in the **SUPPLEMENTARY INFORMATION** section or, for general information, contact Aaron Valenta, via phone at (404) 679–4144, via email at *aaron_valenta@fws.gov,* or via U.S. mail at U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345. 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: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews under the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*), for 36 animal species and 31 plant species. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information that has become available since the last review for the species, particularly information on the status, threats, and recovery of the species that may have become available.

Why do we conduct 5-year reviews?

Under the ESA, we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h) (for wildlife) and 50 CFR 17.12(h) (for plants). Listed wildlife can be found at *https://www.ecfr.gov/current/title-50/chapter-I/subchapter-B/part-17/subpart-B/section-17.11.* Listed plants are at *https://www.ecfr.gov/current/title-50/chapter-I/subchapter-B/part-17/subpart-B/section-17.12.* Section 4(c)(2)(A) of the ESA requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing species under active review; however, we may review the status of any species at any time based upon a petition or other information available to us. For additional information about 5-year reviews, refer to our fact sheet at: *https://www.fws.gov/project/five-year-status-reviews.*

What information do we consider in our review?

A 5-year review considers the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, habitat requirements, tolerance thresholds, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented or are planned that benefit the species;

(D) Current threats and trends in relation to the five listing factors (as defined in section 4(a)(1) of the ESA); and

(E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

New information will be considered in the 5-year review and ongoing recovery programs for the species.

Which species are under review?

This notice announces 5-year status reviews for the species listed in the table below.

Common name/scientific name	Status (endangered or threatened)	Locations where the species is known to occur	Final listing rule (**Federal Register** citation and publication date)	Contact person, email, phone	Contact's mailing address
ANIMALS					
Mammals:					
Mouse, Alabama beach (*Peromyscus polionotus ammobates*).	Endangered ..	Alabama	50 FR 23872; 6/6/1985.	Bill Lynn, *alabama@fws.gov,* 251–441–5181.	USFWS, 1208B Main Street, Daphne, AL 36526.
Mouse, Anastasia Island beach (*Peromyscus polionotus phasma*).	Endangered ..	Florida	54 FR 20598; 5/12/1989.	Lourdes Mena, *Florida_5YR@fws.gov,* 904–731–3134.	USFWS, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.
Vole, Florida salt marsh (*Microtus pennsylvanicus dukecampbelli*).	Endangered ..	Florida	56 FR 1457; 1/14/1991.	Lourdes Mena, *Florida_5YR@fws.gov,* 904–731–3134.	USFWS, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.
Birds:					
Crane, Mississippi sandhill (*Antigone* (= *Grus*) *canadensis pulla*).	Endangered ..	Mississippi	38 FR 14678; 6/4/1973.	Kelly Morris, *mississippi_field_office@fws.gov,* 601–321–1120.	USFWS, 6578 Dogwood View Pkwy., Jackson, MS 39213.
Hawk, Puerto Rican broad-winged (*Buteo platypterus brunnescens*).	Endangered ..	Puerto Rico	59 FR 46710; 9/9/1994.	Ivan Ilerandi-Roman, *caribbean_es@fws.gov,* 786–244–0081.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Petrel, Bermuda (*Pterodroma cahow*).	Endangered ..	Bermuda	35 FR 8491; 6/2/1970.	John Hammond, *Raleigh_ES@fws.gov,* 919–856–4520.	USFWS, P.O. Box 33726, Raleigh, NC 27636–3726.
Pigeon, Puerto Rican plain (*Patagioenas* (= *Columba*) *inornata wetmorei*).	Endangered ..	Puerto Rico	35 FR 16047; 10/13/1970.	José Cruz-Burgos, *caribbean_es@fws.gov,* 786–244–0081.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Amphibians:					
Coquí, llanero (*Eleutherodactylus juanariveroi*).	Endangered ..	Puerto Rico	77 FR 60777; 10/4/2012.	Jan Zegarra, *caribbean_es@fws.gov,* 786–244–0081.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Salamander, frosted flatwoods (*Ambystoma cingulatum*).	Threatened ...	Florida, Georgia, South Carolina.	64 FR 15691; 4/1/1999.	Lourdes Mena, *Florida_5YR@fws.gov,* 904–731–3134.	USFWS, 1601 Balboa Ave., Panama City, FL 32405.
Reptiles:					
Lizard, St. Croix ground (*Ameiva polops*).	Endangered ..	Virgin Islands	42 FR 28543; 6/3/1977.	Jan Zegarra, *caribbean_es@fws.gov,* 786–244–0081.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Snake, Atlantic salt marsh (*Nerodia clarkii taeniata*).	Threatened ...	Florida	42 FR 60743; 11/29/1977.	Lourdes Mena, *Florida_5YR@fws.gov,* 904–731–3134.	USFWS, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.
Snake, eastern indigo (*Drymarchon couperi*).	Threatened ...	Alabama, Florida, Georgia, Mississippi.	43 FR 4026; 1/31/1978.	Michele Elmore, *georgia_es@fws.gov,* 912–403–1873.	USFWS, RG Stephens, Jr. Federal Building, 355 East Hancock Ave., Athens, GA 30601.
Fishes:					
Cavefish, Ozark (*Amblyopsis rosae*).	Threatened ...	Arkansas, Kansas, Missouri, Oklahoma.	49 FR 43965; 11/1/1984.	Pedro Ardapple-Kindberg, *arkansas-es_recovery@fws.gov,* 870–503–1101.	USFWS, 110 South Amity Road, Suite 300, Conway, AR 72032.
Chub, spotfin (*Erimonax monachus*).	Threatened ...	North Carolina, Tennessee, Virginia.	42 FR 45526; 9/9/1977.	Jason Mays, *fw4esasheville@fws.gov,* 828–258–3939.	USFWS, 160 Zillicoa St., Asheville, NC 28801.
Darter, Cumberland (*Etheostoma susanae*).	Endangered ..	Kentucky, Tennessee	76 FR 48722; 8/9/2011.	Michael Floyd, *kentuckyes@fws.gov,* 502–695–0468.	USFWS, 330 W Broadway, Ste. 265, Frankfort, KY 40601.
Darter, trispot (*Etheostoma trisella*).	Threatened ...	Alabama, Georgia, Tennessee.	83 FR 67131; 12/28/2018.	Jennifer Grunewald, *alabama@fws.gov,* 251–441–5181.	USFWS, 1208B Main Street, Daphne, AL 36526.
Darter, vermilion (*Etheostoma chermocki*).	Endangered ..	Alabama	66 FR 59367; 11/28/2001.	Jennifer Grunewald, *alabama@fws.gov,* 251–441–5181.	USFWS, 1208B Main Street, Daphne, AL 36526.
Darter, yellowcheek (*Nothonotus* (= *Etheostoma*) *moorei*).	Endangered ..	Arkansas	76 FR 48722; 8/9/2011.	Dustin Booth, *arkansas-es_recovery@fws.gov,* 501–513–4485.	USFWS, 110 South Amity Road, Suite 300, Conway, AR 72032.
Madtom, Chucky (*Noturus crypticus*).	Endangered ..	Tennessee	76 FR 48722; 8/9/2011.	David Pelren, *cookeville@fws.gov,* 931–528–6481.	USFWS, 446 Neal Street, Cookeville, TN 38501
Madtom, smoky (*Noturus baileyi*).	Endangered ..	Tennessee	49 FR 43065; 10/26/1984.	Warren Stiles, *cookeville@fws.gov,* 931–525–4977.	USFWS, 446 Neal Street, Cookeville, TN 38501.
Clams:					
Clubshell, ovate (*Pleurobema perovatum*).	Endangered ..	Alabama, Georgia, Mississippi, Tennessee.	58 FR 14330; 3/17/1993.	Brittany Barker-Jones, *alabama@fws.gov,* 251–441–5181.	USFWS, 1208B Main Street, Daphne, AL 36526.
Clubshell, southern (*Pleurobema decisum*).	Endangered ..	Alabama, Georgia, Mississippi, Tennessee.	58 FR 14330; 3/17/1993.	Evan Collins, *alabama@fws.gov,* 251–441–5181.	USFWS, 1208B Main Street, Daphne, AL 36526.

Common name/scientific name	Status (endangered or threatened)	Locations where the species is known to occur	Final listing rule (**Federal Register** citation and publication date)	Contact person, email, phone	Contact's mailing address
Fanshell (*Cyprogenia stegaria*).	Endangered ..	Alabama, Illinois, Indiana, Kentucky, Ohio, Tennessee, Virginia, West Virginia.	55 FR 25591; 6/21/1990.	Taylor Fagin, *kentuckyes@fws.gov,* 502–695–0468.	USFWS, 330 W Broadway, Ste. 265, Frankfort, KY 40601.
Heelsplitter, Carolina (*Lasmigona decorata*).	Endangered ..	North Carolina, South Carolina.	58 FR 34926; 6/30/1993.	Morgan Wolf, *charleston_recovery@fws.gov,* 843–300–0428.	USFWS, 176 Croghan Spur Rd., Suite 200, Charleston, SC 29407.
Kidneyshell, triangular (*Ptychobranchus greenii*).	Endangered ..	Alabama, Georgia, Tennessee.	58 FR 14330; 3/17/1993.	Brittany Barker-Jones, *alabama@fws.gov,* 251–441–5181.	USFWS, 1208B Main Street, Daphne, AL 36526.
Moccasinshell, Alabama (*Medionidus acutissimus*).	Threatened ...	Alabama, Georgia, Mississippi, Tennessee.	58 FR 14330; 3/17/1993.	Brittany Barker-Jones, *alabama@fws.gov,* 251–441–5181.	USFWS, 1208B Main Street, Daphne, AL 36526.
Moccasinshell, Coosa (*Medionidus parvulus*).	Endangered ..	Alabama, Georgia, Tennessee.	58 FR 14330; 3/17/1993.	Brittany Barker-Jones, *alabama@fws.gov,* 251–441–5181.	USFWS, 1208B Main Street, Daphne, AL 36526.
Mucket, orangenacre (*Hamiota perovalis*).	Threatened ...	Alabama, Mississippi	58 FR 14330; 3/17/1993.	Evan Collins, *alabama@fws.gov,* 251–441–5181.	USFWS, 1208B Main Street, Daphne, AL 36526.
Mussel, oyster (*Epioblasma capsaeformis*).	Endangered ..	Alabama, Kentucky, Tennessee, Virginia.	62 FR 1647; 1/10/1997.	Andy Ford, *cookeville@fws.gov,* 931–528–6481.	USFWS, 446 Neal Street, Cookeville, TN 38501.
Pigtoe, dark (*Pleurobema furvum*).	Endangered ..	Alabama	58 FR 14330; 3/17/1993.	Erin Padgett, *alabama@fws.gov,* 251–441–5181.	USFWS, 1208B Main Street, Daphne, AL 36526.
Pigtoe, southern (*Pleurobema georgianum*).	Endangered ..	Alabama, Georgia, Tennessee.	58 FR 14330; 3/17/1993.	Brittany Barker-Jones, *alabama@fws.gov,* 251–441–5181.	USFWS, 1208B Main Street, Daphne, AL 36526.
Pink, ring (*Obovaria retusa*).	Endangered ..	Alabama, Kentucky, Tennessee.	54 FR 40109; 9/29/1989.	Taylor Fagin, *kentuckyes@fws.gov,* 502–695–0468.	USFWS, 330 W Broadway, Ste. 265, Frankfort, KY 40601.
Pocketbook, finelined (*Hamiota altilis*).	Threatened ...	Alabama, Georgia, Tennessee.	58 FR 14330; 3/17/1993.	Evan Collins, *alabama@fws.gov,* 251–441–5181.	USFWS, 1208B Main Street, Daphne, AL 36526.
Spinymussel, Altamaha (*Elliptio spinosa*).	Endangered ..	Georgia	76 FR 62928; 10/11/2011.	Martha Zapata, *georgia_es@fws.gov,* 706–208–7524.	USFWS, RG Stephens, Jr. Federal Building, 355 East Hancock Ave., Athens, GA 30601.
Crustaceans:					
Crayfish, Benton County Cave (*Cambarus aculabrum*).	Endangered ..	Arkansas, Missouri	58 FR 25742; 4/27/1993.	Pedro Ardapple-Kindberg, *arkansas-es_recovery@fws.gov,* 870–503–1101.	USFWS, 110 South Amity Road, Suite 300, Conway, AR 72032.
Crayfish, Hell Creek Cave (*Cambarus zophonastes*).	Endangered ..	Arkansas	52 FR 11170; 4/7/1987.	Pedro Ardapple-Kindberg, *arkansas-es_recovery@fws.gov,* 870–503–1101.	USFWS, 110 South Amity Road, Suite 300, Conway, AR 72032.
PLANTS					
Flowering Plants:					
Aristida chaseae (no common name).	Endangered ..	Puerto Rico	58 FR 25755; 4/27/1993.	Angel Colon-Santiago, *caribbean_es@fws.gov,* 786–244–0081.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Aristida portoricensis (pelos de diablo).	Endangered ..	Puerto Rico	55 FR 32255; 8/8/1990.	Angel Colon-Santiago, *caribbean_es@fws.gov,* 786–244–0081.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Astragalus bibullatus (Guthrie's (= *Pyne's*) ground-plum).	Endangered ..	Tennessee	56 FR 48748; 9/26/1991.	Geoff Call, *cookeville@fws.gov,* 931–528–6481.	USFWS, 446 Neal Street, Cookeville, TN 38501.
Baptisia arachnifera (hairy rattleweed).	Endangered ..	Georgia	43 FR 17910; 4/26/1978.	April Punsalan, *charleston_recovery@fws.gov,* 843–300–0432.	USFWS, 176 Croghan Spur Rd., Suite 200, Charleston, SC 29407.
Buxus vahlii (Vahl's boxwood).	Endangered ..	Puerto Rico, Virgin Islands ...	50 FR 32572; 8/13/1985.	Omar Monsegur, *caribbean_es@fws.gov,* 786–244–0081.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Campanula robinsiae (Brooksville bellflower).	Endangered ..	Florida	54 FR 31190; 7/27/1989.	Lourdes Mena, *Florida_5YR@fws.gov,* 904–731–3134.	USFWS, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.
Clematis morefieldii (Morefield's leather-flower).	Endangered ..	Alabama, Georgia, Tennessee.	57 FR 21562; 5/20/1992.	Scott Wiggers, *mississippi_field_office@fws.gov,* 228–475–0765.	USFWS, 6578 Dogwood View Pkwy., Jackson, MS 39213.
Conradina etonia (Etonia rosemary).	Endangered ..	Florida	58 FR 37432; 7/12/1993.	Lourdes Mena, *Florida_5YR@fws.gov,* 904–731–3134.	USFWS, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.
Daphnopsis helleriana (no common name).	Endangered ..	Puerto Rico	53 FR 23740; 6/23/1988.	José G. Martínez, *caribbean_es@fws.gov,* 786–244–0081..	USFWS, P.O. Box 491, Boquerón, PR 00622.
Gesneria pauciflora (no common name).	Threatened ...	Puerto Rico	60 FR 12483; 3/7/1995.	Omar Monsegur, *caribbean_es@fws.gov,* 786–244–0081.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Goetzea elegans (beautiful goetzea or matabuey).	Endangered ..	Puerto Rico.	50 FR 15564; 4/19/1985.	Maritza Vargas, *caribbean_es@fws.gov,* 786–244–0081.	USFWS, P.O. Box 491, Boquerón, PR 00622.

Common name/scientific name	Status (endangered or threatened)	Locations where the species is known to occur	Final listing rule (**Federal Register** citation and publication date)	Contact person, email, phone	Contact's mailing address
Gratiola amphiantha (= *Amphianthus pusillus*) (little amphianthus).	Threatened ...	Alabama, Georgia, South Carolina.	53 FR 3560; 2/5/1988.	Mincy Moffett, *georgia_es@fws.gov,* 787–510–5206.	USFWS, RG Stephens, Jr. Federal Building, 355 East Hancock Ave., Athens, GA 30601.
Hudsonia montana (mountain golden heather).	Threatened ...	North Carolina	45 FR 69360; 10/20/1980.	Rebekah Reid, *fw4esasheville@fws.gov,* 828–258–3939.	USFWS, 160 Zillicoa St., Asheville, NC 28801.
Ilex cookii (Cook's holly) ..	Endangered ..	Puerto Rico	52 FR 22936; 6/16/1987.	Marielle Peschiera, *caribbean_es@fws.gov,* 787–510–5206.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Juglans jamaicensis (Nogal or West Indian walnut).	Endangered ..	Puerto Rico	62 FR 1691; 1/13/1997.	Marielle Peschiera, *caribbean_es@fws.gov,* 786–244–0081.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Justicia cooleyi (Cooley's water-willow).	Endangered ..	Florida	54 FR 31190; 7/27/1989.	Lourdes Mena, *Florida_5YR@fws.gov,* 904–731–3134.	USFWS, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.
Lyonia truncata var. *proctorii* (no common name).	Endangered ..	Puerto Rico	58 FR 25755; 4/27/1993.	Angel Colon-Santiago, *caribbean_es@fws.gov,* 786–244–0081.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Myrcia neothomasiana (= *Calyptranthes thomasiana*) (no common name).	Endangered ..	Virgin Islands	59 FR 8138; 2/18/1994.	José Cruz-Burgos, *caribbean_es@fws.gov,* 786–244–0081.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Nolina brittoniana (Britton's beargrass).	Endangered ..	Florida	58 FR 25746; 4/27/1993.	Lourdes Mena, *Florida_5YR@fws.gov,* 904–731–3134.	USFWS, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.
Paysonia (= *Lesquerella*) *lyrata* (lyrate bladderpod).	Threatened ...	Alabama	55 FR 39864; 9/28/1990.	Erin Lentz, *alabama@fws.gov,* 251–441–5181.	USFWS, 1208B Main Street, Daphne, AL 36526.
Paysonia (= *Lesquerella*) *perforata* (Spring Creek bladderpod).	Endangered ..	Tennessee	61 FR 67493; 12/23/1996.	Kerri Dikun, *cookeville@fws.gov,* 931–528–6481.	USFWS, 446 Neal Street, Cookeville, TN 38501.
Rhododendron chapmanii (Chapman rhododendron).	Endangered ..	Florida	44 FR 24248; 4/24/1979.	Lourdes Mena, *Florida_5YR@fws.gov,* 904–731–3134.	USFWS, 1601 Balboa Ave., Panama City, FL 32405.
Scutellaria floridana (Florida skullcap).	Threatened ...	Florida	57 FR 19813; 5/8/1992.	Lourdes Mena, *Florida_5YR@fws.gov,* 904–731–3134.	USFWS, 1601 Balboa Ave., Panama City, FL 32405.
Schwalbea americana (American chaffseed).	Endangered ..	Alabama, Florida, Georgia, Louisiana, Massachusetts, New Jersey, North Carolina, South Carolina.	57 FR 44703; 9/29/1992.	April Punsalan, *charleston_recovery@fws.gov,* 843–300–0432.	USFWS, 176 Croghan Spur Rd., Suite 200, Charleston, SC 29407.
Sisyrinchium dichotomum (white irisette).	Endangered ..	North Carolina, South Carolina.	56 FR 48752; 9/26/1991.	Natali Ramirez-Bullon, *fw4esasheville@fws.gov,* 828–258–3939.	USFWS, 160 Zillicoa St., Asheville, NC 28801.
Solidago spithamaea (Blue Ridge goldenrod).	Threatened ...	North Carolina, Tennessee ...	50 FR 12306; 3/28/1985.	Natali Ramirez-Bullon, *fw4esasheville@fws.gov,* 828–258–3939.	USFWS, 160 Zillicoa St., Asheville, NC 28801.
Vernonia proctorii (no common name).	Endangered ..	Puerto Rico	58 FR 25755; 4/27/1993.	Angel Colon-Santiago, *caribbean_es@fws.gov,* 786–244–0081.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Ferns and Allies:					
Cyathea dryopteroides (elfin tree fern).	Endangered ..	Puerto Rico	52 FR 22936; 6/16/1987.	Marielle Peschiera, *caribbean_es@fws.gov*, 786–244–0081.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Isoetes louisianensis (Louisiana quillwort).	Endangered ..	Alabama, Louisiana, Mississippi.	57 FR 48741; 10/28/1992.	Scott Wiggers, *mississippi_field_office@fws.gov,* 228–475–0765.	USFWS, 6578 Dogwood View Pkwy., Jackson, MS 39213.
Isoetes melanospora (black-spored quillwort).	Endangered ..	Georgia	53 FR 3560; 2/5/1988.	Mincy Moffett, *georgia_es@fws.gov,* 787–510–5206.	USFWS, RG Stephens, Jr. Federal Building, 355 East Hancock Ave., Athens, GA 30601.
Isoetes tegetiformans (mat-forming quillwort).	Endangered ..	Georgia	53 FR 3560; 2/5/1988.	Mincy Moffett, *georgia_es@fws.gov,* 787–510–5206.	USFWS, RG Stephens, Jr. Federal Building, 355 East Hancock Ave., Athens, GA 30601.

Request for New Information

To ensure that 5-year reviews are based on the best available scientific and commercial information, we request new information from all sources. Please use the contact information listed in the table above that is associated with the species for which you are submitting information. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

How do I ask questions or provide information?

If you wish to provide information for any species listed above, please submit your comments and materials to the appropriate contact in the table above. You may also direct questions to those contacts (also see **FOR FURTHER INFORMATION CONTACT**).

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your submission, you should be aware that your entire submission—including your personal identifying information—may be made publicly available at any time. Although you can request that personal information be withheld from public review, we cannot guarantee that we will be able to do so.

Completed and Active Reviews

A list of all completed and currently active 5-year status reviews can be found at *https://ecos.fws.gov/ecp/report/species-five-year-review.*

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Michael Oetker,

Acting Regional Director, Southeast Region, U.S. Fish and Wildlife Service.

[FR Doc. 2023–10085 Filed 5–10–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/A0A501010.999900]

Cheyenne River Sioux Tribe Alcoholic Beverages Control Law

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Cheyenne River Sioux Tribe Alcoholic Beverages Control Law (''Ordinance''). This Ordinance amends and supersedes the existing Alcoholic Beverages Control Law, published in the **Federal Register** on May 20, 1992.

DATES: *Effective Date:* This Ordinance shall become effective June 12, 2023.

FOR FURTHER INFORMATION CONTACT: Todd Gravelle, Supervisory Tribal Operations Specialist, Great Plains Regional Office, Bureau of Indian Affairs, 115 Fourth Avenue Southeast, Suite 400, Aberdeen, South Dakota 57401, Telephone: (605) 226–7376, Fax: (605) 226–7379.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor control laws for the purpose of regulating liquor transactions in Indian country. The Cheyenne River Sioux Tribe's first Alcoholic Beverages Control Law was published in the **Federal Register** on May 20, 1992, (57 FR 21554) and this amendment supersedes the existing Ordinance, duly adopted by the Cheyenne River Sioux Tribe by Resolution No. 43–2023–CR on March 10, 2023. By the delegated authority contained in 3 IAM 4.4, the Great Plains Regional Director, Bureau of Indian Affairs, approved the amendment on April 6, 2023.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Cheyenne River Sioux Tribe duly adopted this Alcoholic Beverages Control Law by Resolution No. 43–2023–CR on March 10, 2023.

Bryan Newland,

Assistant Secretary—Indian Affairs.

The Cheyenne River Sioux Tribe's Alcoholic Beverages Control Law shall read as follows:

Ordinance No. 48

Alcoholic Beverages Control Law Cheyenne River Sioux Tribe of South Dakota

As Amended

Section 1. Legislative Findings and Policy

Sec. 1–1–1. *Alcohol Abuse is an Epidemic.* The Tribal Council, being vested with the power to protect the public health and to provide for the peace and safety of residents of the Cheyenne River Sioux Indian Reservation, hereby finds that alcohol abuse is an epidemic within the territory of the Cheyenne River Sioux Tribe, and further finds that:

(A) Alcohol abuse leads to frequent early loss of life and morbidity among tribal members and other residents of the Reservation. For example, the age adjusted accident death rates due to homicide, suicide, motor vehicle accidents and diseases related to alcohol abuse are several times higher among tribal members than the general population of the United States, and 90 to 95% of serious trauma cases treated by the Indian Health Service on the Reservation are alcohol related.

(B) Alcohol abuse results in dysfunctional families on the Reservation, and the vast majority of child abuse, spousal abuse and elderly abuse that occurs on the Reservation are alcohol related.

(C) Fetal Alcohol Syndrome and Fetal Alcohol Effect occur at alarming rates among children born within the territory of the Tribe, and children born with parental alcohol damage have difficulty caring for themselves all of their lives. The Tribe has a compelling interest in protecting children from Fetal Alcohol Syndrome and Fetal Alcohol Effect.

(D) Unemployment ranges from 60 to 65% among tribal members on the Reservation and poverty is widespread. Many tribal members suffer economic deprivation due to alcohol abuse, ranging from unemployment to starvation.

(E) Alcohol abuse contributes to the vast majority of the crime which takes place within tribal territory and places heavy burdens on the tribal criminal justice system and the tribal courts.

(F) Alcohol abuse has a devastating impact on our families and the Reservation Community, and the Tribal Council has a duty to combat alcohol abuse.

(G) Both the Tribe and the Federal Government devote tremendous resources to prevent and treat problems of alcohol abuse on the Reservation, yet even the combined treatment programs sponsored by the Tribe and Federal Government are not sufficient to address the problems of alcohol abuse. Far more must be done.

(H) The Tribe must exercise its regulatory authority to combat the problems of alcohol abuse on the Reservation through a comprehensive, consistent, and clearly defined plan to minimize alcohol consumption on the Reservation and to discourage unsafe drinking practices. In addition, the Tribe must raise additional revenue to combat the problems of alcohol abuse.

(I) Teenagers, young adults, and others are susceptible to new and increasingly dangerous high-alcohol-content beverages, some of which contain additives such as caffeine or sugar and increase the health concerns related to addiction and alcohol abuse.

Sec. 1–1–2. *Declaration of War on Alcohol Abuse.* For the spiritual well-being of our children and families and for the survival and strengthening of our people, the Cheyenne River Sioux Tribe declares War on Alcohol Abuse and strives for the speedy elimination of alcohol abuse and its associated problems from the Cheyenne River Indian Reservation. In furtherance of the Tribe's War on Alcohol Abuse, the Tribal Council hereby declares that it is the policy of the Cheyenne River Sioux Tribe:

(A) to minimize alcohol consumption among residents of the Reservation;

(B) to discourage unsafe drinking practices, including, but not limited to, driving while intoxicated, alcoholism or chronic intoxication, violence related to alcohol abuse, public intoxication and drinking during pregnancy;

(C) to minimize the adverse health effects of drinking alcohol through prevention, regulation and treatment;

(D) to protect unborn children, who are people in their own right, from prenatal alcohol damage;

(E) to control the supply of alcoholic beverages through taxation and regulation, and to control conditions of availability of alcoholic beverages through education and regulation;

(F) to maximize education, prevention and treatment programs to fight alcohol abuse; and

(G) to cause those who sell or consume alcoholic beverages to bear a greater proportion of the costs associated with alcohol abuse through taxation of alcoholic beverages and alcoholic beverage dealers and dedicating revenue derived therefrom for alcohol abuse education, enforcement, prevention, regulation and treatment.

Section 2. General Provisions and Definitions

Sec. 2–1–1. *Delegated Authority.* In accordance with Article IV, Section 3 of the Constitution (Future Powers), the Tribal Council of the Cheyenne River Sioux Tribe hereby exercises the authority delegated to the Tribe by the Congress of the United States of America to regulate the manufacture, distribution, sale, possession and consumption of alcoholic beverages within the territory of the Tribe.

Sec. 2–1–2. *Statement of Purpose.* The purpose of this Alcoholic Beverages Control Law is to regulate the manufacture, distribution, sale, possession and consumption of liquor on the Cheyenne River Indian Reservation. It is the Cheyenne River Sioux Tribe's intent in enacting this Ordinance to prohibit all traffic in liquor on the Cheyenne River Indian Reservation except to the extent allowed and permitted under the express terms of this Ordinance. Any person desiring to engage in the possession, sale, trade, transport or manufacture of alcoholic beverages on the Cheyenne River Sioux Indian Reservation shall comply with the rules and regulations set forth in this Alcoholic Beverages Control Law. This Ordinance shall be cited as the ''Cheyenne River Sioux Alcoholic Beverages Control Law'' and is promulgated pursuant to the constitutional, delegated and inherent authority of the Tribe for the purpose of protecting the welfare, health, peace, morals and safety of all people residing on the Cheyenne River Indian Reservation. All the provisions of this Ordinance shall be liberally construed to accomplish the above-declared purpose.

Sec. 2–1–3. *Applicability.* This Ordinance shall apply to all persons engaged in the activities described herein on any and all lands and areas within the exterior boundaries of the Cheyenne River Indian Reservation, including lands held in fee, and all other lands subject to the jurisdiction of the Cheyenne River Sioux Tribe.

Sec. 2–1–4. *Definitions.* The terms used in this Alcoholic Beverages Control Law, unless the context plainly otherwise requires, shall mean:

(A) ''Alcoholic beverages,'' any distilled spirits, wine and malt beverages as defined in this Ordinance.

(B) ''Alcoholic Beverages Dealer,'' any person who sells or engages in commercial traffic in alcoholic beverages, including manufacturers, retailers, solicitors, transporters and wholesalers.

(C) ''Cheyenne River Indian Reservation'' shall include any and all lands within the territory of the Cheyenne River Indian Reservation as set forth in Article I of the Constitution of the Cheyenne River Sioux Tribe, whether said lands are trust, allotted or lands held in fee patent status.

(D) ''Commission,'' the Alcoholic Beverage Control Commission.

(E) ''Contraband,'' any alcoholic beverage introduced into, or possessed, offered for sale or used within, the territory of the Tribe contrary to tribal law and any receptacle or container in which such alcoholic beverages are found.

(F) ''Director,'' the director of the Revenue Department.

(G) ''Distilled spirits,'' ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all delusions and mixtures thereof, for nonindustrial use containing not less than one-half of one percent of alcohol by volume.

(H) ''Distiller,'' means any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any distillery or other establishment for the production, rectifying, blending, or bottling of intoxicating liquor other than beer.

(I) ''Intoxicating beverage,'' any alcoholic beverage.

(J) ''Intoxicating liquor,'' any alcoholic beverage.

(K) ''Liquor,'' any alcoholic beverage.

(L) ''Malt beverage,'' a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption containing not less than one-half of one percent of alcohol by volume, and commonly referred to as beer or ale.

(M) ''Manufacturer,'' any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any facility which produces alcohol beverages.

(N) ''Off Sale,'' the sale of any alcoholic beverage for consumption off the premises where sold.

(O) ''On Sale,'' the sale of any alcoholic beverage for consumption only upon the premises where sold.

(P) ''On-Sale dealer,'' any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold.

(Q) ''Package,'' means the bottle or immediate container of any alcoholic beverage.

(R) ''Package dealer,'' any person other than a distiller, manufacturer, or wholesaler, who sells, or keeps for sale, any alcoholic beverage for consumption off the premises where sold.

(S) ''Person,'' any individual, firm, partnership, joint venture, association, corporation, municipal corporation, estate, trust, business receiver, or any group or combination acting as a unit and the plural as well as the singular in number.

(T) ''Retailer,'' or ''retail dealer'' any person who sells alcoholic beverages for other than resale.

(U) ''Retail license,'' an on- or off-sale license issued under the provisions of this Ordinance.

(V) ''Revenue Department,'' the Cheyenne River Sioux Tribal Revenue Department.

(W) ''Sale,'' the transfer, for a consideration, of title to any alcoholic beverage.

(X) ''Solicitor,'' any person employed by a licensed wholesaler within or without the territorial limits of the Cheyenne River Indian Reservation, or by any distiller or manufacturer within or without the reservation, who solicits orders of intoxicating liquor from wholesale or retail dealers within the Reservation.

(Y) ''Superior Court,'' Cheyenne River Sioux Tribal Court.

(X) ''Transportation company,'' or ''transporter,'' any common carrier or operator of a private vehicle transporting or accepting for transportation any alcoholic beverage destined to be delivered to the Cheyenne River Indian Reservation, but not including transportation by carriers in interstate commerce where the shipment originates outside of the state and is destined to a point outside of the state.

(Y) ''Treasurer,'' the duly elected and acting Treasurer of the Cheyenne River Sioux Tribe.

(Z) ''Tribal Chairman,'' the Chairman of the Cheyenne River Sioux Tribe.

(AA) ''Tribal Council,'' the governing body of the Cheyenne River Sioux Tribe.

(BB) ''Wholesaler,'' any person who sells alcoholic beverages to retailers for resale.

(CC) ''Wine,'' any liquid either commonly used, or reasonably adapted to use, for beverage purposes and obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar and containing no less than one-half of one percent of alcohol by volume but not more than twenty-four percent of alcohol by volume.

Section 3. Licensing Policies and Procedures

Sec. 3–1–1. *Granting of License.* Any person intending to introduce, sell trade, transport or manufacture alcoholic beverages on the Cheyenne River Indian Reservation shall make application for a license and present the completed application to the Revenue Department. The liquor license fees shall be in annual payments, due prior to the 1st day of January of each calendar year, for the following prescribed fees:

Sec. 3–1–2. *Wholesale Licensing.* The fee for an annual wholesale license shall be set by Tribal Council resolution at not less than Two Hundred Dollars ($200.00) and no more than Three Thousand Dollars ($3,000.00).

Sec. 3–1–3(A). *Retail Licensing.* The fee for an annual retail license shall be set by Tribal Council resolution at not less than One Hundred Dollars ($100.00) and no more than Twenty-Five Hundred Dollars ($2,500.00).

Sec. 3–1–3(B). *Temporary Retail Licensing.* A temporary alcoholic beverage license may be issued in conjunction with a special event, to be determined by the Commission, to a civic, charitable, educational, fraternal, or veteran's organization or to the holder of an annual license. Any temporary license issued under this section is limited to the conditions specified in the license, including a designation of the premises at which the licensee may introduce, sell or offer to keep for sale or transport for sale alcoholic beverages, and said temporary license may not exceed an effective period of four days. The fee for a temporary license shall be set by the Alcoholic Beverage Control Commission, and shall be no less than One Hundred Dollars ($100) and no more than Seven Hundred Fifty Dollars ($750). The fee must be submitted with the application before the application will be considered by the Commission.

Sec. 3–1–4. *Transport Licensing.* The fee for an annual transport license shall be set by Tribal Council resolution at not less than Two Hundred Dollars ($200.00) and no more than One Thousand, Five Hundred Dollars ($1,500.00).

Sec. 3–1–5. *Operating of a plant distilling intoxicating liquor.* The fee for an annual distilling plant license shall be set by Tribal Council resolution not less than One Thousand Dollars ($1,000.00) and no more than Five Thousand Dollars ($5,000.00).

Sec. 3–1–6. *Solicitors.* The fee for an annual solicitors license shall be set by Tribal Council resolution at not less than Two Hundred Dollars ($200.00) and no more than Seven Hundred Fifty Dollars ($750.00).

Sec. 3–1–7. *Alcoholic Beverage Control Commission.* There is hereby created a Cheyenne River Sioux Alcoholic Beverage Control Commission.

(A) The Alcoholic Beverage Control Commission shall consist of six (6) members of the Tribal Council, including one member from each tribal voting district, to be selected by the Tribal Chairman, and one (1) physician or other expert professionally trained in the area of alcohol abuse prevention and treatment, to be selected by the Tribal Chairman.

(B) The Commissioners shall, by majority vote, elect one Commissioner to serve as Chairman of the Commission. The Chairman shall preside at Commission meetings and hearings but shall not exercise his power to vote, except in the case of a tie. The Commissioners shall, by majority vote, elect one Commissioner to serve as Vice-Chairman of the Commission. The Vice-Chairman shall preside at Commission meetings and hearings in the absence of the Chairman and, when so presiding, shall not exercise his power to vote, except in the case of a tie.

(C) A quorum of the Commission shall consist of three members, and a quorum is required to exercise Commission authority.

(D) No Commission member shall participate in any Commission decision in which he has a direct interest or in which any member of his immediate family has a direct interest.

Sec. 3–1–8. *Powers of the Alcoholic Beverage Control Commission.* Commissioners shall be appointed for terms of two years, and shall be removed by the Tribal Council only for cause, after notice and an opportunity for a hearing before the Tribal Council. When a vacancy occurs on the Commission, the Tribal Council shall appoint a new Commissioner for the balance of the term.

(A) The Alcoholic Beverage Control Commission shall exercise regulatory and administrative authority of the Tribe under this Ordinance and shall have the power to:

(1) Review license applications and grant licenses;

(2) Conduct hearings on alleged violations of this Ordinance in the manner set forth in Section 6. The Commission may issue subpoenas and compel any licensee, or his agent or servant, to appear before it and to provide any information or documents it requires;

(3) Establish rules and regulations governing the conduct of the Commission and the exercise of Commission authority and establish rules and regulations to implement this Ordinance, in the manner set forth in Section 3–1–12 of this Ordinance;

(4) Collect taxes, impose penalties, suspend and/or revoke licenses when violations of this Ordinance are proved by a preponderance of the evidence;

(5) Enjoin violations of this Ordinance and enforce the orders of the Commission;

(6) Distribute funds collected from any taxes, fees and fines imposed under this Ordinance. The Commission shall distribute such funds to further the purposes of alcohol abuse education, enforcement, prevention, regulation and treatment; and

(7) Require payment of reasonable, non-discriminatory fees to cover administrative costs associated with licensing a liquor establishment in addition to the fees set forth in this Ordinance, provided such additional fees are established by rule or regulation in the manner set forth in Section 3–1–12 of this Ordinance.

(8) Exercise any other power of the Alcoholic Beverage Control Commission set forth elsewhere in this Ordinance.

(B) (1) Taxes may be collected by the Commission through assessment and distraint or other necessary means;

(2) Penalties may be collected through the attachment, levy and sale of property or other necessary means; and

(3) Orders suspending or revoking licenses or enjoining the operations of liquor dealers may be enforced by the Tribal Police acting at the direction of the Commission.

Sec. 3–1–9. *Qualifications for License.* No license of any kind shall be issued under this Ordinance, including a wholesale license, retail license, temporary retail license, transport license, distilling plant license, and solicitors license, unless the applicant shall be twenty-one (21) years of age, has filed a sworn application, accompanied by the required fee, showing the following qualifications and subject to the following standard:

(A) An applicant, other than a corporation, must be a legal resident of the United States and a person of good moral character. If the applicant is a corporation, partnership, joint venture, association, municipal corporation, estate, trust, business receiver or firm, the manager of the licensed premises must be a resident of the United States and a person of good moral character. Officers and directors of corporations, and partners, and directors of corporations, and partners, joint venturers, principals of associations and municipal corporations, trustees, business receivers and members of firms must be legal residents of the United States and persons of good moral character. Applicants must also have a business license with the Cheyenne River Sioux Tribe to be entitled to do business on the Cheyenne River Indian Reservation.

(B) The Alcoholic Beverage Control Commission may require the applicant to set forth such other information as is necessary to enable it to determine if a license should be granted.

(C) The Alcoholic Beverage Control Commission shall issue a license only if the qualifications set forth herein are satisfied and if it concludes, within its discretion, that the best interests of the Reservation community shall be served. In considering applications by retail dealers, the Alcoholic Beverage Control Commission may take into account the following factors, among others, in determining whether the issuance of a license will serve the best interests of the Reservation community:

(1) whether the license applied for is for the operation of a new or an existing retail liquor establishment.

(2) whether the applicant is in compliance with applicable tribal, State and Federal law;

(3) whether the applicant has violated any provision of this Ordinance, and if so, whether the violation has been remedied;

(4) the location, number and density of retail liquor establishments in the community;

(5) whether food is sold at the establishment; and

(6) the health and welfare of the public.

Sec. 3–1–10. *Public Comments.* Before the issuance of any tribal liquor license, the Cheyenne River Sioux Tribe shall allow comments from the public. The Alcoholic Beverage Control Commission shall be the determining authority for the granting of any tribal liquor license.

Sec. 3–1–11. *Appeal.* Any applicant who is denied a license by the Alcoholic Beverage Control Commission may appeal the Commission's decision to deny the license to the Superior Court by filing a notice of appeal with the Court, clearly stating the grounds therefore, and serving a copy of the notice of appeal by hand on the Director of the Revenue Department within thirty (30) days from the date of the decision. The Superior Court shall uphold the decision of the Alcoholic Beverage Control Commission unless it finds that the Commission's decision was arbitrary and capricious, an abuse of discretion, or not in accordance with this Ordinance or other applicable tribal or Federal law.

Sec. 3–1–12. *Regulatory Authority of the Alcoholic Beverage Control Commission.*

(A) *Proposal of Regulations.* The Commission may, on its own initiative, propose rules and regulations that are consistent with this Ordinance and that implement the provisions of this Ordinance, except in the case of rules and regulations that implement Section 4–1–10 of this Ordinance, which rules and regulations may be proposed only in the manner set forth in Section 4–1–10.

(B) *Notice and Publication of Proposed Regulations.*

(1) The Commission shall publish notice of Proposed Regulations in order to provide interested parties an opportunity to comment.

(2) Notice of the Proposed Regulations shall be made by publication in one or more newspapers of general circulation on the Reservation, provided that such newspaper or newspapers have a general circulation in Dewey County and Ziebach County.

(3) The notice shall invite written comments on the Proposed Regulations and give a deadline for their submission not less than sixty (60) days after publication of the notice.

(4) A copy of the Proposed Regulations shall be filed with and made available for public inspection at the Office of the Tribal Secretary.

(C) *Public Comment and Hearings.*

(1) The Commission shall consider all written comments on the Proposed Regulations that are submitted within sixty (60) days after publication of the notice referred to in subpart (B) of this section.

(2) The Commission may, in its sole discretion, hold one or more public hearings on the Proposed Regulations. The Commission shall have the authority to conduct and preside over such hearings and, if necessary in its discretion, establish procedures for the conduct of such hearings.

(D) *Action on Proposed Regulations.* After expiration of the public comment period and after one or more public hearings, if any are held in the sole discretion of the Commission pursuant to subpart (C)(2) of this section, the Commission may:

(1) Amend the Proposed Regulations by adding, changing, or deleting text therefrom in accordance with the procedures set forth in subpart (E) of this section, except in the case of Proposed Regulations to implement Section 4–1–10, which may not be amended by the Commission; or

(2) Adopt the Proposed Regulations, without amendment, as Final Regulations and publish them in accordance with subpart (F) of this section; or

(3) Reject the Proposed Regulations.

(E) *Interim Regulations.*

(1) Proposed Regulations that are amended pursuant to subpart (D)(1) of this section shall be known as ''Interim Regulations.''

(2) The Commission shall publish notice of Interim Regulations in the same manner for the publication of notices of Proposed Regulations, as set forth in subpart (B) of this section, provided that the notice of Interim Regulations may set forth a shortened written comment period of not less than thirty (30) days after publication of the notice.

(3) A copy of the Interim Regulations shall be filed with and made available for public inspection at the Office of the Tribal Secretary.

(4) The Commission shall consider all written comments on the Interim Regulations that are submitted within thirty (30) days after publication of the notice referred to in subpart (E)(2) of this section.

(5) The Commission may, in its sole discretion, hold one or more public hearings on the Interim Regulations. The Commission shall have the authority to conduct and preside over such hearings and, if necessary in its

discretion, establish procedures for the conduct of such hearings.

(6) After expiration of the public comment period and after one or more public hearings, if any are held in the sole discretion of the Commission pursuant to the preceding subpart, the Commission may:

(a) Further amend the Interim Regulations by adding, changing, or deleting text therefrom and, in respect to the further amended Interim Regulations, follow the same procedures set forth in this subpart for notice, publication, public comment, public hearings, if any, consideration, and adoption of Interim Regulations;

(b) Adopt the Interim Regulations, without amendment, as Final Regulations and publish them in accordance with subpart (F) of this section; or

(c) Reject the Interim Regulations.

(F) *Publication of Final Regulations.*

(1) Following adoption of Final Regulations by the Commission, the Commission shall publish the Final Regulations in one or more newspapers of general circulation in Dewey and Ziebach Counties on the Reservation.

(2) The Final Regulations shall become effective thirty (30) days after publication or on such later date as may be specified in the Final Regulations.

(3) A copy of the Final Regulations shall be filed with and made available for public inspection at the Office of the Tribal Secretary.

Section 4. Prohibitions

Sec. 4–1–1. *General Prohibitions.* It shall be unlawful to introduce, manufacture for sale, sell or offer to keep for sale or transport for sale alcoholic beverages, on the Cheyenne River Indian Reservation except upon the terms, conditions, limitations, and restrictions specified in this Ordinance. No sale of liquor shall be made within the Reservation except by persons holding a liquor license issued by the Commission and except at licensed premises. In addition to any other civil penalty provided for in this Ordinance, each violation of this section may subject the violator to a civil fine not to exceed Five Thousand Dollars ($5,000).

Sec. 4–1–2. Disposal Prohibited on Certain Days. No licensee of any class shall sell intoxicating liquor on Sunday, Memorial Day and Christmas Day. No licensee of any class shall sell intoxicating liquor on Tribal election day while the polls are open. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed Five Hundred Dollars ($500) for each violation. The Alcoholic Beverage Control Commission may, in its discretion, waive the prohibition on Sunday sales and it may waive the prohibition on the sale of intoxicating liquor for any other specified day set forth herein. The Commission shall provide reasonable notice to the public and retailers of any such waiver.

Sec. 4–1–3. Disposal Prohibited During Certain Hours. No licensee shall sell, provide, or allow the consumption of, alcoholic beverages to any person on the licensed premises before eleven o'clock a.m. or after one o'clock a.m., Mondays through Thursdays; and no licensee shall sell, provide, or allow the consumption of, alcoholic beverages to any person on the licensed premises before eleven o'clock a.m. or after two o'clock a.m., Fridays through Saturdays. No off-sale dealer shall sell or provide alcoholic beverages to any person before eleven o'clock a.m. or after eleven o'clock p.m., Mondays through Thursdays, and no off-sale dealer shall sell or provide alcoholic beverages to any person before eleven o'clock a.m. or after twelve o'clock a.m. (midnight), Fridays through Saturdays. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed Five Hundred Dollars ($500) for each violation. The Alcoholic Beverage Control Commission may, in its discretion, adjust the hours during which the sale of alcoholic beverages is prohibited. The Commission shall provide reasonable notice to the public and retailers of any such adjustment.

Sec. 4–1–4. *Prohibition as to Persons Under Twenty-One Years of Age.* No licensee of any class shall provide directly or by a clerk, agent or servant, intoxicating beverages to any person under the age of twenty-one (21) years. In addition to any civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed Five Hundred Dollars ($500) for each violation.

(A) In addition, any person who is injured as a result of a violation of this section shall have a right of action against the person who contributed to his injury by providing alcoholic beverages to a minor person. The Superior Court shall have jurisdiction to hear such actions.

(B) An action under Subsection (A) of this section shall be commenced within 2 years after the damage, injury or death.

(C) Evidence of Age and Identity. Evidence of age and identity of a purchaser of liquor must be shown by a current and valid driver's license, tribal identification, or a United States passport, which contains the signature, birth date, and picture of the holder of the license or passport, or any other form of identification acceptable to the Commission

(D) Demand for Identification. Liquor establishments shall have the authority to demand of any person the production of proper evidence of age and identity before making a sale of liquor to such person.

(E) Right and Duty to Refuse Sale. A liquor establishment shall have the authority and duty to refuse to sell liquor to any person who is unable to produce proper evidence of age and identity as prescribed by this section.

(F) Persons under twenty-one (21) years of age are prohibited from the premises of on-sale licensees, except as set forth in subsection G of this section.

(G) Notwithstanding Sections 4–1–4(F) and 9–1–5, persons under twenty-one (21) years of age may be present on the premises of on-sale licensees:

(1) Whose sale of alcoholic beverages constitutes less than fifty percent (50%) of the gross business transaction by the licensee at the premises, as determined and certified by the Commission; or

(2) Whose sale of alcoholic beverages constitutes more than fifty percent (50%) of the gross business transacted by licensee at the premises, but who have erected a physical barrier or barriers, inspected and approved by the Commission, to allow for multiple uses of multiple areas of the premises by persons of all ages, provided that persons under the age of twenty-one (21) are not permitted access to any area in which the sale of alcoholic beverages constitutes more than fifty percent (50%) of the gross revenues transaction by the licensee in the area, as determined and certified by the Commission. For the purposes of this subsection, a physical barrier includes, but is not limited to, a wall, fence, rope, railing, or other physical feature erected for the sole purpose of restricting the free flow of foot traffic and access to a certain area of the premises.

Sec. 4–1–5. *Prohibition as to Provision to Intoxicated Persons.*

(A) No licensee of any class shall provide directly or by a clerk, agent or servant, alcoholic beverages to a visibly intoxicated person. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed Five Hundred Dollars ($500) for each violation.

(B) In addition, any person who is injured as a result of a violation of this section shall have a right of action against the person who contributed to his injury by providing alcoholic beverages to a visibly intoxicated person. The Superior Court shall have jurisdiction to hear such actions.

(C) An action under Subsection (B) of this section shall be commenced within 2 years after the damage, injury or death.

Sec. 4–1–6. *Prohibition as to Purchase or Use by Pregnant Persons.* No licensee of any class shall knowingly provide directly or by a clerk, agent or servant alcoholic beverages to any person who is pregnant. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed Five Hundred Dollars ($500) for each violation.

Sec. 4–1–7. *Prohibition as to Purchase or Use by Pregnant Persons.* No person shall purchase, obtain or use alcoholic beverages while pregnant. Any person who violates this section may be subject to a civil fine not to exceed Five Hundred Dollars ($500). When there is serious danger of prenatal alcohol damage to the unborn child, the violator may be civilly committed to an alcohol abuse treatment facility for a period of time not to exceed the duration of the pregnancy by order of the Superior Court. The Superior Court shall, in determining such cases, follow the procedural rules provided by tribal law for involuntary civil commitments.

Sec. 4–1–8. *Prohibition Against Cashing Subsistence Checks.* No licensee of any class shall, directly or by a clerk, agent or servant, knowingly cash or accept any General Assistance check issued by the Federal Government, any Aid to Families with Dependent Children check issued by the State government or any other Government subsistence check. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed Five Hundred Dollars ($500) for each violation.

Sec. 4–1–9. *Prohibition Against Drive-up Windows.* No licensee shall sell or provide alcoholic beverages from a drive through window or entrance. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed Five Hundred Dollars ($500) for each violation.

Sec. 4–1–10. *Prohibition Against Specific Alcoholic Beverages.*

(A) This Ordinance authorizes the prohibition against the introduction, manufacture for sale, sale or offer to keep for sale, or transport for sale of specific types of alcoholic beverages, which are deemed to have a harmful impact on the health and welfare of the Tribe and its members, provided that such prohibitions are adopted in the following manner:

(1) Tribal Council may by Tribal Council Resolution make a recommendation to the Commission that it consider a rule or regulation prohibiting the introduction, manufacture for sale, sale or offer to keep for sale, or transport for sale of a particular alcoholic beverage.

(2) The Commission shall consider whether to adopt such recommendation by following the procedures set forth in Section 3–1–12.

(B) The Commission will maintain a list of alcoholic beverages prohibited by regulation that will be distributed annually, free of charge, to all licensees. The list will be updated and distributed, free of charge, to all licensees within twenty (20) days of adoption of a regulation containing any new prohibition.

(C) In addition to any other civil penalty provided for in this Ordinance, any licensee who violates a prohibition duly adopted and published by the Commission under this section and Section 3–1–12 may be subject to a civil fine not to exceed Five Hundred Dollars ($500) for each violation.

Section 5. Taxation

Sec. 5–1–1. *Wholesale Alcoholic Beverage Excise Tax.* There is hereby imposed a wholesale alcoholic beverage excise tax of 7.5% on the whole price of all alcoholic beverages introduced into the Cheyenne River Indian Reservation for sale or provision to a retail alcoholic beverage dealer.

Sec. 5–1–2. *Delivery of Beverages for Resale Prohibited Except to Licensees.* No manufacturer, wholesaler, or transporter shall sell or deliver any package containing alcoholic beverages manufactured or distributed by him for resale, unless the person to whom such package is sold or delivered is a licensed alcoholic beverage dealer. In addition to any other civil penalty provided for in this Ordinance, any person who violates this section may be subject to a civil fine not to exceed Two Hundred and Fifty ($250) for each violation.

Sec. 5–1–3. *Retail Alcoholic Beverages dealers to Purchase only from Licensed Wholesalers, Etc.* Retail alcoholic beverage dealers shall buy or receive alcoholic beverages only from wholesalers, solicitors or transporters licensed under this Ordinance. In addition to any other civil penalty provided for in this Ordinance, any person who violates this section may be subject to a civil fine not to exceed Five Hundred Dollars ($500) for each violation.

Sec. 5–1–4. *Monthly Return and Payment of Wholesale Alcoholic Beverage Excise Tax.* Wholesalers and other alcoholic beverage dealers who introduce, or otherwise cause to be introduced, alcoholic beverages into the Cheyenne River Indian Reservation for provision to retail alcoholic beverage dealers shall be liable for payment of the wholesale alcoholic beverage excise tax and shall file monthly returns with the Revenue Department, on such forms as the Revenue Department may require, showing the kind, quantity and price of the alcoholic beverages introduced, or otherwise caused to be introduced, into the Cheyenne River Indian Reservation, along with the names of the persons to whom the alcoholic beverages were provided, the amount of the tax due and other information which the Revenue Department may reasonably require. Said return, covering the period of one calendar month, shall be transmitted to the Revenue Department on or before the twenty-fifth day of the month following the close of the reporting period. The tax due for that period shall be remitted together with the monthly return.

Sec. 5–1–5. *Records and Reports Required of Licensees—Entry and Examination of Default.* Any person liable for the payment of the wholesale alcoholic beverage excise tax shall keep, in current and available form on the licensed premises, records of all purchases, sales, quantities on hand and such other information as the Director of the Revenue Department may reasonably require. The Director may require from any licensee any reports he or she shall prescribe, and he or she may require the production of any book, record, document, invoice, and voucher kept, maintained, received, or issued by any such licensee in connection with his business, which in the judgment of the Director may be necessary to administer and discharge his duties, to secure the maximum of revenue to be paid, and to carry out the provisions of the law. If default is made, or if any such licensee fails or refuses to furnish any other reports or information referred to upon request therefore, the Director may enter the premises of such licensee where the records are kept and make such examination as is necessary to compile the required report. The cost of such examination shall be paid by the licensee whose reports are in default.

Sec. 5–1–6. *Reports Required on Shipments of Beverages into Reservation.* Any person outside the Reservation who sells or ships alcoholic beverages to a manufacturer, wholesaler, solicitor, transporter or retailer within this Reservation shall forthwith forward to the Director such a report as the Director shall require, giving the name and address of the licensee or person making the purchase, the quantity and kind of alcoholic beverages sold, the manner of delivery and such other information as the Director requires.

Sec. 5–1–7. *Tax Stamps.* The wholesale alcoholic beverage excise tax shall be required to be evidenced by an identification stamp to be affixed to original packages of alcoholic beverages introduced into the Cheyenne River Indian Reservation. The Revenue Department shall adopt the design of the identification stamp, procure manufacture of the stamp, and shall issue rules regarding the issuance and use of the stamp.

Sec. 5–1–8. *Counterfeiting of Stamps.* Every person who shall make, manufacture, counterfeit, duplicate or in any way imitate, any identification stamp, provided for in Section 5–1–4 above, or who shall possess or in any way use such counterfeit or imitated stamp, may be assessed a fine not to exceed Five Thousand Dollars ($5,000) for each violation.

Sec. 5–1–9. *Penalty and Interest on Delinquency in Payment of Tax—False Return—Collection of Tax and Penalties.* If any person liable for the wholesale alcoholic beverage excise tax fails to pay the tax on the date payment is due, there shall be added to the tax ten percent of the amount of the tax unpaid. The amount of the tax and penalty shall bear interest at 1.5% per month from the date of delinquency until paid. If any licensee files a false or fraudulent return, there shall be added to the tax an amount equal to the tax evaded, or attempted to be evaded. All such taxes and civil penalties may be collected by assessment and distraint.

Sec. 5–1–10. *Possession of Unstamped Beverages Prohibited.* No person may possess any alcoholic beverage other than in a package upon which the required tax stamps are affixed. In addition to forfeiture and any civil penalty provided for elsewhere in this Ordinance, each violation of this section shall subject the violator to a civil fine not to exceed Five Hundred Dollars ($500).

Sec. 5–1–11. *Luxury Tax on Retail Purchase of Alcoholic Beverages.* There is hereby imposed a luxury tax of 12% on the retail sale price of alcoholic beverages purchased on sale from on-sale liquor dealers within the Cheyenne River Indian Reservation. There is hereby imposed a luxury tax of 15% on the retail sale price of alcoholic beverages purchased off sale from off sale package dealers within the Cheyenne River Indian Reservation. This tax shall be levied and collected in addition to any tribal sales tax.

Sec. 5–1–12. *Monthly Return, Collection and Remittance of Luxury Tax on Retail Purchase of Alcoholic Beverages.* Retail alcoholic beverage dealers shall be liable for the collection and remittance of the luxury tax on the retail sale price of alcoholic beverages. Retail alcoholic beverage dealers shall keep accurate records of all sales of alcoholic beverages and shall file monthly returns with the Revenue Department, on such forms as the Revenue Department may require, showing the quantity and the price of alcoholic beverages sold at retail, along with the amount of the tax due and other information which the Revenue Department may reasonably require. Said return, covering the period of one calendar month, shall be transmitted to the Revenue Department on or before the twenty-fifth day of the month following the close of the reporting period. The tax due for that period shall be remitted together with the monthly return.

Sec. 5–1–13. *Reports Required of Retail Alcoholic Beverage Dealers.* Retail Alcoholic beverage dealers shall keep, in current and available form on the licensed premises, records of all purchases, sales, quantities on hand and such other information as the Director of the Revenue Department may reasonably require. The Director may require from any licensee any reports he shall prescribe, and he may require the production of any book, record, document, invoice, and voucher kept, maintained, received, or issued by any such licensee in connection with his business, which in the judgment of the Director may be necessary to administer and discharge his duties, to secure the maximum of revenue to be paid, and to carry out the provisions of law. If default is made, or if any such licensee fails or refuses to furnish any other reports or information referred to upon request therefore, the Director may enter the premises of such licensee where the records are kept and make such examination as is necessary to compile the required report. The cost of such examination shall be paid by the licensee whose reports are in default.

Sec. 5–1–14. *Penalty and Interest on Delinquency in Collection and Remittance of Tax—False Return—Collection of Tax and Penalties.* If any person responsible for the collection and remittance of the luxury tax on retail alcoholic beverage sales fails to remit the tax on the date that payment is due, there shall be added to the amount of the tax due ten percent of the amount of the tax unpaid. The amount of the tax and penalty shall bear interest at the rate of 1.5% per month from the date of delinquency until paid. If any licensee files a false or fraudulent return, there shall be added to the tax an amount equal to the tax evaded, or attempted to be evaded. All such taxes and civil penalties may be collected by assessment and distraint.

Sec. 5–1–15. *Tax Agreements Authorized.* The Tribal Council finds that the public interest of residents of the Reservation is best served by cooperation between the Tribe, the State of South Dakota and/or its subdivisions in the area of taxation of alcoholic beverages. Accordingly, the Tribal Council hereby authorizes the Revenue Department to negotiate tax collection agreements with the State and/or state subdivisions. Such agreements shall be submitted by the Revenue Department to the Tribal Council for approval before they are final.

Sec. 5–1–16. *Dedication of Tax Revenue.* All tax revenue collected pursuant to this Ordinance shall be dedicated to alcohol abuse education, enforcement, prevention, regulation and treatment.

Section 6. Penalties Imposed for Violations of Ordinance

Sec. 6–1–1. *General Penalties.* Anyone violating this Ordinance shall be subject to suspension or revocation of their tribal liquor license, including but not limited to their wholesale license, retail license, temporary retail license, transport license, distilling plant license, and solicitors license.

Sec. 6–1–2. *Hearing on Alleged Violations.* Anyone having information that a person has violated any provisions of this Ordinance may file with the Revenue Department an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the Revenue Department may set the matter for a hearing before the Alcoholic Beverage Control Commission within 60 days. A copy of the affidavit and notice of hearing shall be mailed to the affected person by registered mail not less than five days before the hearing. A record of such hearings will be made by stenographic notes or by the use of an electronic recording device. The person shall have the right to be represented by counsel, question witnesses and examine the evidence against him or her as well as to present evidence and witnesses in his or her own defense.

Sec. 6–1–3. *Suspension or Revocation of License.* If after such hearing the Alcoholic Beverage Control Commission finds the violation set forth in the affidavit has been proved by preponderance of the evidence, an order shall be served on the licensee revoking or suspending the license for a period of time or imposing such other civil penalties as are provided for in this Ordinance. A decision of the Commission imposing civil fines or directing the payment of taxes may be automatically stayed by posting an appeal bond with the Superior Court in the amount of the fine imposed or taxes to be collected. A decision of the Commission revoking or suspending a license may be automatically stayed by posting a Ten Thousand Dollar ($10,000) appeal bond with the Superior Court.

Sec. 6–1–4. *Powers of the Alcoholic Beverage Control Commission Chairman.* The Chairman of the Alcoholic Beverage Control Commission, or his designee, at a hearing under this Ordinance shall have the power to administer oaths and to subpoena and examine witnesses.

Sec. 6–1–5. *Appeal.* Any person who is aggrieved by a decision of the Alcoholic Beverage Control Commission suspending or revoking a license, imposing a civil penalty or collecting taxes imposed by this Ordinance may appeal the Commission's decision to the Superior Court by filing a notice of appeal, clearly stating the grounds therefore, and serving a copy of the notice of appeal by hand on the Director of the Revenue Department within thirty days from the date of the decision. The Superior Court shall uphold the decision of the Alcoholic Beverage Control Commission unless it finds that the Commission's decision was arbitrary and capricious, and an abuse of discretion, or not in accordance with this Ordinance or other applicable tribal or Federal law. In the event that a decision imposing a civil penalty or ordering the collection of taxes is overturned on appeal, the Court may order the Commission to refund such penalty or taxes.

Section 7. Contraband

Sec. 7–1–1. *Contraband Alcoholic Beverages—Containers—Forfeiture.* The introduction of alcoholic beverages into, and possession, sale or use of alcoholic beverages within, the territory of the Cheyenne River Sioux Tribe contrary to tribal law is inimical to the public interest. All alcoholic beverages introduced into, or possessed, offered for sale or used within, the territory of the Cheyenne River Sioux Tribe contrary to tribal law, and any receptacle or container of any kind in which said alcoholic beverages are found, are hereby declared to be contraband. No property right shall exist in contraband alcoholic beverages or any receptacle or container wherein such alcoholic beverages are found. Contraband alcoholic beverages and any receptacle or container in which such alcoholic beverages are found are hereby declared forfeit and shall be seized forthwith. In addition to any other civil penalty in this Ordinance, any person who violates this section may be subject to a fine not to exceed Five Thousand Dollars ($5,000).

Sec. 7–1–2. *Seizure of Contraband Alcoholic Beverages—Containers—Search Warrant.* When an officer of the Tribe has probable cause to believe that a person has contraband alcoholic beverages within the territory of the Tribe and a search warrant is required under tribal law or under the Federal Indian Civil Rights Act, 25 U.S.C. 1301 *et seq.,* he may apply to the Superior Court of the Tribe for a warrant to authorize the search of said person and any places, containers, conveyances, and receptacles, etc., which the officer has probable cause to believe contains said contraband alcoholic beverages. If the Superior Court determines that probable cause exists that a person has contraband alcoholic beverages within the territory of the Tribe, then the Court shall issue a search warrant describing the person, places and things to be searched and the things to be seized. The officer shall execute the search warrant and seize any and all contraband alcoholic beverages found and any receptacles and any containers in which said contraband alcoholic beverages are found. The officer shall store the contraband in the Evidence Room of the Law Enforcement Department or such other location as determined by the Commission to be an adequate storage facility for contraband. The contraband shall be stored for a period of not less than ninety (90) days prior to disposition, provided that if any person claiming an interest therein files a claim with the Superior Court, pursuant to Section 7–1–3, for a determination as to whether the items seized are contraband, the contraband shall be stored until the time for filing an appeal from a Superior Court determination has elapsed, if no appeal is taken and if an appeal is taken from any determination by the Superior Court, the contraband shall be held until the appeal is fully and finally decided.

Sec. 7–1–3. *Judicial Determination as to Nature of Alcoholic Beverages Seized.*

(A) Within ten calendar days after the seizure of any alcoholic beverages, or any receptacle or container in which said alcoholic beverages are found, on the grounds that they are contraband, any person claiming an interest therein may initiate an action for a determination as to whether the items seized are contraband by filing a claim with the Superior Court and serving notice of the claim on the Director of the Revenue Department. The Superior Court shall then schedule a hearing on the matter within fifteen calendar days after the filing of the claim.

(B) The Superior Court shall, upon good cause shown, permit discovery to be taken on an expedited basis. The Superior Court shall regulate the manner and timing of such discovery; provided that when the Superior Court orders expedited discovery, the time for a hearing may be postponed for a period of sixty (60) days. All discovery shall be completed prior to the hearing date.

(C) The Tribe shall have the burden to establish a prima facie case that items seized are contraband, and after such proof is made, the burden shall shift to the claimant to prove by a preponderance of the evidence that the items seized are not contraband.

(D) If the Superior Court determines that the items seized by the Tribe are not contraband, the Court shall order the return of the items to the claimant after the time for filing an appeal has elapsed. If the Superior Court determines that the items seized are contraband, the Court shall declare the items to be contraband and the Tribe may dispose of the contraband as it deems fit after the time for filing an appeal has elapsed, if no appeal is taken. If an appeal is taken from any determination by the Superior Court, the contraband shall be held until the appeal is fully and finally decided.

(E) The Tribe may appeal an adverse decision of the Superior Court under this section to the Appellate Court by filing a notice of appeal within ten calendar days of the date of the decision of the Superior Court. Filing of the notice of appeal by the Tribe shall automatically stay the decision of the Superior Court. The Appellate Court shall uphold the decision of the Superior Court unless it is clearly erroneous.

(F) The claimant may appeal an adverse decision of the Superior Court under this section to the Appellate Court by filing a notice of appeal within ten calendar days of the date of the decision of the Superior Court and posting an appeal bond in an amount set by the Superior Court. The Superior Court shall set the appeal bond in an amount sufficient to pay for the storage of the items in dispute during the pendency of the appeal and any court costs which may be incurred by the

Tribe on the appeal. Filing of the notice of appeal by the claimant and payment of the appeal bond shall automatically stay the decision of the Superior Court. The Appellate Court shall uphold the decision of the Superior Court unless it is clearly erroneous.

Section 8. Exceptions

Sec. 8–1–1. *Exceptions to this Ordinance.* The provisions of this Ordinance shall not apply to the sale of alcoholic beverages, or to ethanol, used or intended for use, for the following purposes:

(A) For scientific research or manufacturing products other than liquor;

(B) Medical use under the direction of a physician, medical or dental clinic, or hospital;

(C) In preparations not fit for human consumption such as cleaning compounds and toilet products, or flavoring extracts;

(D) By persons exempt from regulation in accordance with the laws of the United States; or

(E) For sacramental use such as wines delivered to priests, rabbis, and ministers.

Section 9. Miscellaneous Provisions

Sec. 9–1–1. *Agreement by Licensee to Grant Access for Inspection Purposes.* Every licensee under this Ordinance, as a condition of the grant of a tribal license, consents to the inspection of his premises, including all buildings, safes, cabinets, lockers and storerooms thereon. Such inspection shall be available upon the demand of the Commission. These inspections shall be conducted by a duly appointed designee of the Commission, or tribal or Federal police. All books and records dealing with the sale and ownership of alcoholic beverages shall be open for inspection purposes by the Commission.

Sec. 9–1–2. *Transferability.* No license issued pursuant to this Ordinance shall be transferable; provided, however, upon death of an individual licensee, the personal representative of the estate may operate under a valid license for sixty (60) days after the licensee's death, so long as said personal representative shall apply to the Tribe for a new license within said sixty (60) day period.

Sec. 9–1–3. *Health Warnings.*

(A) The Health Department of the Cheyenne River Sioux Tribe shall create signs warning of the dangers faced by those who consume alcohol, including warning the dangers to pregnant women, the dangers of drunk driving and such other warnings as the Health Department shall deem necessary. The language in such signs shall be referred to the Indian Health Service for comments and shall be approved by a licensed physician prior to issuance. The Revenue Department shall issue copies of such signs to retail dealers. Each retail dealer shall display said signs in a conspicuous manner in close proximity to the area where alcohol is dispensed or sold.

(B) The Health Department of the Cheyenne River Sioux Tribe shall create pamphlets warning pregnant persons of the dangers of alcohol use during pregnancy. The language in such pamphlets shall be referred to the Indian Health Service for comments and shall be approved by a licensed physician prior to issuance. The Revenue Department shall issue copies of such pamphlets to all retail dealers. Each retail dealer shall offer one of these pamphlets to each pregnant person who is refused service pursuant to Sec. 4–1–5.

Sec. 9–1–4. *Server Training.* Every person who serves alcoholic beverages on the premises of an on-sale license shall attend 8 hours of training in a server training program approved by the Alcoholic Beverage Control Commission on the latter of his or her 60th day of employment or within 60 days after the effective date of this Ordinance.

Sec. 9–1–5. *Age to Sell Alcoholic Beverages.*

(A) No package (off-sale) licensee who holds a valid liquor license may permit any person under the age of twenty-one (21) years to sell alcoholic beverages on the licensed premises, except as set forth in subsection (B) of this section.

(B) A package (off-sale) licensee who holds a valid liquor license may permit a person between the age of eighteen (18) years and twenty-one (21) years to sell malt beverages on the licensed premises if:

(1) Sales of malt beverages constitute less than fifty percent (50%) of the gross receipt of the business, as determined and certified by the Commission; and

(2) An employee over the age of twenty-one (21) years is on the licensed premises when the malt beverage is sold.

(C) No on-sale licensee may permit any person under the age of twenty-one (21) years to sell, serve, or dispense alcoholic beverages on the licensed premises, except as set forth in subsection (D) of this section.

(D) An on-sale licensee may permit persons between the age of eighteen (18) years and twenty-one (21) years to sell, serve, or dispense alcoholic beverages if:

(1) Sales of food and non-alcoholic beverages constitute more than 50% of the gross receipts of the business, as determined and certified by the Commission; and

(2) An employee over the age of twenty-one (21) is on the licensed premises when the alcoholic beverage is sold, served or dispensed.

(E) ''Sell, serve or dispense'' under this section means to take orders for alcoholic beverages and to deliver alcoholic beverages to customers as a normal adjunct of waiting tables. The term does not include bartending or mixing alcoholic drinks. Persons under the age of twenty-one (21) years are not permitted to tend bar or mix drinks.

(F) Violation of this section may result in a fine not to exceed Five Hundred Dollars ($500) per violation.

Sec. 9–1–6. *Tribal Sovereign Immunity.* No provision of this Ordinance shall be construed to permit the recovery of money damages against the Tribe. No provision of this Ordinance shall be construed to waive the sovereign immunity of the Tribe, except as expressly provided in Sections 3–1–11, 6–1–5, 7–1–3.

Section 10. Severability

Sec. 10–1–1. *Severability.* If for any reason, or circumstances, any provision(s) or section(s) of this Ordinance are held invalid by the appropriate court of jurisdiction, the remainder of this Ordinance and other provisions or sections shall not be affected in the application of this Ordinance or to any person covered by this Ordinance.

Section 11. Effective Date of Ordinance No. 48 as Amended

Sec. 11–1–1. *Continued Operation Under Existing License.* Ordinance No. 48 is hereby amended and said Ordinance is effective as amended thirty (30) days after its publication in the **Federal Register**. Any licensee operating under an existing tribal license may continue to operate there under until such license expires provided that the licensee complies with all the provisions contained herein, including the provisions relating to hours of operation, prohibited acts and taxation.

Certification

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribal Council, certify that the Tribal Council is composed of fifteen (15) members of whom 10, constituting a quorum, were present at a meeting, duly and regularly called, noticed and convened and held this 10th day of March, 2023 Regular Session; in Eagle Butte, South Dakota; and that the foregoing Ordinance No. 48, the Alcoholic Beverages Control Law of the Cheyenne River Sioux Tribe of South Dakota, as Amended, was duly adopted at such meeting by a roll call vote of 10 yes, 0 no, 0 abstaining, 2 absent and 3 vacant.

[FR Doc. 2023–10035 Filed 5–10–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

[233D0102DM, DS6CS00000, DLSN00000.000000, DX.6CS25; OMB Control Number 1090–0012]

Agency Information Collection Activities; Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

AGENCY: Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Department of the Interior are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 10, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Jeffrey Parrillo, Departmental Information Collection Clearance Officer, 1849 C Street NW, Washington, DC 20240; or by email to *DOI-PRA@ios.doi.gov.* Please reference OMB Control Number 1090–0012 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jeffrey Parrillo, Departmental Information Collection Clearance Officer, 1849 C Street NW, Washington, DC 20240; or by email to *DOI-PRA@ios.doi.gov,* or by telephone at 202–208–7072. 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: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: A modern, streamlined and responsive customer experience means: raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership.

This information collection activity provides a means to garner customer and stakeholder feedback in an efficient, timely manner in accordance with the Administration's commitment to improving customer service delivery as discussed in Section 280 of OMB Circular A–11 at *https://www.whitehouse.gov/wp-content/uploads/2018/06/s280.pdf.*

As discussed in OMB guidance, agencies should identify their highest-impact customer journeys (using customer volume, annual program cost, and/or knowledge of customer priority as weighting factors) and select touchpoints/transactions within those journeys to collect feedback. These results will be used to improve the delivery of Federal services and programs. It will also provide government-wide data on customer experience that can be displayed on *www.performance.gov* to help build transparency and accountability of Federal programs to the customers they serve. As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The Department of the Interior will only submit collections if they meet the following criteria.

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used for general service improvement and program management purposes.
- Upon agreement between OMB and the agency, all or a subset of information may be released as part of A–11, Section 280 requirements on *performance.gov.* Summaries of customer research and user testing activities may be included in public-facing customer journey maps.
- Additional release of data must be done in coordination with OMB.

These collections will allow for ongoing, collaborative and actionable communications between the Agency, its customers and stakeholders, and OMB as it monitors agency compliance on Section 280. These responses will inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on services will be unavailable.

Title of Collection: Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

OMB Control Number: 1090–0012.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Total Estimated Number of Annual Respondents: 146,384.

Total Estimated Number of Annual Responses: 146,384.

Estimated Completion Time per Response: Varied, dependent upon the possible response time to complete a questionnaire or survey may be 3 minutes up to 90 minutes to participate in an interview based on the data collection method used.

Total Estimated Number of Annual Burden Hours: 13,876.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–10046 Filed 5–10–23; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_HQ_FRN_MO4500170575]

Public Meeting for the Missouri Basin 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 of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Missouri Basin Resource Advisory Council (RAC) will meet as follows.

DATES: The Missouri Basin RAC will meet on June 20, 2023, from 10 a.m. to 4 p.m. Mountain Time (MT) and on June 21, 2023, from 8 a.m. to 1 p.m. MT.

ADDRESSES: The meeting will take place online via Zoom. The meeting sign-in information, agenda, and public comment period times will be announced in a local news release. Written comments to the RAC can be emailed in advance to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Missouri Basin RAC Coordinator, BLM Eastern Montana/Dakotas District, 111 Garryowen Road, Miles City, MT 59301; telephone: (406) 233–2831; email: *mjacobse@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Flanigan. 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 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Central and Eastern Montana, and North and South Dakota. At this meeting, agenda topics will include the selection of a new chair, North-Central and Eastern Montana/Dakotas District reports, Field Office manager reports, a public comment period, the North Dakota Resource Management Plan, and other topics and items of interest the council may wish to cover. All meetings are open to the public, and the public may address or present written comments to the RAC. The RAC meeting will have time allocated for hearing public comments on both meeting dates. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

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 **FOR FURTHER INFORMATION CONTACT** section of this notice at least 7 business days prior to the meeting to give the BLM sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Before including your address, phone number, email address, or other personal identifying information in your comments, please 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: 43 CFR 1784.4–2)

Scott S. Haight,

Eastern Montana/Dakotas District Manager.

[FR Doc. 2023–09986 Filed 5–10–23; 8:45 am]

BILLING CODE 4331–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRM_MO4500170435; AA–11875]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface and subsurface estates in certain lands to Bristol Bay Native Corporation, an Alaska Native regional corporation, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA), as amended.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: Alban Burton, Land Law Examiner, Branch of Adjudication, BLM Alaska State Office, 907–271–1312 or *aburton@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to Bristol Bay Native Corporation. The decision approves conveyance of the surface and subsurface estates in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*), as amended.

The lands are located within the Togiak National Wildlife Refuge, in the following township, and aggregate 8.27 acres: T. 16 S., R. 63 W., Seward Meridian, Alaska.

The decision addresses public access easements, if any, to be reserved to the United States pursuant to Sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands approved for conveyance.

The BLM will also publish notice of the decision once a week for four consecutive weeks in the Bristol Bay Times and Dutch Harbor Fisherman newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until June 12, 2023 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Alban Burton,

Land Law Examiner, Branch of Adjudication.

[FR Doc. 2023–10038 Filed 5–10–23; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–35810; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before April 29, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by May 26, 2023.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before April 29, 2023. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers.

Key: State, County, Property Name, Multiple Name (if applicable), Address/ Boundary, City, Vicinity, Reference Number.

ARKANSAS

Pope County

Reed Cemetery Historic Section, 1200 blk. of West 12th St., Russellville, SG100009033

CALIFORNIA

Glenn County

Willows-Glenn County Airport, 353 Cty. Rd. G, Willows, SG100009029

Los Angeles County

El Segundo Woman's Club, 541 Standard St., El Segundo, SG100009028

Riverside County

Wolf Store and Vail Ranch Headquarters, 32115 Temecula Pkwy., Temecula, SG100009030

FLORIDA

Osceola County

St. Cloud Downtown Historic District, Roughly bounded by 9th St., Wisconsin Ave., Ohio Ave., and US 192, St. Cloud, SG100009031

NEW MEXICO

Santa Fe County

Laboratory of Anthropology Director's Residence, (Buildings Designed by John Gaw Meem MPS), 750 Camino Lejo, Santa Fe, MP100009036

VERMONT

Washington County

Wiswell House, 3296 Main St., Cabot, SG100009035

VIRGINIA

Northumberland County

Gascony, 356 Gascony Ln., Kilmarnock, SG100009027

Additional documentation has been received for the following resource:

MICHIGAN

Kalamazoo County

Acres, The (Additional Documentation), 10036,10069,11090,11108 and 11185 Hawthorne Dr., Charleston Township, AD04000458

Authority: Section 60.13 of 36 CFR part 60.

Dated: May 3, 2023.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2023–10050 Filed 5–10–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035849; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: The Filson Historical Society, Louisville, KY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Filson Historical Society intends to repatriate certain cultural items that meet the definition of unassociated funerary

objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Fulton County, KY; Hickman County, KY; Lake County, TN; and Shelby County, TN.

DATES: Repatriation of the cultural items in this notice may occur on or after June 12, 2023.

ADDRESSES: Kelly Hyberger, The Filson Historical Society, 1310 South 3rd Street, Louisville, KY 40208, telephone (502) 635–5083, email *khyberger@filsonhistorical.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Filson Historical Society. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the Filson Historical Society.

Description

On an unknown date, five unassociated funerary objects were removed from Hickman County, KY. These objects were removed by Phil Porter, most likely from a Mississippian mound complex known as McLeod's Bluff. The Filson purchased these items from Ira Archer in 1933. The five unassociated funerary objects are three ceramic effigy bottles, one ceramic water bottle with a stopper, and one ceramic water bottle.

On an unknown date, nine unassociated funerary objects were removed from either Fulton County, KY, or Hickman County, KY. These objects were removed by Frank White, possibly from a Mississippian mound complex known as McLeod's Bluff. Filson records suggest that White and Phil Porter possibly worked in tandem to remove burial items from ceremonial and burial mounds. The Filson purchased these items from Ira Archer in 1933. The nine unassociated funerary objects are one stone plummet, one ceramic water bottle with incised curvilinear designs, three ceramic bowls, one ceramic water bottle, one ceramic bird effigy bowl, one plain ceramic bowl with loop-style handles, and one ceramic bowl with incised designs.

On an unknown date, one associated funerary object was removed from a burial mound on the shore of Reelfoot Lake in Lake County, TN. The object was removed by an unknown resident of Hornbeak, TN, identified in Filson records only as a local bank cashier. The Filson purchased this item from Ira Archer in 1933. The one unassociated funerary object is a ceramic bottle.

On an unknown date, one associated funerary object was removed by C.E. Hadley from a burial mound on the Mississippi River near Memphis in Shelby County, TN. The Filson purchased this item from Ira Archer in 1933. The one unassociated funerary object is a ceramic bowl.

On an unknown date, one associated funerary object was removed by C.C. Bacon from a mound on the Mississippi River near Memphis in Shelby County, TN. The Filson purchased this item from Ira Archer in 1933. The one unassociated funerary object is a carved shell mask.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, and geographical information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Filson Historical Society has determined that:

• The 17 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

• There is a relationship of shared group identity that can be reasonably traced between the cultural items and The Chickasaw Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after June 12, 2023. If competing requests for repatriation are received, the Filson Historical Society must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Filson Historical Society is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: May 5, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–10033 Filed 5–10–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035850; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Tennessee, Department of Anthropology (UTK), has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Benton, Henry, Humphreys, Stewart, and Williamson Counties, TN, as well as from an unknown county in TN.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after June 12, 2023.

ADDRESSES: Dr. Ozlem Kilic, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2454, email *okilic@utk.edu* and *vpaa@utk.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UTK. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by UTK.

Description

Likely in 1991, human remains representing, at minimum, one individual were removed from Benton County, TN, near Pilot Knob State Park, by an unknown individual. That year, these human remains were turned over to law enforcement officials and transferred to the Forensic Anthropology Center (FAC) at UTK (case number 91–39). They remained at the FAC until 2022, at which time they were transferred to the UTK Office of Repatriation (OR). No associated funerary objects are present.

On July 15, 1992, human remains representing, at minimum, four individuals were removed from Kentucky Lake, in Henry County, TN, by a mussel diver. These human remains were taken to local law enforcement officials, who then transferred them to William Bass at UTK. Following Bass' examination, the human remains were housed at the FAC (case number 92–19). They remained at the FAC until 2022, at which time they were transferred to the OR. The one associated funerary object is one lot consisting of lithics.

On September 2, 1985, human remains representing, at minimum, one individual were removed from the bank of Kentucky Lake in Humphreys County, TN. An individual saw the ancestral human remains while fishing nearby and alerted local law enforcement officials, who contacted William Bass at UTK to examine the human remains. Following Bass' assessment (completed on September 9, 1985), the human remains were transferred to the FAC (case number 85–20). They remained at the FAC until 2022, at which time they were transferred to the OR. No associated funerary objects are present.

Human remains representing, at minimum, three individuals were removed from the bank of an unknown region of the Cumberland River in Stewart County, TN. They were removed by an unknown individual and turned over to law enforcement officials, who contacted William Bass at UTK and transferred the human remains to UTK for examination. Following the examination, the human remains were housed at the FAC (case number 94–42). They remained at the FAC until 2022, at which time they were transferred to the OR. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from an unknown area near the Tennessee River, in Stewart County, TN. The discoverer, a man from Clarksville, TN, took these ancestral human remains to local law enforcement officials, who sent them to UTK for examination on November 2, 1997. Following examination by William Bass, the human remains were housed by the FAC (case number 97–31). They remained at the FAC until 2022, at which time they were transferred to the OR. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the shore of the Harpeth River in Williams County, TN. On March 10, 1996, law enforcement officials were called to the scene after these ancestral human remains were found by a boy playing near the river. The human remains were sent to the FAC for analysis (case number 96–12). They remained at the FAC until 2022, when they were transferred to the OR. No associated funerary objects are present.

Human remains representing, at minimum, one individual were found in Williamson County, TN. On April 8, 2002, a man alerted law enforcement officials that his cousin had discovered these ancestral human remains in a box in a barn. On April 13, 2006, local law enforcement officials transferred the human remains to the FAC for examination (case number 06–10). They remained at the FAC until 2022, at which time they were transferred to the OR. The one associated funerary object is one lot consisting of lithics.

Sometime prior to 1982, human remains representing, at minimum, four individuals were removed from an unknown archeological site in the Kentucky Lake region by Dr. Bobby Brown. Dr. Brown transferred these human remains to the University of Iowa Office of the State Archaeologist (UIOSA). Based on correspondence, in January of 1983, UIOSA transferred the human remains to William Bass at UTK, and since that date, the human remains have been housed there. The two associated funerary objects are one lot consisting of ceramics and one lot consisting of shells.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, biological, geographical, and historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, UTK has determined that:

- The human remains described in this notice represent the physical remains of 16 individuals of Native American ancestry.
- The four objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after June 12, 2023. If competing requests for repatriation are received, UTK must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. UTK is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 5, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–10032 Filed 5–10–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1362]

Certain Liquid Transfer Devices With an Integral Vial Adapter; 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 April 6, 2023, under section 337 of the Tariff Act of 1930, as amended, on behalf of West Pharmaceutical Services, Inc. of Exton, Pennsylvania and West Pharma. Services IL, Ltd. of Ra′anana, Israel. A supplement to the complaint was filed on April 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 liquid transfer devices with an integral vial adapter by reason of the infringement of: (1) certain claims of U.S. Patent No. 10,688,295 (''the '295 patent''); U.S. Design Patent No. D767,124 (''the D'124 patent''), U.S. Design Patent No. D765,837 (''the D'837 patent''), and U.S. Design Patent No. D630,732 (''the D'732 patent''); and (2) U.S. Trademark Registration No. 5,810,583 (''the '583 mark''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute. The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order 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, telephone (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 (2023).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 5, 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)(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 claim 1 of the '295 patent; the claim of the D'124 patent; the claim of the D'837 patent; the claim of the D'732 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337; and

(b) an investigation be instituted to determine whether there is a violation of subsection (a)(1)(C) 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 the '583 mark, and whether an industry in the United States exists or is in the process of being established 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 ''liquid transfer devices that have a trifurcated connector body, with one end including an integral vial adapter, and wherein the integral vial adapter has a diameter of 13mm or 20mm and may only be used with a vial'';

(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 complainants are:

West Pharmaceutical Services, Inc., 530 Herman O. West Drive, Exton, PA 19341, West Pharma. Services IL, Ltd., 4 Hasheizaf St., Ra′anana 4366411, Israel

(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:

Advcare Medical, Inc., No. 36, Sinsing St., Shulin District, New Taipei City, Taiwan 23877

Dragon Heart Medical Devices Co., Ltd., 28 Ruliang Road, Baihe Town, Kaiping City, Guangdong Province, China 529375

Dragon Heart Medical, Inc., 901 South Rohlwing Rd., Unit H, Addison, IL 60101

Summit International Medical, Technologies, Inc., 101 Constitution Blvd., Franklin, MA 02038

(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.

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 complainants 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: May 8, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–10078 Filed 5–10–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA). This meeting announcement is being published as required by Section 10 of the FACA.

DATES: The APB will meet in open session from 8:30 a.m. until 6:00 p.m. on June 7–8, 2023.

ADDRESSES: The meeting will take place at the Renaissance Phoenix Glendale Hotel & Spa, 9495 Entertainment Boulevard, Glendale, AZ 85305; telephone: 623–937–3700. Due to COVID–19 safety precautions limit meeting space accommodations the CJIS Division is offering a blended participation option that allows for a limited number of individuals to participate in person and additional individuals to participate via a telephone bridge line. The public will be permitted to provide comments and/or questions related to matters of the APB prior to the meeting. In-person gallery participation will be limited to the first 140 external participants who register to attend in person. Additional participants may also participate via a telephone bridge line. Please see details in the supplemental information.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Melissa Abel, Management and Program Analyst, Advisory Process Management Office, Law Enforcement Support Section; 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; email: *agmu@leo.gov;* telephone: 304–625–5670.

SUPPLEMENTARY INFORMATION: The FBI CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Law Enforcement Enterprise Portal, National Crime Information Center, Next Generation Identification, National Instant Criminal Background Check System, National Data Exchange System, and Uniform Crime Reporting.

The meeting will be conducted with a blended participation option. The public may participate as follows: Public registrations will be processed on a first-come, first-served basis. The first 140 individuals to register will be afforded the opportunity to participate in person and are required to check-in at the meeting registration desk. Any additional registrants will be provided with a phone bridge number to participate in a listen-only mode.

Registrations will be taken via email to *agmu@leo.gov.* Information regarding the phone access will be provided prior to the meeting to all registered individuals. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the Designated Federal Officer (DFO).

Any member of the public may file a written statement with the APB. Written comments shall be focused on the APB's issues under discussion and may not be repetitive of previously submitted written statements. Written comments should be provided to Mr. Nicky J. Megna, DFO, at least seven (7) days in advance of the meeting so the comments may be made available to the APB members for their consideration prior to the meeting.

Individuals requiring special accommodations should contact Mr. Megna by no later than May 30, 2023. Personal registration information will be made publicly available through the minutes for the meeting published on the FACA website.

Nicky J. Megna,

CJIS Designated Federal Officer, Criminal Justice Information, Services Division, Federal Bureau of Investigation.

[FR Doc. 2023–10039 Filed 5–10–23; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Intent To Renew the Advisory Committee on Apprenticeship (ACA) Charter

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Secretary of Labor (Secretary) has determined that the renewal of the Advisory Committee on Apprenticeship (ACA or Committee) is necessary and in the public interest. The Department of Labor (DOL) intends to renew the ACA charter with revisions which are not intended to change the Committee's purpose or original intent. The revisions update the charter to ensure its closer alignment with the Department's current apprenticeship priorities.

DATES: The renewed ACA charter will be filed after this notice publishes.

FOR FURTHER INFORMATION CONTACT: For any questions concerning the Charter renewal, please contact John Ladd, OA Administrator and ACA DFO, at *advisorycommitteeonapprenticeship@dol.gov,* telephone (202) 693–2796 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Registered Apprenticeship is a unique public private partnership that is highly dependent on the engagement and involvement of its stakeholders and partners for its ongoing operational effectiveness. Apart from the ACA, there is no single organization or group with the broad representation of labor, employers, and the public available to consider the complexities and relationship of apprenticeship activities to other training efforts or to provide advice on such matters to the Secretary. It is particularly important to have such perspectives as DOL considers the expansion of registered apprenticeship, fundamentally instilling a permanent culture of inclusion in our workforce. The ACA's insight and recommendations on the best ways to address critical apprenticeship issues to meet the emerging needs of industry, labor, and the public is critical. For these reasons, the Secretary has determined that the renewal of a national advisory committee on apprenticeship is necessary and in the public interest.

The current charter for the ACA will expire on May 19, 2023. The pending charter has been revised to ensure alignment with current DOL priorities in the following six sections: (1) Authority; (2) Objectives and Scope of Activities; (3) Description of Duties; (4) The Estimated Annual Operating Costs and Staff Years; (5) The Estimated Number and Frequency of Meetings; and (6) The Membership and Designation.

Summary of the Charter Changes

1. Authority was updated to reflect the recent change in H.R. 5961, which changed the placement of FACA in Title 5 of the U.S. Code.

2. The Objectives and Scope of Activities was updated to remove references to specific industry to broaden the ACA's focus, reflect evolving industrial priorities, and maximize the Department's ability to consider all industries.

3. The Description of Duties was updated to remove the requirement for an interim report to allow the ACA members the entire length of the term to address more complex issues, complete their work and develop a final report and supplemental recommendations as needed.

4. The Estimated Annual Operating Costs and Staff Years was updated to increase the estimated costs to be more reflective of the actual cost and the increase in staff and contractor resources needed for overall committee operation and travel. Further, the estimated operational costs range from $526,057.21–$471,057.21 and are contingent on the number of in-person meetings, and the number of ACA members requesting travel reimbursement. The increased costs also reflect the broader role ETA envisions for the ACA.

5. The Estimated Number and Frequency of Meetings was updated to provide clarity that in addition to the annual ACA meetings, there may be a need to convene additional meetings as determined by Secretarial priorities. ETA anticipates that many of these meetings will be outside of Washington, DC and will highlight specific issues that the ACA is addressing.

6. The Membership and Designation was updated to remove the requirement for one apprentice to serve as a voting member to be more inclusive and align with current practice to invite apprentices from different industries to participate in all public meetings throughout the membership term.

The ACA is being renewed in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 10. The ACA is charged with providing advice and recommendations to the Secretary on a variety of apprenticeship issues. The ACA's duties include assembling, reviewing, and assessing information relating to accelerating the expansion of apprenticeship. In providing advice and recommendations to the Secretary, the ACA will hold regular meetings with agendas that are prepared with guidance provided by the Department; engage with a variety of stakeholders, to include site and field visits, as appropriate; review and provide feedback on research, policies, best practices, and industry and employment trends; and consult with experts and practitioners for information and expertise pertinent to Committee duties and priorities as needed.

The ACA will consist of a range of 27–30 voting members that represent labor, employers, and the public:

- Employers or Industry Associations
- Labor or Joint Labor-Management Organizations
- Members of the Public, that represent one of the following: State apprenticeship agencies/councils; State or local workforce development board; community-based organizations; career and technical education schools, or local educational agency; postsecondary education and training providers; apprenticeship intermediaries.

The ACA will be solely advisory in nature, and will consider testimony, reports, comments, research, evidence, and existing practices as appropriate to develop recommendations for inclusion in its final reports to the Secretary.

Members of the ACA serve without compensation, but will be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707), consistent with the availability of funds. Each ACA member will serve at the pleasure of the Secretary for a specified term. The Secretary may also appoint members to fill any ACA vacancies for the unexpired portions of the term.

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–09995 Filed 5–10–23; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request; Administration of the Longshore and Harbor Workers' Compensation Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Administration of the Longshore and Harbor Workers' Compensation Act.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by July 10, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained for free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; or by email at *suggs.anjanette@dol.gov.* Please note that comments submitted after the comment period will not be considered.

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Office of Workers' Compensation Programs (OWCP) administers the

Longshore and Harbor Workers' Compensation Act (LHWCA). LHWCA provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. In addition, several Acts extend the Longshore Act's coverage to certain other employees.

The Secretary of Labor has authority to make rules and regulations to establish procedures which are necessary or appropriate to carry out the provisions of the Act. 33 U.S.C. 939, 944. The Secretary has delegated that authority to the Director, Office of Workers' Compensation Programs. Secretary's Order 10–2009; Public Law 111–5 803, 123 Stat. 115, 187 (2009).

A claimant's social security number may be requested pursuant to Public Law 103–112 and the regulations at 20 CFR 702.202 and 702.221.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB No. 1240–0014.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL-Office of Workers' Compensation Programs.

Type of Review: Revision.

Title of Collection: Regulations governing the administration of the Longshore and Harbor Workers' Compensation Act.

Form:

LS–200 (20 CFR 702.285)
20 CFR 702.162 (Liens)
20 CFR 702.174 (Certifications)
20 CFR 702.175 (Reinstatements)
20 CFR 702.242 (Settlement Applications)
20 CFR 702.321 (Section 8(f) Payments)
ESA–100 (20 CFR 702.201)
LS–271 (Application for Self-Insurance)
LS–272 (Application to Write Longshore Insurance)
LS–274 (Report of Injury Experience of Insurance Carrier or Self-Insured Employer)
LS–201 (Notice of Employee's Injury or Death)
LS–513 (Report of Payments)
LS–267 (Claimant's Statement)
LS–203 (Employee's Claim for Compensation)
LS–204 (Attending Physician's Supplementary Report)
LS–262 (Claim for Death Benefits)

OMB Control Number: 1240–0014.

Affected Public: Private Sector.

Estimated Number of Respondents: 53,842.

Frequency: On occasion.

Total Estimated Annual Responses: 53,842.

Estimated Average Time per Response: 1.11 hours.

Estimated Total Annual Burden Hours:

Burden summary	Hours
LS–200 (20 CFR 702.285)	349
20 CFR 702.162 (Liens)	5
20 CFR 702.174 (Certifications)	4
20 CFR 702.175 (Reinstatements)	1
20 CFR 702.242 (Settlement Applications	4,080
20 CFR 702.321 (Section 8(f) Payments)	2,900
ESA–100 (20 SFR 702.201)	840
LS–271 (Self Insurance Application)	27
LS–272 (Application to write Longshore Insurance)	30
LS–274 (Injury Report of Insurance Carrier and Self-Insured Employer)	552
LS–201 (Injury or Death Notice)	250
LS–513 (Payment Report)	271
LS–267 (Claimant's Statement)	25
LS–203 (Employee Comp. Claim)	1,148
LS–204 (Medical Report)	10,200
LS–262 (Claim for Death Benefits)	70
Total Burden Hours	20,752

Total Estimated Annual Other Cost Burden: $9,524.76.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: May 4, 2023.

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2023–09993 Filed 5–10–23; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request; Administration of the Longshore and Harbor Workers' Compensation Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Administration of the Longshore and Harbor Workers' Compensation Act.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by July 10, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained for free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; or by email at *suggs.anjanette@dol.gov.* Please note that comments submitted after the comment period will not be considered.

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Office of Workers' Compensation Programs, (OWCP) administers the Longshore and Harbor Workers' Compensation Act. This Act was amended on October 27, 1972, to provide for continuation of death benefits for a child or certain other surviving dependents after the age of 18 years (to age 23) if the dependent qualifies as a student as defined in section 2 (18) of the Act. The benefit would also be terminated if the dependent completes four years of education beyond high school. Form LS–266 is to be submitted by the parent or guardian for whom continuation of benefits is sought. The statements contained on the form must be verified by an official of the education institution. The information is used by the DOL to determine whether a continuation of the benefits is justified.

Legal authority for this information collection is found at 33 U.S.C. 902(18) and 33 U.S.C. 939(a). Regulatory authority is found at 20 CFR 702.121.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB No. 1240–0026.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL-Office of Workers' Compensation Programs.

Type of Review: Date Extension.

Title of Collection: Certification of Funeral Expenses under the Longshore and Harbor Workers' Compensation Act.

Form: LS–266 (20 CFR 702.121).

OMB Control Number: 1240–0026.

Affected Public: Private Sector.

Estimated Number of Respondents: 20.

Frequency: On occasion.

Total Estimated Annual Responses: 20.

Estimated Average Time per Response: .5 hours.

Estimated Total Annual Burden Hours: 10.

Total Estimated Annual Other Cost Burden: $229.20.

Authority: 33 U.S.C. 902(18) and 939(a).

Dated: May 4, 2023.

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2023–09994 Filed 5–10–23; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request; Administration of the Longshore and Harbor Workers' Compensation Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Administration of the Longshore and Harbor Workers' Compensation Act.''

This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by July 10, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained for free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; or by email at *suggs.anjanette@dol.gov.* Please note that comments submitted after the comment period will not be considered.

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. In addition, several acts extend Longshore Act coverage to certain other employees.

Section 9(a) of the Act provides that reasonable funeral expenses not to exceed $3,000 shall be paid in all compensable death cases. Form LS–265 has been provided for use in submitting the funeral expenses for payment. *See* 33 U.S.C. 909(a). Section 13 generally provides for the filing of claims under the Act, and section 39 provides authorization for the Department to administer the Act, including promulgating rules and regulations. See 33 U.S.C. 913 and 939. Regulations 20 CFR 702.121 provides that the OWCP may prescribe forms and require their use to report of any required information. *See* 20 CFR 702.121.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB No. 1240–0040 Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL-Office of Workers' Compensation Programs.

Type of Review: Date Extension.

Title of Collection: Certification of Funeral Expenses under the Longshore and Harbor Workers' Compensation Act.

Form: LS–265 (20 CFR 702.121).

OMB Control Number: 1240–0040.

Affected Public: Private Sector.

Estimated Number of Respondents: 75.

Frequency: On occasion.

Total Estimated Annual Responses: 75.

Estimated Average Time per Response: 0.25.

Estimated Total Annual Burden Hours: 19.

Total Estimated Annual Other Cost Burden: $66,320.94.

Authority: 33 U.S.C. 909(a), 913 and 939.

Dated: May 4, 2023.

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2023–10003 Filed 5–10–23; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Advisory Board on Toxic Substances and Worker Health

ACTION: Extension of deadline for nominations to serve on the Advisory Board on Toxic Substances and Worker Health (Advisory Board) for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) from May 12, 2023, to May 27, 2023.

SUMMARY: Due to a recent vacancy, the Secretary of Labor (Secretary) invites interested parties to submit nominations for individuals to serve on the Advisory Board for the EEOICPA. The nominee shall serve as a member from the claimant community, under the Board's statute and Charter.

DATES: Nominations for individuals to serve on the Board must be submitted (postmarked, if sending by mail; submitted electronically; or received, if hand delivered) by May 27, 2023.

ADDRESSES: People interested in being nominated for the Board are encouraged to review the **Federal Register** notice on nominations for membership and submit the requested information by May 27, 2023. Nominations may be submitted, including attachments, by any of the following methods:

• *Electronically:* Send to: *EnergyAdvisoryBoard@dol.gov* (specify in the email subject line, ''Advisory Board on Toxic Substances and Worker Health Nomination'').

• *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy of the documents listed above to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S–3522, 200 Constitution Ave. NW, Washington, DC 20210.

Follow-up communications with nominees may occur as necessary through the process.

FOR FURTHER INFORMATION CONTACT: You may contact Ryan Jansen, Designated Federal Officer (DFO), at *jansen.ryan@dol.gov,* or Carrie Rhoads, Alternate DFO, at *rhoads.carrie@dol.gov,* U.S. Department of Labor, 200 Constitution Avenue NW, Suite S–3524, Washington, DC 20210, telephone (202) 343–5580. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Board is mandated by section 3687 of EEOICPA. The Secretary established the Board under this authority and Executive Order 13699 (June 26, 2015) and in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. app. 2. The purpose of the Board is to advise the Secretary with respect to: (1) the Site Exposure Matrices of the Department of Labor (DOL); (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under Part B of EEOICPA related to lung disease; (4) the work of industrial hygienists and staff physicians and consulting physicians of the DOL and reports of such hygienists and physicians to ensure quality, objectivity, and consistency; (5) the claims adjudication process generally, including review of procedure manual changes prior to incorporation into the manual and claims for medical benefits; and (6) such other matters as the Secretary considers appropriate. In addition, the Board, when necessary, coordinates exchanges of data and findings with the Department of Health and Human Services' Advisory Board on Radiation and Worker Health, which advises the Department of Health and Human Services' National Institute for Occupational Safety and Health on various aspects of causation in radiogenic cancer cases under part B of the EEOICPA program.

Notice of solicitation for nominations to serve on the Advisory Board was published on April 12, 2023. The deadline for submission of nominations was 30 days from the date of publication, or May 12, 2023. The Secretary now extends the deadline for nomination by an additional 15 days, to May 27, 2023.

Signed at Washington, DC.

Christopher Godfrey,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2023–09992 Filed 5–10–23; 8:45 am]

BILLING CODE 4510–CR–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 23–049]

Name of Information Collection: NASA Astronaut Candidate Selection (ASCAN) Qualifications Inquiry

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection, renewal of existing information collection.

SUMMARY: The National Aeronautics and Space Administration, 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.

DATES: Comments are due by June 12, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–7998, or *b.edwards-bodmer@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information supports the National Aeronautics and Space Act of 1958, as amended, to create opportunities to improve processes associated with the evaluation and selection of individuals to participate in the NASA Astronaut Candidate Selection Program. The NASA Astronaut Selection Office (ASO) located at the Lyndon B. Johnson Space Center (JSC) in Houston, Texas is responsible for selecting astronauts for the various United States Space Exploration programs. In evaluating an applicant for the Astronaut Candidate Program, it is important that the ASO have the benefit of qualitative and quantitative information and recommendations from persons who have been directly associated with the applicant over the course of their career.

This information will be used by the NASA ASO and Human Resources (HR) personnel, during the candidate selection process (approx. 2-year duration), to gain insight into the candidates' work ethic and professionalism as demonstrated in previous related employment activities. Respondents may include the astronaut candidate's previous employer(s)/direct-reporting manager, as well as co-workers and other references provided by the candidate.

II. Methods of Collection

Electronic and optionally by paper.

III. Data

Title: NASA Astronaut Candidate Selection (ASCAN) Qualifications Inquiry.

OMB Number: 2700–0156.

Type of Review: Renewal of Existing Information Collection.

Affected Public: Individuals.

Estimated Annual Number of Activities: 2,000.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 2,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 669.

Estimated Total Annual Cost: $50,905.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection.

They will also become a matter of public record.

William Edwards-Bodmer,

NASA PRA Clearance Officer.

[FR Doc. 2023–10094 Filed 5–10–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: The National Endowment for the Humanities (NEH) will hold two meetings, by videoconference, of the Humanities Panel, a federal advisory committee, during June 2023. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. 10), notice is hereby given of the following meetings:

1. Date: June 21, 2023

This video meeting will discuss applications on the topics of History and Social Sciences, for the NEH-Mellon Fellowships for Digital Publication grant program, submitted to the Division of Research Programs.

2. Date: June 22, 2023

This video meeting will discuss applications on the topics of Literature and the Arts, for the NEH-Mellon Fellowships for Digital Publication grant program, submitted to the Division of Research Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chair's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: May 8, 2023.

Jessica Graves,

Legal Administrative Specialist, National Endowment for the Humanities.

[FR Doc. 2023–10076 Filed 5–10–23; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: The meeting was noticed on May 5, 2023, at 88 FR 29167.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:

Tuesday, May 9, 2023, from 8:30 a.m.–3:55 p.m. EDT.

Wednesday, May 10, 2023, from 8:30 a.m.–3:00 p.m. EDT.

CHANGES IN THE MEETING:

Change 1: Item two in the closed session on May 9, 2023, at 3:25–3:55 p.m. originally read:

- NSF Engines, Review/Award Process.

That item now reads:

- NSF Engines Update and Portfolio Construction Process.

Change 2: Item six in the open session on May 10, 2023, at 10:40–11:55 a.m. originally read:

- NSB–NSF Merit Review Commission Report Vote on Mid-scale Research Infrastructure Track 2 Portfolio Award.

That item now reads:

- NSB–NSF Merit Review Commission Report.

Items seven through nine in that session were included in error and are deleted.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000.

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2023–10130 Filed 5–9–23; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 11005789; NRC–2023–0057]

Framatome, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Export license application; opportunity to provide comments, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering issuing an extension on an export license (XW015), requested by Framatome, Inc. by application dated February 8, 2023. Under export license, XW015, Framatome, Inc. is authorized to return up to 25,000 kilograms (kg) of non-combustible Class A radioactive waste (*e.g.,* glass, metal, slag) contaminated with up to 40 kg of uranium (containing up to 5 percent by weight total of U–235) after treatment at a Framatome facility in Richland, Washington to Germany. The request seeks the approval to extend the expiration date for this license for an additional 5 years, to December 31, 2028. The NRC is providing notice of the opportunity to comment, request a hearing, and petition to intervene on Framatome, Inc.'s application.

DATES: Submit comments by June 12, 2023. A request for a hearing or petition for leave to intervene must be filed by June 12, 2023.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0024. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov*. For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Hearing.Docket@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Andrea Jones, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–

0001; telephone: 404–997–4443; email: *Andrea.Jones2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to NRC–2023–0057 or Docket No. 11005789 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0057.
- *NRC's Public Website:* Go to *https://www.nrc.gov* and search for License No. XW015, Docket No. 11005789, or Docket ID NRC–2023–0057.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The export license application is available in ADAMS under Accession No. ML23060A203.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include NRC–2023–0057 or Docket No. 11005789 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

On February 8, 2023, Framatome, Inc. submitted an application to the NRC for a license to export radioactive waste. Framatome imports combustible Class A radioactive waste contaminated with uranium from Advanced Nuclear Fuels GmbH in Germany to Richland, Washington. In Washington, these materials will be incinerated and processed to recover the uranium. Once the uranium is recovered, Framatome exports the residual non-combustible contaminated Class A radioactive waste, under export license XW015, to Advanced Nuclear Fuels GmbH facility in Germany. The export consists of up to 25,000 kg of non-combustible Class A radioactive waste (*e.g.,* glass, metal, slag) contaminated with up to 40 kg of uranium (containing up to 5 percent by weight total of U–235 or up to 2 kgs of U–235). Framatome, Inc. requests an extension to the expiration date for XW015 to December 31, 2028. No other changes to XW015 were requested in the application.

In accordance with section 110.70 paragraph (b) of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is providing notice of the receipt of the application; providing the opportunity to submit written comments concerning the application; and providing the opportunity to request a hearing or petition for leave to intervene, for a period of 30 days after publication of this notice in the **Federal Register**.

A hearing request or petition for leave to intervene must include the information specified in 10 CFR 110.82(b). Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner in accordance with 10 CFR 110.89(a), either by delivery, by mail, or filed with the NRC electronically in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

The information concerning this application for an export license is as follows.

NRC EXPORT LICENSE APPLICATION

Application Information	
Name of Applicant	Framatome, Inc.
Date of Application	January 30, 2023.
Date Received	February 8, 2023.
Application No	XW015.
Docket No	11005789.
ADAMS Accession No	ML23060A203.

NRC EXPORT LICENSE APPLICATION—Continued

Description of Material	
Material Type	Up to 25,000 kg of non-combustible Class A radioactive waste (*e.g.,* glass, metal, slag) contaminated with up to 40 kg of uranium (containing up to 5 percent by weight of U–235).
Total Quantity	Not to exceed 40 kg uranium containing 2 kg of uranium-235 (maximum 5 percent by weight total of U–235).
End Use	Storage and ultimate disposal of low-level radioactive waste.
Country of Destination	Germany.

Dated: April 25, 2023.

For the Nuclear Regulatory Commission.

Sabrina D. Atack,

Deputy Director, Office of International Programs.

[FR Doc. 2023–10045 Filed 5–10–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–143 and CP2023–146]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 12, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–143 and CP2023–146; *Filing Title:* USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 10 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 4, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* May 12, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–10005 Filed 5–10–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 11, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 3, 2023, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service To Add Priority Mail, First-Class Package Service & Parcel Select Contract 9 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–142, CP2023–145.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–09988 Filed 5–10–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 11, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 5, 2023, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service & Parcel Select Contract 11 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–145, CP2023–148.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–09990 Filed 5–10–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 11, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 4, 2023, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service & Parcel Select Contract 10 to Competitive Product List.* Documents are available at *www.prc.gov*, Docket Nos. MC2023–143, CP2023–146.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–09989 Filed 5–10–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 11, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 5, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 780 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–144, CP2023–147.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–09991 Filed 5–10–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 11, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 2, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 117 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–141, CP2023–144.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–09987 Filed 5–10–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–808, OMB Control No. 3235–0740]

Proposed Collection; Comment Request; Extension: Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies

Upon Written Request Copies Available From: U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

In accordance with the requirements of section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. 5452), the Commission joined with the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Bureau of Consumer Financial Protection (Agencies) to develop Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies (Joint Standards), which were issued through an interagency policy statement published in the **Federal Register** on June 15, 2015. To facilitate the collection of information envisioned by the Joint Standards, the Commission developed a form entitled the ''Diversity Self-Assessment Tool for Entities Regulated by the SEC'' (formerly referred to as the ''Diversity Assessment Report'').

The Diversity Self-Assessment Tool (1) asks for general information about the respondent; (2) includes a checklist and questions relating to the policies and practices set forth in the Joint Standards; (3) requests data related to workforce diversity and supplier diversity; and (4) provides respondents with the opportunity to describe their successful policies and practices for promoting diversity and inclusion.

The information collection is voluntary. The Commission may use information submitted to monitor progress and trends in the financial services industry regarding diversity and inclusion and to identify and highlight diversity and inclusion policies and practices that have been successful. In addition, the Commission may publish information submitted, such as leading practices, in a form that does not identify a particular entity or disclose confidential business information. Further, the Commission may share information with other Agencies, when appropriate, to support coordination of efforts and to avoid duplication.

Title of Collection: Joint Standards for Assessing Diversity Policies and Practices.

Type of Review: Request for a Non-Substantive Change to an Existing Approved Information Collection.

Frequency of Response: Biennially.

Estimated Number of Respondents: 260.

Estimated Burden Hours per Respondent: Reporting: 8 hours; 4 hours annualized.

Estimated Total Annual Burden Hours: 2,080; 1,040 annualized. Since the last approval of this information collection, we have adjusted the burden hours per respondent based on a reduction in the number of items in this information collection.

Proposed Revisions: The SEC proposes to amend the Diversity Self-Assessment Tool to: (1) change the name of the information collection from the ''Diversity Assessment Report'' to the ''Diversity Self-Assessment Tool''; (2) allow firms to consent to allowing the SEC to publish the name of consenting firms having submitted a Diversity Self-Assessment Tool; (3) shorten the Diversity Self-Assessment Tool by combining and removing some items; (4) add clarifying language to items; and (5) shorten items for brevity. A draft of the proposed revised Diversity Self-Assessment Tool can be viewed at *https://www.sec.gov/files/omwi-diversity-self-assessment-tool.pdf.*

Request for Comments: The comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Written comments are invited on: (a) whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing 60 days after the date of this publication, July 10, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 5, 2023.

J. Matthew DeLesDernier,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97443; File No. SR–CboeEDGX–2023–035]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options

May 5, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2023, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') 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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX Options'') proposes to extend the pilot programs in connection with the listing and trading of P.M.-settled series on certain broad-based index options. 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/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change extends the listing and trading of P.M.-settled series on certain broad-based index options on a pilot basis.[5] Rule 29.11(a)(6) currently

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange is authorized to list for trading options that overlie the Mini-SPX Index (''XSP'') and the Russell 2000 Index (''RUT''). *See* Rule 29.11(a). *See also* Securities Exchange Act Release Nos. 84481 (October 24, 2018), 83 FR 54624 (October 30, 2018) (Notice of Filing of a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options on a Pilot Basis) (SR–CboeEDGX–2018–037) (''Notice''); 85182 (February 22, 2019), 84 FR 6846 (February 28, 2019) (Notice of Deemed Approval of a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options on a Pilot Basis) (SR–CboeEDGX–2018–037); 88054 (January 27, 2020), 85 FR 5761 (January 31, 2020) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options) (SR–CboeEDGX–2020–002); 88787 (April 30, 2020), 85 FR 26995 (May 6, 2020) (Notice of Filing and Immediate Effectiveness of a Proposed

Continued

permits the listing and trading of XSP options with third-Friday-of-the-month expiration dates, whose exercise settlement value will be based on the closing index value on the expiration day (''P.M.-settled'') on a pilot basis set to expire on May 8, 2023 (the ''XSPPM Pilot Program''). Rule 29.11(j)(3) also permits the listing and trading of P.M.-settled options on broad-based indexes with weekly expirations (''Weeklys'') and end-of-month expirations (''EOMs'') on a pilot basis set to expire on May 8, 2023 (the ''Nonstandard Expirations Pilot Program'', and together with the XSPPM Pilot Program, the ''Pilot Programs''). The Exchange proposes to extend the Pilot Programs through November 6, 2023.

XSPPM Pilot Program

Rule 29.11(a)(6) permits the listing and trading, in addition to A.M.-settled XSP options, of P.M.-settled XSP options with third-Friday-of-the-month expiration dates on a pilot basis. The Exchange believes that continuing to permit the trading of XSP options on a P.M.-settled basis will continue to encourage greater trading in XSP options. Other than settlement and closing time on the last trading day (pursuant to Rule 29.10(a)),[6] contract terms for P.M.-settled XSP options are the same as the A.M.-settled XSP options. The contract uses a $100 multiplier and the minimum trading increments, strike price intervals, and expirations are the same as the A.M.-settled XSP option series. P.M.-settled XSP options have European-style exercise. The Exchange also has flexibility to open for trading additional series in response to customer demand.

If the Exchange were to propose another extension of the XSPPM Pilot Program, the Exchange would submit a filing proposing such amendments to the XSPPM Pilot Program. Further, any positions established under the XSPPM Pilot Program would not be impacted by the expiration of the XSPPM Pilot Program. For example, if the Exchange lists a P.M.-settled XSP option that expires after the XSPPM Pilot Program expires (and is not extended), then those positions would continue to exist. If the pilot were not extended, then the positions could continue to exist. However, any further trading in those series would be restricted to transactions where at least one side of the trade is a closing transaction.

As part of the XSPPM Pilot Program, the Exchange submits a pilot report to the Commission at least two months prior to the expiration date of the pilot.[7] This annual report contains an analysis of volume, open interest, and trading patterns. In proposing to extend the XSPPM Pilot Program, the Exchange will continue to abide by the reporting requirements described in the Notice.[8] Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the XSPPM Pilot Program is consistent with the Exchange Act. The Exchange is in the process of making public on its website data and analyses previously submitted to the Commission under the Pilot Program, and will make public any data and analyses it submits to the Commission under the Pilot Program in the future. The Exchange also notes that its affiliated options exchange, Cboe Exchange, Inc. (''Cboe Options'') currently has pilots that permit P.M.-settled third Friday-of-the-month XSP options.[9]

Nonstandard Expirations Pilot Program

Rule 29.11(j)(1) permits the listing and trading, on a pilot basis, of P.M.-settled options on broad-based indexes with nonstandard expiration dates and is currently set to expire on May 8, 2023. The Nonstandard Expirations Pilot Program permits both Weeklys and EOMs as discussed below. Contract terms for the Weekly and EOM expirations are similar to those of the A.M.-settled broad-based index options, except that the Weekly and EOM expirations are P.M.-settled.

In particular, Rule 29.11(j)(1) permits the Exchange to open for trading Weeklys on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM). Weeklys are subject to all provisions of Rule 29.11 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, under the Nonstandard Expirations Pilot Program, Weeklys are P.M.-settled, and new Weekly series may be added up to and including on the expiration date for an expiring Weekly.

Rule 29.11(a)(2) permits the Exchange to open for trading EOMs on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOMs are subject to all provisions of Rule 29.11 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, under the Nonstandard Expirations Pilot Program, EOMs are P.M.-settled, and new series of EOMs may be added up to and including on the expiration date for an expiring EOM.

As stated above, this proposed rule change extends the Nonstandard Expirations Pilot Program for broad-based index options on a pilot basis, for a period of six months. If the Exchange were to propose an additional extension of the Nonstandard Expirations Pilot Program, the Exchange would submit additional filings proposing such amendments. Further, any positions established under the Nonstandard Expirations Pilot Program would not be impacted by the expiration of the pilot. For example, if the Exchange lists a Weekly or EOM that expires after the Nonstandard Expirations Pilot Program expires (and is not extended), then those positions would continue to exist. However, any further trading in those series would be restricted to transactions where at least one side of the trade is a closing transaction.

As part of the Nonstandard Expirations Pilot Program, the Exchange submits a pilot report to the Commission at least two months prior to

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Rule Change To Extend the Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options) (SR–CboeEDGX–2020–019); 90253 (October 22, 2020) 85 FR 68390 (October 28, 2020) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options) (SR–CboeEDGX–2020–050); 91700 (April 28, 2021), 86 FR 23770 (May 4, 2021) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options) (SR–CboeEDGX–2021–022); 93453 (October 28, 2021), 86 FR 60667 (November 3, 2021) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options) (SR–CboeEDGX–2021–047); *and* 94803 (April 27, 2022), 87 FR 26237 (May 3, 2022) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options) (SR–CboeEDGX–2022–025); *and* 96209 (November 2, 2022), 87 FR 67520 (November 8, 2022) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Programs in Connection with the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options) (SR–CboeEDGX–2022–047).

[6] Rule 29.10(a) permits transactions in P.M.-settled XSP options on their last trading day to be effected on the Exchange between the hours of 9:30 a.m. and 4:00 p.m. Eastern time. All other transactions in index options are effected on the Exchange between the hours of 9:30 a.m. and 4:15 p.m. Eastern time.

[7] The Exchange notes that the Pilot Programs currently run on a bi-annual pilot basis.

[8] *See supra* note 5.

[9] *See* Cboe Options Rule 4.13.13, which also permits P.M.-settled third Friday-of-the-month SPX options on a pilot basis (''SPXPM Pilot Program'').

the expiration date of the pilot.[10] This annual report contains an analysis of volume, open interest, and trading patterns. In proposing to extend the Nonstandard Expirations Pilot Program, the Exchange will continue to abide by the reporting requirements described in the Notice.[11] Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Nonstandard Expirations Pilot Program is consistent with the Exchange Act. The Exchange makes its annual data and analyses previously submitted to the Commission under the Pilot Program public on its website and will continue to make public any data and analyses it submits to the Commission under the Pilot Program in the future. The Exchange notes that other exchanges, including its affiliated exchange, Cboe Options, currently have pilots that have weekly and end-of-month expirations.[12]

Additional Information

The Exchange believes there is sufficient investor interest and demand in the XSPPM and Nonstandard Expirations Pilot Programs to warrant their extension. The Exchange believes that the Programs have provided investors with additional means of managing their risk exposures and carrying out their investment objectives. The proposed extensions will continue to offer investors the benefit of added transparency, price discovery, and stability, as well as the continued expanded trading opportunities in connection with different expiration times. The Exchange proposes the extension of the Pilot Programs in order to continue to give the Commission more time to consider the impact of the Pilot Programs. To this point, the Exchange believes that the Pilot Programs have been well-received by its Members and the investing public, and the Exchange would like to continue to provide investors with the ability to trade P.M.-settled XSP options and contracts with nonstandard expirations. All terms regarding the trading of the Pilot Products shall continue to operate as described in the XSPPM and Nonstandard Expirations Notice.[13] The Exchange merely proposes herein to extend the terms of the Pilot Programs to November 6, 2023.

[10] *See supra* note 7.

[11] *See supra* note 5.

[12] *See* Cboe Options Rule 4.13(e); and Phlx Rule 1101A(b)(5).

[13] *See supra* note 5.

Furthermore, the Exchange has not experienced any adverse market effects with respect to the Programs. The Exchange will continue to monitor for any such disruptions or the development of any factors that would cause such disruptions. The Exchange represents it continues to have an adequate surveillance program in place for index options and that the proposed extension will not have an adverse impact on capacity.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[15] 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.

In particular, the Exchange believes that the proposed extension of the Pilot Programs will continue to provide greater opportunities for investors. The Exchange believes that the Pilot Programs have been successful to date. The proposed rule change allows for an extension of the Program for the benefit of market participants. The Exchange believes that there is demand for the expirations offered under the Program and believes that P.M.-settled XSP, Weekly Expirations and EOMs will continue to provide the investing public and other market participants with the opportunities to trade desirable products and to better manage their risk exposure. The proposed extension will also provide the Commission further opportunity to observe such trading of the Pilot Products. Further, the Exchange has not encountered any problems with the Programs; it has not experienced any adverse effects or meaningful regulatory or capacity concerns from the operation of the Pilot Programs. Also, the Exchange believes that such trading pursuant to the XSPPM Pilot Program has not, and will not, adversely impact fair and orderly markets on Expiration Fridays for the underlying stocks comprising the S&P 500 index.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

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. Specifically, the Exchange believes that, by extending the expiration of the Pilot Programs, the proposed rule change will allow for further analysis of the Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

Specifically, the Exchange does not believe the continuation of the Pilot Program will impose any unnecessary or inappropriate burden on intramarket competition because it will continue to apply equally to all EDGX Options market participants, and the Pilot Products will continue to be available to all EDGX Options market participants. The Exchange believes there is sufficient investor interest and demand in the Pilot Programs to warrant its extension. The Exchange believes that, for the period that the Pilot Programs has been in operation, it has provided investors with desirable products with which to trade. Furthermore, as stated above, the Exchange maintains that it has not experienced any adverse market effects or regulatory concerns with respect to the Pilot Programs. The Exchange further does not believe that the proposed extension of the Pilot Programs will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only applies to trading on EDGX Options. To the extent that the continued trading of the Pilot Products may make EDGX Options a more attractive marketplace to market participants at other exchanges, such market participants may elect to become EDGX Options market participants.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow it to extend the Pilot Programs prior to its expiration on May 8, 2023, and maintain the status quo, thereby reducing market disruption. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Pilot Programs to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the Pilot Programs. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[20]

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 change should be approved or disapproved.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–CboeEDGX–2023–035 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–CboeEDGX–2023–035. 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CboeEDGX–2023–035, and should be submitted on or before June 1, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Deputy Secretary.

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[21] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97444; File No. SR–NFA–2023–01]

Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Change to NFA Compliance Rule 2–9(c) and the Interpretive Notice Entitled "NFA Compliance Rule 2–9: FCM and IB Anti-Money Laundering Program"

May 5, 2023.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–7 thereunder,[2] notice is hereby given that on March 28, 2023, National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

In its filing with the Commission (File No. SR–NFA–2023–01), NFA stated the following: NFA also filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC") in five separate filings in October 2011, August 2012, June 2018, May 2020, and September 2022; on October 13, 2011, NFA requested that the CFTC make a determination that review of the proposed rule change of NFA included in the October 2011 filing was not necessary; [3] on November 16, 2011, the CFTC notified NFA that it had determined not to review the proposed rule change; [4] on August 27, 2012, NFA

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] *See* letter dated October 13, 2011 from Thomas W. Sexton, III, Senior Vice President and General Counsel, NFA, to David A. Stawick, Office of the Secretariat, CFTC. This letter can be found in Exhibit 5(a) of File No. SR–NFA–2023–01.

[4] *See* letter dated November 16, 2011 from Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight, CFTC to Thomas W. Sexton, Senior Vice President and General Counsel, NFA. This letter can be found in Exhibit 5(b) of File No. SR–NFA–2023–01.

requested that the CFTC make a determination that review of the proposed rule change of NFA included in the August 2012 filing was not necessary; [5] on August 27, 2013, the CFTC notified NFA that it had determined not to review the proposed rule change; [6] on June 15, 2018, NFA also filed a proposed rule change with the CFTC and requested that the CFTC make a determination that review of the proposed rule change of NFA was not necessary; [7] by letter dated June 28, 2018, the CFTC notified NFA of its determination not to review the proposed rule change; [8] on May 28, 2020, NFA filed a proposed rule change with the CFTC and requested that the CFTC make a determination that review of the proposed rule change of NFA was not necessary; [9] in an email on May 29, 2020, the CFTC requested clarification of NFA's proposed rule change filed on May 28, 2020; [10] by letter dated June 8, 2020, the CFTC notified NFA of its determination not to review the proposed rule change; [11] on September 22, 2022, NFA filed a proposed rule change with the CFTC and requested that the CFTC make a determination that review of the proposed rule change of NFA was not necessary; [12] by letter dated October 19, 2022, the CFTC notified NFA of its determination not to review the proposed rule change.[13]

I. Self-Regulatory Organization's Description and Text of the Proposed Rule Change

The proposed amendments to the Interpretive Notice entitled *NFA Compliance Rule 2–9: FCM and IB Anti-Money Laundering Program* (''Interpretive Notice'') update the Interpretive Notice to incorporate changes the Financial Crimes Enforcement Network (''FinCEN'') made to Bank Secrecy Act (''BSA'') regulations regarding suspicious activity report (''SAR'') confidentiality, as well as advisories issued by FinCEN regarding sharing SARs between and among affiliates.[14] The amendments also provide Members with additional guidance regarding the timing of SAR filings and record retention requirements, the frequency of the employee training and independent audit requirements and incorporate existing BSA requirements related to Reports of Foreign Bank and Financial Accounts and Reports of International Transportation of Currency or Monetary Instruments. Further, the amendments revise the references to the Code of Federal Regulations to reflect the adoption of Chapter X for BSA requirements.[15] (October 2011 Amendments)

The amendments also revise the Customer Identification Program (''CIP'') subsection of the Interpretive Notice, which describes guidance that FinCEN and the CFTC issued in 2006 (FIN–2006–G004—*Frequently Asked Questions Regarding Customer Identification Programs for Futures Commission Merchants and Introducing Brokers,* February 14, 2006) related to CIP obligations with respect to omnibus accounts.[16] Due to concerns that the language in NFA's Interpretive Notice could be read to provide that a firm is never required to obtain information on beneficial owners, the language was revised to indicate that for omnibus accounts where the intermediary is the account holder, an FCM should treat the intermediary as the customer and the FCM does not have to apply its CIP requirements to the underlying beneficiary. (August 2012 Amendments).

The proposed amendments to NFA Compliance Rule 2–9(c) as well as the related Interpretive Notice incorporate changes FinCEN made to the BSA regulations on May 11, 2016 that require financial institutions to identify and verify the identity of beneficial owners of legal entity (''LE'') customers and amend the Anti-Money Laundering Program (''AML'') requirements for FCMs and IBs to require appropriate risk-based procedures to conduct ongoing customer due diligence (collectively, ''CDD Rule''). (June 2018 Amendments).

The amendments also incorporate guidance issued by the Commission [sic] in consultation with FinCEN to CFTC Interpretive Letter No. 19–18 entitled *Interpretive Guidance Regarding Voice Broker Customer Identification Program and Beneficial Ownership Rule Requirements.* The proposed amendments also made minor amendments to unrelated footnotes to reflect technical citation changes and re-numbered existing footnotes. (May 2020 Amendments).

Moreover, the amendments also closely align NFA's Interpretive Notice with the exact language included in the BSA and its implementing regulations. Further, the amendments include the deletion of two footnotes that are no longer applicable as well as amendments to other footnotes that include outdated language and website links that are no longer operable. (September 2022 Amendments).

The text of the proposed amendments—October 2011 Amendments, August 2012 Amendments, June 2018 Amendments, May 2020 Amendments, and September 2022 Amendments—to the Interpretive Notice and NFA Compliance Rule 2–9(c) is found in Exhibit 4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, NFA 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. NFA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[5] *See* letter dated August 27, 2012 from Thomas W. Sexton, III, Senior Vice President and General Counsel, NFA to David A. Stawick, Office of the Secretariat, CFTC. This letter can be found in Exhibit 5(c) of File No. SR–NFA–2023–01.

[6] *See* letter dated August 27, 2013 from Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight, CFTC to Thomas W. Sexton, III, Senior Vice President and General Counsel, NFA. This letter can be found in Exhibit 5(d) of File No. SR–NFA–2023–01.

[7] *See* letter dated June 15, 2018 from Carol A. Wooding, Vice President and General Counsel, NFA to Christopher J. Kirkpatrick, Office of the Secretariat, CFTC. This letter can be found in Exhibit 5(e) of File No. SR–NFA–2023–01.

[8] *See* Letter dated June 28, 2018 from Matthew Kulkin, Director, Division of Swap Dealer and Intermediary Oversight, CFTC to Carol A. Wooding, Vice President and General Counsel, NFA. This letter can be found in Exhibit 5(f) of File No. SR–NFA–2023–01.

[9] *See* letter dated May 28, 2020 from Carol A. Wooding, Senior Vice President and General Counsel, NFA to Christopher J. Kirkpatrick, Office of the Secretariat, CFTC. This letter can be found in Exhibit 5(g) of File No. SR–NFA–2023–01.

[10] *See* email dated May 29, 2020 from Christopher W. Cummings, Special Counsel, Division of Swap Dealer and Intermediary Oversight, CFTC to Carol A. Wooding, Senior Vice President and General Counsel, NFA. This correspondence can be found in Exhibit 5(h) of File No. SR–NFA–2023–01.

[11] *See* letter dated June 8, 2020 from Joshua Sterling, Director, Division of Swap Dealer and Intermediary Oversight, CFTC to Carol A. Wooding, Senior Vice President and General Counsel, NFA. This letter can be found in Exhibit 5(i) of File No. SR–NFA–2023–01.

[12] *See* letter dated September 22, 2022 from Carol A. Wooding, Senior Vice President and General Counsel, NFA to Christopher J. Kirkpatrick, Office of the Secretariat, CFTC. This letter can be found in Exhibit 5(j) of File No. SR–NFA–2023–01.

[13] *See* letter dated October 19, 2022 from Amanda L. Olear, Director, Market Participants Division, CFTC to Carol A. Wooding, Senior Vice President and General Counsel, NFA. This letter can be found in Exhibit 5(k) of File No. SR–NFA–2023–01.

[14] NFA notified Members of these changes through Notices to Members outlining these new requirements at the time FinCEN originally issued or adopted the requirements/advisories.

[15] *See* ''Transfer and Reorganization of Bank Secrecy Act Regulations; Final Rule,'' 75 FR 65806 (Oct. 26, 2010).

[16] 31 CFR 1026.220(a)(2)(ii)(C) (2015).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

Section 15A(k) of the Exchange Act [17] makes NFA a national securities association for the limited purpose of regulating the activities of NFA Members who are registered as brokers or dealers in security futures products under section 15(b)(11) of the Exchange Act.[18] NFA's Interpretive Notice and NFA Compliance Rule 2–9(c) apply to all NFA Member FCMs and IBs and require them to develop and implement an AML program reasonably designed to achieve and monitor a Member's compliance with the requirements of the BSA and the implementing regulations promulgated thereunder and could apply to NFA Members registered as security futures brokers or dealers under section 15(b)(11) of the Exchange Act.[19]

NFA is amending the Interpretive Notice to include amendments to the BSA regulations that specify that the BSA's confidentiality provisions prohibit FCMs and IBs from revealing any information which would reveal the existence of a SAR. NFA's amendments also clarify that the disclosure prohibition is not limited to the person involved in the transaction that is the subject of the SAR, but rather applies to all persons except as specifically authorized by the regulation. NFA's amendments also incorporate FinCEN's guidance that permits FCMs and IBs to share SARs or any information that would reveal the existence of a SAR with an affiliate provided that the affiliate is subject to a SAR regulation issued by FinCEN or another regulatory agency, including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the SEC. NFA's amendments also add existing BSA requirements related to the timing for filing a SAR, SAR documentation retention requirements, FCM and IB requirements for filing a Report of Foreign Bank and Financial Accounts, and the FCM requirements for filing a Report of International Transportation of Currency or Monetary Instruments. The amendments revise all references to the Code of Federal Regulations to reflect the adoption of Chapter X for BSA requirements.[20]

Moreover, the amendments also revise the CIP subsection of the Interpretive Notice, which describes guidance that FinCEN and the CFTC issued in 2006 (FIN–2006–G004—*Frequently Asked Questions Regarding Customer Identification Programs for Futures Commission Merchants and Introducing Brokers,* February 14, 2006) related to CIP obligations with respect to omnibus accounts. Due to concerns that the language in NFA's Interpretive Notice could be read to provide that a firm is never required to obtain information on beneficial owners, the revised language indicates that for omnibus accounts where an intermediary is the account holder an FCM should treat the intermediary as the customer and the FCM does not have to apply its CIP requirements to the underlying beneficiary.[21]

Further, on August 12, 2016, NFA notified Members of the upcoming FinCEN CDD Rule requirements; instructed them to begin considering modifications to their AML programs in order to comply with these new requirements; and informed them that NFA Compliance Rule 2–9(c) and the related Interpretive Notice would be updated to incorporate FinCEN's new requirements. FCMs and IBs were required to comply with FinCEN's CDD Rule on or before May 11, 2018.

Currently, NFA Compliance Rule 2–9(c) requires an FCM's and IB's AML program to, at a minimum, have four enumerated components—(1) policies, procedures and internal controls reasonably designed to assure compliance with the applicable provisions of the BSA and the implementing regulations; [22] (2) independent testing; (3) designation of a compliance officer responsible for day-to-day compliance; and (4) ongoing training for appropriate personnel. NFA is amending Compliance Rule 2–9(c) and the Interpretive Notice to incorporate the fifth component that FinCEN added to its AML Program Requirements that requires firms to adopt and implement appropriate risk-based procedures for conducting ongoing customer due diligence, including: (i) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (ii) conducting ongoing monitoring to identify and report suspicious transactions, and, on a risk basis, to maintain and update customer information.

NFA is also amending the Interpretive Notice to add a separate section requiring that FCMs and IBs establish and implement written procedures that are reasonably designed to identify and verify the identity of beneficial owners of LE customers. Specifically, in accordance with FinCEN's requirements, the Interpretive Notice requires FCM and IB Members to obtain certain identifying information, including a required certification,[23] from the natural person opening the account on behalf of the LE. After a firm identifies the beneficial owner(s), it is also required to verify the identity using risk-based procedures that, at a minimum, contain the same elements as required for verifying the identity of customers that are individuals under the CIP requirements. As with CIP requirements, the CDD Rule and NFA's Interpretive Notice permit a financial institution to enter into a reliance agreement with another financial institution to perform these obligations.

NFA is further amending the Interpretive Notice to incorporate the CDD Rule's new recordkeeping requirements for FCMs and IBs. Namely, firms will be required to make and maintain records of all beneficial owners and retain those records for five years after the account is closed. Additionally, firms must also make and maintain records of the description of the documents and any non-documentary methods used to verify the identity of a beneficial owner for a period of five years after the record was made. Firms are expected to use the beneficial ownership information obtained to ensure they comply with Office of Foreign Assets Controls (''OFAC'') Regulations and OFAC-administered sanctions. NFA's amendments merely incorporate the requirements of FinCEN's beneficial ownership rule and do not impose any additional requirements on FCM and IB Members.

Moreover, NFA is amending the Interpretive Notice to incorporate CFTC guidance as provided in the July 22,

[17] 15 U.S.C. 78o–3(k).

[18] 15 U.S.C. 78o(b)(11).

[19] *Id.*

[20] *See* ''Transfer and Reorganization of Bank Secrecy Act Regulations, Final Rule,'' 75 FR 65806 (Oct. 26, 2010).

[21] 31 CFR 1026.220(c)(2)(ii)(C) (2015).

[22] Without explanation, FinCEN also modified this component to require that the policies, procedures, and internal controls be designed to *prevent the financial institution from being used for money laundering or the financing of terrorist activities.* NFA is amending Compliance Rule 2–9(c) to incorporate this change.

[23] Firms may choose to comply with the certification requirement by using FinCEN's Certification Form (as adopted as an appendix A to the rulemaking) or by obtaining the information required by FinCEN's form, along with a certification by the natural person regarding the accuracy of the information.

2019, CFTC Interpretive Letter No.19–18 entitled *Interpretive Guidance Regarding Voice Broker Customer Identification Program and Beneficial Ownership Rule Requirements* (''CFTC Interpretive Guidance'') addressing FCMs' and IBs' compliance with applicable requirements of the BSA and its implementing regulations related to CIP and Beneficial Ownership and granting relief from the CIP and Beneficial Ownership requirements to IBs that do not introduce an account to an FCM and do not have customers or accounts for the purposes of the CIP rule. NFA amended footnote 6 in the Interpretive Notice to provide a hyperlink to and a brief description of the Interpretive Guidance and to clarify that these IBs are not required to establish and implement a CIP or apply Beneficial Ownership requirements with respect to their voice brokerage business under NFA's Interpretive Notice. The footnote also clarifies that these IBs are required to conduct suspicious activity reviews and comply with other applicable NFA requirements using the information available to them. NFA also amended the Interpretive Notice to more closely align with the exact language in the BSA and its implementing regulations in two unrelated footnotes (*i.e.,* new footnotes 18 and 41) to reflect technical citation changes, as well as amendments to make required re-numbering of existing footnotes.

Furthermore, NFA's amendments closely align NFA's Interpretive Notice with the exact language included in the BSA and its implementing regulations. These amendments also include the deletion of two footnotes that are no longer applicable as well as amendments to other footnotes that include outdated language and website links that are no longer operable.

Amendments to the Interpretive Notice were previously filed with the SEC in SR–NFA–2006–03, Exchange Act Release No. 34–54956 (Dec. 18, 2006), 71 FR 77431 (Dec. 26. 2006); SR–NFA–2007–06 (withdrawn); SR–NFA–2008–01, Exchange Act Release No. 34–57640 (Apr. 9, 2008), 73 FR 20341 (Apr. 15, 2008); and SR–NFA–2011–01 (withdrawn). This is the first amendment filing for NFA Compliance Rule 2–9(c) since it was initially filed with the SEC in SR–NFA–2002–03, Exchange Act Release No. 34–45887 (May 7, 2002), 67 FR 32072 (May 13, 2002).

2. Statutory Basis

NFA believes that the proposed rule change is authorized by, and consistent with section 15A(k)(2)(B) of the Exchange Act.[24] That section sets out requirements for rules of a futures association, registered under section 17 of the Commodity Exchange Act, that are a registered national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products pursuant to section 15(b)(11) of the Exchange Act.[25] Under section 15A(k)(2)(B) of the Exchange Act,[26] the rules of such a limited purpose national securities association must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest in connection with security futures products in a manner reasonably comparable to the rules of a registered national securities association applicable to securities futures products.

NFA believes the proposed rule change would meet these requirements by: specifying that the BSA's confidentiality provisions prohibit FCMs and IBs from revealing any information which would reveal the existence of a SAR; clarifying that the disclosure prohibition is not limited to the person involved in the transaction that is the subject of the SAR, but rather applies to all persons except as specifically authorized by the BSA regulation; incorporating FinCEN's guidance that permits FCMs and IBs to share SARs or any information that would reveal the existence of a SAR with an affiliate provided that the affiliate is subject to a SAR regulation issued by FinCEN or another regulatory agency, including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision and the SEC; clarifying timing requirements for AML training and AML independent testing; adding existing BSA requirements related to the timing for filing a SAR, SAR documentation retention requirements, FCM and IB requirements for filing a Report of Foreign Bank and Financial Accounts and the FCM requirements for filing a Report of International Transportation of Currency or Monetary Instruments; revising all references to the Code of Federal Regulations to reflect the recent adoption of Chapter X for BSA; and clarifying CIP responsibilities with respect to omnibus accounts.

The proposed rule change further protects investors and the public interest in connection with security futures products by requiring FCMs and IBs to modify their AML programs to incorporate FinCEN's new regulations requiring financial institutions to identify and verify the identity of beneficial owners of LE customers and to conduct ongoing customer due diligence. Accordingly, NFA is amending Compliance Rule 2–9(c) to modify language and to specifically require appropriate risk-based procedures for conducting customer due diligence.

Further, NFA is amending the Interpretive Notice to add a separate section on identifying and verifying beneficial owners pursuant to FinCEN requirements; to amend the suspicious activity reporting section to add a requirement that FCMs and IBs develop risk-based ongoing CDD procedures in accordance with FinCEN's requirements; to amend the Ongoing Compliance Responsibilities—OFAC section to clarify that FCMs and IBs should use the beneficial ownership information to help ensure that they are in compliance with OFAC regulations; and to clarify that voice broker IBs that negotiate/facilitate block futures and cleared swap transactions do not have customers or accounts for purposes of the CIP Rule and are not required to establish and implement a CIP or apply Beneficial Ownership requirements with respect to their voice broker business but still required to adopt and implement an AML program to conduct suspicious activity reviews and comply with other applicable NFA requirements using the information available to them. NFA is also amending the Notice [sic] to more closely align the language with the exact wording in the BSA and its implementing regulations.

This proposal is not designed to regulate, by virtue of any authority conferred by the Exchange Act, matters not related to the purposes of the Exchange Act or the administration of the association. To the extent that this proposal regulates activities and transactions other than security futures, the authority for regulating those activities and transactions comes from the Commodity Exchange Act rather than securities laws.

B. Self-Regulatory Organization's Statement on Burden on Competition

NFA does not believe that the proposed rule changes would impose any burden on competition. With the exception of the amendment clarifying

[24] 15 U.S.C. 78o–3(k)(2)(B).

[25] 15 U.S.C. 78o(b)(11).

[26] 15 U.S.C. 78o–3(k)(2)(B).

the timing requirements related to training of employees and the independent audit, the amendments update the Notice [sic] to incorporate or clarify requirements and guidance under the BSA, to which NFA Member FCMs and IBs are currently subject. NFA also believes that the amendment clarifying the timing of employee training and the independent audit will not impose any burden on competition because FCM and IB Members are currently required to have annual employee training and an annual audit.

At first glance, the rule change may appear to impose additional burdens on FCMs and IBs. However, these new obligations have already been imposed by rules adopted by FinCEN in order to prevent and detect money laundering activities, and NFA's amendments merely incorporate FinCEN's requirements into NFA's rules. The rule changes require FCMs and IBs to identify and verify the identity of all beneficial owners of LE customers, to adopt new recordkeeping requirements, to make and maintain records of all beneficial owners, and to require appropriate risk-based procedures to conduct ongoing customer due diligence. NFA 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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA did not publish the rule changes to the membership for comment. NFA did not receive comment letters concerning the rule change. NFA Member FCM and IB Advisory Committees fully supported the proposed amendments to the Interpretive Notice and NFA Compliance Rule 2–9(c).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NFA filed the proposed rule changes with the CFTC in five separate filings filed on the following dates: October 13, 2011,[27] August 27, 2013,[28] June 15, 2018,[29] May 28, 2020,[30] and September 22, 2022.[31] On November 16, 2011, August 27, 2013, June 28, 2018, and June 8, 2020, the CFTC notified NFA that it had determined not to review the proposed rule changes.[32] However, as for the June 2018 Amendments, FinCEN's rule required FCMs and IBs to comply with the CDD Rule on or before May 11, 2018. NFA did not concurrently file the proposed rule changes with the SEC. Section 19(b)(7)(B) of the Act provides that a proposed rule change filed with the SEC pursuant to section 19(b)(7)(A) of the Act shall be filed concurrently with the CFTC.

Section 19(b)(7)(C) of the Exchange Act provides, *inter alia* that ''[a]ny proposed rule change of a self-regulatory organization that has taken effect pursuant to section 19(b)(7)(B) of the Exchange Act may be enforced by such self-regulatory organization to the extent such rule is not inconsistent with the provisions of the title, the rules and regulations thereunder and applicable Federal law. At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Exchange Act.

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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NFA–2023–01 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–NFA–2023–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://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 NFA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to File Number SR–NFA–2023–01 and should be submitted on or before June 1, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–10030 Filed 5–10–23; 8:45 am]

BILLING CODE 8011–01–P

[27] *See* Letter dated October 13, 2011 from Thomas W. Sexton, III, Senior Vice President and General Counsel, NFA to David A. Stawick, Office of the Secretariat, CFTC.

[28] *See* Letter dated August 27, 2012 from Thomas W. Sexton, III, Senior Vice President and General Counsel, NFA to David A. Stawick, Office of the Secretariat, CFTC.

[29] *See* Letter dated June 15, 2018 from Carol A. Wooding, Vice President and General Counsel, NFA to Christopher J. Kirkpatrick, Office of the Secretariat, CFTC.

[30] *See* Letter dated May 28, 2020 from Carol A. Wooding, Senior Vice President and General Counsel, NFA to Christopher J. Kirkpatrick, Office of the Secretariat, CFTC.

[31] *See* Letter dated September 22, 2022 from Carol A. Wooding, Senior Vice President and General Counsel, NFA to Christopher J. Kirkpatrick, Office of the Secretariat, CFTC.

[32] *See* Letter dated November 16, 2011 from Gary Barnett, Director, Division of Swap and Intermediary Oversight, CFTC to Thomas W. Sexton, III, Senior Vice President and General Counsel, NFA; Letter dated August 27, 2013 from Gary Barnett, Director Division of Swap and Intermediary Oversight, CFTC to Thomas W. Sexton, III, Senior Vice President and General Counsel, NFA; Letter dated June 28, 2018 from Matthew Kulkin, Director Division of Swap Dealer and Intermediary Oversight, CFTC to Carol A. Wooding, Vice President and General Counsel, NFA; Letter dated June 8, 2020 from Joshua Sterling, Director, Division of Swap Dealer and Intermediary Oversight, CFTC to Carol A. Wooding, Senior Vice President and General Counsel, NFA; and Letter dated October 19, 2022 from Amanda L. Olear, Director, Market Participants Division, CFTC to Carol A. Wooding, Senior Vice President and General Counsel, NFA.

[33] 17 CFR 200.30–3(a)(73).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–818, OMB Control No. 3235–0774]

Proposed Collection; Comment Request; Extension: Amendments to the National Market System Plan Governing the Consolidated Audit Trail

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in connection with amendments [1] adopted pursuant to the statutory authority provided by the Securities Exchange Act of 1934, [2] including sections 11A(a)(3)(B),[3] 17(a),[4] 19(b),[5] and 23(a) [6] thereof, and pursuant to Rule 608(a)(2) and (b)(2),[7] to a National Market System (NMS) Plan filed with the Commission under Rule 613 (17 CFR 242.613), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The amendments, as adopted, required two new collections of information:

a. *Implementation Plan.* The amendments require the Participants, within 30 calendar days following the effective date of the amendments, to prepare, file with the Commission, and make publicly available on a website a complete CAT implementation plan (''Implementation Plan'') that includes a detailed timeline for achieving various implementation milestones.

b. *Quarterly Progress Reports.* The amendments require the Participants, within 30 calendar days after the end of each calendar quarter, to prepare, file with the Commission, and make publicly available on a website a complete report (the ''Quarterly Progress Report'') that provides a detailed and up-to-date description of the progress made by the Participants toward each of the milestones identified in the Implementation Plan.

The one-time information collection associated with the Implementation Plan was completed by the Participants, so there will be no further burdens associated with the Implementation Plan. The Quarterly Progress Report information collection continues.

There are currently 25 Participants who must complete four Quarterly Progress Reports per year. The Commission staff estimates that, on the average, most Quarterly Progress Reports require approximately 72 hours per Participant, and cost approximately $8,000 per Participant. The Commission staff estimates Participants spend a total of approximately 7,200 hours per year ($25 \times 4 \times 72$) and $800,000 per year ($25 \times 4 \times \$8{,}000$) complying with the rule.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by July 10, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 5, 2023.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–09997 Filed 5–10–23; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* Securities Exchange Act Release No. 88890 (May 15, 2020), 85 FR 31322 (May 22, 2020) (File No. S7–13–19) (''Adopting Release'').

[2] *See* 15 U.S.C. 78a *et seq.*

[3] *See* 15 U.S.C. 78k–1(a)(3)(B).

[4] *See* 15 U.S.C. 78q(a).

[5] *See* 15 U.S.C. 78s(b).

[6] *See* 15 U.S.C. 78w(a).

[7] *See* 17 CFR 242.608(a)(2), (b)(2).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–21, OMB Control No. 3235–0025]

Proposed Collection; Comment Request; Extension: Rule 30e–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 30e–1 (17 CFR 270.30e–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') generally requires a registered investment company (''fund'') to transmit to its shareholders, at least semi-annually, reports containing the information that is required to be included in such reports by the fund's registration statement form under the Investment Company Act. The purpose of the collection of information required by rule 30e–1 is to provide fund shareholders with current information about the operation of their funds in accordance with Section 30 of the Investment Company Act.

Approximately 11,840 funds, respond to rule 30e–1 annually.[1] We estimate that it takes approximately 147 hours to comply with the collection of information associated with rule 30e–1 per fund. This time is spent, for example, preparing, reviewing, and certifying the reports, as well as the website availability requirements and delivery of shareholder reports upon request requirements. Accordingly, we calculate the total estimated annual internal burden of responding to rule 30e–1 to be approximately 1,738,428 hours (146.8 hours $\times$ 11,840 funds). In addition to the burden hours, we estimate that the total cost burden of compliance with the information collection requirements of rule 30e–1 is approximately $13,105 per fund. This includes, for example, the cost of goods and services purchased to prepare, comply with website availability requirements, and deliver reports upon request under the amendments to rule 30e–1, such as for the services of independent auditors and outside counsel. Accordingly, we calculate the total external cost burden associated with rule 30e–1 to be approximately $155,164,791.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not

[1] Includes all open-end funds, including ETFs, registered on Form N–1A.

derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collection of information under rule 30e–1 is mandatory. The information provided under rule 30e–1 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by July 10, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: May 5, 2023.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–10000 Filed 5–10–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97442; File No. SR–CboeBZX–2023–034]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options

May 5, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2023, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') 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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX Options'') proposes to extend the pilot programs in connection with the listing and trading of P.M.-settled series on certain broad-based index options. 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.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change extends the listing and trading of P.M.-settled series on certain broad-based index options on a pilot basis.[5] Rule 29.11(a)(6) currently permits the listing and trading of XSP options with third-Friday-of-the-month expiration dates, whose exercise settlement value will be based on the closing index value on the expiration day (''P.M.-settled'') on a pilot basis set to expire on May 8, 2023 (the ''XSPPM Pilot Program''). Rule 29.11(j)(3) also permits the listing and trading of P.M.-settled options on broad-based indexes with weekly expirations (''Weeklys'') and end-of-month expirations (''EOMs'') on a pilot basis set to expire on May 8, 2023 (the ''Nonstandard Expirations Pilot Program'', and together with the XSPPM Pilot Program, the ''Pilot Programs''). The Exchange proposes to extend the Pilot Programs through November 6, 2023.

XSPPM Pilot Program

Rule 29.11(a)(6) permits the listing and trading, in addition to A.M.-settled XSP options, of P.M.-settled XSP options with third-Friday-of-the-month expiration dates on a pilot basis. The Exchange believes that continuing to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange is authorized to list for trading options that overlie the Mini-SPX Index (''XSP'') and the Russell 2000 Index (''RUT''). *See* Rule 29.11(a). *See also* Securities Exchange Act Release Nos. 84480 (October 24, 2018), 83 FR 54635 (October 30, 2018) (Notice of Filing of a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options on a Pilot Basis) (SR–CboeBZX–2018–066) (''Notice''); 85181 (February 22, 2019), 84 FR 6842 (February 28, 2019) (Notice of Deemed Approval of a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options on a Pilot Basis) (SR–CboeBZX–2018–066); 88052 (January 27, 2020), 85 FR 5753 (January 31, 2020) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options) (SR–CboeBZX–2020–004); 88788 (April 30, 2020), 85 FR 27008 (May 6, 2020) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options) (SR–CboeBZX–2020–038); and 90255 (October 22, 2020), 85 FR 68378 (October 28, 2020) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options) (SR–CboeBZX–2020–076); 91699 (April 28, 2021), 86 FR 23767 (May 4, 2021) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options) (SR–CboeBZX–2021–031); 93454 (October 28, 2021), 86 FR 60727 (November 3, 2021) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options) (SR–CboeBZX–2021–072); 94802 (April 27, 2022), 87 FR 26240 (May 3, 2022) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options) (SR–CboeBZX–2022–029); and 96208 (November 2, 2022), 87 FR 67524 (November 8, 2022) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options) (SR–CboeBZX–2022–052).

permit the trading of XSP options on a P.M.-settled basis will continue to encourage greater trading in XSP options. Other than settlement and closing time on the last trading day (pursuant to Rule 29.10(a)),[6] contract terms for P.M.-settled XSP options are the same as the A.M.-settled XSP options. The contract uses a $100 multiplier and the minimum trading increments, strike price intervals, and expirations are the same as the A.M.-settled XSP option series. P.M.-settled XSP options have European-style exercise. The Exchange also has flexibility to open for trading additional series in response to customer demand.

If the Exchange were to propose another extension of the XSPPM Pilot Program, the Exchange would submit a filing proposing such amendments to the XSPPM Pilot Program. Further, any positions established under the XSPPM Pilot Program would not be impacted by the expiration of the XSPPM Pilot Program. For example, if the Exchange lists a P.M.-settled XSP option that expires after the XSPPM Pilot Program expires (and is not extended), then those positions would continue to exist. If the pilot were not extended, then the positions could continue to exist. However, any further trading in those series would be restricted to transactions where at least one side of the trade is a closing transaction.

As part of the XSPPM Pilot Program, the Exchange submits a pilot report to the Commission at least two months prior to the expiration date of the pilot.[7] This annual report contains an analysis of volume, open interest, and trading patterns. In proposing to extend the XSPPM Pilot Program, the Exchange will continue to abide by the reporting requirements described in the Notice.[8] Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the XSPPM Pilot Program is consistent with the Exchange Act. The Exchange makes its annual data and analyses previously submitted to the Commission under the Pilot Program public on its website and will continue to make public any data and analyses it submits to the Commission under the Pilot Program in the future. The Exchange also notes that its affiliated options exchange, Cboe Exchange, Inc. (''Cboe Options'') currently has pilots that permit P.M.-settled third Friday-of-the-month XSP options.[9]

Nonstandard Expirations Pilot Program

Rule 29.11(j)(1) permits the listing and trading, on a pilot basis, of P.M.-settled options on broad-based indexes with nonstandard expiration dates and is currently set to expire on May 8, 2023. The Nonstandard Expirations Pilot Program permits both Weeklys and EOMs as discussed below. Contract terms for the Weekly and EOM expirations are similar to those of the A.M.-settled broad-based index options, except that the Weekly and EOM expirations are P.M.-settled.

In particular, Rule 29.11(j)(1) permits the Exchange to open for trading Weeklys on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM). Weeklys are subject to all provisions of Rule 29.11 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, under the Nonstandard Expirations Pilot Program, Weeklys are P.M.-settled, and new Weekly series may be added up to and including on the expiration date for an expiring Weekly.

Rule 29.11(a)(2) permits the Exchange to open for trading EOMs on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOMs are subject to all provisions of Rule 29.11 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, under the Nonstandard Expirations Pilot Program, EOMs are P.M.-settled, and new series of EOMs may be added up to and including on the expiration date for an expiring EOM.

As stated above, this proposed rule change extends the Nonstandard Expirations Pilot Program for broad-based index options on a pilot basis, for a period of six months. If the Exchange were to propose an additional extension of the Nonstandard Expirations Pilot Program, the Exchange would submit additional filings proposing such amendments. Further, any positions established under the Nonstandard Expirations Pilot Program would not be impacted by the expiration of the pilot. For example, if the Exchange lists a Weekly or EOM that expires after the Nonstandard Expirations Pilot Program expires (and is not extended), then those positions would continue to exist. However, any further trading in those series would be restricted to transactions where at least one side of the trade is a closing transaction.

As part of the Nonstandard Expirations Pilot Program, the Exchange submits a pilot report to the Commission at least two months prior to the expiration date of the pilot.[10] This annual report contains an analysis of volume, open interest, and trading patterns. In proposing to extend the Nonstandard Expirations Pilot Program, the Exchange will continue to abide by the reporting requirements described in the Notice.[11] Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Nonstandard Expirations Pilot Program is consistent with the Exchange Act. The Exchange is in the process of making public on its website data and analyses previously submitted to the Commission under the Pilot Program, and will make public any data and analyses it submits to the Commission under the Pilot Program in the future. The Exchange notes that other exchanges, including its affiliated exchange, Cboe Options, currently have pilots that have weekly and end-of-month expirations.[12]

Additional Information

The Exchange believes there is sufficient investor interest and demand in the XSPPM and Nonstandard Expirations Pilot Programs to warrant their extension. The Exchange believes that the Programs have provided investors with additional means of managing their risk exposures and carrying out their investment objectives. The proposed extensions will continue to offer investors the benefit of added transparency, price discovery, and stability, as well as the continued expanded trading opportunities in connection with different expiration times. The Exchange proposes the extension of the Pilot Programs in order to continue to give the Commission more time to consider the impact of the Pilot Programs. To this point, the Exchange believes that the Pilot

[6] Rule 29.10(a) permits transactions in P.M.-settled XSP options on their last trading day to be effected on the Exchange between the hours of 9:30 a.m. and 4:00 p.m. Eastern time. All other transactions in index options are effected on the Exchange between the hours of 9:30 a.m. and 4:15 p.m. Eastern time.

[7] The Exchange notes that the Pilot Programs currently run on a bi-annual pilot basis.

[8] *See supra* note 5.

[9] *See* Cboe Options Rule 4.13.13, which also permits P.M.-settled third Friday-of-the-month SPX options on a pilot basis (''SPXPM Pilot Program'').

[10] *See supra* note 7.

[11] *See supra* note 5.

[12] *See* Cboe Options Rule 4.13(e); and Phlx Rule 1101A(b)(5).

Programs have been well-received by its Members and the investing public, and the Exchange would like to continue to provide investors with the ability to trade P.M.-settled XSP options and contracts with nonstandard expirations. All terms regarding the trading of the Pilot Products shall continue to operate as described in the XSPPM and Nonstandard Expirations Notice.[13] The Exchange merely proposes herein to extend the terms of the Pilot Programs to November 6, 2023.

Furthermore, the Exchange has not experienced any adverse market effects with respect to the Programs. The Exchange will continue to monitor for any such disruptions or the development of any factors that would cause such disruptions. The Exchange represents it continues to have an adequate surveillance program in place for index options and that the proposed extension will not have an adverse impact on capacity.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [15] 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.

In particular, the Exchange believes that the proposed extension of the Pilot Programs will continue to provide greater opportunities for investors. The Exchange believes that the Pilot Programs have been successful to date. The proposed rule change allows for an extension of the Program for the benefit of market participants. The Exchange believes that there is demand for the expirations offered under the Program and believes that P.M.-settled XSP, Weekly Expirations and EOMs will continue to provide the investing public and other market participants with the opportunities to trade desirable products and to better manage their risk exposure. The proposed extension will also provide the Commission further opportunity to observe such trading of the Pilot Products. Further, the Exchange has not encountered any problems with the Programs; it has not experienced any adverse effects or meaningful regulatory or capacity concerns from the operation of the Pilot Programs. Also, the Exchange believes that such trading pursuant to the XSPPM Pilot Program has not, and will not, adversely impact fair and orderly markets on Expiration Fridays for the underlying stocks comprising the S&P 500 index.

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. Specifically, the Exchange believes that, by extending the expiration of the Pilot Programs, the proposed rule change will allow for further analysis of the Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

Specifically, the Exchange does not believe the continuation of the Pilot Program will impose any unnecessary or inappropriate burden on intramarket competition because it will continue to apply equally to all BZX Options market participants, and the Pilot Products will continue to be available to all BZX Options market participants. The Exchange believes there is sufficient investor interest and demand in the Pilot Programs to warrant its extension. The Exchange believes that, for the period that the Pilot Programs has been in operation, it has provided investors with desirable products with which to trade. Furthermore, as stated above, the Exchange maintains that it has not experienced any adverse market effects or regulatory concerns with respect to the Pilot Programs. The Exchange further does not believe that the proposed extension of the Pilot Programs will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only applies to trading on BZX Options. To the extent that the continued trading of the Pilot Products may make BZX Options a more attractive marketplace to market participants at other exchanges, such market participants may elect to become BZX Options market participants.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow it to extend the Pilot Programs prior to its expiration on May 8, 2023, and maintain the status quo, thereby reducing market disruption. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Pilot Programs to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the Pilot Programs. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[20]

[13] *See supra* note 5.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has also

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2023–034 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–2023–034. 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 (*https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CboeBZX–2023–034, and should be submitted on or before June 1, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Deputy Secretary.

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considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97446; File No. SR–CBOE–2023–024]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Operation of Its SPXPM Pilot Program

May 5, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 3, 2023, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') 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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to extend the operation of its SPXPM pilot program. The text of the proposed rule change is provided below. (additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 4.13. Series of Index Options

* * * * *

Interpretations and Policies

.01–.12 No change.

.13 In addition to A.M.-settled S&P 500 Stock Index (''SPX'') options approved for trading on the Exchange pursuant to Rule 4.13, the Exchange may also list options on SPX whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (P.M.-settled third Friday-of-the-month SPX options series). The Exchange may also list options on the Mini-SPX Index (''XSP'') and Mini-RUT Index (''MRUT'') whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''P.M.-settled''). P.M.-settled third Friday-of-the-month SPX options series and P.M.-settled XSP and MRUT options will be listed for trading for a pilot period ending [May 8]*November 6,* 2023.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, 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

On February 8, 2013, the Securities and Exchange Commission (the ''Commission'') approved a rule change that established a Pilot Program that allows the Exchange to list options on the S&P 500 Index whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''SPXPM'').[5] On July 31,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR–CBOE–2012–120) (the ''SPXPM Approval

Continued

2013, the Commission approved a rule change that amended the Pilot Program to allow the Exchange to list options on the Mini-SPX Index (''XSP'') whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''P.M.-settled XSP'').[6] On February 5, 2021, the Commission approved a rule change that amended the Pilot Program to allow the Exchange to list options on the Mini Russell 2000 Index (''MRUT'' or ''Mini-RUT'') whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''P.M.-settled MRUT'') [7] (together, SPXPM, P.M.-settled XSP, and P.M.-settled MRUT to be referred to herein as the ''Pilot Products'').[8] The Exchange has extended the pilot period numerous times, which, pursuant to Rule 4.13.13, is currently set to expire on the earlier of May 8, 2023 or the date on which the pilot program is approved on a permanent basis.[9] The Exchange hereby proposes to further extend the end date of the pilot period to November 6, 2023.[10]

During the course of the Pilot Program and in support of the extensions of the Pilot Program, the Exchange submits reports to the Commission regarding the Pilot Program that detail the Exchange's experience with the Pilot Program, pursuant to the SPXPM Approval Order,[11] the P.M.-settled XSP Approval Order,[12] and the P.M.-settled MRUT Approval Order.[13] Specifically, the Exchange submits annual Pilot Program reports to the Commission that contain an analysis of volume, open interest, and trading patterns. The analysis examines trading in Pilot Products as well as trading in the securities that comprise the underlying index. Additionally, for series that exceed certain minimum open interest parameters, the annual reports provide analysis of index price volatility and share trading activity. The Exchange also submits periodic interim reports that contain some, but not all, of the information contained in the annual reports. In providing the annual and periodic interim reports (the ''pilot reports'') to the Commission, the Exchange has previously requested confidential treatment of the pilot reports under the Freedom of Information Act (''FOIA'').[14]

The pilot reports both contain the following volume and open interest data:

(1) monthly volume aggregated for all trades;

(2) monthly volume aggregated by expiration date;

(3) monthly volume for each individual series;

(4) month-end open interest aggregated for all series;

(5) month-end open interest for all series aggregated by expiration date; and

(6) month-end open interest for each individual series.

The annual reports also contain (or will contain) the information noted in Items (1) through (6) above for Expiration Friday, A.M.-settled, S&P 500 and RUT index options traded on Cboe Options, as well as the following analysis of trading patterns in the Pilot Products options series in the Pilot Program:

(1) a time series analysis of open interest; and

(2) an analysis of the distribution of trade sizes.

Finally, for series that exceed certain minimum parameters, the annual reports contain the following analysis related to index price changes and underlying share trading volume at the close on Expiration Fridays:

(1) a comparison of index price changes at the close of trading on a given Expiration Friday with comparable price changes from a control sample. The data includes a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by the Cboe Volatility Index (VIX), is provided; and

(2) a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money series. The data includes a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period.

The minimum open interest parameters, control sample, time intervals, method for randomly selecting the component securities, and sample periods are determined by the Exchange and the Commission. In proposing to extend the Pilot Program, the Exchange will continue to abide by the reporting requirements described herein, as well as in the SPXPM Approval Order, the P.M.-settled XSP Approval Order, and the P.M.-settled MRUT Approval Order.[15] Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Pilot Program is consistent with the Exchange Act. The Exchange is in the process of making public on its website all data and analyses previously submitted to the Commission under the Pilot Program,[16] and will continue to make public any data and analyses it submits to the Commission under the Pilot Program in the future.

The Exchange proposes the extension of the Pilot Program in order to continue to give the Commission more time to consider the impact of the Pilot Program. To this point, Cboe Options believes that the Pilot Program has been

Order''). Pursuant to Securities Exchange Act Release No. 80060 (February 17, 2017), 82 FR 11673 (February 24, 2017) (SR–CBOE–2016–091), the Exchange moved third-Friday P.M.-settled options into the S&P 500 Index options class, and as a result, the trading symbol for P.M.-settled S&P 500 Index options that have standard third Friday-of-the-month expirations changed from ''SPXPM'' to ''SPXW.'' This change went into effect on May 1, 2017, pursuant to Cboe Options Regulatory Circular RG17–054.

[6] *See* Securities Exchange Act Release No. 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR–CBOE–2013–055) (the ''P.M.-settled XSP Approval Order'').

[7] *See* Securities Exchange Act Release No. 91067 (February 5, 2021), 86 FR 9108 (SR–2020–CBOE–116) (the ''P.M.-settled MRUT Approval Order'').

[8] For more information on the Pilot Products or the Pilot Program, *see* the SPXPM Approval Order, the P.M.-settled XSP Approval Order, and the P.M.-settled MRUT Approval Order.

[9] *See* Securities Exchange Act Release Nos. 71424 (January 28, 2014), 79 FR 6249 (February 3, 2014) (SR–CBOE–2014–004); 73338 (October 10, 2014), 79 FR 62502 (October 17, 2014) (SR–CBOE–2014–076); 77573 (April 8, 2016), 81 FR 22148 (April 14, 2016) (SR–CBOE–2016–036); 80386 (April 6, 2017), 82 FR 17704 (April 12, 2017) (SR–CBOE–2017–025); 83166 (May 3, 2018), 83 FR 21324 (May 9, 2018) (SR–CBOE–2018–036); 84535 (November 5, 2018), 83 FR 56129 (November 9, 2018) (SR–CBOE–2018–069); 85688 (April 18, 2019), 84 FR 17214 (April 24, 2019) (SR–CBOE–2019–023); 87464 (November 5, 2019), 84 FR 61099 (November 12, 2019) (SR–CBOE–2019–107); 88674 (April 16, 2020), 85 FR 22479 (April 22, 2020) (SR–CBOE–2020–036); 90263 (October 23, 2020), 85 FR 68611 (October 29, 2020) (SR–CBOE–2020–100); 91698 (April 28, 2021), 86 FR 23761 (May 4, 2021) (SR–CBOE–2021–027); 93455 (October 28, 2021), 86 FR 60660 (November 3, 2021) (SR–CBOE–2021–062); 94799 (April 27, 2022), 87 FR 26244 (May 3, 2022) (SR–CBOE–2022–019); *and* 96222 (November 3, 2023), 87 FR 67736 (November 9, 2022) (SR–CBOE–2022–054).

[10] The Exchange recently proposed to make the pilot program permanent. *See* Securities Exchange Act Release Nos. 96703 (January 18, 2023), 88 FR 4265 (January 24, 2023) (SR–CBOE–2023–005); and 97366 (April 24, 2023) (SR–CBOE–2023–019).

[11] *See supra* note 5.

[12] *See supra* note 6.

[13] *See supra* note 7.

[14] 5 U.S.C. 552.

[15] Pursuant to Securities Exchange Act Release No. 75914 (September 14, 2015), 80 FR 56522 (September 18, 2015) (SR–CBOE–2015–079), the Exchange added SPXPM and P.M.-settled XSP options to the list of products approved for trading during Extended Trading Hours (''ETH''). The Exchange will also include the applicable information regarding SPXPM and P.M.-settled XSP options that trade during ETH in its annual and interim reports.

[16] Available at ***https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/pm-settlement-spxpm-data***.

well-received by its Trading Permit Holders and the investing public, and the Exchange would like to continue to provide investors with the ability to trade SPXPM and P.M.-settled XSP and MRUT options. All terms regarding the trading of the Pilot Products shall continue to operate as described in the SPXPM Approval Order, the P.M.-settled XSP Approval Order, and the P.M.-settled MRUT Approval Order. The Exchange merely proposes herein to extend the term of the Pilot Program to November 6, 2023.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [18] 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. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed extension of the Pilot Program will continue to provide greater opportunities for investors. Further, the Exchange believes that it has not experienced any adverse effects or meaningful regulatory concerns from the operation of the Pilot Program. As such, the Exchange believes that the extension of the Pilot Program does not raise any unique or prohibitive regulatory concerns. Also, the Exchange believes that such trading has not, and will not, adversely impact fair and orderly markets on Expiration Fridays for the underlying stocks comprising the S&P 500 index and RUT index. The extension of the Pilot Program will continue to provide investors with the opportunity to trade the desirable products of SPXPM and P.M.-settled XSP and MRUT, while also providing the Commission further opportunity to observe such trading of the Pilot Products.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the continuation of the Pilot Program will impose any unnecessary or inappropriate burden on intramarket competition because it will continue to apply equally to all Cboe Options market participants, and the Pilot Products will be available to all Cboe Options market participants. The Exchange believes there is sufficient investor interest and demand in the Pilot Program to warrant its extension. The Exchange believes that, for the period that the Pilot Program has been in operation, it has provided investors with desirable products with which to trade. Furthermore, the Exchange believes that it has not experienced any adverse market effects or regulatory concerns with respect to the Pilot Program. The Exchange further does not believe that the proposed extension of the Pilot Program will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only applies to trading on Cboe Options. To the extent that the continued trading of the Pilot Products may make Cboe Options a more attractive marketplace to market participants at other exchanges, such market participants may elect to become Cboe Options market participants.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [20] and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6) [22] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [23] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow it to extend the Pilot Program prior to its expiration on May 8, 2023, and maintain the status quo, thereby reducing market disruption. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Pilot Program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the Pilot Program. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[24]

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2023–024 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–CBOE–2023–024. 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 (*https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CBOE–2023–024, and should be submitted on or before June 1, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–10028 Filed 5–10–23; 8:45 am]

BILLING CODE 8011–01–P

[25] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97445; File No. SR–CBOE–2023–023]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Renew an Existing Pilot Program Until November 6, 2023

May 5, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2023, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') 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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to renew an existing pilot program until November 6, 2023. The text of the proposed rule change is provided below. (additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 4.13. Series of Index Options

(a)–(d) No change.

(e) Nonstandard Expirations Pilot Program.

(1)–(2) No change.

(3) Duration of Nonstandard Expirations Pilot Program. The Nonstandard Expirations Pilot Program shall be through [May 8]*November 6,* 2023.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), 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] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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

On September 14, 2010, the Securities and Exchange Commission (the ''Commission'') approved a Cboe Options proposal to establish a pilot program under which the Exchange is permitted to list P.M.-settled options on broad-based indexes to expire on (a) any Friday of the month, other than the third Friday-of-the-month, and (b) the last trading day of the month.[5] On January 14, 2016, the Commission approved a Cboe Options proposal to expand the pilot program to allow P.M.-settled options on broad-based indexes to expire on any Wednesday of month, other than those that coincide with an EOM.[6] On August 10, 2016, the Commission approved a Cboe Options proposal to expand the pilot program to allow P.M.-settled options on broad-based indexes to expire on any Monday of month, other than those that coincide with an EOM.[7] On April 12, 2022, the Commission approved a Cboe Options proposal to expand the pilot program to allow P.M.-settled SPX options to also expire on Tuesday or Thursday.[8] On September 15, 2022, the Commission approved a Cboe Options proposal to expand the pilot program to allow P.M.-settled XSP options to similarly expire on Tuesday or Thursday.[9] Under the

[5] *See* Securities Exchange Act Release 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (order approving SR–CBOE–2009–075).

[6] *See* Securities Exchange Act Release 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (order approving SR–CBOE–2015–106).

[7] *See* Securities Exchange Act Release 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (order approving SR–CBOE–2016–046).

[8] *See* Securities Exchange Act Release 94682 (April 12, 2022) (order approving SR–CBOE–2022–005).

[9] *See* Securities Exchange Act Release 95795 (September 21, 2022) (order approving SR–CBOE–2022–039).

terms of the Nonstandard Expirations Pilot Program (''Program''), Weekly Expirations and EOMs are permitted on any broad-based index that is eligible for regular options trading. Weekly Expirations and EOMs are cash-settled and have European-style exercise. The proposal became effective on a pilot basis for a period of fourteen months that commenced on the next full month after approval was received to establish the Program [10] and was subsequently extended.[11] Pursuant to Rule 4.13(e)(3), the Program is scheduled to expire on November 7, 2022. The Exchange believes that the Program has been successful and well received by its Trading Permit Holders and the investing public during that the time that it has been in operation. The Exchange hereby proposes to extend the Program until November 6, 2023.[12] This proposal does not request any other changes to the Program.

Pursuant to the order approving the establishment of the Program, two months prior to the conclusion of the pilot period, Cboe Options is required to submit an annual report to the Commission, which addresses the following areas: Analysis of Volume & Open Interest; Monthly Analysis of Weekly Expirations & EOM Trading Patterns; Provisional Analysis of Index Price Volatility; and, for SPX and XSP options specifically, certain market quality data.[13] The Exchange has submitted, under separate cover, the annual report in connection with the present proposed rule change. Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Program is consistent with the Exchange Act. The Exchange is in the process of making public on its website all data and analyses previously submitted to the Commission under the Program,[14] and will make public any data and analyses it makes to the Commission under the Program in the future.

If the Exchange were to propose an additional extension of the Program, the Exchange will submit an annual report (addressing the same areas referenced above and consistent with the order approving the establishment of the Program) to the Commission at least two months prior to the next bi-annual expiration date of the Program.[15] The Exchange will also make this report public. Any positions established under the Program will not be impacted by the expiration of the Program.

The Exchange believes there is sufficient investor interest and demand in the Program to warrant its extension. The Exchange believes that the Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any adverse market effects with respect to the Program.

The Exchange believes that the proposed extension of the Program will not have an adverse impact on capacity.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [17] 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 facilitation 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. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the Program has been successful to date and states that it has not encountered any problems with the Program. The proposed rule change allows for an extension of the Program for the benefit of market participants. Additionally, the Exchange believes that there is demand for the expirations offered under the Program and believes that that Weekly Expirations and EOMs will continue to provide the investing public and other market participants increased opportunities to better manage their risk exposure.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options 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. Specifically, the Exchange believes that, by extending the expiration of the Program, the proposed rule change will allow for further analysis of the Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

[10] *See supra* note 7.

[11] *See* Securities Exchange Act Release 65741 (November 14, 2011), 76 FR 72016 (November 21, 2011) (immediately effective rule change extending the Program through February 14, 2013). *See also* Securities Exchange Act Release 68933 (February 14, 2013), 78 FR 12374 (February 22, 2013) (immediately effective rule change extending the Program through April 14, 2014); 71836 (April 1, 2014), 79 FR 19139 (April 7, 2014) (immediately effective rule change extending the Program through November 3, 2014); 73422 (October 24, 2014), 79 FR 64640 (October 30, 2014) (immediately effective rule change extending the Program through May 3, 2016); 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (extending the Program through May 3, 2017); 80387 (April 6, 2017), 82 FR 17706 (April 12, 2017) (extending the Program through May 3, 2018); 83165 (May 3, 2018), 83 FR 21316 (May 9, 2018) (SR–CBOE–2018–038) (extending the Program through November 5, 2018); 84534 (November 5, 2019), 83 FR 56119 (November 9, 2018) (SR–CBOE–2018–070) (extending the Program through May 6, 2019); 85650 (April 15, 2019), 84 FR 16552 (April 19, 2019) (SR–CBOE–2019–022) (extending the Program through November 4, 2019); 87462 (November 5, 2019), 84 FR 61108 (November 12, 2019) (SR–CBOE–2019–104) (extending the Program through May 4, 2020); 88673 (April 16, 2020), 85 FR 22507 (April 22, 2020) (SR–CBOE–2020–035) (extending the Program through November 2, 2020); 90262 (October 23, 2020) 85 FR 68616 (October 29, 2020) (SR–CBOE–2020–101); 91697 (April 28, 2021), 86 FR 23775 (May 4, 2021) (SR–CBOE–2021–026) (extending the Program through November 1, 2021); 93459 (October 28, 2021), 86 FR 60663 (November 3, 2021) (SR–CBOE–2021–063) (extending the Program through May 2, 2022); 94800 (April 27, 2022) 87 FR 26248 (May 3, 2022) (SR–CBOE–2022–021 (extending the Program through November 7, 2022); *and* 96223 (November 3, 2022), 87 FR 67728 (November 9, 2022) (SR–CBOE–2022–055) (extending the Program through May 8, 2023).

[12] The Exchange recently proposed to make the pilot program permanent. *See* Securities Exchange Act Release No. 97371 (April 25, 2023) (SR–CBOE–2023–020).

[13] The SPX and XSP options market quality data includes time-weighted relative quoted spreads, relative effective spreads and time-weighted bid and offer sizes, over sample periods determined by the Exchange and the Commission.

[14] Available at *https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/non-standard-expiration-data.*

[15] The Exchange notes that from the Program's implementation in 2010 through 2014, the Program ran on a 14-month basis, and, in 2014, the Program was extended to run on a bi-annual pilot basis. *See* Securities Exchange Act Release No. 71836 (April 1, 2014), 79 FR 19139 (April 7, 2014) (SR–CBOE–2014–027). The Program continues to run on a bi-annual basis today.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20]

A proposed rule change filed under Rule 19b–4(f)(6) [21] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [22] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow it to extend the Program prior to its expiration on May 8, 2023, and maintain the status quo, thereby reducing market disruption. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the Program. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[23]

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2023–023 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–CBOE–2023–023. 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 (*https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CBOE–2023–023, and should be submitted on or before June 1, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–10034 Filed 5–10–23; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97440; File No. SR–MRX–2023–08]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Options 7, Section 3

May 5, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 24, 2023, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 the Exchange's Pricing Schedule at Options 7, Section 3 (Regular Order Fees and Rebates).

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Options 7, Section 3 (Regular Order Fees and Rebates).

Today, as set forth in Table 1 of Options 7, Section 3, the Exchange assesses the following fees for regular orders in Penny Symbols:

PENNY SYMBOLS

Market participant	Maker fee Tier 1	Maker fee Tier 2	Taker fee Tier 1	Taker fee Tier 2
Market Maker	$0.20	$0.10	$0.50	$0.50
Non-Nasdaq MRX Market Maker (FarMM)	0.47	0.47	0.50	0.50
Firm Proprietary/Broker-Dealer	0.47	0.47	0.50	0.50
Professional Customer	0.47	0.47	0.50	0.50
Priority Customer	0.00	0.00	0.00	0.00

In addition, the Exchange currently offers a growth incentive that allows Market Makers [3] to reduce their maker fees described above.[4] Specifically, Market Makers may qualify for a reduction in the Tier 1 and Tier 2 Maker Fees described above if the Market Maker has increased its volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume [5] by at least 100% over the Member's December 2022 Market Maker volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume. Market Makers that qualify would have their Tier 1 Maker Fee reduced to $0.08 and their Tier 2 Maker Fee reduced to $0.04. From January 3, 2023 until June 30, 2023, Market Makers with no volume in the Penny Symbol add liquidity segment for the month of December 2022 may qualify for the reduced Tier 1 and Tier 2 Maker Fees by having any new volume considered as added volume. As stated in the adopting filing, the Exchange offers this temporary incentive from January 3, 2023 until June 30, 2023 in order to encourage new Market Makers to join MRX, and is using this time period to evaluate the appropriate parameters going forward for market participants with no December 2022 volume in the targeted segment.[6]

The Exchange now proposes to amend this Market Maker growth incentive by expanding the sunset date from the current new Market Maker portion of the incentive to the entire incentive. As amended, note 6 will provide:

> Market Makers may qualify for a reduction in the Tier 1 and Tier 2 Maker Fees described above if the Market Maker has increased its volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume by at least 100% over the Member's December 2022 Market Maker volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume. Market Makers that qualify will have their Tier 1 Maker Fee reduced to $0.08 and their Tier 2 Maker Fee reduced to $0.04. Market Makers with no volume in the Penny Symbol add liquidity segment for the month of December 2022 may qualify for the reduced Tier 1 and Tier 2 Maker Fees by having any new volume considered as added volume. This note 6 incentive will be available to Market Makers until June 30, 2023.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [9]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system

[3] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[4] *See* Options 7, Section 3, note 6.

[5] ''Customer Total Consolidated Volume'' means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month. *See* Options 7, Section 1(c).

[6] *See* Securities Exchange Act Release No. 97148 (March 15, 2023), 88 FR 17068 (March 21, 2023) (SR–MRX–2023–07).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

"has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies." [10]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that it is reasonable to have the growth incentive in note 6 expire on June 30, 2023. Currently, only the new Market Maker portion of this incentive expires on June 30, 2023.[11] The proposal is reasonable because it will continue to provide extra incentives to Market Makers to engage in substantial amounts of liquidity adding activity in Penny Symbols on the Exchange, as well as to grow substantially the extent to which they do so relative to a recent benchmark month. The Exchange believes that sunsetting the note 6 incentive within six months of the base month (December 2022) will ensure that the benchmark against which Market Maker growth is measured is timely and meets the intended purpose of encouraging increased order flow.

The Exchange believes that its proposal to have the note 6 growth incentive expire on June 30, 2023 is equitable and not unfairly discriminatory because the proposed expiration date will be applied uniformly to all Market Makers. The Exchange continues to believe that it is equitable and not unfairly discriminatory to provide the note 6 growth incentive to only Market Makers because Market Makers have different requirements and additional obligations to the Exchange that other market participants do not (such as quoting requirements). As such, this growth incentive is designed to increase Market Maker participation and reward Market Makers for the unique role they play in ensuring a robust market. As discussed above, the note 6 incentive is designed to encourage Market Makers to substantially add Penny Symbol liquidity to the Exchange, to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. The proposed change to sunset the note 6 incentive on June 30, 2023 does not impose an undue burden on intra-market competition because all Market Makers will have the opportunity to qualify for this growth incentive for the six months it is offered. The Exchange also believes that the Market Maker growth incentive will continue to encourage the provision of liquidity from both existing and new Market Makers that enhances the quality of the Exchange's market and increases the number of trading opportunities on the Exchange for all market participants who will be able to compete for such opportunities.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act,[12] and Rule 19b–4(f)(2) [13] 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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2023–08 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–MRX–2023–08. 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 (*https://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

[10] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

[11] Specifically, the rule provides that from January 3, 2023 until June 30, 2023, Market Makers with no volume in the Penny Symbol add liquidity segment for the month of December 2022 may qualify for the reduced Tier 1 and Tier 2 Maker Fees by having any new volume considered as added volume.

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–MRX–2023–08 and should be submitted on or before June 1, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–10031 Filed 5–10–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97439; File No. SR–OCC–2023–002]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Granting Approval of Proposed Rule Change by the Options Clearing Corporation Concerning the Amendment of Its Clearing Membership Standards

May 5, 2023.

I. Introduction

On March 3, 2023, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2023–002 pursuant to section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4[2] thereunder. The proposed rule change concerns proposed changes to OCC's standards for its members. The proposed rule change was published for public comment in the **Federal Register** on March 21, 2023.[3] The Commission has received no comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Background[4]

OCC acts as the central counterparty (''CCP'') for all listed options in the U.S., as well as for certain futures. It provides clearing services to its members, which are financial organizations that, in turn, facilitate the clearing and settlement of their customer transactions or proprietary transactions through OCC. OCC is proposing to change its rules that address standards for its membership by (i) expanding its membership types and updating its membership requirements and associated processes, including on-boarding and off-boarding procedures; (ii) amending members' financial responsibility standards; (iii) amending members' operational requirements; and (iv) changing rules governing disciplinary actions.

(i) Member Eligibility, On-Boarding, and Termination

OCC proposes rule changes to expand the types of entities that are eligible to become Clearing Members, while removing distinctions between certain membership categories to ensure consistent requirements across members. The proposed rule changes would also consolidate and streamline the procedures and requirements for admitting new members. Further, the proposed rule changes would allow a member to elect to voluntarily terminate its membership.

Currently, OCC's Articles and By-Laws permit three different types of institutions eligible for clearing membership: (i) broker-dealers, (ii) futures commission merchants, and (iii) non-U.S. securities firms. The proposed rule change would expand the list of eligible institutions to include certain banks.[5] OCC proposes limiting bank membership to clearing proprietary activity only. The proposed rules would also require a bank member to provide assurances regarding its activities and ability to contribute collateral.

In addition to expanding its list of eligible institutions to include banks, OCC proposes additional revisions to member eligibility. For example, proposed Rule 201(b)(5) would clearly state the types of members who may clear stock loan transactions (*i.e.,* broker-dealers, non-U.S. securities firms, or banks). Similarly, proposed Rule 201(d) requires that each member meet standards related to risk management capability, in addition to the current requirements related to financial and operational capabilities.

The proposed rule change is designed to accommodate the admission of non-U.S. Clearing Members other than Canadian Clearing Members.[6] Broadly, the changes would require that such members not conduct transactions or activities that would result in the imposition of taxes, withholding, or reporting obligations with respect to amounts paid or received by OCC (other than U.S. federal and state income taxes imposed on OCC's income).[7]

The proposed rule change would consolidate the admission procedures and requirements and modify such admission procedures and requirements to help streamline the application review process.[8] For example, proposed Rule 203(b) would include information about expedited approval through OCC's Risk Committee, if the approval of the applicant is appropriate for the protection of investors and the public interest. Moreover, proposed Rule 203(c) would allow for Clearing Members to clear additional types of transactions by requesting authorization from OCC through a business expansion request.

The proposed rule change would amend the conditions for admission as an OCC member.[9] Such amendments would impose requirements on applicants (*e.g.,* an applicant must notify OCC in writing if it is or becomes subject to Statutory Disqualification)[10]

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 97150 (Mar. 15, 2023), 88 FR 17046 (Mar. 21, 2023) (File No. SR–OCC–2023–002) (''Notice of Filing'').

[4] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

[5] OCC also proposes relocating the list of eligible institutions in its rules from Article V of the By-Laws to new Rule 201(a)(1) through (a)(3).

[6] OCC also proposes relocating existing Article V, Section 1, paragraph (e) of the By-Laws and Rule 310(d) to new Rule 202.

[7] Relatedly, OCC also proposes to move various defined terms from its Bylaws to Chapter 1 of its Rules, such as: Canadian Clearing Member, FATCA, FATCA Compliant, FFI Clearing Member, Non-U.S. Regulatory Agency, Non U.S. Securities Firm, Qualified Intermediary Assuming Primary Withholding Responsibility, and Qualified Derivatives Dealer.

[8] OCC also proposes relocating existing Article V, Section 2 and Article V, Section 1, Interpretation and Policy .03, clause (e) of the By-Laws to new Rule 203.

[9] OCC also proposes consolidating such provisions currently set forth in existing Article V, Section 3 and various other portions of Article V of the By-Laws into new Rule 204.

[10] OCC proposes to move the definition of Statutory Disqualification from its By-Laws to Chapter 1 of its rules, move the majority of its current Rule 217 regarding Statutory Disqualification to proposed Rule 308, and remove

Continued

as well as make less substantive updates (*e.g.,* removal of a duplicative choice of law provision addressed elsewhere in OCC's rules). The changes also describe, with minor clarifying changes, the terms of a new member's initial contribution and agreements; disapproval where an applicant engages in acts or practices inconsistent with ''just and equitable principles of trade;'' and other admission conditions.

The proposed rule change would adopt new Rule 212 to address circumstances in which a Clearing Member may elect to voluntarily terminate its membership. OCC's current Rules include information about voluntary membership termination, but only under certain specific circumstances, such as if the member's Clearing Fund contribution is increased as a result of an amendment of the Rules,[11] or during a cooling-off period.[12] Among other things, proposed Rule 212 would provide that a Clearing Member may elect to voluntarily terminate its membership by providing written notice to OCC that specifies a desired date for its withdrawal from membership. The terminating Clearing Member will be required to close out or transfer all open positions with OCC by the termination date.

Additionally, OCC proposes to relocate existing rules,[13] remove distinctions between certain membership categories to ensure consistent requirements across members,[14] and remove rules regarding implementation dates that have already passed.[15]

(ii) Financial Responsibility Standards

OCC proposes to eliminate the current distinction between initial and ongoing capital requirements for its members.[16] OCC also proposes to increase the minimum financial requirements for members and set out requirements for banks as a new member category.[17] The current broker-dealer and FCM minimum requirement of $2.5 million in initial capital and adjusted net capital would be increased to $10 million in net capital and adjusted net capital.[18] Similarly, OCC proposes to set capital requirements for Canadian Investment Dealers and Non-U.S. Securities Firms at $10 million generally.[19] The proposed rule change also introduces capital requirements for banks as a new type of Clearing Member. Specifically, U.S. banks would be required to maintain Tier 1 Capital of at least $500 million, a Tier 1 Capital Ratio greater than 6%, and be either ''well-capitalized'' or ''adequately-capitalized'' as measured by prompt corrective action (''PCA'') capital category ratios applicable to such U.S. Banks. OCC represents that, upon Commission approval of the proposed rule change, OCC would provide a six-month grace period for existing Clearing Members to meet the proposed increase in capital requirements.[20]

(iii) Operational Requirements

OCC proposes changes to rules governing certain operation requirements and processes for its members. As described below, such changes include, but are not limited to, the acceptance of e-signatures, record retention requirements, and the consolidation of existing rules.[21]

OCC proposes changes to its rules designed to reflect changes in technology. OCC proposes to expand its rules to permit the reliance on electronic signatures, in addition to reliance on an original signature.[22] Additionally, OCC proposes to remove references to authorization stamps as a security measure because OCC no longer uses such stamps.[23] Additionally, OCC proposes removing its current Rule 204 that requires members to designate physical locations as clearing offices of the Clearing Member, because the rule is no longer relevant to OCC's operations or to its Clearing Members given the migration of trading, clearance and settlement activities to electronic means.

OCC proposes changes to its rules regarding various submissions and reports between OCC and its members. OCC proposes to align its rules regarding the submission to and retrieval from OCC of documents by Clearing Members.[24] The proposed rules also permit OCC to disregard untimely submissions from a Clearing Member, except in unusual or unforeseen circumstances. Additionally, OCC proposes to require that it post proposed rule changes on its website after (rather than before) filing such changes to provide notice to members.[25]

OCC also proposes to reorganize and update various rules pertaining to member processes and operational requirements. With regard to member processes, OCC proposes to streamline its rule regarding record retention requirements for Clearing Members to state that such requirements apply to all

certain provisions related to hearings that are duplicative of authority under OCC's rules.

[11] *See* OCC Rule 1002(e).

[12] *See* OCC Rule 1006(h)(C). Proposed Rule 212(d) would clarify that any Voluntary Termination Notice provided during a cooling-off period implemented pursuant to Rule 1006(h) would be subject to the requirements of Rule 1006(h).

[13] OCC proposes to relocate requirements applicable to Canadian Hedge Clearing Members on behalf of which CDS maintains an identifiable sub-account at DTC to existing Rule 2201, which addresses instructions provided to OCC. Specifically, OCC would propose relocating portions of existing Article V, Section 1, Interpretation and Policy .07 to Rule 2201(c) and (d).

[14] OCC proposes to replace the following distinct membership categories with general references to ''Clearing Member'' and make them subject to the standards for all Clearing Members: Canadian Hedge Clearing Member; Domestic Clearing Member; Exempt Non-U.S. Clearing Member; Futures-only affiliated Clearing Member; Hedge Clearing member; Managed Clearing Member; Managing Clearing Member; and Market Loan Clearing Member. OCC proposes to maintain the concept of Appointing Clearing Members and Appointed Clearing Members, but these members would no longer be subject to distinct or different membership standards.

[15] OCC proposes to remove defined terms ''Section 871(m) Effective Date'' and ''Section 871(m) Implementation Date'' as well as references to these terms because these dates have passed and the defined terms are no longer necessary.

[16] OCC proposes to replace current Rules 301 and 302, which set forth initial financial requirements and ongoing net capital requirements, respectively, with new Rule 301.

[17] OCC would continue not to permit opening purchase transactions, opening sale transactions, or entering into a Stock Loan by members not meeting such standards. OCC proposes to move the language related to this requirement from current Rule 302(a) to proposed Rule 301(b). The proposed rule change would also delete existing Rule 309A, which sets forth minimum capital and other requirements for Appointed Clearing Members because these concepts are no longer a distinct membership type.

[18] For broker-dealers, the minimum net capital would be equal to the greater of (i) $10 million; (ii) 6⅔% of its aggregate indebtedness (in the case of a broker-dealer that does not elect to operate pursuant to the alternative net capital requirements); or (iii) 2% of its aggregate debit items (in the case of a broker-dealer that elects to operate pursuant to the alternative net capital requirements). For FCMs, the minimum net capital would be equal to the greater of (i) $10 million or (ii) any other minimum financial requirements established by regulation of the Commodity Futures Trading Commission.

[19] The change would increase the current warning reserve requirement from $2.5 million to $10 million for Canadian Investment Dealers.

[20] *See* Notice of Filing, 88 FR at 17052.

[21] OCC also proposes relocating its current Rule 203 (requiring members to establish and maintain a bank account in a Clearing Bank for each account maintained by it with OCC) to proposed Rule 206. OCC proposes no changes to the text of current Rule 203.

[22] OCC stated that the change is intended to better reflect evolving technology and the means by which signatures generally may be accepted. *See* Notice of Filing, 88 FR at 17051. OCC also proposes to renumber current Rule 202, which discusses such signature requirements, as new Rule 205.

[23] OCC proposes to renumber its current Rule 212 regarding security measures (including authorization stamps) as proposed Rule 209.

[24] To facilitate this alignment, OCC proposes to combine its current Rules 205 (submissions by members) and 206 (retrievals from OCC) into proposed Rule 207.

[25] Rule 19b–4(l) under the Exchange Act requires OCC to post each proposed rule change to its website within two business days of filing such change. 17 CFR 240.19b–4(l). OCC further proposes to consolidate its current Rules 208, 211, and 213 (regarding reports and notices by OCC) in proposed Rule 211 subject to the modifications described here.

confirmed trade data required pursuant to the By-Laws and Rules, including confirmed trade information reported to OCC under Rule 401.[26] With regard to operational requirements, OCC proposes to consolidate existing provisions regarding Clearing Members' operational capability in proposed Rule 302.[27] In addition to consolidation, OCC proposes the following changes to such requirements:

- Adopt a new general statement requiring members to meet OCC's operational capability, experience and competence standards;
- Require that an authorized representative of each Clearing Member be available during regular and overnight business hours;
- Simplify and standardize the record keeping requirements applicable to each Clearing Member;
- Clarify that each Clearing Member must be able to participate in applicable operational and default management activities; and
- Make additional minor clarifying changes.

Proposed Rule 302 would also set forth the requirement that Clearing Members must maintain operationally sufficient facilities, systems, and procedures to discharge their clearing functions in a timely and efficient manner. The proposed rule also provides additional operational requirements for Clearing Members that effect transactions in physically-settled equity options and stock futures, or participate in OCC's stock loan programs.

Further, OCC proposes to apply its existing rules regarding an applicant's financial, operations, and risk management personnel to OCC Clearing Members.[28] Under OCC's current rules, different personnel requirements exist for applicants and Clearing Members. OCC's proposal would make such requirements the same for both. In addition to applying the personnel requirements for applicants to Clearing Members, OCC proposes to change such standards as follows. Proposed Rule 303(a) would provide that every applicant and Clearing Member must employ personnel or maintain contractual arrangements with third-party service providers acceptable to OCC with substantial experience in clearing the kind(s) of cleared contracts applicable to the applicant or Clearing Member. Proposed paragraph (b) would require Clearing Members to employ personnel or retain third-party service providers responsible for Clearing Members' compliance with applicable net capital, recordkeeping and other financial, operational, and risk management rules. Proposed paragraph (c) would require Clearing Members to ensure that they employ an appropriate number of clearing operations personnel or retain third-party service providers with requisite capability, experience, and competency, among other requirements. The proposed Rule also sets forth additional requirements for contractual arrangements with third-party personnel, as well as requirements for replacing relevant personnel or third-party providers who are being separated or terminated from OCC. The proposed modifications to the existing financial, operations, and risk management personnel requirements include eliminating the requirements for Managed Clearing Members and Managing Clearing Members, and removing references to facilities management agreements, Managing Clearing Members and Managed Clearing Members. These requirements, in current Rule 309, would be replaced by proposed Rule 303's more general rules for outsourcing third-party service providers. According to OCC, the modifications are intended to reduce administrative burdens and provide OCC and its Clearing Members with greater flexibility.[29]

OCC proposes to add two new rule provisions designed to expand its rules related to operational and default management testing.[30] The first would state that OCC will periodically designate Clearing Members required to participate in business continuity and disaster recovery testing. The second would state that OCC may require Clearing Members to participate in other operational and connectivity testing and related reporting requirements that OCC deems necessary to ensure the continuing operational capability of the Clearing Members and the continuing ability of OCC to perform its clearing, settlement, and risk management activities.

OCC proposes three sets of changes to its rules regarding notification and reporting requirements for Clearing Members.[31] First, OCC proposes to add a rule stating that each Clearing Member must provide to OCC such notices, reports, documentation, or other information required in the Rules and any other requirements promulgated by OCC. In contrast, OCC's current rules prescribe a series of narrow notice requirements under specific circumstances such as currently requiring ''prompt'' written notice (rather than 30-day prior written notice).

Second, OCC proposes to change the requirements for event-based reporting by Clearing Members.[32] Specifically, proposed Rule 306A(a) would require Clearing Members to provide early-warning notices to OCC of any financial or operational difficulty, or any instances where a Clearing Member fails to meet certain financial or operational thresholds, depending on the nature of the Clearing Member's business. For example, if the Clearing Member is a fully-registered broker-dealer and fails to meet specific thresholds for net capital, it would need to provide an early-warning notice to OCC. The proposed rule also provides the specific circumstances where early-warning notices would be required from other Clearing Member types, such as fully-registered FCMs, non-U.S. securities firms, and banks. Proposed Rule 306A(b) sets forth the requirements for Clearing Members to report material changes to their organizational structure, finances, or operations; their intentions to enter into, terminate, or alter outsourcing activities; and provide other types of event-based reporting or responses to information requests from OCC. Proposed Rule 306A(c) provides the statutory disqualification notification requirements for Clearing Members.

Third, OCC proposes to change the requirements for periodic reporting by Clearing Members.[33] The proposed rule

[26] OCC's current rule requires retention of such information by referencing specific types of information by product (*e.g.,* the series, trade price, and trade date with respect to confirmed trades in BOUNDS). In addition to the modifications described here, OCC proposes to renumber its current Rule 207 regarding record retention requirements as proposed Rule 208.

[27] Proposed Rule 302 is a consolidation of requirements set forth in the existing By-Laws and the Rules, including Article V, Section 1, Interpretations and Policies .02, .07 and .07A of the By-Laws and current Rule 201.

[28] As an organizational matter, OCC proposes to consolidate the personnel requirements set forth in Article V, Section 1 of the By-Laws as well as current Rule 214 in proposed Rule 303.

[29] *See* Notice of Filing, 88 FR 17055.

[30] As an organizational matter, OCC proposes to move existing Rule 218 regarding operational and default management testing to proposed Rule 304 subject to the changes described here. Additionally, OCC proposes a few non-material changes (*e.g.,* replacing ''will'' with ''shall'').

[31] These requirements would be consolidated from various provisions of the By-Laws and Rules, including existing Article V, Section 1, Interpretations and Policies .03 and .07 of the By-Laws and Rules 201(b), 215, 216, 217(b), 303, 306, 308, and 310(a)–(c).

[32] OCC's current event-based reporting requirements for members, set forth in existing Article V, Section 1, Interpretations and Policies .03 (clause (c)) and .07 of the By-Laws and existing Rules 201(b), 215, 217(b) and 303, would be consolidated in proposed Rule 306A.

[33] OCC's current periodic reporting requirements for members, set forth in existing Rules 216, 306,

Continued

would cover periodic reporting of financial reports and annual audited financial statements, as well as the timing and frequency of such reporting, including providing OCC discretion to allow for extensions.

(iv) Protective Measures and Disciplinary Actions

OCC proposes to change its rules related to (i) the imposition of protective measures on Clearing Members who may pose a risk to OCC and (ii) disciplinary actions OCC may take in response to violations of its rules. With regard to the imposition of protective measures, OCC proposes to adopt new Rule 307, which would grant OCC the authority to impose broader protective measures on a member or applicant that (i) is approaching or does not meet OCC's minimum membership standards or fails to provide information such that OCC is unable to determine whether it meets the minimum membership standards, (ii) presents increased credit or liquidity risk to OCC, (iii) is subject to enhanced monitoring and surveillance under OCC's watch level reporting process, or (iv) whose financial condition, operational capability, or risk management capability otherwise makes it necessary or advisable, for the protection of OCC, other Clearing Members, or the general public.[34] Although proposed Rule 307 would not provide OCC with entirely new authority to impose protective measures, it would clarify that OCC has the authority to impose such measures under a broader set of circumstances, not just on Clearing Members, but on applicants for membership as well. Additionally, OCC proposes to modify two of its current rules regarding the imposition of protective measures on its members.[35] OCC proposes to clarify that restrictions on distributions apply to all qualified regulatory capital (as opposed to funds from specific accounts), and to provide that OCC may prohibit a Clearing Member from withdrawing qualified regulatory capital if it is subject to enhanced monitoring and surveillance under OCC's watch level reporting process or the distribution could increase OCC's credit or liquidity risk.[36] Further, the proposal would permit OCC to impose activity restrictions as additional protective measures.[37] The proposed changes would link certain restrictions on activities to the potential risks posed by that Clearing Member (*e.g.,* limiting transactions that increase credit or liquidity risk).[38] OCC also proposes to adopt a new Rule 307C that would authorize it to impose protective measures in the form of additional operational, personnel, financial resource, or risk management requirements.

With regard to disciplinary actions, OCC proposes to increase the potential fines for minor rule violations (*e.g.,* increasing the fine for a first occasion from $300 to $1500).[39] Additionally, the proposed rules would reduce the number of minor rule violations within a twenty-four month period that would result in a disciplinary proceeding from four to three violations. OCC also proposes to modify its current Rule 209 to require that any fine levied by OCC for a minor rule violation that has not been timely contested will be due and payable immediately upon notice as opposed to within five business days following the end of each calendar month.[40]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[41] After carefully considering the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Exchange Act sections 17A(b)(3)(B), (F), and (G)[42] as well as Rules 17Ad–22(e)(2)(i) and 17Ad–22(e)(18),[43] as described in detail below.

A. Consistency With Section 17A(b)(3)(B) of the Exchange Act

Section 17A(b)(3)(B) of the Exchange Act requires that the rules of a clearing agency provide, among other things, that any registered broker or dealer, bank may become a participant in such clearing agency.[44] OCC's rules currently allow for registered broker-dealers to become members if they meet the applicable membership requirements. As described above, OCC proposes to expand the list of entities eligible for membership to include banks. Such expansion includes the description of specific standards for banks to become Clearing Members. These standards, including bank-specific financial thresholds, operational requirements, and risk requirements, are consistent with the types of standards for other entities already eligible for clearing membership with OCC, such as broker-dealers and futures commission merchants. The Commission believes, therefore, that the proposal is consistent with the requirements of section 17A(b)(3)(B) of the Exchange Act.

B. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that a clearing agency's rules are designed to promote the prompt and accurate clearance and settlement of securities transactions and are not designed to permit the unfair discrimination in the admission of participants or among participants in the use of the clearing agency.[45]

As described above, OCC proposes to align and strengthen its financial responsibility standards for members. OCC also proposes to modify its operational requirements for members to (i) reflect changes in technology (*e.g.,* allowing for reliance on electronic signatures); (ii) remove provisions no longer applicable to current practice (*e.g.,* the use of authorization stamps or

308 and 310(a)–(c), would be consolidated in proposed Rule 306B.

[34] OCC proposes a conforming change to its Rule 609 regarding the imposition of intraday margin. Specifically, OCC proposes to expand the grounds for imposing additional margin requirements to contemplate not only a member's financial position, but also its operational and risk management conditions. Similarly, OCC proposes to add a statement to current Rule 311 (renumbered as proposed Rule 305) authorizing the imposition of protective measures based on a review of a member's risk management policies, procedures, and practices.

[35] OCC's current Rules 304 (restrictions on distributions) and 305 (restrictions on certain transactions, positions, and activities) would be renumbered as proposed Rules 307A and 307B, respectively.

[36] OCC would also remove certain distinctions from its current rules such that restrictions on distributions would apply consistently across member types.

[37] Currently, OCC may impose such restrictions based on certain broad determinations. The proposed change would align the threshold with the terms of proposed Rule 307.

[38] OCC also proposes to remove a non-exhaustive list of situations in which OCC may impose protective measures.

[39] In addition to the modification described here, OCC proposes to consolidate rules regarding minor rule violations. Specifically, OCC proposes to relocate rule 1201(b), 215(e) and 215(f) and Interpretation and Policy .01 to proposed Rule 1203. Further, current Rule 1203 would be renumbered as proposed Rule 1204.

[40] In addition to the modification described here, OCC proposes to renumber current Rule 209 as proposed Rule 210.

[41] 15 U.S.C. 78s(b)(2)(C).

[42] 15 U.S.C. 78q–1(b)(3)(B), 15 U.S.C. 78q–1(b)(3)(F), and 15 U.S.C. 78q–1(b)(3)(G).

[43] 17 CFR 240.17Ad–22(e)(2)(i) and 17 CFR 240.17Ad–22(e)(18).

[44] 15 U.S.C. 78q–1(b)(3)(B).

[45] 15 U.S.C. 78q–1(b)(3)(F).

designation of a physical location as a clearing office); and (iii) expand requirements with regard to members' operational capability, personnel, and reporting, as well as testing (*e.g.,* participation in business continuity testing). The Commission believes that such enhancements to OCC's financial and operational standards for Clearing Members should help to ensure that OCC's Clearing Members are capable of meeting their obligations to OCC, which in turn will help ensure that OCC continues to promote the prompt and accurate clearance and settlement of securities transactions.

Further, OCC proposes to consolidate its admission procedures and requirements and modify such admission procedures and requirements to help streamline the application review process. The Commission believes that such streamlining should promote consistent application across membership types, which, in turn may reduce the likelihood of unfair discrimination in the admission of OCC's Clearing Members. OCC also proposes to amend its conditions for member admission (*e.g.,* an applicant must notify OCC in writing if it is or becomes subject to Statutory Disqualification), and directly address voluntary membership termination.

The Commission believes, therefore, that the proposal is consistent with the requirements of section 17A(b)(3)(F) of the Exchange Act.

C. Consistency With Section 17A(b)(3)(G) of the Exchange Act

Section 17A(b)(3)(G) of the Exchange Act requires, among other things, that the rules of a clearing agency provide that its participants shall be appropriately disciplined for violation of any provision of the rules of that clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.[46]

As described above, OCC proposes to broaden its authority to impose protective measures on Clearing Members who may pose a risk to OCC. Such measures include the imposition of financial obligations, such as additional margin requirements, as well as activity restrictions. OCC also proposes to raise fines, reduce the threshold for instituting a disciplinary proceeding, define when fines for uncontested violations become due, and make other strengthening changes to the way it enforces and addresses minor rule violations. The Commission believes that strengthening OCC's ability to respond to risks and violations in this way is consistent with the requirements of section 17A(b)(3)(G) of the Exchange Act.

D. Consistency With Rule 17Ad–22(e)(2)(i) of the Exchange Act

Rule 17Ad–22(e)(2)(i) requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent.[47]

OCC's existing membership eligibility requirements, admissions criteria, and ongoing standards are scattered across OCC's By-Laws and Rules. As described above, OCC proposes to reorganize, relocate, or consolidate such rule text into chapters 2 and 3 of OCC's Rules (along with supporting definitional changes to chapter 1 of OCC's rules). Further, OCC proposes other non-substantive wording changes throughout its rules (*e.g.,* changing ''will'' to ''shall''). Because such changes would improve the readability of OCC's publically available rules, which, in turn, would make such rules clearer and more transparent to members and the public, the Commission believes that such changes are consistent with Rule 17Ad–22(e)(2)(i).[48]

E. Consistency With Rule 17Ad–22(e)(18) of the Exchange Act

Rule 17Ad–22(e)(18) requires a covered clearing agency to establish, implement, maintain, and enforce policies and procedures reasonably designed to, among other things, establish objective, risk-based, and publically disclosed criteria for participation, which permit fair and open access by direct participants, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and to monitor compliance with such participation requirements on an ongoing basis.[49]

As stated above, OCC proposes to align and strengthen its financial responsibility standards for members. OCC also proposes to modify its operational requirements for members to (i) reflect changes in technology (*e.g.,* allowing for reliance on electronic signatures); (ii) remove provisions no longer applicable to current practice (*e.g.,* the use of authorization stamps or designation of a physical location as a clearing office); and (iii) expand requirements with regard to members' operational capability, personnel, and reporting, as well as testing (*e.g.,* participation in business continuity testing). The Commission believes that such enhancements to OCC's financial and operational standards should help to ensure that OCC's membership has sufficient financial resources and robust operational capacity to meet obligations for participation in OCC. Further, OCC proposes to modify and consolidate its admission procedures and requirements to help streamline the application review process. The Commission believes that such streamlining should promote consistent application across membership types, which, in turn, would permit fair and open access by direct participants.

Therefore, the Commission believes, therefore, that the proposal is consistent with the requirements of Rule 17Ad–22(e)(18) of the Exchange Act.[50]

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act, and in particular the requirements of section 17A of the Exchange Act[51] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[52] that the proposed rule change (SR–OCC–2023–002) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–10029 Filed 5–10–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–524, OMB Control No. 3235–0582]

Proposed Collection; Comment Request; Extension: Form N–PX

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995

[46] 15 U.S.C. 78q–1(b)(3)(G).

[47] 17 CFR 240.17Ad–22(e)(2)(i).

[48] 17 CFR 240.17Ad–22(e)(2)(i).

[49] 17 CFR 240.17Ad–22(e)(18).

[50] 17 CFR 240.17Ad–22(e)(18).

[51] In approving this proposed rule change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[52] 15 U.S.C. 78s(b)(2).

[53] 17 CFR 200.30–3(a)(12).

(44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

On November 2, 2022, the Commission adopted rule and form amendments (''Amendments'') that would enhance the information funds report on Form N–PX and make that information easier to analyze.[1] The Commission also adopted a new rule that would require an institutional investment manager subject to section 13(f) of the Securities Exchange Act of 1934 (''Exchange Act'') to report annually on Form N–PX how it voted proxies relating to executive compensation matters, as required by section 14A of the Exchange Act. The Amendments require funds (and, for executive compensation matters, institutional investment managers) to (i) identify voting matters using language from the issuer's form of proxy (with certain exceptions for issuers who are not subject to the Commission's proxy rules) and categorize their votes from a list of categories; (ii) disclose quantitative information regarding the number of votes cast (or instructed to be cast) and the number of shares not voted because they are out on loan; and (iii) file reports in an XML structured data language using a standardized format. In addition, the Amendments included changes to Forms N–1A, N–2, and N–3 that require funds, if they have a website, to disclose that their proxy voting records are publicly available on or through their websites, free of charge, and to make this information available on or through its website as soon as reasonably practicable after filing a report on Form N–PX with the Commission.

The purpose of Form N–PX is to meet the filing and disclosure requirements of rules under the Act and also to enable funds to provide investors with information necessary to evaluate overall patterns in the manager's voting behavior. This information collection is primarily for the use and benefit of investors. The information filed with the Commission also permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information. Due to the Amendments, Form N–PX will also be used by institutional investment managers to meet the filing and disclosure requirements of section 14A under the Exchange Act.

The table below summarizes our estimates associated with the amendments to Form N–PX that the Amendments address:

FORM N–PX PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours [1]		Wage rate [2]	Internal time costs	Annual external cost burden
Funds Holding Equity Securities						
Estimated annual burden of current Form N–PX per response	....	7.2	×	[3] $400	$2,880	$1,000
Estimated initial burden to accommodate new reporting requirements	36	12	×	[4] 349	$4,188	$500
Additional estimated annual burden associated with amendments to Form N–PX	....	12	×	[5] 349	$4,188	$1,000
Website availability requirement [6]	....	0.5	×	[7] 272	$136	....
Estimated number of annual responses [8]	....	× *5,496*		....	× *5,496*	× *5,496*
Total annual burden	....	188,490	....	....	$67,737,479	$14,865,142
Funds Not Holding Equity Securities						
Estimated annual burden of current Form N–PX per response	....	0.17	×	[3] 400	$68	....
Additional estimated annual burden associated with amendments to Form N–PX	....	....		....	....	....
Estimated number of annual responses [8]	....	× *2,588*		....	× *2,588*	....
Total annual burden	....	440	....	....	$176,005	....
Funds of Funds						
Estimated annual burden of current Form N–PX per response	....	1	×	[3] 400	$400	$100
Additional estimated annual burden associated with amendments to Form N–PX	....	0.5	×	[3] 400	$200	$100
Website availability requirement [6]	....	0.5	×	[6] 272	$136	....
Estimated number of annual responses [8]	....	× *1,619*		....	× *1,619*	× *1,619*
Total annual burden	....	3,238	....	....	$1,191,584	$323,800

[1] Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, Investment Company Release No. 34745 (November 2, 2022) [87 FR 78770 (Dec. 22, 2022)] (''Adopting Release'').

FORM N–PX PRA ESTIMATES—Continued

	Internal initial burden hours	Internal annual burden hours [1]		Wage rate [2]	Internal time costs	Annual external cost burden
Institutional Investment Managers						
Changes to systems to accommodate new reporting requirements	45	15	×	[9] 349	$5,235	$500
Estimated annual burden associated with Form N–PX filing requirement	....	7.5	×	[10] 343	$2,573	$2,000
Estimated number of annual responses	....	× *8,381*		....	× *8,381*	× *8,381*
Total annual burden	....	188,572	....	....	$65,438,848	$20,952,500
Total Burden						
Currently Approved Burden	....	47,984		....	....	$17,657,958
Additional Burden Associated with Amendments	....	332,757		....	....	$18,483,484
Total Burden	....	380,741	....	....	....	$36,141,445

Certain products and sums do not tie due to rounding.

[1] Includes initial burden estimates amortized over a three-year period.

[2] The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted annually to account for the effects of inflation, with the last adjustment before the adoption of the Amendments occurring in early 2022. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

[3] Represents the estimated hourly wage rate of a compliance attorney.

[4] Represents the blended estimated hourly wage rates of a programmer and a compliance attorney and includes, *inter alia,* the costs of obtaining from service providers data on the number of shares on loan but not recalled. In the case of the final estimates, the blended hourly rate is based on 18 hours for a programmer at $297 per hour and 18 hours for a compliance attorney at $400 per hour.

[5] Represents the blended estimated hourly wage rates of a programmer and a compliance attorney. In the case of the final estimates, the blended hourly rate is based on 6 hours for a programmer at $297 per hour and 6 hours for a compliance attorney at $400 per hour.

[6] While the Amendments will require funds to disclose that their proxy voting records both are available on fund websites and will be delivered to investors upon request, the Form N–PX PRA estimates includes only the burdens associated with website posting. Funds' registration forms currently require them to disclose that they either make their proxy voting records available on their websites or deliver them upon request. We understand most funds deliver proxy voting records upon request and, therefore, the burdens of delivery upon request are already included in the information collection burdens of each relevant registration form.

[7] Represents the estimated hourly wage rate of a webmaster.

[8] These estimates are conducted for each fund portfolio, not for each filing, and are an average estimate across all Form N–PX reporting persons. In certain cases, a single Form N–PX filing will report the proxy voting records of multiple fund portfolios. In those circumstances, the reporting person will bear the burden associated with each fund portfolio it reported. This average estimate takes into account higher costs for funds filing reports for multiple portfolios without assuming any economies of scale that multiple-portfolio fund complexes may be able to achieve.

[9] Represents the blended estimated hourly wage rates of a programmer and a compliance attorney. In the case of the final estimates,the blended hourly rate is based on 22.5 hours for a programmer at $297 per hour and 22.5 hours for a compliance attorney at $400 per hour.

[10] Represents the blended estimated hourly wage rates of a programmer and a compliance attorney. In the case of the final estimates, the blended hourly rate is based on 3 hours for a programmer at $297 per hour and 4.5 hours for a compliance attorney at $400 per hour.

The table above summarizes our PRA initial and ongoing annual burden estimates associated with Form N–PX, as amended. In the aggregate, we estimate the total annual burden to comply with amended Form N–PX to be 380,741 hours, with an average external cost of $36,141,445.

Compliance with Form N–PX is mandatory. Responses to the collection of information requirements will not be kept confidential.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by July 10, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 5, 2023.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–10002 Filed 5–10–23; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Docket No.: SBA–2023–0005]

Development Company Loan Program—Job Creation and Retention Requirements; Additional Areas for Higher Portfolio Average

AGENCY: Small Business Administration.

ACTION: Notification of changes to Development Company Program; request for comments.

SUMMARY: The Small Business Administration (SBA) is changing the job creation or retention requirements under its Development Company Loan Program (504 Loan Program) by increasing the dollar amounts used in calculating the number of jobs that must be created or retained for each 504 Project and for the portfolio average of each Certified Development Company.

DATES:

Applicability Date: The job creation or retention requirements that are described in this document will apply to all 504 loans that are approved under the 504 Loan Program on or after May 11, 2023.

Comment Date: SBA must receive comments on or before June 12, 2023.

ADDRESSES: You may submit comments, identified by Docket No. SBA–2023–0005, by any of the following methods:

(1) *Federal eRulemaking Portal: https://www.regulations.gov,* following the instructions for submitting comments; or

(2) *Mail/Hand Delivery/Courier:* Greg Suryadi, Finance and Loan Specialist, Office of Financial Assistance, U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416.

SBA will post all comments on *https://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *https://www.regulations.gov,* you must submit such information to U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416, Attn: Greg Suryadi, Finance and Loan Specialist; or send an email to *gregorius.suryadi@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Greg Suryadi, Finance and Loan Specialist, Office of Financial Assistance, U.S. Small Business Administration; telephone: (202) 205–6806; email: *gregorius.suryadi@sba.gov.*

SUPPLEMENTARY INFORMATION: The 504 Loan Program is an SBA financing program authorized under Title V of the Small Business Investment Act of 1958 (SBI Act), 15 U.S.C. 695 *et seq.* The purpose of the 504 Loan Program is to foster economic development and to create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns. See section 501(a) of the SBI Act, 15 U.S.C. 695(a). Under the 504 Loan Program, loans are made to small business applicants by Certified Development Companies (CDCs), which are certified and regulated by SBA to promote economic development within their community. In general, a project in the 504 Loan Program (a 504 Project) is financed through: A loan obtained from a private sector lender with a senior lien covering at least 50 percent of the project cost; a loan obtained from a CDC (a 504 Loan) with a junior lien covering up to 40 percent of the total cost (backed by a 100 percent SBA-guaranteed debenture); and a contribution from the Borrower of at least 10 percent equity.

To qualify for financing under the 504 Loan Program, each 504 Project must satisfy one of the economic development objectives or public policy goals set forth in sections 501(d)(1) through (3) of the SBI Act. Under section 501(d)(1), a Project is eligible for 504 financing if it creates job opportunities within two years of completion of the Project or if it preserves or retains jobs attributable to the Project. Section 501(e)(1) of the SBI Act required each 504 Project to create or preserve one job for every $65,000 guaranteed by SBA; in the case of a small manufacturing Project, the amount was $100,000. Under section 501(e)(2) of the SBI Act, if the Project was eligible for financing under one of the objectives or goals set forth in section 501(d)(2) or (3), the Project did not need to satisfy the job creation or preservation criteria described section 501(e) provided that the CDC's overall portfolio of outstanding debentures met or exceeded the job creation or preservation criteria of one job for every $65,000 guaranteed by SBA. In addition, under section 501(e)(3) of the SBI Act, for projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas (as determined by the Secretary of Labor), and for other areas designated by SBA, the CDC's portfolio did not have to average more than $75,000 per job created or retained. See section 501(e)(3) of the SBI Act. (Loans for Projects of small manufacturers are excluded from the overall portfolio calculations.)

In 2018 SBA changed the job creation or retention requirements under the 504 Loan Program by increasing the dollar amounts used in calculating the number of jobs that must be created or retained for each 504 Project and for the portfolio average of each Certified Development Company, and designated Opportunity Zones as additional areas for which the higher portfolio average described in section 501(e)(3) of the SBI Act. See 83 FR 55224 (November 2, 2018). Consequently, under current requirements, to satisfy the economic development objectives or public policy goals set forth in sections 501(d)(1) through (3) of the SBI Act, each 504 Project must create or preserve one job for every $75,000 guaranteed by SBA; in the case of a small manufacturing Project, the amount is $120,000. Further, under current requirements, if the Project is eligible for financing under one of the objectives or goals set forth in section 501(d)(2) or (3), the Project need not satisfy the job creation or preservation criteria described in section 501(e)(1) provided that the CDC's overall portfolio of outstanding debentures meets or exceeds the job creation or preservation criteria of one job for every $75,000 guaranteed by SBA. Finally, under current requirements, for projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas (as determined by the Secretary of Labor), and for other areas designated by SBA, which include Opportunity Zones (as described by section 13823 of the Tax Cuts and Jobs Act of 2017, Public Law 115–97), the CDC's portfolio may average not more than $85,000 per job created or retained.

The SBI Act authorizes SBA to develop the job creation or job preservation criteria that apply to the 504 Loan Program. See section 501(d) of SBI Act. SBA's regulations provide that ''[a] Project must create or retain one Job Opportunity per an amount of 504 loan funding that will be specified by SBA from time to time in a **Federal Register** notice.'' 13 CFR 120.861. SBA's regulations also provide that ''[a] CDC's portfolio must maintain a minimum average of one Job Opportunity per an amount of 504 loan funding that will be specified by SBA from time to time in a **Federal Register** notice.'' 13 CFR 120.829(a).

Although the job creation or retention standards for the 504 Loan Program have not been increased since 2018, the Consumer Price Index for All Urban Consumers has increased 19% from 2018 through January 2023 according to the Bureau of Labor Statistics of the U.S. Department of Labor. Accordingly, pursuant to 13 CFR 120.829(a) and 120.861, SBA is modifying the Job Opportunity requirements as follows:

(1) A Project must create or retain one Job Opportunity per $90,000 guaranteed by SBA except that, in the case of a Project of a small manufacturer or a project that meets an energy public policy goal, the Project must create or

retain one Job Opportunity per $140,000 guaranteed by SBA;

(2) For Projects that are eligible under 13 CFR 120.862, ''Other economic development objectives,'' a CDC's portfolio must reflect an average of one Job Opportunity for every $90,000 guaranteed by SBA; and

(3) For Projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas (as determined by the Secretary of Labor), and for other areas designated by SBA (which include Opportunity Zones), the CDC's portfolio may average not more than $100,000 per job created or retained.

SBA invites public comments on these new job creation or preservation standards and the designation of additional areas for application of the higher portfolio average described above. Please clearly identify paper and electronic comments as ''Public Comments on 504 Loan Program's Job Opportunity Requirements, Docket No. SBA–2023–0005'' and submit them by one of the methods identified in the **ADDRESSES** section of this document. SBA will consider the comments and determine whether any revisions are necessary.

Authority: 15 U.S.C. 695(d); 13 CFR 120.829(a) and 120.861.

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2023–10055 Filed 5–10–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent of Waiver With Respect to Land; Lake County Executive Airport, Willoughby, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change 12.53 acres of airport land from aeronautical use to non-aeronautical use and to authorize the lease of airport property located at Lake County Executive Airport, Willoughby, Ohio. The aforementioned land is not needed for aeronautical use. The property is located east of Lost Nation Road and north of Jet Center Place, adjacent to the Lost Nation Sports Park. The property is designated as aeronautical use however the existing use and proposed future use as a soccer field is non-aeronautical.

DATES: Comments must be received on or before June 12, 2023.

ADDRESSES: All requisite and supporting documentation will be made available for review by appointment at the FAA Detroit Airports District Office, Evonne M. McBurrows, Program Manager, 11677 S Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone: (734) 229–2945/Fax: (734) 229–2950 and Patty Fulop, Manager, 38550 Jet Center Drive, Willoughby, OH 44094.

Written comments on the Sponsor's request may be submitted using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* and follow the instructions for sending your comments electronically.

• *Mail:* Evonne M. McBurrows, Program Manager, Federal Aviation Administration, Detroit Airports District Office, 11677 S Wayne Road, Romulus, Michigan 48174.

• *Hand Delivery:* Deliver to mail address above between 8 a.m. and 5 p.m. Monday through Friday, excluding Federal holidays.

• *FAX:* (734) 229–2950.

FOR FURTHER INFORMATION CONTACT: Evonne M. McBurrows, Program Manager, Federal Aviation Administration, Detroit Airports District Office, 11677 S Wayne Road, Romulus, Michigan 48174. Telephone Number: (734) 229–2945/FAX Number: (734) 229–2950.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The property was acquired by the City of Willoughby under Federal grant 3–39–0090–01 and transferred to the Lake County Ohio Port and Economic Development Authority (now Lake Development Authority). The current use of the property is as a 12.53 acre soccer field. This is also proposed to remain as the future non-aeronautical use of the land. The airport will continue to lease the parcel at Fair Market Value.

The disposition of proceeds from the lease of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Lake County Executive Airport, Willoughby, Ohio from its obligations to be maintained for aeronautical purposes. Approval does not constitute a commitment by the FAA to financially assist in the change in use of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Legal Description of a 12.531 Ac. Land Lease Area

Situated in the City of Willoughby, County of Lake and State of Ohio and being part of Original Lot No. 6, Douglas Tract and being further bounded and described as follows;

Beginning at a monument at the center of the cul-de-sac of Jet Center Place (variable right of way) as recorded in Volume 16 Page 34 of Lake County map records; Thence North 13°31′14″ East, a distance of 68.50 feet to the westerly right of way of Jet Center Place and the westerly line of lands conveyed to the Lake County Ohio Port and Economic Development Authority by Doc. No. 2014R025222 of LCR, Permanent Parcel No. 27B–54–13 and the easterly line of lands conveyed to Weston Jet Center Road LLC by Doc. No. 2018R032352, Permanent Parcel No. 27B–54–17;

Thence North 00°44′06″ East, along the westerly line of land of the Lake County Ohio Port and Economic Development Authority and the easterly line of Weston Jet Center Road LLC, a distance of 82.96 feet to the northwesterly corner of said Lake County Ohio Port and Economic Development Authority and being the principal place of beginning of the land lease area herein described;

Course I: Thence North 01°13′44″ East, continuing along the easterly line of said Weston Jet Center Road LLC, a distance of 903.33 feet to the southerly line of land conveyed to Kennedy Group Lost Nation Parkway I Ltd, by Doc. No. 2009R009487, Permanent Parcel No. 24B–54–23;

Course II: Thence South 88°46′16″ East, along the southerly line of Kennedy Group Lost Nation Parkway I Ltd, a distance of 605.50 feet to a point;

Course III: Thence South 01°13′44″ West, a distance of 899.68 feet to a point on the northerly line of previously said Lake County Ohio Port and Economic Development Authority;

Course IV: Thence North 89°07′00″ West, along the northerly line of the Lake County Ohio Port and Economic Development Authority, a distance of 605.51 feet to the principal place of beginning and containing 12.531 acres of land as described by Scott A. Landgraf, Professional Surveyor No. 8085 in November 2022 and subject to all legal highways and easements of record. Bearings are based upon an assumed meridian and are used to describe angles only. Describing a 12.531 acre land lease area as a part of Parcel No. 27B–52–3 (Doc. No. 2014R025222).

Issued in Romulus, Michigan, on May 5, 2023.

Stephanie Swann,

Deputy Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2023–10001 Filed 5–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0113]

Parts and Accessories Necessary for Safe Operation; Exemption Application From Great Lakes Timber Professionals Association

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA requests public comment on an application for exemption from the Great Lakes Timber Professionals Association (GLTPA) to allow motor carriers to use fewer tiedowns than required by the regulations for securing shortwood logs transported lengthwise in crib-type vehicles that have been modified or manufactured without front structures, without rear structures, or with a center-mounted crane for loading and unloading. GLTPA and the Wisconsin State Patrol Motor Carrier Enforcement Section partnered to conduct cargo securement testing on stacks of shortwood logs in a crib-type vehicle using different tiedown configurations. Based on this testing, GLTPA proposes alternative cargo securement methods for shortwood logs loaded lengthwise and states that such securement methods will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: Comments must be received on or before June 12, 2023.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2023–0113 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2023–0113) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14–FDMS, which can be reviewed at *https://www.transportation.gov/privacy,* the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA, (202) 366–5541, *jose.cestero@dot.gov.*

If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2023–0113), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number ‘‘FMCSA–2023–0113’’ in the keyword box, and click ‘‘Search.’’ Next, sort the results by ‘‘Posted (Newer-Older),’’ choose the first notice listed, click the ‘‘Comment’’ button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely maintain a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. GLTPA's Request

GLTPA seeks an exemption from 49 CFR 393.116(b)(3) and 393.116(e) to allow motor carriers to use fewer tiedowns than required to secure shortwood logs transported lengthwise in crib-type vehicles that have been modified or manufactured without front structures, without rear structures, or with a center-mounted crane for loading and unloading. In its application, GLTPA proposes alternative methods of securement. GLTPA states that the log securement methods it proposes would achieve a level of safety equivalent to or greater than the level of safety provided by the regulation. A copy of GLTPA's application for exemption is posted in the docket.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b) and 31136(e), FMCSA requests public comment from all interested persons on the GLTPA application for an exemption from certain cargo securement requirements of 49 CFR 393.116.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and considered to the extent practicable. In addition to late comments, FMCSA will also continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–10057 Filed 5–10–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities: Proposed Renewal; Comment Request; Renewal Without Change of the Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on a proposed renewal, without change, of a generic clearance for the collection of qualitative feedback on agency service delivery. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome and must be received on or before July 10, 2023.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2023–0006 and the Office of Management and Budget (OMB) control number 1506–0062.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2023–0006 and OMB control number 1506–0062.

Please submit comments by one method only. Comments will be reviewed consistent with the Paperwork Reduction Act of 1995 and applicable OMB regulations and guidance. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Foreign Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (October 26, 2001), and other legislation, including the Anti-Money Laundering Act of 2020 (AML Act).[1] The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, and 31 U.S.C. 5311–5314 and 5316–5336, and notes thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury (the ''Secretary''), *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement AML programs and compliance procedures.[2] Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.[3]

FinCEN conducts surveys to collect qualitative customer and stakeholder feedback, in furtherance of its commitment to improving service delivery.

II. Paperwork Reduction Act of 1995 (PRA) [4]

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1506–0062.

Abstract: FinCEN is issuing this notice to renew, without change, its capability to solicit feedback from the public with respect to timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders would be unavailable. FinCEN will submit a collection for approval under this generic clearance only if it meets the following conditions:

- The collection is voluntary;
- The collection is low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and low-cost for both the respondents and the Federal government;
- The collection is noncontroversial and does not raise issues of concern to other Federal agencies;
- The collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information is collected only to the extent necessary and is not retained;

[1] The AML Act was enacted as Division F, sections 6001–6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 134 Stat. 3388 (2021).

[2] Section 358 of the USA PATRIOT Act expanded the purpose of the BSA, by including a reference to reports and records ''that have a high degree of usefulness in intelligence or counterintelligence activities to protect against international terrorism.'' Section 6101 of the AML Act added language further expanding the purpose of the BSA.

[3] Treasury Order 180–01 (Jan. 14, 2020).

[4] Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

• Information gathered is intended to be used internally for general service improvement and program management purposes and is not intended for release outside of the agency (if released, FinCEN must indicate the qualitative nature of the information);

• Information gathered will not be used for the purpose of substantially informing influential policy decisions; and

• Information gathered will yield qualitative information; the collection will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Type of Review: Renewal without change of an information collection.

Affected Public: Business or other for-profit institutions, and non-profit institutions.

Frequency: As required.

Estimated Number of Respondents: 15,000 respondents.[5]

Estimated Number of Responses: 15,000 responses.[6]

Estimated Number of Hours: 10,000 hours.[7]

Request for Comments

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. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

[5] FinCEN anticipates it will send surveys to approximately 15,000 BSA-regulated financial institutions over the three-year period requested for approval of this OMB control number.

[6] FinCEN anticipates, on average, sending ten surveys per year to approximately 500 respondents per survey. Over the three-year period requested for approval of this OMB control number that equates to 15,000 responses.

[7] FinCEN anticipates the surveys will average 15 to 40 minutes to complete, so FinCEN will conservatively approximate 10,000 burden hours are needed for the three-year period requested for approval of this OMB control number (40 minutes multiplied by 15,000 responses converted to hours).

Himamauli Das,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2023–10098 Filed 5–10–23; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Tuesday, May 30, 2023.

FOR FURTHER INFORMATION CONTACT: Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Tuesday, May 30, 2023, at 12:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information, please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1503, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.*

The agenda will include reports from the committees, and subcommittee discussions on priorities the TAP will focus on for the 2023 year. Public input is welcomed.

Dated: May 5, 2023.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2023–10042 Filed 5–10–23; 8:45 am]

BILLING CODE 4830–01–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings

TIME AND DATE: May 18, 2023, 12:00 p.m. to 3:00 p.m., Eastern time.

PLACE: This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll), Meeting ID: 959 2757 1162, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/meeting/register/tJEkde6tqTorHNaYI4Ibnm_V0-H1gi-ZFzu7.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Education and Training Subcommittee (the ''Subcommittee'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Call to Order—UCR Education and Training Subcommittee Chair

The Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules—UCR Education and Training Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Subcommittee Agenda will be reviewed, and the Subcommittee will consider adoption.

Ground Rules

➢ Subcommittee action only to be taken in designated areas on agenda.

IV. Review and Approval of Subcommittee Minutes From the February 16, 2023 Subcommittee Meeting—UCR Education and Training Subcommittee Chair

For Discussion and Possible Subcommittee Action

Draft minutes from the February 16, 2023 Subcommittee meeting will be reviewed. The Subcommittee Chair will consider action to approve.

V. Audit 2 Module—UCR Education and Training Subcommittee Chair

The Subcommittee Chair will review updates to the Audit Training 2 video modules to ensure accuracy of updates to the modules.

VI. Agency Head Brochure—UCR Education and Training Subcommittee Chair

The Subcommittee Chair will review a draft version of the updated brochure and seek comments.

VII. NRS Module Development—UCR Education and Training Subcommittee Chair

The Subcommittee Chair will discuss key reports generated in the NRS system for module consideration.

VIII. Other Business—UCR Education and Training Subcommittee Chair

The Subcommittee Chair will call for any other items Subcommittee members would like to discuss.

IX. Adjournment—UCR Education and Training Subcommittee Chair

The Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, May 10, 2023 at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2023–10185 Filed 5–9–23; 4:15 pm]

BILLING CODE 4910–YL–P

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FEDERAL REGISTER

Vol. 88 Thursday,
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Part II

Consumer Financial Protection Bureau

12 CFR Part 1026
Residential Property Assessed Clean Energy Financing (Regulation Z); Proposed Rule

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1026

[Docket No. CFPB–2023–0029]

RIN 3170–AA84

Residential Property Assessed Clean Energy Financing (Regulation Z)

AGENCY: Consumer Financial Protection Bureau.

ACTION: Proposed rule; request for public comment.

SUMMARY: Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) directs the Consumer Financial Protection Bureau (CFPB or Bureau) to prescribe ability-to-repay rules for Property Assessed Clean Energy (PACE) financing and to apply the civil liability provisions of the Truth in Lending Act (TILA) for violations. PACE financing is financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer. In this notice of proposed rulemaking, the Bureau proposes to implement EGRRCPA section 307 and to amend Regulation Z to address how TILA applies to PACE transactions to account for the unique nature of PACE.

DATES: Comments must be received on or before July 26, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2023–0029 or RIN 3170–AA84, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2023-NPRM-PACE@cfpb.gov.* Include Docket No. CFPB–2023–0029 or RIN 3170–AA84 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—PACE, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The CFPB encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov.*

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Luke Diamond, Daniel Tingley, Counsels; Kristin McPartland, Amanda Quester, Alexa Reimelt, or Joel Singerman, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) directs the Bureau to prescribe ability-to-repay (ATR) rules for Property Assessed Clean Energy (PACE) financing and to apply the civil liability provisions of the Truth in Lending Act (TILA) for violations.[1] In this notice of proposed rulemaking, the Bureau proposes to implement EGRRCPA section 307 and to amend Regulation Z to address the application of TILA to ''PACE transactions'' as defined in proposed § 1026.43(b)(15).

The proposed rule would:

- Clarify an existing exclusion to Regulation Z's definition of credit that relates to tax liens and tax assessments. Specifically, the CFPB is proposing to clarify that the commentary's exclusion to ''credit,'' as defined in § 1026.2(a)(14), for tax liens and tax assessments applies only to involuntary tax liens and involuntary tax assessments.
- Make a number of adjustments to the requirements for Loan Estimates and Closing Disclosures under §§ 1026.37 and 1026.38 that would apply when those disclosures are provided for PACE transactions, including:
  - Eliminating certain fields relating to escrow account information;
  - Requiring the PACE transaction and other property tax payment obligations to be identified as separate components of estimated taxes, insurance, and assessments;
  - Clarifying certain implications of the PACE transaction on the property taxes;
  - Requiring disclosure of identifying information for the PACE company;
  - Requiring various qualitative disclosures for PACE transactions that would replace disclosures on the current forms, including disclosures relating to assumption, late payment, servicing, partial payment policy, and the consumer's liability after foreclosure; and
  - Clarifying how unit-periods would be disclosed for PACE transactions.
- Provide new model forms under H–24(H) and H–25(K) of appendix H for the Loan Estimate and Closing Disclosure, respectively, specifically designed for PACE transactions.
- Exempt PACE transactions from the requirement to establish escrow accounts for certain higher-priced mortgage loans, under proposed § 1026.35(b)(2)(i)(E).
- Exempt PACE transactions from the requirement to provide periodic statements, under proposed § 1026.41(e)(7).
- Apply Regulation Z's ATR requirements in § 1026.43 to PACE transactions with a number of specific adjustments to account for the unique nature of PACE financing, including requiring PACE creditors to consider certain monthly payments that they know or have reason to know the consumer will have to pay into the consumer's escrow account as an additional factor when making a repayment ability determination for PACE transactions extended to consumers who pay their property taxes through an escrow account.
- Provide that a PACE transaction is not a qualified mortgage (QM) as defined in § 1026.43.
- Extend the ATR requirements and the liability provisions of TILA section 130 to any ''PACE company,'' as defined in proposed § 1026.43(b)(14), that is substantially involved in making the credit decision for a PACE transaction.
- Provide clarification regarding how PACE and non-PACE mortgage creditors should consider pre-existing PACE transactions when originating new mortgage loans.

The Bureau proposes that the final rule, if adopted, would take effect at least one year after publication of the final rule in the **Federal Register**, but no earlier than the October 1 which follows by at least six months **Federal Register** publication. The Bureau requests comment on all aspects of the proposed rule and on whether there are any other provisions of TILA or Regulation Z that the Bureau should address with respect to PACE transactions.

II. Background

A. PACE Market Overview

1. How does PACE financing work?

PACE financing is a mechanism that enables property owners to finance certain upgrades to real property

[1] 15 U.S.C. 1639c(b)(3)(C).

through an assessment on their real property.[2] Eligible upgrade types vary by locality but often include upgrades to promote energy efficiency or to help prepare for natural disasters. The voluntary financing agreements (PACE loans) are made between the consumer and the consumer's local government or a government entity operating with the authority of several local governments,[3] and they leverage the property tax system for administration of payments. PACE financing is repaid through the property tax system along with the consumer's other property tax payment obligations. The assessments are typically collected through the same process as real property taxes.[4] Local governments typically fund PACE transactions through bond issuance, with these bonds in turn collateralized and sold as securitized obligations.

PACE assessments are secured by a lien on the consumer's real property. The liens securing PACE loans typically have priority under State law similar to that of other real property tax liens, which are superior to other mortgage liens on the property, including those that predated the PACE lien.[5] In a foreclosure sale, this superior lien position means that any amount due on the PACE loan is paid with the foreclosure sale proceeds before any proceeds will flow to other liens. The PACE assessment is tied to the property, not the property owner. As such, the repayment obligation remains with the property when property ownership transfers unless paid off at the time of sale.

Although some local governments operate PACE financing programs directly, most contract with private PACE companies to operate the programs. These private companies generally handle the day-to-day operations, including tasks such as marketing PACE financing to consumers, training home improvement contractors to sell PACE to consumers, overseeing originations, performing underwriting, and making decisions about whether to extend the loan. The PACE companies may also contract with third-party companies to administer different aspects of the loans after origination. Typically, PACE companies purchase PACE bonds that are issued by local governments to fund the programs, which generate revenue for the PACE companies from interest on consumer payments. PACE companies are also sometimes involved in securitizing the bond obligations for sale as asset-backed securities. Additionally, PACE companies often earn various fees related to the transactions.[6]

PACE companies often rely heavily upon home improvement contractors both to sell PACE loans to consumers and to facilitate the origination of those loans. Home improvement contractors frequently market PACE financing directly to consumers in the course of selling their home improvement contracts, often door-to-door. They often serve as the primary point of contact with consumers during the origination process, typically collecting any application information that the PACE companies use to make underwriting and eligibility determinations. The contractors may also deliver disclosures relating to the PACE transaction and obtain the consumer's signature on the financing agreement.

2. Origin and Growth of PACE Programs

In 2008, California passed Assembly Bill no. 811 to enable the first PACE programs. The Bureau is aware of 19 States plus the District of Columbia that currently have enabling legislation for residential PACE financing programs, but only a small number of states have had active programs, primarily California, Florida, and Missouri.[7]

During the early years of PACE financing, lending activity appears to have been relatively limited, with cumulative obligations of around $200 million through 2013.[8] In 2014, PACE financing activity accelerated, reaching peak production in 2016 with over $1.7 billion in investment.[9] This level of activity was maintained in 2017, but it declined between 2018 and 2021, with an average investment of $769 million per year during those years.[10] Overall, as of December 31, 2021, the PACE financing industry had financed 323,000 home upgrades, totaling over $7.7 billion.[11]

3. Common Financing Terms

According to data analyzed in a report that the Bureau is releasing concurrently with this proposal (''PACE Report''), the term of PACE loans that were originated between July 2014 and June 2020 was most often 20 years, but ranged between five and 30 years.[12] The Report also finds that the interest rates for those loans clustered around 7 to 8 percent with annual percentage rates (APRs) averaging approximately a percentage point higher.[13] Fees vary by program, but the CFPB has reviewed agreements that include fees for application, origination, tax administration, lien recordation, title, escrow, bond counsel, processing, title, underwriting, and fund disbursement. The Bureau is not aware of any PACE obligations that are open-end or have a negative-amortization feature.

4. Consumer Protection Concerns

Consumer advocates have expressed concerns that the PACE market lacks adequate consumer protections. They have indicated that the highly secure super-priority lien associated with PACE transactions creates incentives for PACE companies and home improvement contractors to originate loans quickly, often on the spot, without regard to affordability or consumer understanding. They have reported allegations of deceptive sales tactics, aggressive sales practices, and fraud.

Consumer advocates have criticized other aspects of PACE financing as well,

[2] Some States authorize PACE financing for residential and commercial property. In this proposal, the term PACE financing refers only to residential PACE financing unless otherwise indicated.

[3] Although PACE financing programs may be sponsored by individual local governments, many are sponsored by intergovernmental organizations whose membership consists of multiple local governments.

[4] *See, e.g.,* Cal. Sts. & Hwys. Code sec. 5898.30; Fla. Stat. 163.08; Fla. Stat. 197.3632(8)(a); Mo. Stat. 67.2815(5).

[5] *See, e.g.,* Cal. Sts. & Hwys. Code sec. 5898.30 (providing for ''the collection of assessments in the same manner and at the same time as the general taxes of the city or county on real property, unless another procedure has been authorized by the legislative body or by statute . . . .''); Fla. Stat. 163.08(8) (''The recorded agreement shall provide constructive notice that the assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments from the date of recordation.''). However, authorizing statutes in some PACE States provide for subordinated-lien status for PACE financing. *See, e.g.,* Minn. Stat. 216C.437(4); Me. Stat. tit. 35A 10156(3), (4); 24 V.S.A. 3255(b).

[6] *See, e.g.,* Energy Programs Consortium, *R–PACE, Residential Property Assessed Clean Energy, A Primer for State and Local Energy Officials* (Mar. 2017), *http://www.energyprograms.org/wp-content/uploads/2017/03/R-PACE-Primer-March-2017.pdf.*

[7] *See infra* note 329. There has been pilot program activity for residential PACE financing in some states. *See, e.g.,* DevelopOhio, *Lucas County PACE program benefits homeowners* (Aug. 16, 2019), *https://www.developohio.com/post/detail/lucas-county-pace-program-benefits-homeowners-234705.* Some States that previously authorized residential PACE financing programs have amended their statutes such that PACE financing is no longer authorized for single-family residential properties. *See, e.g.,* 2021 Wis. Act 175 (codified at Wis. Stat. sec. 66.0627).

[8] *See* PACENation, *Market Data, https://www.pacenation.org/pace-market-data/* (last visited Mar. 30, 2023).

[9] *See id.*

[10] *See id.* The latest data available on the PACE financing industry trade association's website is for 2021.

[11] *See id.*

[12] *See* CFPB, *PACE Financing and Consumer Financial Outcomes* at Table 2 (May 2023), *https://files.consumerfinance.gov/f/documents/cfpb_pace-rulemaking-report_2023-04.pdf* (PACE Report). The PACE Report is discussed in more detail in part IV.

[13] *Id.*

such as the high cost of funding compared to other mortgage debt, excessive capitalized fees, and inadequate disclosures. They have argued that these aspects of PACE financing can result in unexpected and unaffordable tax payment spikes that can lead to delinquency, late fees, tax defaults, and foreclosure actions.[14] Some local officials have echoed many of these concerns in discussions with CFPB staff.

Additionally, consumer advocates have expressed concern that some home improvement contractors involved in the origination of PACE transactions provide consumers with misleading information about potential energy savings or promote the most expensive energy improvements, regardless of their actual energy conservation benefits.[15] They have noted that such practices could result in homeowners receiving a smaller reduction in their utility bills than anticipated, making PACE financing payments more difficult to afford.

Additionally, consumer advocates have alleged that PACE financing is disproportionately targeted at older Americans, consumers with limited English proficiency or lower incomes, and consumers in predominantly Black or Hispanic neighborhoods. They have also highlighted that, although a PACE assessment technically remains with the property at sale, most home buyers are unwilling to take on the remaining payment obligation for a PACE lien, or their mortgage lender prohibits them from doing so.[16] Consumer advocates have reported that PACE consumers are often unaware of these issues when agreeing to the financing, which causes an unanticipated financial burden when consumers are required to pay off the PACE assessment to complete a home sale.

Mortgage industry stakeholders have also asserted that PACE financing introduces risk to the mortgage market, as PACE liens take priority over pre-existing mortgage liens.[17]

Since 2015, the CFPB has received over 50 complaints related to PACE financing, primarily from consumers in California and Florida. Many of the complaints allege fraud, deceptive practices, overly high costs, or trouble with refinancing the consumer's home. Six of the complaints involve older Americans, and five of the complaints involve consumers with limited English proficiency. Consumer advocates have suggested that consumers may not be aware of their ability to submit PACE complaints to the CFPB database or may have had difficulty categorizing them, which may have resulted in a lower number of complaints reported. Consumers in California are also able to submit complaints to their State PACE regulator and submitted 385 complaints between 2019 and 2021.[18]

In August 2019, Renovate America, Inc. (Renovate), a major PACE company at the time, reached a $4 million settlement with six counties and one city in California.[19] The complaint, filed in State court, alleged that Renovate America misrepresented the PACE program or failed to make adequate disclosures about key aspects of the program, including its government affiliation, tax deductibility, transferability of assessments to subsequent property owners, financing costs, and Renovate's contractor verification policy.[20] Subsequently, in June 2021, the California State PACE regulator moved to revoke Renovate's Administrator license, required to operate a PACE company in the State, after finding that one of its solicitors repeatedly defrauded homeowners in San Diego County.[21] Renovate ultimately consented to the revocation.[22]

In October 2022, Ygrene Energy Fund Inc. (Ygrene), a major PACE company, reached a $22 million settlement with the Federal Trade Commission (FTC) and the State of California over allegations regarding its conduct in the PACE marketplace.[23] In a joint complaint, the FTC and California alleged that Ygrene deceived consumers about the potential financial impact of its financing and unfairly recorded liens on consumers' homes without their consent.[24] The complaint further alleged that Ygrene and its contractors falsely told consumers that PACE financing would not interfere with the sale or refinancing of their homes and used high-pressure sales tactics and even forgery to enroll consumers into PACE programs.[25]

5. State Laws and Regulations in States With Active PACE Programs California

California authorized PACE programs in 2008 to finance projects related to renewable energy and energy efficiency, and later expanded the scope to include water efficiency, certain disaster hardening, and electric vehicle charging

[14] *See, e.g.,* Nat'l Consumer Law Ctr., *Residential (PACE) Loans: The Perils of Easy Money for Clean Energy Improvements* (Sept. 2017), *https://www.nclc.org/images/pdf/energy_utility_telecom/pace/ib-pace-stories.pdf; see also* Off. of the Dist. Att'y, Cnty. of Riverside, *News Release, District Attorneys Announce $4 Million Consumer Protection Settlement* (Aug. 9, 2019), *https://rivcoda.org/community-info/news-media-archives/district-attorneys-announce-4-million-consumer-protection-settlement;* Kirsten Grind, *America's Fastest-Growing Loan Category Has Eerie Echoes of Subprime Crisis,* Wall Street Journal (Jan. 10, 2017), *https://www.wsj.com/articles/americas-fastest-growing-loan-category-has-eerie-echoes-of-subprime-crisis-1484060984.*

[15] *See* Claudia Polsky, Claire Christensen, Kristen Ho, Melanie Ho & Christina Ismailos, *The Darkside of the Sun: How PACE Financing Has Under-Delivered Green Benefits and Harmed Low Income Homeowners,* Berkeley L., Env't L. Clinic, at 8–13, *https://www.law.berkeley.edu/wp-content/uploads/2021/02/ELC_PACE_DARK_SIDE_RPT_2_2021.pdf.*

[16] *See* Freddie Mac, *Purchase and "no cash-out" refinance Mortgage requirements* (Mar. 31, 2022), *https://guide.freddiemac.com/app/guide/section/4606.4.* As of February 2023, guidelines from both Fannie Mae and Freddie Mac generally prohibit purchase of mortgages on properties with outstanding first-lien PACE obligations. Similarly, the Federal Housing Administration (FHA) updated its handbook requirements in 2017 to prohibit insurance of mortgage on properties with outstanding first-lien PACE obligations, *see* U.S. Dept. of Hous. & Urban Dev., *Property Assessed Clean Energy (PACE)* (Dec. 7, 2017), *https://www.hud.gov/sites/dfiles/OCHCO/documents/17-18ml.pdf.*

[17] *See, e.g.,* Fed. Hous. Fin. Agency (FHFA), *FHFA Statement on Certain Energy Retrofit Loan Programs* (July 6, 2010), *https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx; FHFA Notice and Request for Input on PACE Financing,* 85 FR 2736 (Jan. 16, 2020); *Joint Letter from Mortgage Trade Assocs. to FHFA Director Mark Calabria* (Mar. 16, 2020), *https://www.housingpolicycouncil.org/_files/ugd/d315af_6cb569a5427f4e26ab4ef4d55038b3f6.pdf.*

[18] Cal. Dep't of Fin. Prot. & Innovation, *Annual Report of Operation of Finance Lenders, Brokers, and PACE Administrators Licensed Under the California Financing Law*, at 41 (Aug. 2022) *https://dfpi.ca.gov/wp-content/uploads/sites/337/2022/08/2021-CFL-Aggregated-Annual-Report.pdf.*

[19] *See* Riverside Cnty. Dist. Att'y, *District Attorneys Announce $4 Million Consumer Protection Settlement With "PACE" Program Administrator Renovate America, Inc.* (Aug. 9, 2019), *https://rivcoda.org/community-info/news-media-archives/district-attorneys-announce-4-million-consumer-protection-settlement; see also State of California* v. *Renovate America,* Case No. RIC1904068 (Super. Ct. Riverside Cnty. 2019).

[20] *Id.*

[21] *See* Cal. Dep't of Fin. Prot. & Innovation, *DFPI Moves to Revoke PACE Administrator's License After Finding Its Solicitor Defrauded Homeowners* (June 4, 2021), *https://dfpi.ca.gov/2021/06/04/dfpi-moves-to-revoke-pace-administrators-license-after-finding-its-solicitor-defrauded-homeowners/.*

[22] Cal. Dep't of Fin. Prot. & Innovation, *Settlement Agreement* (Sept. 8, 2021), *https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/09/Admin.-Action-Renovate-America-Inc.-Settlement-Agreement.pdf?emrc=090ca0.*

[23] *See* Fed. Trade Comm'n, *FTC, California Act to Stop Ygrene Energy Fund from Deceiving Consumers about PACE Financing, Placing Liens on Homes Without Consumers' Consent* (Oct. 28, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-california-act-stop-ygrene-energy-fund-deceiving-consumers-about-pace-financing-placing-liens; see also* Complaint for Permanent Injunction, Monetary Relief, Civil Penalties, and Other Relief, *Fed. Trade Comm'n et al* v. *Ygrene Energy Fund Inc.,* No. 2:22–cv–07864 (C.D. Cal. 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/Complaint%20-%20Dkt.%201%20-%2022-cv-07864.pdf.*

[24] *Id.*

[25] *Id.*

infrastructure measures.[26] Since 2008, California has passed several laws to add and adjust consumer protections for PACE programs, with major additions in a series of amendments that took effect around 2018 (collectively, 2018 California PACE Reforms). Current California law requires that, before executing a PACE contract, PACE administrators must make a determination that the consumer has a reasonable ability to pay the annual payment obligations based on the consumer's income, assets, and current debt obligations.[27] Additionally, California law requires, among other protections, financial disclosures prior to consummation; [28] a three-day right to cancel, which is extended to five days for older adults; [29] mandatory confirmation-of-terms calls; [30] and restrictions on contractor compensation.[31] California law also imposes certain financial requirements for consumers to be eligible for PACE financing, including that consumers must be current on their property taxes and mortgage and generally not have been party to a bankruptcy proceeding within the previous four years.[32] There is also a maximum permissible loan-to-value ratio for PACE financing under California law.[33] California law exempts government agencies from some of these requirements.[34]

As part of the 2018 California PACE Reforms, California significantly increased the role of what is now called California's Department of Financial Protection and Innovation (DFPI).[35] In 2019, the DFPI began licensing PACE administrators and subsequently promulgated rules implementing some of California's statutory PACE provisions, which became effective in 2021.[36] DFPI also has certain examination, investigation, and enforcement authorities over PACE administrators, solicitors, and solicitor agents.[37]

PACE administrators must be licensed by the DFPI under the California Financing Law. They must also establish and maintain processes for the enrollment of PACE solicitors and solicitor agents, including training and background checks.[38] PACE administrators are required to annually share certain operational data with DFPI.[39] DFPI compiles the data in annual reports on PACE lending in California, which provide aggregated information on PACE loans, PACE administrators and solicitors, and consumer complaints.[40]

Florida

Florida authorized PACE programs in 2010 to finance projects related to energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements.[41] The authorizing legislation imposes certain financial requirements to be eligible for PACE financing, including that consumers must be current on their property taxes and all mortgage debts on the property.[42] It also includes a maximum loan-to-value ratio and requires a short general disclosure about PACE assessments.[43] Additionally, Florida law requires that the property owner provide holders or servicers of any existing mortgages secured by the property with notice of their intent to enter into a PACE financing agreement together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount.[44]

Missouri

Missouri authorized PACE programs in 2010 to finance projects involving energy efficiency improvements and renewable energy improvements.[45] In 2021, Missouri enacted new legislation imposing certain consumer protection requirements for PACE transactions. The law currently requires clean energy development boards (the government entities offering PACE programs) to provide a disclosure form to homeowners that shows the financing terms of the assessment contract, including the total amount funded and borrowed, the fixed rate of interest charged, the APR, and a statement that, if the property owner sells or refinances the property, the owner may be required by a mortgage lender or a purchaser to pay off the assessment.[46] It also requires verbal confirmation of certain provisions of the assessment contract, imposes specific financial requirements to execute an assessment requirement, and provides for a three-day right to cancel.[47] The 2021 legislation also limited the term, amount of financing, and total indebtedness secured by the property and required the clean energy development board to review and approve assessment contracts.[48] The new requirements became effective January 1, 2022.[49]

6. Self-Regulatory Efforts

In addition to consumer protections mandated by State governments, in November 2021, the national trade association that advocates for the PACE financing industry announced voluntary consumer protection policy principles for PACE programs nationwide.[50] According to the trade association, the 22 principles are designed to establish a national framework for enhanced accountability and transparency within PACE programs and to offer greater protections for all consumers, as well as additional protections for low-income homeowners, based on stated income, and those over the age of 75.[51] They include provisions relating to ability-to-pay, financing disclosures, a right to cancel, and foreclosure-avoidance protections, among others.

B. EGRRCPA

The Economic Growth, Regulatory Relief, and Consumer Protection Act of

[26] *See, e.g.,* Cal. Sts. & Hwys. Code secs. 5898.12, 5899, 5899.3.

[27] Cal. Fin. Code sec. 22686–87.

[28] Cal. Sts. & High. Code sec. 5898.17.

[29] Cal. Sts. & High. Code sec. 5898.16–17.

[30] Cal. Sts. & High. Code sec. 5913.

[31] Cal. Sts. & High. Code sec. 5923.

[32] Cal. Fin. Code sec. 22684(a), (d)–(e).

[33] Cal. Fin. Code sec. 22684(h).

[34] Cal. Fin. Code sec. 22018(a) (exempting public agencies from the definition of ''program administrator'' that is subject to the ability-to-pay requirements set forth under Cal. Fin. Code sec. 22687).

[35] Cal. AB 1284 (2017–2018), Cal. SB 1087 (2017–2018).

[36] 10 Cal. Code Regs. sec. 1620.01 *et seq.* California law uses the term ''program administrator'' to refer to companies that are referred to here as PACE companies. *See* Cal. Fin. Code sec. 22018.

[37] Cal. Fin. Code sec. 22690. California law uses the term ''PACE solicitor'' and ''PACE solicitor agent'' to refer to persons authorized by program administrators to solicit property owners to enter into PACE assessment contracts, often home improvement contractors. *See* Cal. Fin. sec. 22017(a)–(b).

[38] Cal. Fin. Code secs. 22680–82.

[39] Cal. Fin. Code sec. 22692.

[40] *See, e.g.,* Cal. Dep't of Fin. Prot. & Innovation, *Annual Report of Operation of Finance Lenders, Brokers, and PACE Administrators Licensed Under the California Financing Law* (Aug. 2022), *https://dfpi.ca.gov/wp-content/uploads/sites/337/2022/08/2021-CFL-Aggregated-Annual-Report.pdf.*

[41] *See* Fla. HB 7179 (2010), *codified at Fla. Stat. 163.08 et seq.*

[42] Fla. Stat. sec. 163.08(9).

[43] Fla. Stat. sec. 163.08(12), (14).

[44] Fla. Stat. sec. 163.08(13).

[45] Mo. HB 1692 (2010), codified at Mo. Rev. Stat. 67.2800(8) (defining projects eligible for financing).

[46] Mo. HB 697, codified at Mo. Rev. Stat. 67.2818(4).

[47] Mo. HB 697, codified at Mo. Rev. Stat. 67.2817(2) (financial requirements to execute an assessment contract); 67.2817(4) (right to cancel); 67.2817(6) (verbal confirmation).

[48] Mo. HB 697, codified at Mo. Rev. Stat. 67.2817(2), 67.2818(2)–(3).

[49] Mo. HB 697, codified at Mo. Rev. Stat. 67.2840.

[50] *See* PACENation, *PACENation Unveils 22 New Consumer Protection Policies for Residential PACE Programs Nationwide* (Nov. 5, 2021), *https://www.pacenation.org/pacenation-unveils-22-consumer-protection-policies-for-residential-pace-programs-nationwide/.*

[51] *Id.*

2018 (EGRRCPA) was signed into law on May 24, 2018.[52] EGRRCPA section 307 amended TILA to mandate that the CFPB take regulatory action on PACE financing, which it defines as ''financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer.'' Specifically, it provides in relevant part that the CFPB must prescribe regulations that (1) carry out the purposes of TILA section 129C(a), and (2) apply TILA section 130 with respect to violations under TILA section 129C(a) with respect to PACE financing, and requires that the regulations account for the unique nature of PACE financing.[53] TILA section 129C(a) contains TILA's ATR provisions for residential mortgage loans and TILA section 130 contains TILA's civil liability provisions. Thus, section 307 requires the Bureau to apply TILA's ATR provisions to PACE financing, and to apply TILA's civil liability provisions for violations of those ATR provisions, all in a way that accounts for the unique nature of PACE financing. This proposal discusses the proposed implementation of the ATR and civil liability requirements further in the section-by-section analysis of proposed § 1026.43.

III. Advance Notice of Proposed Rulemaking

On March 4, 2019, the CFPB issued an Advance Notice of Proposed Rulemaking (ANPR) to solicit information relating to residential PACE financing.[54] The purpose of the ANPR was to gather information to better understand the PACE financing market and other information to inform a proposed rulemaking under EGRRCPA section 307.

The ANPR sought five categories of information related to PACE financing: (1) written materials associated with PACE transactions; (2) descriptions of current standards and practices in the PACE financing origination process; (3) information relating to civil liability under TILA for violations of the ATR requirements in connection with PACE financing, as well as rescission and borrower delinquency and default; (4) information about what features of PACE financing make it unique and how the CFPB should address those unique features in this rulemaking; and (5) views concerning the potential implications of regulating PACE financing under TILA.

In response to the ANPR, the CFPB received over 115 comments, which were submitted by a diverse group of entities, including individual consumers, consumer groups, private PACE industry participants, mortgage stakeholders, energy and environmental groups, and government entities, among others. A summary of some of the legal and policy positions reflected in the ANPR comments is included below, and additional information from the ANPR comments is referenced throughout this proposal.

Regarding the need for PACE regulation, consumer groups and mortgage industry stakeholders generally agreed that PACE transactions require Federal regulation, advocating for strong ATR rules, in particular. Some also supported further application of TILA to PACE financing, including disclosure requirements, rescission rights, loan originator compensation requirements, and protections for high-cost PACE transactions. These commenters indicated that PACE financing is consumer credit, and should be regulated similar to a traditional mortgage because it is voluntary financing that is secured by the consumer's home and because delinquency can lead to penalties, additional interest, and foreclosure. Some argued for more stringent regulations than currently apply to traditional mortgages due to what they asserted was the dangerous nature of PACE financing, citing problematic lending incentives, alleged abuses by home improvement contractors, and alleged targeting of PACE to vulnerable populations.

On the other hand, PACE industry participants generally opposed the imposition of additional or stringent regulations. Many argued that PACE financing is safe for consumers, citing the involvement of State and local governments, the relatively small size of the debt obligation, existing State and local requirements, low delinquency rates, and other features of PACE financing. Some expressed concern that overly broad rules could infringe on the fundamental taxing authority of State and local governments, undermine PACE's public purpose of reducing barriers to green energy financing, decrease access to private capital, and potentially lead to the termination of PACE programs. Some were also worried that regulations would erode PACE's point-of-sale nature, causing consumers and contractors to turn to more dangerous unsecured credit products and decrease new applications. Many argued that PACE financing is not consumer credit subject to TILA, and that the CFPB lacks authority to impose TILA's requirements beyond its ATR rules.

In regard to application of TILA's ATR requirements to PACE financing, there were again differing opinions among commenters. Consumer groups and mortgage industry stakeholders generally agreed that TILA's existing ATR requirements should be applied, but some suggested adjusting them to account for factors such as the cadence of property tax payments, which tend to be due on an annual or semi-annual basis, and the potential for payment shocks related to PACE financing's impact on the consumer's existing mortgage escrow account. Some called for verification of consumers' financial information, and for the ATR rules to account for pre-existing and simultaneous PACE financing to prevent loan stacking or loan splitting. In contrast, some PACE industry participants opposed application of TILA's existing ATR requirements, stating that it would be unnecessary and too burdensome, and would lead to decreased consumer participation in PACE programs. Some also argued that mandatory income verification for all consumers would interfere with the point-of-sale nature of PACE financing, and that a modeled income requirement would be sufficient. Some recommended an emergency exception to any ATR requirement. Still others recommended that the CFPB structure any ATR rules to avoid conflict with existing California regulations.

A few commenters provided their opinions on whether certain PACE transactions should be entitled to a presumption of compliance with the CFPB's ATR requirements similar to QM status. One PACE company suggested that a reasonable safe harbor is necessary to ensure that private capital continues to invest in PACE financing. However, some consumer groups opposed offering a presumption of compliance, stating that PACE is structurally unsafe and a source of abuse for some populations. A mortgage trade association recommended that, if the CFPB decides to permit such a presumption, subordination of the PACE lien should be required.

Regarding the application of TILA section 130 to PACE financing, some consumer groups suggested that PACE companies should be held liable under TILA section 130 because they are responsible for operating the PACE

[52] Public Law 115–174, 132 Stat. 1296 (2018).

[53] EGRRCPA section 307, amending TILA section 129C(b)(3)(C)(ii), 15 U.S.C. 1639c(b)(3)(C)(ii). EGRRCPA section 307 also includes amendments authorizing the Bureau to ''collect such information and data that the Bureau determines is necessary'' in prescribing the regulations and requiring the Bureau to ''consult with State and local governments and bond-issuing authorities.''

[54] *Advance Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy Financing,* 84 FR 8479 (Mar. 8, 2019).

programs. Some PACE industry participants expressed concern that, if government entities become subject to civil liability, they might stop operating PACE programs. Finally, one PACE company recommended capping civil liability at the amount of the assessment, to prevent TILA's statutory damages from exceeding the principal amount of the average PACE transaction.

IV. Data Collection

EGRRCPA section 307 authorizes the CFPB to ''collect such information and data that the Bureau determines is necessary'' to support the PACE rulemaking required by the section.[55] In October 2020, the CFPB requested PACE financing data from all companies providing PACE financing at that time. The request was voluntary and was intended to gather information on PACE transaction applications and originations between July 2014 and June 2020, including basic underwriting information used for applications, application outcomes, and loan terms. The CFPB also contracted with one of the three nationwide consumer reporting agencies to obtain credit record data for the PACE consumers in the PACE transaction data.

In August 2022, the CFPB received from its contractor de-identified PACE data from the four PACE companies that were active in the PACE market at the time of submission and matching de-identified credit record data for the consumers involved in the PACE transactions.[56] The PACE company data encompassed about 370,000 PACE transaction applications submitted in California and Florida from 2014 to 2020 and about 128,000 resulting PACE transaction originations. The CFPB's contractor was able to provide matching credit data for about 208,000 individual PACE consumers, which included periodic credit snapshots for each consumer between June 2014 and June 2022. In total, the matched consumers submitted about 286,000 PACE applications and entered into approximately 100,000 PACE transactions.[57]

The CFPB utilized the acquired data to develop a report that analyzes the impact of PACE transactions on consumer outcomes, with a particular focus on mortgage delinquency. In addition to other analyses, the report examines consumers who obtained originated PACE transactions and compares them to those who applied for PACE transactions and were approved but did not proceed. The report, entitled ''PACE Financing and Consumer Financial Outcomes'' (PACE Report) is being published concurrently with this NPRM.[58]

Among other findings, the PACE transactions analyzed in the PACE Report led to an increase in negative credit outcomes, particularly 60-day mortgage delinquency, with an increase of 2.5 percentage points over a two-year span following PACE transaction origination. Additionally, the PACE borrowers discussed in the PACE Report resided in census tracts with higher percentages of Black and Hispanic residents than the average for their States.[59] However, the effect of PACE transactions on non-PACE mortgage delinquency was statistically similar for PACE borrowers in majority-white census tracts compared to those in majority-non-white census tracts.[60] The PACE Report also assesses the impact of the 2018 California PACE Reforms, discussed in part II.A.5. The analysis finds that these laws improved consumer outcomes while substantially reducing the volume of PACE lending.[61]

V. Outreach

To learn about the industry and the unique nature of PACE financing, the Bureau has engaged with a wide variety of stakeholders since 2015, including consumer advocates, a range of public and private participants in the PACE financing industry, mortgage industry stakeholders, and representatives from energy and environmental groups. The engagement has included listening sessions, roundtable discussions, question-and-answer sessions, consultation calls soliciting stakeholder input, briefings on the ANPR, panel appearances by CFPB staff, and written correspondence.

The CFPB's outreach relating to PACE financing is summarized at a high level below.[62] The outreach has supplemented information on PACE financing that the CFPB has gleaned from independent research; the detailed comments responding to the ANPR, discussed in part III; the data collection described in part IV; and information from publicly available sources such as news reports, research and analysis, and litigation documents.

A. Consumer Advocates

The CFPB began corresponding with consumer advocates regarding PACE financing in 2016. These stakeholders have shared their concerns about consumer risks in the PACE financing market and stories of PACE financing resulting in financial harm to consumers.

The CFPB has continued the engagement since EGRRCPA section 307 was passed, meeting on numerous occasions with individual consumer advocates and consumer advocacy groups to discuss a range of topics related to PACE financing. For example, these stakeholders have shared their understanding of how the PACE financing industry functions, including the structure of the financial obligation, the different roles of government units and private parties, industry trends, and the effects of State legislation on PACE financing. Similar to the perspectives they shared in ANPR comments, discussed in part III, they have also voiced consumer protection concerns and shared legal and policy analysis regarding the implementation of EGRRCPA section 307 and the application of TILA to PACE transactions.

B. Private PACE Industry Stakeholders

Since 2015, the CFPB has engaged on dozens of occasions with various private PACE industry stakeholders, including private PACE companies, a national trade organization, private companies that help administer the assessments (assessment administrators), and at least one bond counsel. These stakeholders have provided the CFPB a great deal of information about PACE transactions, industry business practices, market trends, and the roles of different industry participants.

Additionally, the PACE financing providers, assessment administrators, and a national trade organization have shared industry trends and their views on how the industry has been developing in different jurisdictions. They have also shared their views on some of the challenges and progress the industry has experienced as the programs have developed, including, for example, the causes of fluctuations in loan volumes, industry efforts to improve the consumer experience, benefits of PACE financing, and the effects of consumer protection

[55] 15 U.S.C. 1639c(b)(3)(C)(iii)(I).

[56] The Bureau received data from FortiFi Financial, Home Run Financing, Renew Financial, and Ygrene Energy Fund.

[57] Matched consumers resided in census tracts with smaller Hispanic populations, higher median income, and lower average education compared to consumers who were not matched. The PACE Report verifies that weighting the sample to be more like the full population of PACE consumers has no meaningful effect on the main results of the Report. PACE Report, *supra* note 12, at 11.

[58] *See* PACE Report, *supra* note 12.

[59] *Id.* at 4.

[60] *Id.* at 38–39, Figure 11.

[61] *Id.* at 4–5.

[62] The CFPB also engaged in extensive outreach with numerous stakeholders to design and complete the Bureau data collection on PACE financing that is discussed in part IV.

requirements in particular States. Some of these stakeholders have also shared their perspectives on EGRRCPA section 307 and considerations the CFPB should bear in mind in this rulemaking.

C. State and Local Governments and Bond-Issuing Authorities

As part of the CFPB's PACE rulemaking, EGRRCPA section 307 requires that the CFPB ''consult with State and local governments and bond-issuing authorities.'' [63] Consistent with this requirement, the CFPB has conferred on numerous occasions with State and local governments and bond-issuing authorities involved in PACE financing to gather information about PACE for the rulemaking. Entities with which the CFPB has consulted over the years include government sponsors of PACE financing programs, agencies involved in different aspects of the programs, local property tax collectors, public PACE financing providers, and county and city officials. The CFPB engagements with bond-issuing authorities occurred on a number of occasions, including discussions over the phone and in-person, and through written correspondence. The CFPB also conferred on a number of occasions with membership organizations representing municipalities.

In the course of developing the NPRM, CFPB staff also conducted a series of consultation calls to promote awareness about the CFPB rulemaking and gather input on topics that the CFPB was considering addressing in this proposal, including, for example, whether the CFPB should use the same ATR framework for PACE financing that currently applies to mortgage credit or a different framework, what changes should be made to account for the unique nature of PACE financing, whether to apply any existing QM definitions to PACE financing, how to apply TILA's general civil liability provisions to violations of the ATR requirements for PACE financing, and the implications of this rulemaking for PACE financing bonds. Each call was targeted to specific stakeholder groups, including: (1) State agencies in the three States that currently offer PACE, (2) California local government officials, (3) Missouri local government officials, (4) Florida local government officials, and (5) State and local officials from states that do not currently offer PACE. In addition to feedback provided during the calls, some participants provided input after the calls.

Public entities involved in the operation of PACE financing and third parties operating on their behalf have expressed divergent views on PACE financing. For example, some individuals from local tax collectors' offices and other government units have expressed concern about the risks or challenges that PACE financing can create for consumers or local taxing authorities. In part because of these concerns, some government representatives have shared consumer protection recommendations and background information about how the PACE financing industry operates in particular jurisdictions. Several localities with active PACE financing programs have expressed consumer protection concerns and informed the CFPB that they would welcome application of TILA's ATR provisions to PACE, or that they have implemented certain consumer protection standards themselves. A nonprofit organization that administered a PACE financing program on behalf of a local government informed the CFPB that the locality ended its PACE financing program, largely due to consumer protection concerns.

Other local governments (and third parties they work with) have shared views that reflect more positive assessments of the industry. For example, representatives from one government sponsor of PACE financing (that later ceased sponsoring new PACE financing originations [64]) told the CFPB that the program carries important consumer benefits, including that it provides a financing option for home improvement projects that have energy and environmental benefits, and creating jobs. Local government representatives in certain jurisdictions have expressed enthusiasm about aspects of PACE financing such as increased solar panel installations, and have indicated that they think PACE financing programs generally function well. Some government sponsors indicated that their PACE financing programs had instituted a number of practices that were consumer-protective, such as repayment analysis, low fees, contractor screening, or monitoring and oversight of private entities involved in the originations. Some government sponsors expressed concern that Federal regulation could negatively impact PACE programs, and that the CFPB should not apply TILA's ATR provisions or other consumer protections to PACE financing. Several State and local entities also informed the CFPB that consumer complaints had declined significantly in recent years.

D. Other Stakeholders

The CFPB outreach has also included other stakeholders with an interest in PACE financing. For example, several times since 2016, the CFPB has discussed PACE financing with national and State-level mortgage industry trade organizations. These stakeholders have provided updates on, for example, State-level developments in the PACE financing industry and analysis of Federal policy involving PACE financing. Some have also shared concerns about the potential impact of PACE financing on mortgage industry participants, noting, for example, the priority position of liens securing PACE transactions relative to non-PACE mortgage liens, the challenges non-PACE mortgage industry stakeholders have in obtaining information about PACE transactions and attendant risks, and that non-PACE mortgage servicers may need to collect PACE transactions through an escrow account, which may include advancing their own funds if the consumer is unable to afford the PACE financing payment. Some mortgage industry stakeholders have also raised consumer protection concerns, sharing anecdotal reports of consumer harm and asserting that, in practice, consumers have often had to repay the full PACE financing balance before they have been able to sell properties encumbered with a PACE financing lien. Some suggested that the CFPB should treat PACE like a standard mortgage or apply TILA more generally to PACE.

The CFPB has also met with representatives from environmental and energy groups. These representatives shared general views on, for example, the role of PACE financing in the marketplace, industry trends, and potential risks to consumers.

As discussed in part IX, the CFPB has also consulted with Federal government entities.

VI. Legal Authority

The Bureau is proposing to amend Regulation Z pursuant to its authority under the Consumer Financial Protection Act of 2010 (CFPA) and other provisions of the Dodd-Frank Wall Street Reform and Consumer Protection

[63] 15 U.S.C. 1639c(b)(3)(C)(iii)(II).

[64] The Bureau understands that a number of government sponsors, some of which participated in the Bureau's outreach, have stopped participating in new originations. *See, e.g.,* Jeff Horseman, *Riverside-based agency to end controversial PACE loans for energy improvements,* The Press-Enterprise (Dec. 12, 2022); Andrew Khouri, *L.A. County ends controversial PACE home improvement loan program,* L.A. Times (May 21, 2020), *https://www.latimes.com/homeless-housing/story/2020-05-21/la-fi-pace-home-improvement-loans-la-county#:~:text=Los%20Angeles%20County%20has%20ended,risk%20of%20losing%20their%20homes.*

Act (Dodd-Frank Act),[65] EGRRCPA section 307, TILA, and Real Estate Settlement Procedures Act of 1974 (RESPA).[66]

A. Dodd-Frank Act

CFPA section 1022(b)(1). Section 1022(b)(1) of the CFPA authorizes the Bureau to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' [67] Among other statutes, TILA, RESPA, and the CFPA are Federal consumer financial laws.[68] Accordingly, the Bureau proposes exercising its authority under CFPA section 1022(b) to prescribe rules that carry out the purposes and objectives of TILA, RESPA, and the CFPA and prevent evasion of those laws.

Dodd-Frank Act section 1405(b). Section 1405(b) of the Dodd-Frank Act provides that, notwithstanding any other provision of title XIV of the Dodd-Frank Act, in order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, the Bureau may exempt from or modify disclosure requirements, in whole or in part, for any class of residential mortgage loans if the Bureau determines that such exemption or modification is in the interest of consumers and in the public interest.[69] Section 1401 of the Dodd-Frank Act, which amends TILA section 103(cc)(5), generally defines a residential mortgage loan as any consumer credit transaction that is secured by a mortgage on a dwelling or on residential real property that includes a dwelling, other than an open-end credit plan or an extension of credit secured by a consumer's interest in a timeshare plan.[70] Notably, the authority granted by section 1405(b) applies to disclosure requirements generally and is not limited to a specific statute or statutes. Accordingly, Dodd-Frank Act section 1405(b) is a broad source of authority to exempt from or modify the disclosure requirements of TILA and RESPA. In developing this proposed rule, the Bureau has considered the purposes of improving consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures and the interests of consumers and the public. The Bureau proposes these amendments pursuant to its authority under Dodd-Frank Act section 1405(b). For the reasons discussed below and in the 2013 TILA–RESPA Rule, the Bureau believes the proposal is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

B. TILA

TILA section 105(a). TILA section 105(a) directs the Bureau to prescribe regulations to carry out the purposes of TILA and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions and may further provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.[71] A purpose of TILA is to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various available credit terms and avoid the uninformed use of credit.[72] Additionally, a purpose of TILA sections 129B and 129C is to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.[73]

TILA section 105(b). TILA section 105(b), amended by the CFPA, requires publication of an integrated disclosure for mortgage loan transactions covering the disclosures required by TILA and the disclosures required by sections 4 and 5 of RESPA.[74] The purpose of the integrated disclosure is to facilitate compliance with the disclosure requirements of TILA and RESPA and to improve borrower understanding of the transaction. The Bureau provided additional discussion of this integrated disclosure mandate in the 2013 TILA–RESPA Rule.[75]

TILA section 105(f). Section 105(f) of TILA, 15 U.S.C. 1604(f), authorizes the Bureau to exempt from all or part of TILA any class of transactions if the Bureau determines after the consideration of certain factors that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection.

TILA section 129C(b)(3)(A), (B)(i). TILA section 129C(b)(3)(A) directs the Bureau to prescribe regulations to carry out the purposes of the subsection.[76] In addition, TILA section 129C(b)(3)(B)(i) authorizes the Bureau to prescribe regulations that revise, add to, or subtract from the criteria that define a QM upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C; or are necessary and appropriate to effectuate the purposes of TILA sections 129B and 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.[77]

TILA section 129C(b)(3)(C)(ii). In section 307 of the EGRRCPA, codified in TILA section 129C(b)(3)(C), Congress directed the Bureau to conduct a rulemaking to ''prescribe regulations that carry out the purposes of [TILA's ATR requirements] and apply section 130 [of TILA] with respect to violations [of the ATR requirements] with respect to [PACE] financing, which shall account for the unique nature of [PACE] financing.'' [78]

C. RESPA

RESPA section 4(a). RESPA section 4(a), amended by the CFPA, requires publication of an integrated disclosure for mortgage loan transactions covering the disclosures required by TILA and the disclosures required by sections 4 and 5 of RESPA.[79] The purpose of the integrated disclosure is to facilitate compliance with the disclosure requirements of TILA and RESPA and to improve borrower understanding of the transaction. The Bureau provided additional discussion of this integrated disclosure mandate in the 2013 TILA–RESPA Rule.[80]

RESPA section 19(a). Section 19(a) of RESPA authorizes the Bureau to prescribe such rules and regulations and to make such interpretations and grant such reasonable exemptions for classes of transactions as may be necessary to achieve the purposes of RESPA.[81] One purpose of RESPA is to effect certain changes in the settlement process for residential real estate that will result in more effective advance disclosure to

[65] Public Law 111–203, 124 Stat. 1376 (2010).

[66] 12 U.S.C. 2601 *et seq.*

[67] 12 U.S.C. 5512(b)(1).

[68] CFPA section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of CFPA); CFPA section 1002(12), 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include TILA and RESPA).

[69] Public Law 111–203, 124 Stat. 1376, 2142 (2010) (codified at 15 U.S.C. 1601 note).

[70] Public Law 111–203, 124 Stat. 1376, 2138 (2010) (codified at 15 U.S.C. 1602(cc)(5)).

[71] 15 U.S.C. 1604(a).

[72] 15 U.S.C. 1601(a).

[73] 15 U.S.C. 1639b(a)(2).

[74] Public Law 111–203, 124 Stat. 1376, 2108 (2010) (codified at 15 U.S.C. 1604(b)).

[75] 78 FR 79730, 79753–54 (Dec. 31, 2013).

[76] 15 U.S.C. 1639c(b)(3)(A).

[77] 15 U.S.C. 1639c(b)(3)(B)(i).

[78] 15 U.S.C. 1639c(b)(3)(C)(ii).

[79] Public Law 111–203, 124 Stat. 1376, 2103 (2010) (codified at 12 U.S.C. 2603(a)).

[80] 78 FR 79730, 79753–54 (Dec. 31, 2013).

[81] 12 U.S.C. 2617(a).

home buyers and sellers of settlement costs.[82] In addition, in enacting RESPA, Congress found that consumers are entitled to greater and more timely information on the nature and costs of the settlement process and to be protected from unnecessarily high settlement charges caused by certain abusive practices in some areas of the country.[83] In developing proposed rules under RESPA section 19(a), the Bureau has considered the purposes of RESPA, including to effect certain changes in the settlement process that will result in more effective advance disclosure of settlement costs.

VII. Section-by-Section Analysis

1026.2 Definitions and Rules of Construction.

1026.2(a) Definitions

1026.2(a)(14) Credit

Section 1026.2(a)(14) defines ''credit'' to mean ''the right to defer payment of debt or to incur debt and defer its payment.'' Currently, comment 2(a)(14)–1.ii states, in part, that ''tax liens'' and ''tax assessments'' are not considered credit for purposes of the regulation. The Bureau proposes to amend comment 2(a)(14)–1.ii to add the word ''involuntary'' to clarify which tax liens and tax assessments are not considered credit. Amended as proposed, comment 2(a)(14)–1.ii would provide that ''involuntary tax liens, involuntary tax assessments, court judgments, and court approvals of reaffirmation of debts in bankruptcy'' are not considered credit for purposes of the regulation.[84] The proposed amendment would resolve ambiguity in the existing comment and bring the exclusion in line with the definition of credit in TILA and congressional intent with respect to TILA coverage.

For a number of years, stakeholders have expressed disagreement in litigation, ANPR comments, and other communications about whether comment 2(a)(14)–1.ii excludes PACE transactions from TILA coverage. The ambiguity derives largely from the text of the comment in light of the structure of PACE transactions. The comment excludes tax assessments and tax liens, and PACE transactions have attributes of both involuntary special property tax assessments that are not subject to TILA and voluntary mortgage transactions that are. As described in part II.A, PACE transactions have been treated as assessments under State law, are collected through local property tax systems, and are secured by liens treated similarly to property tax liens; but PACE transactions arise through voluntary contractual agreement, similar to other credit transactions that are subject to TILA.

In general, PACE industry stakeholders have argued that PACE transactions are not TILA credit, in part because the text of the comment states that tax liens and tax assessments are not credit without explicitly distinguishing between voluntary and involuntary obligations; and consumer advocates and mortgage industry stakeholders have argued that PACE transactions *are* TILA credit because, unlike other tax liens and assessments, PACE transactions are voluntary for consumers. One Federal district court has directly addressed the question, ruling that PACE financing is not credit for purposes of TILA in part due to the text of comment 2(a)(14)–1.ii.[85]

The Bureau proposes to amend the commentary to clarify that PACE transactions are credit under TILA and Regulation Z. Amended as proposed, comment 2(a)(14)–1.ii would state that ''involuntary tax liens, involuntary tax assessments, court judgments, and court approvals of reaffirmation of debts in bankruptcy'' are not considered credit for purposes of the regulation. By adding the word ''involuntary'' to comment 2(a)(14)–1.ii, the Bureau would clarify that the comment does not exclude tax liens and tax assessments that arise from voluntary contractual agreements, such as PACE transactions. Thus, under the proposed amendments, tax liens and tax assessments that are voluntary would be credit if they meet the definition of credit under TILA and Regulation Z and are not otherwise excluded.[86]

The proposed amendment would bring the exclusion in comment 2(a)(14)–1.ii in line with the definition of credit in TILA and Regulation Z. TILA defines ''credit'' to mean the ''right granted by creditor to a debtor to defer payment of debt or to incur debt and defer its payment,'' and Regulation Z defines ''credit'' as ''the right to defer payment of debt or to incur debt and defer its payment.'' [87] In general, PACE transactions appear to easily fit these definitions—the agreements provide for consumers to receive funding for home improvement projects and repay those funds over time in installments.[88]

The proposed amendments to comment 2(a)(14)–1.ii would also be in line with congressional intent. Congress enacted TILA in part to enable consumers ''to compare more readily the various credit terms available'' to them, and to ''avoid the uninformed use of credit.'' [89] To that end, relevant legislative history indicates that TILA was intended to require ''all creditors to disclose credit information in a uniform manner'' so that ''the American

[82] 12 U.S.C. 2601(b).

[83] 12 U.S.C. 2601(a). In the past, RESPA section 19(a) has served as a broad source of authority to prescribe disclosures and substantive requirements to carry out the purposes of RESPA.

[84] The proposed rule would also make a conforming change later in the comment, inserting the word ''involuntary'' before ''tax lien'' in an illustrative example of third-party financing that is credit for purposes of the regulation notwithstanding the exclusion.

[85] *See In re HERO Loan Litig.*, 017 WL 3038250 (C.D. Cal. 2017); *see also Burke* v. *Renew Fin. Grp., Inc.,* 2021 WL 5177776 (C.D. Cal. 2021) (ruling that PACE transactions are not consumer credit under TILA). The *In re HERO* and *Burke* courts suggested that PACE assessments are not ''consumer credit transactions'' for purposes of TILA. 2017 WL 3038250, at *2–*3; 2021 WL 5177776, at *3. TILA defines ''consumer credit transactions'' to mean that a credit transaction is ''one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes.'' 15 U.S.C. 1602(i). Consistent with this, Regulation Z defines ''consumer credit'' to mean ''credit offered or extended to a consumer primarily for personal, family, or household purposes.'' 12 CFR 1026.2(a)(12). Residential PACE transactions satisfy these definitions. Notwithstanding the rulings in *Burke* and *In re HERO,* such Residential PACE transactions satisfy these definitions. Notwithstanding the rulings in *Burke* and *In re HERO,* such transactions are ''offered or extended'' to consumers, who as natural persons are the targets of marketing and sales efforts, are offered the loans and decide whether to sign up, and are signatories to the financing agreements, which are for money to fund home improvement services that are primarily for personal, family, or household purposes.

[86] Under the proposed amendments, tax liens and tax assessments that are not voluntary for the consumer would continue to be excluded.

[87] 15 U.S.C. 1602(f); 12 CFR 1026.2(a)(14). Regulation Z further defines creditor generally as ''a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.'' 12 CFR 1026.2(a)(17).

[88] Treating PACE transactions as TILA credit is consistent with the FTC's assertion of claims against a PACE company under the Bureau's Regulation N, 12 CFR part 1014, which the parties settled pursuant to a proposed court order. *See Stipulation as to Entry of Order for Permanent Injunction, Monetary Judgement, and Other Relief* (Oct. 28, 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/Stipulation%20-%20Dkt.%202%20-%2022-cv-07864.pdf; see also* part II.A.4 (describing the settlement). Regulation N, also known as the Mortgage Acts and Practices—Advertising Rule, implements section 626 of the Omnibus Appropriations Act, 2009, as amended. 12 U.S.C. 5538. Regulation N applies to the advertising, marketing, and sale of a ''mortgage credit product,'' defined as ''any form of credit that is secured by real property or a dwelling and that is offered or extended to a consumer primarily for personal, family, or household purposes.'' 12 CFR 1014.2. Regulation N defines ''credit'' identically to Regulation Z but does not include any commentary analogous to comment 2(a)(14)–1.ii to Regulation Z.

[89] TILA section 102(a), 15 U.S.C. 1601(a).

consumer will be given the information he needs to compare the cost of credit and to make the best informed decision on the use of credit.'' [90] Clarifying that voluntary tax liens and tax assessments can be credit, such that PACE transactions are subject to TILA's uniform disclosure requirements, would squarely align with these goals. Consumers have a number of financing options for home improvement projects, such as home equity lines of credit, personal loans, and credit cards. Just like these other financing options, PACE transactions carry certain costs, terms, and conditions that consumers must be aware of in order to make informed credit decisions. Requiring TILA disclosures for PACE transactions allows consumers to shop among different options and across creditors.

Notably, it appears that the current text of comment 2(a)(14)–1.ii was not intended to exclude voluntary transactions such as PACE. The Board of Governors of the Federal Reserve System (Board) first issued the comment in 1981 as part of a broader rulemaking issuing commentary to Regulation Z.[91] In preamble preceding that issuance and in several public information letters that were forerunners to the 1981 rule, it is clear that the Board was addressing whether certain types of involuntary tax and assessment obligations were credit under TILA and Regulation Z. In one letter, the Board stated that the definition of ''credit'' ''necessarily assumes the right to avoid incurring debt. That is, the debt must arise from a contractual relationship, voluntarily entered into, between the debtor and creditor.'' [92] Because ''such a relationship [did] not exist in the delinquent tax arrangement case,'' the Board found that TILA and Regulation Z ''would not govern the transaction.'' [93] Other letters contained similar analysis,[94] and the Board reiterated this reasoning in preamble predating the commentary in which it explained its rationale for the comment, again focusing on the involuntary nature of the obligations as the reason they were not credit.[95] The Board explained:

> Certain transactions do not involve the voluntary incurring of debt; others do not involve the right to defer a debt. Tax liens, tax assessments and court judgments (including reaffirmations of a debt discharged in bankruptcy, if approved by a court) fall into this category and are therefore not covered by the regulation.[96]

Moreover, in this preamble and in the commentary to Regulation Z that it adopted later that year, the Board specifically juxtaposed the excluded obligations with voluntary ones, stating that, while the obligations it was excluding are not credit, ''third-party financing of such obligations (for example, obtaining a bank loan to pay off a tax lien) would constitute credit for Truth in Lending purposes.'' [97] There is no indication that, in issuing the comment excluding tax liens and tax assessments, the Board had considered any tax lien or tax assessment that had originally arisen from a voluntary contractual agreement.

PACE industry stakeholders have asserted a number of additional reasons PACE transactions should not be treated as TILA credit, including that PACE financing serves important public policy purposes as mandated by State law, and that PACE transactions are special assessments that are repaid through the property tax system and are secured by liens enforced similar to property tax liens under State law. The Bureau is not aware of any indication that Congress intended for TILA to exclude voluntary transactions like PACE financing on account of their being processed through property tax systems or because they are intended to further certain public policy purposes.

The Bureau recognizes that clarifying the exclusion in comment 2(a)(14)–1.ii as limited to involuntary tax assessments and involuntary tax liens would ensure that TILA applies generally to PACE transactions. As a result, it would ensure that certain participants in PACE transactions would be subject to TILA requirements. For example, various disclosure and other requirements would apply to the entity that is the ''creditor'' as defined in § 1026.2(a)(17), which the Bureau understands is typically the government sponsor in a PACE transaction.[98] Other requirements would apply to any entity that operates as a ''loan originator'' for a PACE transaction, which could include a PACE company or home improvement contractor depending on the roles those entities play in a particular transaction.[99] In the Bureau's view, PACE transactions share relevant characteristics with other credit transactions, as described above. If they were not subject to TILA and Regulation Z, consumers would be at risk, and it would run counter to the purposes for enacting TILA expressed by Congress. The Bureau understands, however, that certain existing requirements in Regulation Z might warrant adjustment to better accommodate the unique structure of PACE transactions. The Bureau is proposing amendments to that end, as described in the relevant section-by-section analyses in this proposal.

The Bureau seeks comment on the proposed amendments to comment 2(a)(14)–1.ii. The Bureau also seeks comment on whether any TILA provisions not addressed in this proposal warrant amendment for PACE transactions.

1026.32 Requirements for High-Cost Mortgages and 1026.34 Prohibited Acts or Practices in Connection With High-Cost Mortgages

The Home Ownership and Equity Protection Act (HOEPA) was enacted in 1994 as an amendment to TILA to address abusive practices in refinancing and home-equity mortgage loans with high interest rates or high fees.[100] Loans that meet HOEPA's high-cost coverage tests are subject to special disclosure requirements and restrictions on loan terms, and borrowers in high-cost

[90] H.R. Rep. No. 1040, 90th Cong. (1967).

[91] *See* 46 FR 50288, 50292 (Oct. 9, 1981).

[92] Fed. Rsrv. Bd., *Public Information Letter No. 166* (1969).

[93] *Id.*

[94] *See* Fed. Rsrv. Bd., *Public Information Letter No. 153* (1969) (similar with regard to sewer assessment installment payments); Fed. Rsrv. Bd., *Public Information Letter No. 40* (1969) (''[T]he term 'credit', for the purposes of Truth-in-Lending, assumes a contractual relationship, voluntarily entered, between creditor and debtor. Since such a relationship [did] not exist in the case of tax assessments by the Sewer District (and, similarly in the case of ad valorem taxes imposed by a city), . . . such assessments (and city taxes) would not fall within the coverage of [TILA] or Regulation Z.'').

[95] 46 FR 20848, 20851 (Apr. 7, 1981).

[96] *Id.*

[97] *Id.; see also* 46 FR 50288, 50292 (Oct. 9, 1981) (adopting the relevant comment with the same language). In 2011, the authority to interpret TILA and implement Regulation Z transferred to the Bureau, which republished the 1981 Board interpretation as an official Bureau interpretation in comment 2(a)(14)–1.ii with no substantive changes.

[98] Implementing TILA section 103(g), § 1026.2(a)(17) defines ''creditor'' generally as a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments, and to whom the obligation is initially payable. The Bureau's understanding, consistent with ANPR comments and other research, is that these characteristics apply to government sponsors of PACE transactions in the PACE programs that have been active.

[99] Section 1026.36(a)(1) generally defines a ''loan originator'' as a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the following activities: takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or through advertising or other means of communication represents to the public that such person can or will perform any of these activities. See the section-by-section analysis of proposed § 1026.41 for discussion of servicing provisions in Regulation Z.

[100] Public Law 103–325, 108 Stat. 2160.

mortgages have enhanced remedies for violations of the law.[101] The provisions of HOEPA are implemented in Regulation Z in §§ 1026.32 and 1026.34.[102]

The Bureau is not proposing any changes to § 1026.32 or § 1026.34 in this proposed rule. Thus, if the proposed rule is finalized as proposed, the high-cost loan requirements implemented in §§ 1026.32 and 1026.34 would apply to PACE transactions that meet the definition of high-cost mortgage in § 1026.32(a)(1) in the same way that they apply to other high-cost mortgages.[103] The Bureau requests comment on whether any clarification is required through rulemaking or otherwise with respect to how HOEPA's provisions as implemented in Regulation Z apply to PACE transactions that may qualify as high-cost mortgages. In particular, the Bureau requests comment on the interest rates and late fees that consumers may have to pay in connection with their PACE transactions both before and after default, and whether, for example, late fees that apply to all property taxes should be treated differently from contractually-imposed late fees for purposes of HOEPA's limitations on late fees[104] as implemented in § 1026.34(a)(8).

1026.35 Requirements for Higher-Priced Mortgage Loans

35(b) Escrow Accounts

35(b)(2) Exemptions

35(b)(2)(i)

35(b)(2)(i)(E)

TILA section 129D generally requires creditors to establish escrow accounts for certain higher-priced mortgage loans (HPMLs).[105] Regulation Z implements this requirement in § 1026.35(a) and (b), defining an HPML as a closed-end consumer credit transaction secured by the consumer's principal dwelling with an APR exceeding the average prime offer rate (APOR)[106] for a comparable transaction by a certain number of percentage points.[107] With certain exemptions, Regulation Z § 1026.35(b) prohibits creditors from extending HPMLs secured by first liens on consumers' principal dwellings unless an escrow account is established before consummation for payment of property taxes, among other charges (HPML escrow requirement). The Bureau is unaware of any PACE transactions that require consumers to escrow property tax payments or other charges, whether or not the PACE transaction could be characterized as an HPML. The Bureau believes that requiring escrow accounts for PACE transactions that would be subject to the HPML escrow requirement would provide little or no benefit to consumers while imposing substantial burden on industry. The Bureau proposes to add § 1026.35(b)(2)(i)(E) to exempt PACE transactions from the HPML escrow requirement.

The Bureau believes that a mandatory escrow requirement would provide little or no benefit to PACE borrowers. According to the Bureau's PACE data, nearly three-fourths of PACE borrowers had a mortgage at the time their PACE transactions were funded.[108] As a result, a large proportion of PACE borrowers already may have escrow accounts through their pre-existing mortgage loan.[109] For PACE borrowers for whom this is true, PACE payments are already incorporated into the mortgage escrow accounts as part of the property tax payment. Those borrowers who do not have a pre-existing escrow account are already paying their property taxes and any other traditionally escrowed charges on their own and likely do not need or perhaps even want an escrow account. Because the PACE charges are billed with the property taxes, the Bureau believes that it is unlikely that such borrowers will mistakenly neglect to pay them.

Additionally, escrow accounts for PACE transactions would be governed by rules in Regulation X.[110] The rules include a variety of detailed requirements governing, for example, escrow account analyses, escrow account statements, and the treatment of surpluses, shortages, and deficiencies in escrow accounts.[111] The Bureau believes the additional cost and burden to comply with these requirements in this context would not be warranted given the lack of consumer benefit.[112]

Further, Federal law requires certain escrow account disclosures, including escrow account statements required under Regulation X[113] and escrow-related elements of the TILA–RESPA integrated disclosure forms required under Regulation Z,[114] that could be confusing in the context of PACE transactions. A defining feature of PACE is that the loans are paid back through the property tax system. The escrow account disclosures were developed to address more traditional escrow accounts; they would not effectively communicate that an escrow account for a PACE transaction would collect the principal and interest payments as part of the property tax payment. These disclosures would not be required if the Bureau finalizes this proposal—Regulation X does not require escrow account statements if there will be no escrow account,[115] and the TILA–RESPA integrated disclosure forms would not be required to disclose escrow-related information for PACE transactions.[116] Additionally, the escrow account disclosures may create uncertainty about whether the PACE transaction affects the consumer's pre-existing mortgage escrow account when applicable.

The Bureau notes that some of the consumer protection concerns that

[101] *See* 15 U.S.C. 1602(bb), 1639.

[102] 12 CFR part 1026.

[103] A mortgage is generally a high-cost mortgage if (1) the spread between the APR and the average prime offer rate (APOR) is greater than 6.5 percentage points for a first-lien transaction or 8.5 percentage points for a subordinate-lien transaction, (2) points and fees exceed 5 percent of the total loan amount (for loans under $20,000) or the lesser of 8 percent or $1,000 (for loans over $20,000), or (3) the creditor can charge prepayment penalties more than 36 months after consummation or in an amount exceeding 2 percent of the amount prepaid. 12 CFR 1026.32(a)(1). As discussed in the PACE Report, the Bureau estimates that a small percentage of PACE transactions would exceed the APR–APOR spread trigger, while over one-third of existing PACE transactions have points and fees that would exceed the HOEPA points and fees coverage trigger. PACE Report, *supra* note 12, at 15.

[104] 15 U.S.C. 1639(k).

[105] 15 U.S.C. 1639d.

[106] Section 1026.35(a)(2) defines APOR as an APR that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The Bureau publishes APORs for a broad range of types of transactions in a table updated at least weekly as well as the methodology the Bureau uses to derive these rates.

[107] Section 1026.35(a)(1) defines HPML to mean ''a closed-end consumer credit transaction secured by the consumer's principal dwelling with an APR that exceeds the APOR for a comparable transaction as of the date the interest rate is set'' by at least 1.5, 2.5, or 3.5 percentage points depending on the lien priority and the size of the loan relative to the maximum principal obligation eligible for purchase by Freddie Mac.

[108] *See* PACE Report, *supra* note 12, at 12.

[109] *See* Adam H. Langley, Lincoln Inst. Of Land Pol'y, *Improving the Property Tax by Expanding Options for Monthly Payments,* at 2 (Jan. 2018), *https://www.lincolninst.edu/sites/default/files/pubfiles/langley-wp18al1_0.pdf* (stating that, in 2015, 44 percent of U.S. homeowners paid their property taxes as a part of their monthly mortgage payment).

[110] *See generally* Regulation X, 12 CFR 1024.17.

[111] *Id.*

[112] Commenters to the 2008 HPML escrow rule estimated that the cost could range between one million and $16 million for a large creditor. *See* 73 FR 44521, 44558 (July 30, 2008).

[113] *See* 12 CFR 1024.17(g)–(j).

[114] *See* 12 CFR 1026.37, .38.

[115] *See generally* 12 CFR 1024.17.

[116] As discussed in the section-by-section analyses of §§ 1026.37(p) and 1026.38(u) below, the Bureau is proposing to eliminate certain escrow-related fields from the TILA–RESPA integrated disclosure forms, and the remaining escrow-related fields can generally be left blank on the TILA–RESPA integrated disclosure forms if there is no escrow account associated with the transaction.

prompted the Board to adopt the initial HPML escrows rule do not apply in the same way to the PACE market. The Board first implemented the HPML escrow requirement in Regulation Z in 2008, before the requirement was codified in TILA, relying on its authority to prohibit deceptive or unfair acts or practices.[117] The Board's HPML rule was originally intended to protect consumers who receive relatively high interest rates. The Board was concerned that market pressures discouraged creditors from offering escrow accounts to borrowers getting subprime loans, increasing the risk that these consumers would base borrowing decisions on an unrealistically low assessment of their mortgage-related obligations. In contrast, PACE borrowers for whom the HPML escrow requirement would apply will already be paying property taxes as a function of homeownership, and the Bureau understands that PACE transactions do not generally require any mortgage-related insurance. To the extent consumers do lack information about their overall payment obligations, and to the extent this could lead to them receiving unaffordable PACE loans, the Bureau believes such concerns are better addressed through other TILA provisions, including the TILA–RESPA integrated disclosures and ATR requirements that are tailored to PACE as discussed in the section-by-section analyses below.[118]

One ANPR comment letter from consumer groups advocated for applying the HPML escrow requirement for PACE consumers without an existing mortgage escrow, to help spread out payments. The Bureau recognizes that having the option to break up property tax payments into smaller amounts could be helpful to taxpayers generally and particularly to taxpayers with PACE accounts who do not already have a pre-existing mortgage with an escrow account.[119] The Bureau believes it would be beneficial if local taxing authorities facilitated the spreading-out of payments for PACE borrowers[120] but does not believe that requiring an escrow account for PACE HPMLs would be the best way to accomplish this.

The Bureau is proposing this exemption pursuant to TILA sections 105(a) and 105(f). For the reasons discussed in this section-by-section analysis, the Bureau believes that exempting PACE transactions from the requirements of TILA section 125D is proper to carry out the purposes of TILA. As described above, the Bureau believes that the requirements of TILA section 125D would significantly complicate, hinder, and make more expensive the credit process for PACE transactions. The Bureau thus has preliminarily determined that the goal of consumer protection would not be undermined by this exemption.

TILA–RESPA Integrated Disclosure Requirements Implemented Under Sections 1026.37 and 1026.38

The CFPA directed the Bureau to integrate the mortgage loan disclosures required under TILA and RESPA sections 4 and 5, and to publish model disclosure forms to facilitate compliance.[121] The Bureau issued regulatory requirements and model forms to satisfy these statutory obligations in 2013 (2013 TILA–RESPA Rule).[122] The requirements and forms generally apply to closed-end consumer credit transactions secured by real property or a cooperative unit, other than a reverse mortgage subject to § 1026.33.[123]

The integrated disclosures consist of two forms: a Loan Estimate and a Closing Disclosure. The Loan Estimate provides the consumer with good faith estimates of credit costs and transaction terms. It is designed to provide disclosures that are helpful to consumers in understanding the key features, costs, and risks of the mortgage for which they are applying.[124] In general, the Loan Estimate must be provided to consumers within three business days after they submit a loan application[125] and not later than the seventh business day before consummation.[126] The Closing Disclosure is a final disclosure reflecting the actual terms of the transaction. In general, the Closing Disclosure must be provided to the consumer three business days before consummation of the transaction.[127]

As the Bureau explained in the 2013 TILA–RESPA Rule, the TILA–RESPA integrated disclosure forms use clear language and design to make it easier for consumers to locate key information, such as interest rate, periodic payments, and loan costs.[128] The forms also provide information to help consumers decide whether they can afford the loan and to compare the cost of different loan offers, including the cost of the loans over time.[129] These benefits are important for PACE borrowers just as they are for other mortgage borrowers.

The Bureau believes that certain elements of the current TILA–RESPA integrated disclosures may benefit from adaptation so that the forms more effectively disclose information about PACE transactions in view of their unique nature. The Bureau proposes the modifications to the Loan Estimate and Closing Disclosure described below. Where this proposal would not provide a PACE-specific version of a particular provision, the existing requirements in §§ 1026.37 and 1026.38 would apply. As with other mortgage transactions, elements of the forms that are not applicable for PACE transactions may generally be left blank.[130] The Bureau requests comment on the proposed amendments and on any further amendments that may improve consumer understanding for PACE transactions. The Bureau is proposing model forms in appendix H–24(H) (Loan Estimate) and appendix H–25(K) (Closing Disclosure) reflecting the proposed PACE-specific implementation of the TILA–RESPA integrated disclosure requirements.

The Bureau is not proposing amendments to the timing requirements for the Loan Estimate and Closing Disclosure for PACE transactions. The Bureau explained in the 2013 TILA–RESPA Rule that the seven-business-day waiting period between provision of the Loan Estimate and consummation is intended to effectuate the purposes of both TILA and RESPA by enabling the informed use of credit and ensuring effective advance disclosure of settlement charges.[131] The Bureau

[117] 73 FR 44521 (July 30, 2008). The requirement was later codified in TILA section 129D, 15 U.S.C. 1639d.

[118] *See* section-by-section analyses of proposed §§ 1026.37, 1026.38, 1026.43, *infra.*

[119] Langley, *Improving the Property Tax by Expanding Options for Monthly Payments, supra* note 109, at 7.

[120] *See generally id.* (encouraging local governments to expand options for consumers to pay property taxes on a monthly basis).

[121] CFPA sections 1098 & 1100A, codified at 12 U.S.C. 2603(a) & 15 U.S.C. 1604(b), respectively.

[122] *See* 78 FR 80225 (Dec. 31, 2013); 80 FR 43911 (July 24, 2015). The TILA–RESPA integrated disclosure requirements have been amended several times. *See https://www.consumerfinance.gov/rules-policy/final-rules/2013-integrated-mortgage-disclosure-rule-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/.*

[123] *See* § 1026.19(e)(1) and (f)(1).

[124] *See* 78 FR 79730, 80225 (Dec. 31, 2013).

[125] *See* § 1026.2(a)(3)(ii) (defining ''application'' for these purposes as one that ''consists of the submission of the consumer's name, the consumer's income, the consumer's social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought'').

[126] Section 1026.19(e)(1)(iii)(A)–(B).

[127] Section 1026.19(f)(1)(ii)(A).

[128] 78 FR 79730, 80225 (Dec. 31, 2013).

[129] *Id.*

[130] *See* comments 37–1 and 38–1.

[131] 78 FR 79730, 79802–03 (Dec. 31, 2013); *see also id.* at 79806–07 (reasoning in context of considering amendments to bona fide personal financial emergencies that, at least with respect to

Continued

explained that the three-business-day-period following provision of the Closing Disclosure greatly enhances consumer awareness and understanding of the costs associated with the mortgage transaction.[132] As with the substantive disclosures, the timing requirements are important to PACE borrowers, particularly given concerns that the origination process for some PACE borrowers may not provide enough time to understand the obligation and shop for other financing options.[133]

The Bureau is proposing the implementation of the disclosure requirements described in the section-by-section analyses of proposed §§ 1026.37(p) and 1026.38(u) pursuant to its authority under TILA section 105(a) and 105(f), and RESPA section 19(a). For the reasons discussed in the respective section-by-section analyses, the Bureau believes, in its initial analysis, that the proposed implementation would be necessary and proper to carry out the purposes of TILA and RESPA. The proposed provisions that would implement the disclosure requirements under TILA section 105(a), including adjustments or exceptions discussed in the applicable section-by-section analyses, are intended to assure a meaningful disclosure of credit terms, avoid the uninformed use of credit, or facilitate compliance with TILA. In general, the proposed changes are intended to make the Loan Estimate and Closing Disclosure more effective and understandable for PACE borrowers, and to facilitate compliance given the unique nature of PACE transactions. The Bureau believes that the proposed provisions that would implement the disclosure requirements under RESPA section 19(a), including interpretations discussed in the applicable section-by-section analysis, would further the purposes of RESPA and be consistent with the Bureau's authority under RESPA section 19(a).

For the reasons discussed in the respective section-by-section analyses, the Bureau is proposing various exemptions in §§ 1026.37(p) and 1026.38(u) pursuant to its authority under TILA section 105(a) and 105(f). With respect to TILA section 105(a), the Bureau believes, in its initial analysis, that the proposed exemptions would be necessary and proper to carry out TILA's purposes, including by assuring the meaningful disclosure of credit terms and avoiding the uninformed use of credit. Additionally, with respect to TILA section 105(f), the Bureau's preliminary determination, after considering the factors in TILA section 105(f)(2), is that the disclosures proposed to be exempted would not provide meaningful benefit to consumers in the form of useful information or protection. In the Bureau's preliminary analysis, the exempted disclosure requirements would significantly complicate, hinder, or make more expensive credit for PACE transactions, and the exemptions would not undermine the goal of consumer protection. Where the Bureau believes that doing so would help assure the meaningful disclosure of credit terms and avoid the uninformed use of credit, the proposal would replace the exempted disclosures with disclosures that serve similar purposes to the existing disclosures, but that would better fit the context of PACE transactions.

relatively large mortgage loans, the seven-business-day-waiting-period would provide consumers a meaningful opportunity to shop for a loan, compare available financing options, and negotiate favorable terms, and that the seven-business-day-waiting period ''is the minimum amount of time'' in which consumers could meaningfully do so).

[132] 78 FR 79730, 79847 (Dec. 31, 2013).

[133] *See* part II.A.4, *supra.*

Section 1026.37 Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

37(p) PACE Transactions

Section 1026.37 implements the TILA–RESPA integrated disclosure requirements by setting forth the requirements for the Loan Estimate. Proposed § 1026.37(p)(1)–(7) would set forth modifications to the Loan Estimate requirements for ''PACE transactions,'' as defined under proposed § 1026.43(b)(15), to account for the unique nature of PACE.

37(p)(1) Itemization

TILA section 128(a)(6), (a)(16), (b)(2)(C), and (b)(4) are currently implemented in part by § 1026.37(c)(1) through (5), which generally requires creditors to disclose a table itemizing each separate periodic payment or range of payments, among other information, under the heading ''Projected Payments.'' As part of the projected payments table, the creditor is required to state the total periodic payment under § 1026.37(c)(2)(iv), as well as the constituent parts of the total periodic payment under § 1026.37(c)(2)(i) through (iii). Relevant here, § 1026.37(c)(2)(iii) generally requires a field for the disclosure of the amount payable into an escrow account to pay for some or all mortgage-related obligations, as applicable, labeled ''Escrow,'' together with a statement that the amount disclosed can increase over time. Proposed § 1026.37(p)(1) would exempt PACE transactions from the escrow account payment disclosure requirements implemented under § 1026.37(c)(2)(iii).

As discussed in the section-by-section analysis of proposed § 1026.35(b)(2)(i)(E), the Bureau is unaware of any PACE transactions that carry their own escrow accounts. Thus, the escrow account payment field under § 1026.37(c)(2)(iii) would generally be left blank if it were included on the Loan Estimate associated with any PACE transaction.[134] This blank entry could cause confusion for PACE borrowers who pay their property taxes into pre-existing escrow accounts associated with non-PACE mortgage loans, since PACE transactions are typically part of the property tax payment. It also could create doubt for the consumer about whether the PACE transaction will be repaid through the existing escrow account. The Bureau believes the proposed exemption would mitigate this risk.

37(p)(2) Taxes, Insurance, and Assessments

TILA sections 128(a)(16) and 128(b)(4)(A) are currently implemented in part by § 1026.37(c)(4)(ii). Section 1026.37(c)(4) requires creditors to include in the projected payments table [135] information about taxes, insurance, and assessments, with the label ''Taxes, Insurance & Assessments.'' Section 1026.37(c)(4)(ii) generally requires disclosure of the sum of mortgage-related obligations, including property taxes, insurance premiums, and other charges.[136] Section 1026.37(c)(4)(iii) through (vi) requires various statements about this disclosure. Under proposed § 1026.37(p)(2)(i) and

[134] See existing comment 37–1, which provides that a portion of the Loan Estimate that is inapplicable may generally be left blank. (Existing comment 38–1 provides similarly for the Closing Disclosure.)

[135] As noted in the section-by-section analysis of proposed § 1026.37(p)(1), § 1026.37(c) generally requires creditors to disclose a table itemizing each separate periodic payment or range of payments, among other information, under the heading ''Projected Payments.''

[136] Section 1026.37(c)(4)(ii) requires disclosure of ''[t]he sum of the charges identified in § 1026.43(b)(8), other than amounts identified in § 1026.4(b)(5), expressed as a monthly amount, even if no escrow account for the payment of some or any of such charges will be established.'' Section 1026.43(b)(8) defines mortgage-related obligations as ''property taxes; premiums and similar charges identified in § 1026.4(b)(5), (7), (8), and (10) that are required by the creditor; fees and special assessments imposed by a condominium, cooperative, or homeowners association; ground rent; and leasehold payments.'' See also the section-by-section analysis of proposed § 1026.37(p)(8)(i) for discussion of the applicable unit-period for PACE transactions.

(ii), the Bureau would retain most of these requirements for PACE transactions, with changes to the disclosures currently required under § 1026.37(c)(4)(iv), (v), and (vi) for PACE transactions.

Currently, § 1026.37(c)(4)(iv) requires a statement of whether the sum of mortgage-related obligations disclosed pursuant to § 1026.37(c)(4)(ii) includes payments for property taxes, certain insurance premiums, or other charges.[137] Section 1026.37(c)(4)(iv) currently does not require a more specific statement regarding the PACE payment, separate from other property tax obligations. The Bureau is proposing § 1026.37(p)(2)(i) to provide such specificity. Proposed § 1026.37(p)(2)(i) would require a statement of whether the amount disclosed pursuant to § 1026.37(c)(4)(ii) includes payments for the PACE transaction and, separately, whether it includes payments for the non-PACE portions of the property tax payment. The statement about the PACE loan payment would be labeled ''PACE Payment,'' and the statement about the other property taxes would be labeled ''Property Taxes (not including PACE loan).'' Besides having a more specific statement regarding the PACE payment separate from the other property taxes, the other components regarding certain insurance premiums or other charges would continue to be disclosed under proposed § 1026.37(p)(2)(i) similar to how they are disclosed under current § 1026.37(c)(4)(iv). The Bureau believes these proposed changes would help consumers understand the unique nature of PACE and reinforce that the PACE transaction will increase the consumer's property tax payment.

Section 1026.37(c)(4)(iv) also currently requires creditors to state whether the constituent parts of the taxes, insurance, or assessments will be paid by the creditor using escrow account funds. Proposed § 1026.37(p)(2)(i) would eliminate this requirement for PACE transactions. Omitting this information would avoid potential consumer confusion for similar reasons as explained in the section-by-section analysis of proposed § 1026.37(p)(1).

The Bureau is also proposing amendments to the requirements in § 1026.37(c)(4)(v) and (vi). Currently, § 1026.37(c)(4)(v) requires a statement that the consumer must pay separately any amounts described in § 1026.37(c)(4)(ii) that are not paid by the creditor using escrow account funds; and § 1026.37(c)(4)(vi) requires a reference to escrow account information, required under § 1026.37(g)(3), located elsewhere on the Loan Estimate. Proposed § 1026.37(p)(2)(ii) would replace these disclosures with the following for PACE transactions: (1) a statement that the PACE transaction, described in plain language as a ''PACE loan,'' will be part of the property tax payment; and (2) a statement directing the consumer, if the consumer has a pre-existing mortgage with an escrow account, to contact the consumer's mortgage servicer for what the consumer will owe and when. The Bureau believes the proposed disclosures would promote consumer understanding of PACE transactions and their effect on any pre-existing mortgage loans, and that omitting the two existing disclosures would not impair consumer understanding of the transaction.

37(p)(3) Contact Information

TILA section 128(a)(1) is currently implemented in part by § 1026.37(k), which requires disclosure of certain contact information, under the heading ''Additional Information About this Loan.''[138] In general, a creditor must disclose: (1) the name and NMLSR ID,[139] license number, or other unique identifier issued by the applicable jurisdiction or regulating body for the creditor, labeled ''Lender,'' and mortgage broker, labeled ''Mortgage Broker,'' if any; (2) similar information for the individual loan officer, labeled ''Loan Officer,'' of the creditor and the mortgage broker, if any, who is the primary contact for the consumer; and (3) the email address and telephone number of the loan officer. Section 1026.37(k)(1) through (3) further provides that, in the event the creditor, mortgage broker, or loan officer has not been assigned an NMLSR ID, the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the creditor or mortgage broker is licensed and/or registered shall be disclosed, with the abbreviation for the State of the applicable jurisdiction or regulating body.

Proposed § 1026.37(p)(3) would additionally require similar disclosures for PACE companies if such information is not disclosed under the requirements described above. Specifically, proposed § 1026.37(p)(3) would require disclosure of the PACE company's name, NMLSR ID (labeled ''NMLS ID/License ID''), email address, and telephone number of the PACE company (labeled ''PACE Company''). Similar to § 1026.37(k)(1) through (3)'s existing requirements with respect to creditors, mortgage brokers, and loan officers, proposed § 1026.37(p)(3) would provide that, in the event that the PACE company has not been assigned an NMLSR ID, the creditor must disclose on the Loan Estimate the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the PACE company is licensed and/or registered, along with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word ''License'' in the label, if any. These disclosures would not be required if the PACE company's contact information is otherwise disclosed pursuant to § 1026.37(k)(1) through (3). Proposed comment 37(p)(3)–1 would clarify that, for example, if the PACE company is a mortgage broker as defined in § 1026.36(a)(2), then the PACE company is disclosed as a mortgage broker and the field for PACE company may be left blank.

As explained in the 2013 TILA–RESPA Rule, disclosing the name and NMLSR ID number, if any, for the creditor, mortgage broker, and loan officers employed by such entities provides consumers with the information they need to conduct the due diligence necessary to ensure that these parties are appropriately licensed.[140] Having this information may also help consumers assess the risks associated with services and service providers associated with the

[137] Section 1026.37(c)(4)(iv) refers to ''payments for property taxes, amounts identified in § 1026.4(b)(8), and other amounts described in'' § 1026.37(c)(4)(ii). Section 1026.4(b)(8), in turn, refers to ''[p]remiums or other charges for insurance against loss of or damage to property, or against liability arising out of ownership or use of property, written in connection with a credit transaction.'' Additionally, the Bureau notes that a creditor issuing a simultaneous loan that is a PACE transaction would generally be required to include the simultaneous PACE loan in calculating the sum of taxes, assessments, and insurance described in § 1026.37(c)(4)(ii), since the simultaneous PACE loan would increase the consumer's property tax payment. This is consistent with existing comment 19(e)(1)(i)–1, which cross-references existing § 1026.17(c)(2)(i) and generally provides that creditors must make TILA–RESPA integrated disclosures based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. As discussed in the section-by-section analysis of § 1026.43(c)(2)(iv), the Bureau is also proposing to clarify that a creditor originating a PACE transaction knows or has reason to know of simultaneous loans that are PACE transactions if the transactions are included in any existing database or registry of PACE transactions that includes the geographic area in which the property is located and to which the creditor has access.

[138] Section 1026.37(k) also integrates the disclosure of certain information required under appendix C to Regulation X.

[139] Under § 1026.37(k)(1), the NMLS ID refers to the Nationwide Mortgage Licensing System and Registry identification number.

[140] 78 FR 79730, 79975–76 (Dec. 31, 2013).

transaction, which in turn serves the purposes of TILA, RESPA, and the CFPA and Dodd-Frank Act.[141] The Bureau believes that similar considerations apply to the disclosure of the PACE company.

Proposed § 1026.37(p)(3) would reference proposed § 1026.43(b)(14) for the definition of ''PACE company.'' As explained in the section-by-section analysis of proposed § 1026.43(b)(14), ''PACE company'' means a person, other than a natural person or a government unit, that administers the program through which a consumer applies for or obtains PACE financing.

The Bureau seeks comment on proposed § 1026.37(p)(3) generally, and on whether to require the contact information for the PACE company under the ''PACE Company'' heading in all cases, instead of under the ''Mortgage Broker'' heading when applicable.

37(p)(4) Assumption

TILA section 128(a)(13) is currently implemented in part by § 1026.37(m)(2), which requires the creditor to disclose a statement of whether a subsequent purchaser of the property may be permitted to assume the remaining loan obligation on its original terms, labeled ''Assumption.'' This existing disclosure requirement could be misleading for PACE transactions. In general, PACE payment obligations can transfer with the sale of the property, such that the subsequent property owner would be required to pay the remaining obligation as a function of property ownership. However, the new homeowners generally do not technically assume the loans.

Proposed § 1026.37(p)(4) would instead require a statement reflecting a PACE-specific risk that stakeholders have indicated sometimes occurs when consumers try to transfer the PACE obligation by selling the property. The proposed statement would state that, if the consumer sells the property, the buyer or the buyer's mortgage lender may require the consumer to pay off the PACE transaction as a condition of the sale. For clarity, proposed § 1026.37(p)(4) requires the creditor to label this disclosure ''Selling the Property'' and use of the term ''PACE loan'' in the disclosure. The Bureau believes the proposed disclosure would further the purposes of TILA by providing useful information about key risks of PACE loans, thus avoiding the uninformed use of credit.

[141] *See id.*

37(p)(5) Late Payment

TILA section 128(a)(10) is currently implemented in part by § 1026.37(m)(4), which requires the creditor to disclose a statement detailing any charge that may be imposed for a late payment, stated as a dollar amount or percentage charge of the late payment amount, and the number of days that a payment must be late to trigger the late payment fee, labeled ''Late Payment.'' Unlike non-PACE mortgage loans, however, late payment charges for PACE transactions are typically determined by taxing authorities as part of the overall property tax payment. It may be challenging to disclose all late charges that may be associated with a property tax delinquency succinctly and effectively on the Loan Estimate, either under existing § 1026.37(m)(4) or otherwise. The Bureau understands that some States impose several types of late charges, some of which can change as the delinquency persists or depend on factors that are unknown at the time of the disclosure.

To avoid potential confusion for consumers and ensure the Loan Estimate includes useful information about the charges a PACE borrower might accrue in delinquency, the Bureau proposes to implement TILA section 128(a)(10) for PACE transactions by requiring the disclosure in proposed § 1026.37(p)(5) rather than the existing disclosure in § 1026.37(m)(4). Proposed § 1026.37(p)(5) would require creditors, to include one or more statements relating to late charges, as applicable. First, proposed § 1026.37(p)(5)(i) would require a statement detailing any charge specific to the PACE transaction that may be imposed for a late payment, stated as a dollar amount or percentage charge of the late payment amount, and the number of days that a payment must be late to trigger the late payment fee, labeled ''Late Payment.'' Proposed comment 37(p)(5)–1 would clarify that a charge is specific to the PACE transaction if the property tax collector does not impose the same charges for general property tax delinquencies. Although the Bureau is not aware of PACE transactions that impose such PACE-specific late charges, if any PACE transactions do provide for it, disclosure of late payment information would be incomplete without it. If a PACE transaction does not provide for it, the disclosure would not be required.

Second, proposed § 1026.37(p)(5)(ii) would require, for any charge that is not specific to the transaction, either (1) a statement notifying the consumer that, if the consumer's property tax payment is late, they may be subject to penalties and late fees established by their property tax collector, as well as a statement directing the consumer to contact the tax collector for more information; or (2) a statement describing any charges that may result from property tax delinquency that are not specific to the PACE transaction, which may include dollar amounts or percentage charges and the number of days a payment must be late to trigger the fee. Proposed § 1026.37(p)(5)(ii) would provide flexibility for the creditor while ensuring that the Loan Estimate contains useful information about charges that may result from a property tax delinquency.

The Bureau solicits comment on whether it should require creditors to disclose specific late-payment information and, if so, what information to require.

37(p)(6) Servicing

RESPA section 6(a) is currently implemented by § 1026.37(m)(6), which requires the creditor to disclose a statement of whether the creditor intends to service the loan or transfer the loan to another servicer, using the label ''Servicing.'' PACE transactions are not subject to transfer of servicing rights as far as the Bureau is aware. Thus, the Bureau is proposing to implement RESPA section 6(a) for PACE transactions by requiring a servicing-related disclosure that would be more valuable for PACE borrowers.

Proposed § 1026.37(p)(6) would require the PACE creditor to provide a statement that the consumer will pay the PACE transaction, using the term ''PACE loan,'' as part of the consumer's property tax payment. Proposed § 1026.37(p)(6) would also require a statement directing the consumer, if the consumer has a mortgage escrow account that includes the consumer's property tax payment, to contact the consumer's mortgage servicer for what the consumer will owe and when. Proposed § 1026.37(p)(6) would preserve the label ''Servicing'' for the disclosure. The Bureau believes that proposed § 1026.37(p)(6) would promote the informed use of credit.

37(p)(7) Exceptions

37(p)(7)(i) Unit-Period

Because PACE transaction payments are repaid with the property taxes once or twice a year, the applicable unit-period would typically be annual or semi-annual. The proposed model form for PACE under proposed appendix H–24(H) would use ''annual'' in the tables disclosing loan terms and projected payments. Proposed § 1026.37(p)(7)(i) would provide that, wherever the proposed form uses ''annual'' to describe the frequency of any payments or the applicable unit-period, the creditor shall use the appropriate term to reflect the transaction's terms, such as semi-annual payments. Proposed § 1026.37(p)(7)(i) would be similar to existing § 1026.37(o)(5), which permits unit-period changes wherever the Loan Estimate or § 1026.37 uses ''monthly'' to describe the frequency of any payments or uses ''month'' to describe the applicable unit-period.[142]

37(p)(7)(ii) PACE Nomenclature

The Bureau understands that PACE companies may market PACE loans to consumers using brand names that do not include the term ''Property Assessed Clean Energy'' or the acronym ''PACE.'' To improve the Loan Estimate's utility and understandability, proposed § 1026.37(p)(7)(ii) would clarify that, wherever § 1026.37 requires disclosure of the term ''PACE'' or the proposed model form in appendix H–24(H) uses the term ''PACE,'' the creditor may substitute the name of a specific PACE financing program that will be recognizable to the consumer. Proposed comment 37(p)(7)(ii)–1 would provide an example of how a creditor may substitute the name of a specific PACE financing program that is recognizable to the consumer as PACE on the form.

Section 1026.38 Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)

38(u) PACE Transactions

Section 1026.38 implements the TILA–RESPA integrated disclosure requirements by setting forth the requirements for the Closing Disclosure. Proposed § 1026.38(u)(1)–(9) would set forth modifications to the Closing Disclosure requirements under § 1026.38 for ''PACE transactions,'' as defined under proposed § 1026.43(b)(15), to account for the unique nature of PACE.

38(u)(1) Transaction Information

TILA section 128(a)(1) is currently implemented in part by § 1026.38(a)(4), which requires disclosure of identifying information for the borrower, the seller, where applicable, and the lender,[143] under the heading ''Transaction Information.'' [144] Proposed § 1026.38(u)(1) would additionally require the Closing Disclosure for a PACE transaction to include the name of any PACE company involved in the transaction, labeled ''PACE Company.'' It would refer to proposed § 1026.43(b)(14) for the definition of ''PACE company'' for these purposes: a person, other than a natural person or a government unit, that administers the program through which a consumer applies for or obtains PACE financing.

As the Bureau explained in the 2013 TILA–RESPA Rule, disclosing the identifying information for the borrower, seller, and lender is intended to effectuate statutory purposes by promoting the informed use of credit.[145] The Bureau believes disclosing the PACE company's identifying information would do the same.[146]

38(u)(2) Projected Payments

TILA section 128(a)(6), (a)(16), (b)(2)(C), and (b)(4) is currently implemented in part by § 1026.38(c). Under § 1026.38(c)(1), the Closing Disclosure must disclose the information in the projected payments table required on the Loan Estimate under § 1026.37(c)(1)–(4),[147] with certain exceptions. These disclosures generally include the total periodic payment, as well as an itemization of the periodic payment's constituent parts. Additionally, § 1026.38(c)(2) requires the projected payments table on the Closing Disclosure to include a statement referring the consumer to a detailed disclosure of escrow account information located elsewhere on the form.

Proposed § 1026.38(u)(2) would retain the existing structure of the projected payments table but would (1) eliminate the field for escrow account information that is part of the periodic payment disclosure currently required under § 1026.37(c)(2)(iii); (2) require the creditor to disclose whether the amount disclosed for estimated taxes, insurance, and assessments includes payments for the PACE transaction and, separately, whether it includes the non-PACE portions of the property tax payment, with corresponding labels for both; and (3) require a statement that the PACE transaction will be part of the property tax payment and a statement directing the consumer, if they have a mortgage with an escrow account, to contact their mortgage servicer for what they will owe and when. Additionally, proposed § 1026.38(u)(2) would require the creditor to omit the existing reference to detailed escrow account information located elsewhere on the form. With these proposed amendments, the projected payments table for the Closing Disclosure in a PACE transaction would mirror that on the Loan Estimate as amended under proposed § 1026.37(p)(1) and (2). The Bureau is proposing these changes for the same reasons as set forth in the section-by-section analyses of proposed § 1026.37(p)(1) and (2) above.

38(u)(3) Assumption

TILA section 128(a)(13) is currently implemented in part by § 1026.38(l)(1), which requires the information described in § 1026.37(m)(2) to be provided on the Closing Disclosure under the subheading ''Assumption.'' Section 1026.37(m)(2) requires the creditor to disclose a statement of whether a subsequent purchaser of the property may be permitted to assume the remaining loan obligation on its original terms. As discussed in the section-by-section analysis of proposed § 1026.37(p)(4), the Bureau understands that this disclosure would not be as relevant for PACE transactions, since subsequent property owners typically would not assume PACE obligations. For the reasons discussed in the section-by-section analysis of proposed § 1026.37(p)(4), proposed § 1026.38(u)(3) would thus implement TILA section 128(a)(13) for PACE transactions by requiring the creditor to use the subheading ''Selling the Property'' and to disclose the information required by § 1026.37(p)(4) in place of the information required under § 1026.38(l)(1).

38(u)(4) Late Payment

TILA section 128(a)(10) is currently implemented in part by § 1026.38(l)(3), which requires the creditor to disclose on the Closing Disclosure the information described in § 1026.37(m)(4) under the subheading ''Late Payment.'' It requires a statement detailing any charge that may be

[142] Comment 37(o)(5)–4 explains that, for purposes of § 1026.37, the term ''unit-period'' has the same meaning as in appendix J to Regulation Z.

[143] For purposes of § 1026.38(a)(4)(iii), the lender is defined as ''the name of the creditor making the disclosure.'' In relevant part, the ''creditor'' is a ''person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable.'' *See* § 1026.2(a)(17). As noted in the section-by-section analysis of proposed § 1026.2(a)(14), government sponsors are typically the creditors for PACE transactions.

[144] Section 1026.38(a)(4) also integrates the disclosure of certain information required under appendix A to Regulation X.

[145] 78 FR 79730, 80002–03 (Dec. 31, 2013).

[146] See part II.A.1 for discussion of the central role PACE companies often play in PACE transactions.

[147] Section 1026.37(c)(1)–(3) requires information about the initial periodic payment or range of payments; and § 1026.37(c)(4) requires information about estimated taxes, insurance, and assessments. The Bureau is proposing changes to these disclosure requirements for PACE transactions as described in the section-by-section analysis of proposed § 1026.37(p)(1) and (2).

imposed for a late payment, stated as a dollar amount or percentage charge of the late payment amount, and the number of days that a payment must be late to trigger the late payment fee, labeled ''Late Payment.'' Proposed § 1026.38(u)(4) would make changes relating to the disclosure of late payment charges on the Closing Disclosure for PACE transactions to parallel the changes that would be made in proposed § 1026.37(p)(5) with respect to the Loan Estimate. The Bureau proposes these changes for the same reasons discussed in the section-by-section analysis of proposed § 1026.37(p)(5).

38(u)(5) Partial Payment Policy

TILA section 129C(h) is currently implemented by § 1026.38(l)(5), which requires certain disclosures regarding the lender's acceptance of partial payments under the subheading ''Partial Payments.'' Section 1026.38(l)(5)(i) through (iii) generally requires disclosure of whether the creditor accepts partial payments and, if so, whether the creditor may apply the partial payments or hold them in a separate account. Section 1026.38(l)(5)(iv) requires a statement that, if the loan is sold, the new lender may have a different policy.

For PACE transactions, however, the current partial-payment disclosure may not accurately and effectively reflect partial-payment options for PACE transactions. In general, partial payment policies for PACE transactions are typically set by the taxing authority and not by the creditor. The tax collector may offer payment options not described accurately in the disclosure required under § 1026.38(l)(5), and any payment options would likely apply to the full property tax payment, not only to the PACE payment specifically. Further, if a PACE borrower pays their property taxes into an escrow account on a pre-existing mortgage loan, their PACE loans may be subject to a partial payment policy associated with the pre-existing mortgage loan, which the disclosure of partial-payment policies associated with the creditor for the PACE transaction would not necessarily reflect.

Proposed § 1026.38(u)(5) would avoid potential inaccuracies that might arise under existing requirements and is intended to provide the consumer with useful information as it relates to a PACE transaction. It would require that, in lieu of the information required by § 1026.38(l)(5), the creditor shall disclose a statement directing the consumer to contact the mortgage servicer about the partial payment policy for the account if the consumer has a mortgage escrow account for property taxes, and to contact the tax collector about the tax collector's partial payment policy if the consumer pays property taxes directly to the tax authority.

38(u)(6) Escrow Account

TILA section 129D(h) and 129D(j) is currently implemented in part by § 1026.38(l)(7), which requires a statement of whether an escrow account will be established for the transaction, as well as detailed information about the effects of having or not having an escrow account, under the subheading ''Escrow Account.'' For similar reasons as discussed in the section-by-section analysis for proposed § 1026.37(p)(1) with respect to exempting escrow-related information from the projected payments table on the Loan Estimate for PACE transactions, and because certain elements of the disclosure under § 1026.38(l)(7) could be inaccurate for some PACE borrowers, proposed § 1026.38(u)(6) would exempt creditors in PACE transactions from the requirement to disclose on the Closing Disclosure the information otherwise required under § 1026.38(l)(7).

38(u)(7) Liability After Foreclosure

TILA section 129C(g)(2) and 129C(g)(3) is currently implemented in part by § 1026.38(p)(3), which requires the creditor to disclose certain information about the consumer's potential liability after foreclosure. It requires, under the subheading ''Liability after Foreclosure,'' a brief statement of whether, and the conditions under which, the consumer may remain responsible for any deficiency after foreclosure under applicable State law, a brief statement that certain protections may be lost if the consumer refinances or incurs additional debt on the property, and a statement that the consumer should consult an attorney for additional information.

In general, this disclosure provides useful information for consumers who may have State-law protections against deficiency. However, it may not be applicable in the same way, or at all, with respect to PACE transactions due to their unique nature. Thus, proposed § 1026.38(u)(7) would provide that the creditor shall not disclose the liability-after-foreclosure disclosure described in § 1026.38(p)(3).[148] It would provide that, if the consumer may be responsible for any deficiency after foreclosure or tax sale under applicable State law, the creditor shall instead disclose a brief statement that the consumer may have such responsibility, a description of any applicable protections provided under State anti-deficiency laws, and a statement that the consumer should consult an attorney for additional information. This information would be under the subheading ''Liability after Foreclosure or Tax Sale.'' The Bureau believes this information would be more useful for PACE borrowers than the existing disclosure required under § 1026.38(p)(3), thus helping to avoid the uninformed use of credit.

38(u)(8) Contact Information

TILA section 128(a)(1) is currently implemented in part by § 1026.38(r), which generally requires certain information disclosed in a separate table, under the heading ''Contact Information.''[149] For transactions without a seller, § 1026.38(r) requires specified contact and licensing information for each creditor, mortgage broker, and settlement agent participating in the transaction. Proposed § 1026.38(u)(8) would require the same contact and licensing information for the PACE company if not otherwise disclosed pursuant to § 1026.38(r). As discussed in the section-by-section analysis of proposed § 1026.37(p)(3) and proposed comment 37(p)(3)–1,[150] the PACE company may be a mortgage broker, in which case its information would be required under the existing requirements in § 1026.38(r); proposed § 1026.38(u)(8) would not require the disclosure of the PACE company a second time. As explained in the section-by-section analysis of proposed § 1026.43(b)(14), given the important role that PACE companies play in PACE transactions, the Bureau believes that disclosing their contact information could be useful to consumers and would facilitate the informed use of credit.

38(u)(9) Exceptions

38(u)(9)(i) Unit-Period

To permit creditors the flexibility to disclose the correct unit-period for each PACE transaction, proposed

[148] As described in § 1026.37(m)(7), if the purpose of the credit transaction is to refinance an extension of credit as described in § 1026.37(a)(9)(ii), the Loan Estimate would be required to disclose information about the consumer's liability after foreclosure. The Bureau believes that this disclosure is unlikely to be required on a Loan Estimate for a PACE loan. Therefore the proposal does not currently address such language on the Loan Estimate.

[149] Section 1026.38(r) also integrates the disclosure of certain information required under appendix A and appendix C to Regulation X.

[150] Proposed comment 37(p)(3)–1 explains that a PACE company may be a mortgage broker as defined in § 1026.36(a)(2).

§ 1026.38(u)(9)(i) would provide that, wherever proposed form H–25(K) of appendix H uses ''annual'' to describe the frequency of any payments or the applicable unit-period, the creditor shall use the appropriate term to reflect the transaction's terms, such semi-annual payments. The Closing Disclosure changes in proposed § 1026.38(u)(9)(i) parallel the Loan Estimate changes in proposed § 1026.37(p)(7)(i), and the Bureau is proposing proposed § 1026.38(u)(9)(i) for the same reasons stated in the section-by-section analysis of proposed § 1026.37(p)(7)(i). Proposed § 1026.38(u)(9)(i) is also similar to existing § 1026.38(t)(5)(i), which permits changes wherever the Closing Disclosure or § 1026.38 uses ''monthly'' to describe the frequency of any payments or uses ''month'' to describe the applicable unit-period.'' [151]

38(u)(9)(ii) PACE Nomenclature

The Bureau understands that PACE companies may market to consumers using brand names that do not include the term ''Property Assessed Clean Energy'' or the acronym ''PACE.'' To ensure that consumers understand Closing Disclosures provided for PACE transactions, proposed § 1026.38(u)(9)(ii) would clarify that, wherever § 1026.38 requires disclosure of the term ''PACE'' or the proposed model form in appendix H–25(K) uses the term ''PACE,'' the creditor may substitute the name of a specific PACE financing program that will be recognizable to the consumer. Proposed comment 38(u)(9)(ii)–1 would provide an example of how a creditor may substitute the name of a specific PACE financing program that is recognizable to the consumer as PACE on the form.

1026.41 Periodic Statement

41(e) Exemptions

41(e)(7) PACE Transactions

TILA section 128(f) generally requires periodic statements for residential mortgage loans.[152] Section 1026.41 implements this requirement by requiring creditors, servicers, or assignees, as applicable, to provide a statement for each billing cycle that contains information such as the amount due, payment breakdown, transaction activity, contact information, and delinquency information.[153] Proposed § 1026.41(e)(7) would exempt PACE transactions, as defined in proposed § 1026.43(b)(15), from the periodic statement requirement to reduce consumer confusion while avoiding undue burden for PACE creditors.

Several unique characteristics of PACE financing support this proposed exemption. First, PACE payments and delinquency charges are typically integrated with broader property tax payments and delinquency charges. Consumers may be confused about whether fields in the periodic statement include details of the PACE financing, property taxes, or both, or why the figures do not align with those in their property tax statements. Second, the annual or semi-annual payment schedule for PACE financing means that information on the periodic statement about the next expected payment would come many months before the payment was due, given timing requirements for periodic statements under Regulation Z, which may limit its utility for consumers.[154] Finally, requiring a periodic statement could impose a significant burden on the party providing the statement given that local taxing authorities would hold needed information such as whether and when payments were made or delinquency charges applied.

Even with the proposed exemption, consumers would still receive information regarding payments and delinquency from their property tax collector and, if they have a mortgage with an escrow, from their mortgage servicer. Consumers could also obtain information about the PACE loan by requesting a payoff statement pursuant to § 1026.36(c)(3).

The Bureau seeks comment on proposed § 1026.41(e)(7) and whether a periodic statement requirement would benefit PACE consumers. Specifically, the Bureau seeks comment on the types of disclosures related to PACE financing that consumers currently receive from PACE creditors, property tax collectors, and others. The Bureau also seeks comment on whether an annual or semi-annual disclosure like the periodic statement would be useful for PACE consumers and, if so, what information it should contain.

The Bureau also requests comment on whether there are any other mortgage servicing requirements in Regulation Z or X beyond the periodic statement requirement that the Bureau should address in the final rule. Some servicing requirements, such as the requirements to provide periodic statements and to provide payoff statements, apply not just to servicers but also to creditors and assignees.[155] Both Regulation Z and Regulation X also impose certain servicing requirements that apply only to ''servicers'' as defined in Regulation X, 12 CFR 1024.2(b).[156] Regulation X generally defines servicer as ''a *person* responsible for the servicing of a federally related mortgage loan'' and servicing as receiving any scheduled periodic payments from a borrower pursuant to the loan's terms and making certain payments to the loan's owner or other third parties.[157] The definition of ''person'' in RESPA [158] has been interpreted not to apply to government entities.[159] This proposed rule does not address any servicing requirements that apply only to ''servicers'' as defined in Regulation X because there does not appear to be a ''servicer'' in typical PACE transactions. Pursuant to the terms of PACE transactions that the Bureau has reviewed, the consumer's local government taxing authority typically receives the borrower's regular PACE payments as part of the consumer's larger property tax payment.

The Bureau proposes to use its authority under TILA sections 105(a) and (f) and Dodd-Frank Act section 1405(b) to exempt PACE financing from the periodic statement requirement. The Bureau preliminarily concludes that this exemption is necessary and proper under TILA section 105(a). Furthermore, the Bureau preliminarily concludes, for the reasons stated above, that disclosure of the information specified in TILA section 128(f)(1) would not provide a meaningful benefit to PACE consumers, considering the factors in TILA section 105(f). The Bureau preliminarily believes that this conclusion would be true regardless of the loan amount, borrower status (including related

[151] Comment 38(t)(5)–3 explains that, for purposes of § 1026.38, the term ''unit-period'' has the same meaning as in appendix J to Regulation Z.

[152] 15 U.S.C. 1638(f).

[153] For purposes of § 1026.41, the term ''servicer'' includes the creditor, assignee, or servicer of the loan, as applicable. § 1026.41(a)(2).

[154] *See* 12 CFR 1026.41(b).

[155] *See* §§ 1026.41(a)(2); 1026.36(c)(3).

[156] *See, e.g.,* 12 CFR 1024.41 (loss mitigation); 1026.36(c)(1) and (2) (payment processing and pyramiding of late fees).

[157] 12 CFR 1024.2(b) (emphasis added); *see also* 12 U.S.C. 2605(i)(2).

[158] *See* 12 U.S.C. 2602(5).

[159] *See, e.g., New Jersey Title Ins. Co.* v. *Cecere,* 2020 WL 7137873, at *10 (D.N.J. 2020); *United States* v. *Davis,* 2018 WL 6694826, at *4 (C.D. Ill. 2018); *Rodriguez* v. *Bank of Am.,* 2017 WL 3086369, at *5 (D.N.J. 2017). Other entities involved in PACE transactions, such as the PACE company and home improvement contractor, would fall within RESPA's definition of ''person'' but do not appear to meet the Regulation X definition of ''servicer'' in typical PACE transactions. For federally related mortgage loans, defined in RESPA section 3(1), 12 U.S.C. 2602(1), and Regulation X § 1024.2(b), RESPA covered persons are generally subject to RESPA's provisions including the anti-kickback provisions in 12 U.S.C. 2607.

financial arrangements, financial sophistication, and the importance to the borrower of the loan), or whether the loan is secured by the consumer's principal residence. Consequently, the proposed exemption appears to further the consumer protection objectives of the statute, and helps to avoid complicating, hindering, or making more expensive the credit process. The Bureau also believes that the proposed modification of the requirements in TILA section 128(f) to exempt PACE financing would improve consumer awareness and understanding and is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

1026.43 Minimum Standards for Transactions Secured by a Dwelling

Section 1026.43 implements the requirement in TILA section 129C(a) that creditors must make a reasonable, good faith determination of a consumer's ability to repay a residential mortgage loan and defines the loans eligible to be ''qualified mortgages,'' which obtain certain presumptions of compliance pursuant to TILA section 129C(b). The Bureau is proposing a number of amendments to § 1026.43 and its commentary to account for the unique nature of PACE. Specifically, this proposal would (1) define ''PACE company'' and ''PACE transaction'' for purposes of § 1026.43; (2) provide an additional factor a creditor must consider when making a repayment ability determination for PACE transactions extended to consumers who pay their property taxes through an escrow account; (3) provide that a PACE transaction is not a QM as defined in § 1026.43; and (4) extend the requirements of § 1026.43 and the liability provisions of section 130 of TILA [160] to any PACE company that is substantially involved in making the credit decision. This proposal would also amend the commentary to this section to explain that a creditor originating a PACE transaction knows or has reason to know of any simultaneous loans that are PACE transactions if the transactions are included in a relevant database or registry of PACE transactions. The Bureau further proposes to amend the commentary to make clear that pre-existing PACE transactions are considered a property tax for purposes of considering mortgage-related obligations under § 1026.43(b)(8) and to clarify the verification requirements for existing PACE transactions. The CFPB seeks comment on these proposed amendments.

Background on the Existing Ability-to-Repay Requirements for Mortgages

The Dodd-Frank Act amended TILA to establish, among other things, ATR requirements in connection with the origination of most residential mortgage loans.[161] As amended, TILA prohibits a creditor from making a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan according to its terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.[162]

TILA identifies the factors a creditor must consider in making a reasonable and good faith assessment of a consumer's ability to repay. These factors are the consumer's credit history, current and expected income, current obligations, debt-to-income (DTI) ratio or residual income after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than equity in the dwelling or real property that secures repayment of the loan.[163]

In January 2013, the Bureau issued a final rule amending Regulation Z to implement TILA's ATR requirements (January 2013 Final Rule).[164] This proposal refers to the January 2013 Final Rule and later amendments to it collectively as the ATR/QM Rule. The ATR/QM Rule implements the statutory criteria listed above in the eight underwriting factors a creditor must consider in making a repayment ability determination set out in § 1026.43(c)(2).[165] These factors are (1) the consumer's current or reasonably expected income or assets (other than the value of the dwelling and attached real property that secures the loan) that the consumer will rely on to repay the loan; (2) the consumer's current employment status (if a creditor relies on employment income when assessing the consumer's ability to repay); (3) the monthly mortgage payment for the loan that the creditor is underwriting; (4) the monthly payment on any simultaneous loans secured by the same dwelling; (5) monthly mortgage-related obligations; (6) the consumer's current debts, alimony, and child-support obligations; (7) the consumer's monthly DTI ratio or residual income; and (8) the consumer's credit history.[166]

The ATR/QM Rule generally requires a creditor to verify the information it relies on when determining a consumer's repayment ability using reasonably reliable third-party records.[167] For example, to verify the consumer's income and assets, a creditor may use a tax-return transcript issued by the Internal Revenue Service or a variety of other records, such as filed tax returns, IRS Form W–2s, payroll statements, financial institution records, or other third-party documents.[168]

The ATR/QM Rule also defines categories of loans, called QMs, that are presumed to comply with the ATR requirement.[169] Under the ATR/QM Rule, a creditor that makes a QM loan is deemed to have complied with ATR requirements presumptively or conclusively, which generally depends on whether the loan is ''higher priced.'' [170] The ATR/QM Rule defines several categories of QM loans. As

[160] 15 U.S.C. 1640.

[161] Dodd-Frank Act sections 1411–12, 1414, 124 Stat. 2142–48, 2149; 15 U.S.C. 1639c.

[162] 15 U.S.C. 1639c(a)(1). TILA section 103 defines ''residential mortgage loan'' to mean, with some exceptions including open-end credit plans, ''any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling.'' 15 U.S.C. 1602(dd)(5). TILA section 129C also exempts certain residential mortgage loans from the ATR requirements. *See, e.g.,* 15 U.S.C. 1639c(a)(8) (exempting reverse mortgages and temporary or bridge loans with a term of 12 months or less).

[163] 15 U.S.C. 1639c(a)(3).

[164] 78 FR 6408 (Jan. 30, 2013).

[165] *See id.* at 6463.

[166] 12 CFR 1026.43(c)(2).

[167] 12 CFR 1026.43(c)(3)–(4).

[168] 12 CFR 1026.43(c)(4). TILA section 129C(a)(4) provides that, in order to safeguard against fraudulent reporting, any consideration of a consumer's income history must include the verification of income using either (1) IRS transcripts of tax returns; or (2) an alternative method that quickly and effectively verifies income documentation by a third-party, subject to rules prescribed by the Bureau. In the January 2013 Final Rule, the Bureau implemented TILA section 129C(a)(4)(B) by adjusting the requirement to (1) require the creditor to use reasonably reliable third-party records, consistent with TILA section 129C(a)(4), rather than the ''quickly and effectively'' standard of TILA section 129C(a)(4)(B); and (2) provide examples of reasonably reliable records that a creditor can use to efficiently verify income, as well as assets. *See* 78 FR 6408, 6474 (Jan. 30, 2013).

[169] 15 U.S.C. 1639c(b)(1).

[170] The ATR/QM Rule generally defines a ''higher-priced'' loan to mean a first-lien mortgage with an APR that exceeded APOR for a comparable transaction as of the date the interest rate was set by 1.5 or more percentage points; or a subordinate-lien mortgage with an APR that exceeded APOR for a comparable transaction as of the date the interest rate was set by 3.5 or more percentage points. 12 CFR 1026.43(b)(4). A creditor that makes a QM loan that is not ''higher priced'' is entitled to a conclusive presumption that it has complied with the ATR/QM Rule—*i.e.,* the creditor receives a safe harbor from liability. 12 CFR 1026.43(e)(1)(i). A creditor that makes a loan that meets the standards for a QM loan but is ''higher priced'' is entitled to a rebuttable presumption that it has complied with the ATR/QM Rule. 12 CFR 1026.43(e)(1)(ii).

relevant here, those categories include General QM, Small Creditor QM, Seasoned QM, and Balloon-Payment QM loans.[171]

QM Definitions

One category of QM loans defined by the ATR/QM Rule consists of ''General QM loans.'' [172] The January 2013 Final Rule provided that a loan was a General QM loan if:

• The loan did not have negative-amortization, interest-only, or balloon-payment features, a term that exceeds 30 years, or points and fees that exceed specified limits; [173]

• The creditor underwrote the loan based on a fully amortizing schedule using the maximum rate permitted during the first five years; [174]

• The creditor considered and verified the consumer's income and debt obligations in accordance with appendix Q; [175] and

• The consumer's DTI ratio was no more than 43 percent, determined in accordance with appendix Q.[176]

The Bureau amended the General QM definition on December 10, 2020 (General QM Final Rule).[177] The General QM Final Rule amended Regulation Z to remove the General QM loan definition's DTI limit (and appendix Q) and replace it with limits based on the loan's pricing. For non-PACE mortgages, loan pricing in general is strongly correlated with early delinquency rates, which the General QM Final Rule used as a proxy for repayment ability.[178] The Bureau concluded that a comparison of a loan's APR to the APOR for a comparable transaction is a more holistic and flexible indicator of a consumer's ability to repay than DTI alone.[179] The Bureau further concluded that the bright-line pricing thresholds established in the General QM Final Rule strike an appropriate balance between ensuring consumers' ability to repay and ensuring access to responsible, affordable mortgage credit.[180] Under the amended rule, a loan meets the General QM loan definition only if the APR exceeds the APOR for a comparable transaction by less than 2.25 percentage points, with higher thresholds for loans with smaller loan amounts, for certain manufactured housing loans, and for subordinate-lien transactions.[181]

In May 2013, the Bureau amended the ATR/QM Rule to add, among other things, a new QM category for covered transactions that are originated by creditors that meet certain size criteria and that satisfy certain other requirements (the Small Creditor QM).[182] Those requirements include many that apply to General QMs, with some exceptions. Specifically, Small Creditor QMs are not subject to the pricing threshold for QM status, and the threshold for determining whether Small Creditor QMs are higher-priced covered transactions, and thus qualify for the QM safe harbor or rebuttable presumption, is higher than the threshold for General QMs.[183] In addition, Small Creditor QMs must be held in portfolio for three years (a requirement that does not apply to General QMs).[184]

In December 2020, the Bureau created a new category of QMs (Seasoned QMs) for first-lien, fixed-rate covered transactions that have met certain performance requirements, are held in portfolio by the originating creditor or first purchaser for a 36-month period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements.[185] To qualify, a transaction generally must have no more than two delinquencies of 30 or more days and no delinquencies of 60 or more days at the end of the seasoning period of 36 months beginning on the date on which the first periodic payment is due.[186] The Bureau found that if combined with certain other factors, successful loan performance over a number of years indicates sufficient certainty to presume that loans were originated in compliance with the ATR/QM Rule.[187]

TILA section 129C(b)(2)(E)(iv)(I) granted the Bureau the discretion to create a special provision allowing origination of balloon-payment QMs, which it implemented in the January 2013 Final Rule.[188] As directed by Congress, the Bureau considered the issues facing small creditors in rural and underserved areas and determined that it was appropriate to exercise its discretion under TILA to reduce burdens on certain small creditors that operate predominantly in rural or underserved areas. Accordingly, the Bureau established a special provision allowing these creditors to originate balloon-payment QMs, even though balloon-payment mortgages are otherwise precluded from being considered QMs.[189]

43(b) Definitions

Section 1026.43(b) sets forth certain definitions for purposes § 1026.43. The Bureau is proposing to amend the commentary to § 1026.43(b)(8), regarding the existing definition of mortgage-related obligations, to clarify the treatment of payments for pre-existing PACE transactions. The Bureau is also proposing two new definitions in § 1026.43(b)(14) and (b)(15). Under the proposal, § 1026.43(b)(14) would define

[171] 12 CFR 1026.43(c), (e), (f). TILA section 129C(b)(3)(B)(ii) directs HUD, the Department of Veterans Affairs (VA), the Department of Agriculture (USDA), and the Rural Housing Service (RHS) to prescribe rules defining the types of loans they insure, guarantee, or administer, as the case may be, that are QMs. Section 1026.43(e)(4) provides that, notwithstanding paragraph § 1026.43.43(e)(2), a QM is a covered transaction that is defined as a QM by HUD under 24 CFR 201.7 and 24 CFR 203.19, VA under 38 CFR 36.4300 and 38 CFR 36.4500, or USDA under 7 CFR 3555.109. In addition, section 101 of the EGRRCPA amended TILA to provide protection from liability for insured depository institutions and insured credit unions with assets below $10 billion with respect to certain ATR requirements regarding residential mortgage loans. The Bureau is not aware of any PACE creditors that would qualify for protection under these provisions, and these provisions are not addressed in this proposed rule.

[172] Another temporary category of QMs defined by the ATR/QM Rule, Temporary GSE QMs, expired on October 1, 2022.

[173] 12 CFR 1026.43(e)(2)(i)–(iii).

[174] 12 CFR 1026.43(e)(2)(iv).

[175] 12 CFR 1026.43(e)(2)(v).

[176] 12 CFR 1026.43(e)(2)(vi). Appendix Q contained standards for calculating and verifying debt and income for purposes of determining whether a mortgage satisfied the 43 percent DTI limit for General QM loans. The standards in appendix Q were adapted from guidelines maintained by the Federal Housing Administration (FHA) of HUD when the January 2013 Final Rule was issued. 78 FR 6408, 6527–28 (Jan. 30, 2013) (noting that appendix Q incorporates, with certain modifications, the definitions and standards in HUD Handbook 4155.1, Mortgage Credit Analysis for Mortgage Insurance on One-to-Four-Unit Mortgage Loans).

[177] 85 FR 86308 (Dec. 29, 2020).

[178] See part IX.A for a discussion of why these dynamics differ for PACE transactions.

[179] 85 FR 86308, 86317 (Dec. 29, 2020).

[180] *Id.*

[181] *Id.* at 86367.

[182] 78 FR 35430 (June 12, 2013). The Bureau made several amendments to the Small Creditor QM provisions in 2015. 80 FR 59944 (Oct. 2, 2015).

[183] QMs are generally considered to be higher priced if they have an APR that exceeds the applicable APOR by at least 1.5 percentage points for first-lien loans and at least 3.5 percentage points for subordinate-lien loans. In contrast, Small Creditor QMs are only considered higher priced if the APR exceeds APOR by at least 3.5 percentage points for either a first- or subordinate-lien loan. 12 CFR 1026.43(b)(4). The same is true for another QM definition that permits certain creditors operating in rural or underserved areas to originate QMs with a balloon payment provided that the loans meet certain other criteria (Balloon Payment QM loans). QMs that are higher priced enjoy only a rebuttable presumption of compliance with the ATR requirements, whereas QMs that are not higher priced enjoy a safe harbor.

[184] 12 CFR 1026.43(e)(5)(ii).

[185] 85 FR 86402 (Dec. 29, 2020).

[186] 12 CFR 1026.43(e)(7)(ii).

[187] 85 FR 86402, 86415 (Dec. 29, 2020).

[188] 78 FR 6408, 6538 (Jan. 30, 2013).

[189] *Id.* The Bureau further amended the Regulation Z requirements for balloon-payment QMs in response to the HELP Rural Communities Act in October 2015. 81 FR 16074 (Mar. 25, 2016); *see* Public Law 114–94, 129 Stat. 1312 (2015).

PACE company, and § 1026.43(b)(15) would define PACE transaction.[190]

43(b)(8) Mortgage-Related Obligations

Section 1026.43(b)(8) defines ''mortgage-related obligations'' to include property taxes, among other things. In turn, § 1026.43(c)(2)(v) requires a creditor to consider the consumer's monthly payment for mortgage-related obligations in making the repayment ability determination required under § 1026.43(c)(1). The Bureau proposes to amend comment 43(b)(8)–2 to explicitly state that payments for pre-existing PACE transactions are considered property taxes for purposes of § 1026.43(b)(8). The intent of this proposed amendment is to ensure that it is clear that a creditor must consider payments for pre-existing PACE transactions as mortgage-related obligations.

The proposed amendment to comment 43(b)(8)–2 is consistent with the existing rule but adds an explicit reference to PACE transactions for clarity. Comment 43(b)(8)–2 already provides that all obligations that are related to the ownership or use of real property and paid to a taxing authority, whether on a monthly, quarterly, annual, or other basis, are property taxes for purposes of § 1026.43(b)(8). PACE transactions are related to the ownership or use of real property and are paid to a taxing authority. In addition, the existing comment provides as an example that taxes, assessments, and surcharges imposed by independent districts established or allowed by the government with the authority to impose levies on properties within the district to fund a special purpose qualify as property taxes for purposes of § 1026.43(b)(8). The Bureau seeks comment on this proposed amendment.

43(b)(14) PACE Company

To provide clarity and for ease of reference, the Bureau proposes to add a definition of ''PACE company'' in § 1026.43(b)(14).

As discussed in part II.A above, most local governments that engage in PACE financing rely on private companies to administer PACE programs. PACE companies are generally responsible for operating the applicable programs, including marketing PACE financing to consumers, administering originations, making decisions about whether to extend the loan, and enlisting home improvement contractors that will implement the projects to facilitate the originations. PACE companies thus play an extensive role in PACE transactions, and as discussed in the section-by-section analysis of § 1026.43(i) below, the Bureau proposes to apply the requirements of § 1026.43 to any PACE company that is substantially involved in making the credit decision.[191]

Proposed § 1026.43(b)(14) would provide that PACE company means a person, other than a natural person or a government unit, that administers the program through which a consumer applies for or obtains a PACE transaction. Proposed comment 43(b)(14)–1 would provide indicia of whether a person is administering a PACE financing program. The Bureau intends this proposed provision and associated commentary to target the private companies involved in running the PACE programs as described above—the Bureau understands that it would not apply to home improvement contractors, who may be natural persons and who generally do not administer the PACE program. The CFPB seeks comment on this proposed definition and, in particular, on whether it accurately identifies the intended entities and whether the use of this term accounts for the unique nature of PACE financing.

43(b)(15) PACE Transaction

Section 307 of the EGRRCPA amended TILA to define the term ''Property Assessed Clean Energy financing'' for purposes of TILA section 129C(b)(3)(C) as financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer.[192] The Bureau proposes to add a definition for the term ''PACE transaction'' to Regulation Z that is based on the EGRRCPA section 307 definition. Specifically, proposed § 1026.43(b)(15) would provide that a PACE transaction means financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer. The Bureau seeks comment on this proposed definition.

43(c) Repayment Ability

Section 307 of the EGRRCPA directed the Bureau to prescribe regulations that carry out the purposes of TILA's ATR provisions for residential mortgage loans with respect to PACE transactions. The Bureau has preliminarily concluded that the existing ATR framework set out in § 1026.43(c) effectively carries out the purposes of TILA's ATR provisions and is generally appropriate for PACE transactions, with adjustments to the commentary to § 1026.43(c) and the addition of the provisions set out in § 1026.43(i) described below.

As described above, the existing ATR requirement in § 1026.43(c)(1) requires a creditor to make a reasonable and good faith determination of a consumer's ability to repay at or before consummation of a covered mortgage loan. Section 1026.43(c)(2) provides eight factors that a creditor must consider in making the repayment ability determination, while § 1026.43(c)(3) and (c)(4) generally requires a creditor to verify the information that the creditor relies on in determining a consumer's repayment ability using reasonably reliable third-party records. These verification requirements are important to carrying out the purpose of TILA's ATR provisions.[193] TILA section 129C(a)(4) is intended to safeguard against fraudulent reporting and inaccurate underwriting, as the statute specifically notes that a creditor must verify a consumer's income history ''[i]n order to safeguard against fraudulent reporting.'' These concerns appear to be heightened in the PACE market given the consumer protection issues observed by advocates and others, such that weakening the verification requirement in this context would be inappropriate. The Bureau believes the current ATR provisions, which provide minimum requirements for creditors making ability-to-repay determinations but do not dictate particular underwriting models, are similarly appropriate for PACE transactions, subject to certain proposed adjustments specific to PACE transactions discussed below.

Applying existing § 1026.43(c) to PACE transactions will allow PACE creditors to account for the particular features of the PACE transactions that they originate when assessing a consumer's ability to repay. The Bureau's ATR framework is designed to be flexible, to allow creditors to develop

[190] If the Bureau finalizes the new definitions in proposed § 1026.43(b)(14) and (b)(15), the final rule would add the new definitions into § 1026.43(b) where they belong alphabetically in that paragraph and would renumber existing definitions as needed and make conforming technical adjustments to cross-references to those definitions to reflect the renumbering changes.

[191] The Bureau also proposes to apply section 130 of TILA, 15 U.S.C. 1640, to covered PACE companies that fail to comply with § 1026.43. *See* section-by-section analysis of proposed § 1026.43(i)(3).

[192] *See* 15 U.S.C. 1639C(b)(3)(C)(i).

[193] *See* 78 FR 6408, 6475 (Jan 30. 2013) (''One of the purposes of TILA section 129C is to assure that consumers are offered and receive covered transactions on terms that reasonably reflect their ability to repay the loan. *See* TILA section 129B(a)(2). The Bureau believes that a creditor consulting reasonably reliable records is an effective means of verifying a consumer's income and helps ensure that consumers are offered and receive loans on terms that reasonably reflect their repayment ability.'').

and apply their own underwriting standards, and to permit creditors to consider the facts and circumstances of each individual extension of credit. The ATR provisions of Regulation Z also do not provide comprehensive underwriting standards to which creditors must adhere.[194] For example, the rule and commentary do not specify how much income is needed to support a particular level of debt or how credit history should be weighed against other factors. So long as creditors consider the factors set forth in § 1026.43(c)(2) according to the requirements of § 1026.43(c), creditors are permitted to develop their own underwriting standards and make changes to those standards over time in response to empirical information and changing economic and other conditions.[195] As such, the Bureau preliminarily believes that the existing ATR framework provides PACE creditors sufficient operational flexibility while still requiring compliance with the general requirement to make a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms.

For these reasons, the Bureau proposes to apply existing § 1026.43(c) to PACE transactions, with adjustments to the commentary to § 1026.43(c) and the addition of the provisions set out in § 1026.43(i) described below. The Bureau seeks comment on these proposed changes. In particular, the Bureau seeks comment on whether § 1026.43(c) should be amended to permit or require a creditor to consider the effect of potential savings resulting from the home improvement project financed in the PACE transaction (such as lowered utility payments).

43(c)(2) Basis for Determination

43(c)(2)(iv)

Section 1026.43(c)(2) sets forth factors creditors must consider when making the ATR determination required under § 1026.43(c)(1), and the accompanying commentary provides guidance regarding these factors. Section 1026.43(c)(2)(iv) provides that one factor a creditor must consider is the consumer's payment obligation on any simultaneous loan that the creditor knows or has reason to know will be made at or before consummation of the covered transaction. The Bureau proposes to add new comment 43(c)(2)(iv)–4 to provide additional guidance to creditors originating PACE transactions. Proposed comment 43(c)(2)(iv)–4 would provide that a creditor originating a PACE transaction knows or has reason to know of any simultaneous loans that are PACE transactions if the transactions are included in any existing database or registry of PACE transactions that includes the geographic area in which the property is located and to which the creditor has access.

Proposed comment 43(c)(2)(iv)–4 is intended to help address concerns about the prevalence of ''loan splitting'' and ''loan stacking'' in the PACE industry that were raised in ANPR comments from consumer groups and other stakeholders. As described in the comments, loan splitting refers to the practice of a contractor dividing a loan for one consumer into more than one transaction to make each transaction appear more affordable, while loan stacking refers to contractors returning to a PACE borrower to offer additional PACE financing (often through different creditors). The Bureau's statistical analysis indicates that a little more than 13 percent of PACE borrowers between 2014 and 2020 received multiple PACE transactions, with many of these transactions originated simultaneously or within a few months of each other, which could be indicative of loan splitting or stacking.[196] About one-fourth of PACE borrowers with multiple PACE transactions consummated multiple transactions in the same month, and about three-quarters of PACE borrowers with multiple PACE loans consummated more than one transaction within the same 6-month period.[197] In some cases, the creditor originating the second or successive PACE transaction might not be aware of previous transactions, due to delays in recording.

Given these concerns and the increased possibility of a PACE borrower having previously entered a PACE transaction, the Bureau preliminarily concludes that it is practical and appropriate for a PACE creditor to search any existing database or registry of PACE transactions that includes the geographic area in which the property is located and to which the creditor has access. A PACE industry association has recommended that market participants create a PACE-related lien registry for PACE companies to review when underwriting consumers for PACE transactions.[198] In addition, the Bureau understands that at least one active PACE State has contemplated establishing a real-time registry or database system for tracking PACE assessments.[199] The Bureau believes that if a database of PACE transactions that covers the geographic area in which the property is located exists, proposed comment 43(c)(2)(iv)–4 would lead PACE creditors to discover more simultaneous loans, which could reduce the extent of loan splitting and loan stacking. The Bureau is not proposing to apply this provision to creditors originating non-PACE mortgages, because the origination of a PACE loan and a non-PACE mortgage in short succession does not appear to raise the same concerns regarding loan splitting or loan stacking. Additionally, it is relatively rare for a new mortgage borrower to have a pre-existing PACE transaction on the same property, since PACE transactions are less common than non-PACE mortgages and a property sale is unlikely to be completed unless any existing PACE loan has already been paid off. The Bureau seeks comment on this proposal.

43(c)(3) Verification Using Third-Party Records

In general, a creditor must verify the information that the creditor relies on in determining a consumer's repayment ability under § 1026.43(c)(2) using reasonably reliable third-party records. The Bureau proposes to amend comment 43(c)(3)–5 to clarify how this requirement applies to consumers with existing PACE transactions.[200] Current comment 43(c)(3)–5 provides that, ''[w]ith respect to the verification of mortgage-related obligations that are property taxes required to be considered under § 1026.43(c)(2)(v), a record is reasonably reliable if the information in the record was provided by a governmental organization, such as a taxing authority or local government.'' Additionally, the comment provides that the creditor complies with § 1026.43(c)(2)(v) by relying on property taxes referenced in the title report if the source of the property tax information was a local taxing authority.

The Bureau proposes to amend comment 43(c)(3)–5 to clarify that a

[194] *See* comment 43(c)(1)–1.

[195] *See id.; see also* comment 43(c)(2)–1.

[196] *See* PACE Report, *supra* note 12, at 12, 24.

[197] *See id.* at 24.

[198] PACENation, *Residential Property Assessed Clean Energy (R–PACE) State and Local Consumer Protection Policy Principles,* at 3 (Oct. 21, 2021), *https://www.pacenation.org/wp-content/uploads/2021/11/PACENation-R-PACE-Consumer-Protection-Policy-Principles-ADOPTED-October-21.2021.pdf.*

[199] *See* Cal. Fin. Code sec. 22693.

[200] As discussed above, the Bureau is proposing to clarify that payments for pre-existing PACE transactions are considered a property tax and therefore mortgage-related obligations under § 1026.43(b)(8). *See* discussion of comment 43(b)(8)–2 in section-by-section analysis of proposed § 1026.43(b)(8) *supra.*

creditor that knows or has reason to know that a consumer has an existing PACE transaction does not comply with § 1026.43(c)(2)(v) by relying on information provided by a governmental organization, either directly or indirectly, if the information provided does not reflect the PACE transaction. A PACE creditor might know or have reason to know of a PACE transaction that is about to be originated and that, therefore, will not appear in property tax records or property tax information in a title report. For example, a PACE creditor might learn of the existing PACE transaction by searching a relevant database of PACE transactions, or a consumer might inform the creditor of the PACE transaction in application materials. In those circumstances, the proposed amendment provides that a creditor would not comply with the requirement to verify mortgage-related obligations using reasonably reliable third-party records by verifying the consumer's property taxes solely using property tax records or property tax information in a title report that do not include the existing PACE transaction. The CFPB seeks comment on this proposed amendment.

43(i) PACE Transactions

43(i)(1)

Many consumers who obtain PACE transactions have pre-existing mortgages that require the payment of property taxes through an escrow account. Consumers with such pre-existing mortgages will typically also make their PACE transaction payments through their existing escrow account. Under certain circumstances, the addition of payments for a PACE transaction can result in a sharp increase in the consumer's escrow payments. This increase is relevant to the consumer's ability to repay the PACE transaction. The CFPB preliminarily concludes that, for consumers who pay their property taxes through an escrow account, a creditor's reasonable and good faith determination of a consumer's ability to repay a PACE transaction according to its terms must include the creditor's consideration of the effect of incorporating a PACE transaction into a consumer's escrow payments. For the reasons discussed below, the Bureau proposes to add new § 1026.43(i)(1) to require that a creditor making the repayment ability determination under § 1026.43(c)(1) and (2) also consider any monthly payments the consumer will have to pay into the consumer's escrow account as a result of the PACE transaction that are in excess of the monthly payment amount considered under § 1026.43(c)(2)(iii).

One unique aspect of PACE transactions is that, unlike traditional mortgages, consumers may pay them through an escrow account on another mortgage loan. PACE transactions are also distinct from non-PACE mortgage loans in several other respects, including with regard to the timing of when the first PACE payment is due and their annual or semi-annual repayment schedule. These distinct features of PACE transactions can result in significant payment spikes for consumers. Consumers who are required to make their PACE payments through their existing escrow account have faced particularly long delays before payments have come due on their PACE transaction.[201] These consumers only begin repaying their PACE transaction once their mortgage servicer conducts an escrow account analysis and adjusts their monthly payment to reflect the addition of the PACE transaction to their property tax bill. A servicer must conduct an escrow account analysis every 12 months but may, and in some cases must, do so more frequently. The Bureau understands that the timing of this analysis—and whether the servicer knows of the PACE transaction at the time of the first analysis following consummation—can have a significant impact on the amount of the consumer's initial escrow payments once adjusted to incorporate the PACE transaction.[202]

For example, assume a PACE transaction was consummated in June 2021, and the first PACE payment was due November 1, 2021. If the servicer had not learned of the PACE transaction before receiving a tax bill for the November 1, 2021 payment, the PACE transaction would not have been promptly incorporated into the consumer's escrow account. Assuming no funds were set aside to pre-pay the consumer's escrow account, in this example the servicer's next escrow account analysis might newly account for (1) the initial payment due November 1, 2021 for which no escrow funds were previously collected, (2) the upcoming PACE payment that would be due November 1, 2022, and (3) any potential adjustments to the escrow account cushion attributable to the PACE transaction.[203] In this example, a consumer could experience a sharp and unexpected increase in their initial escrow payments beyond the amount that would have been owed had the PACE transaction been incorporated into escrow promptly. This payment spike would undercut a central benefit of escrow accounts to consumers in spreading out large obligations into more manageable, regular payments.

Consumer group commenters to the ANPR stated that the delay in this adjustment of the escrow account means that the first year or two of a consumer's increased escrow payments to account for the PACE transaction will likely be higher than in subsequent years due to significant shortages in the escrow account. These commenters expressed that if, for example, the servicer analyzes the escrow account just before property tax bills are issued, the servicer will advance the full property tax amount, including the amount owed on the PACE transaction, but the escrow account will then carry a deficiency (or negative balance due to the prior year's PACE payment) going forward. They stated further that, at the next escrow account analysis, the servicer will calculate the new escrow payment by adding to the base payment an amount sufficient to repay the deficiency, an amount to cover the upcoming year's PACE payment that was not accounted for in the prior year's escrow analysis (an escrow shortage), and a reserve cushion of no greater than one-sixth (1/6) of the estimated total annual payments from the account.[204] A State trade association indicated that in general, it is not uncommon for a PACE transaction to double a consumer's monthly escrow payment because the PACE transaction amount could be as much or more than the existing property tax. This commenter stated that the escrow adjustment to bring the escrow account current after one year, provide for the next PACE payment, and fund a cushion can potentially triple the consumer's monthly escrow payment amount for a 12-month period.

The CFPB understands that at least some PACE consumers have had difficulty repaying their PACE transaction because of this substantial and unanticipated spike in their escrow

[201] Regulation X provides that an escrow account is any account established or controlled by a servicer on behalf of a borrower to pay taxes, insurance premiums, or other charges with respect to a federally related mortgage loan, including those charges that the servicer and borrower agreed to have the servicer collect and pay. 12 CFR 1024.17(b).

[202] *See generally* 12 CFR 1024.17(c)(3) (discussing annual escrow account analyses).

[203] Under 12 CFR 1024.17(c)(1), servicer may charge a cushion of no greater than one-sixth (1/6) of the estimated total annual payments from the account.

[204] A deficiency is the amount of a negative balance in an escrow account, while a shortage is an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis. 12 CFR 1024.17(b).

payments. Some consumer group commenters to the ANPR asserted that the addition of a PACE transaction to the property tax bill has frequently driven PACE consumers' escrow payments to unaffordable levels that result in many PACE consumers being unable to make their full mortgage payments and going into default and even foreclosure. These commenters cited as examples a homeowner in Stockton, California, who saw his escrow payment increase by almost $500 a month, and an older adult homeowner in Oakland, California, whose monthly fixed income was only about $1,000 and faced an increase in her escrow payment of over $900.

The Bureau preliminarily concludes that a creditor can only make a reasonable and good faith determination of the consumer's ability to repay the PACE transaction by considering the potential spike in the consumer's escrow payments it may cause. As described above, commenters to the ANPR expressed that the payment spike that can result when a PACE transaction is added to a consumer's property tax bill frequently increases their escrow payments to unaffordable levels, which could result in the consumer's default and even tax sale or foreclosure. The CFPB thus preliminarily concludes that it is consistent with the purposes of the ATR requirements to require a PACE creditor to consider whether a consumer who will pay their PACE payments through an escrow account will be able to make their monthly escrow payment once the escrow payment amount is adjusted to account for any potential deficiency or shortage and an escrow cushion attributable to the PACE transaction. Although the initial increase in the escrow payment would not last for the entire remaining duration of the PACE transaction, it could last for a year or longer and thus have a direct bearing on the consumer's ability to afford their PACE transaction during the timeframe in which this higher amount is owed. This short-term payment spike is also foreseeable by PACE creditors at consummation.

The CFPB also preliminarily concludes that the heightened consumer uncertainty that may arise for PACE transactions paid through escrow accounts as compared to other types of covered transactions supports this proposal. The Bureau has heard anecdotally and from commenters to the ANPR that PACE consumers are often surprised by and unprepared for the large payment spike. A few consumer group commenters to the ANPR asserted that the information provided by PACE programs regarding the relationship between PACE financing and escrow accounts is insufficient to prepare consumers for the payment shock—or equip them to prevent it—when there is a delay between consummation and when the servicer learns of the PACE transaction and adjusts the escrow payment.[205] The Bureau is concerned that the consumer uncertainty that can arise from the lack of information regarding how escrow accounts work in the context of PACE transactions could be further compounded by the lack of notice to consumers regarding when the escrow payments incorporating the PACE transactions will begin. The uncertainty that PACE consumers with escrow accounts experience regarding how much their escrow payments will increase because of their PACE transaction and when those increases will occur may persist even with the proposed disclosures and other protections that would be afforded under the proposal. Accordingly, the CFPB expects that the uniquely unpredictable and complex nature of the initial PACE payment obligations could make it challenging for these consumers to accurately track the amount owed as a result of their PACE transaction and set aside an amount sufficient to cover the higher initial payments once the escrow account is adjusted.

For these reasons, the Bureau proposes to add new § 1026.43(i)(1). Section 1026.43(i)(1) would require that, for PACE transactions extended to consumers who pay their property taxes through an escrow account, in making the repayment ability determination required under § 1026.43(c)(1) and (c)(2), a creditor must consider the factors identified in § 1026.43(c)(2)(i) through (viii) and also must consider any monthly payments that the creditor knows or has reason to know the consumer will have to pay into any escrow account as a result of the PACE transaction that are in excess of the monthly payment amount considered under § 1026.43(c)(2)(iii). The CFPB preliminarily concludes that proposed § 1026.43(i)(1) would provide an appropriately calibrated means to address concerns about a consumer's repayment ability when incorporation of the PACE transaction into the escrow payments could result in a sharp payment increase. As described above, the Bureau preliminarily concludes that it would not be reasonable for a creditor to make an ATR determination while ignoring a potentially significant and unexpected spike in the consumer's escrow payments once adjusted to account for the PACE transaction. At the same time, this potential payment spike would not last for the duration of the PACE transaction. Creditors would be required to consider any monthly payments that are in excess of the monthly payment amount considered under § 1026.43(c)(2)(iii), but they would not need to assume these higher payments would be owed for the entire duration of the loan. Creditors would also not be required to calculate this amount as part of the consumer's monthly payment amount for purposes of § 1026.43(c)(5) or to include the amount considered under proposed § 1026.43(i)(1) in their DTI or residual income calculations required under § 1026.43(c)(2)(vii) but could do so at their option as one possible means of complying with proposed § 1026.43(i)(1). The Bureau expects the proposal would provide an appropriate means for creditors to consider this limited duration, but potentially significant PACE-related obligation, faced by consumers who pay through an escrow account.

Proposed § 1026.43(i)(1)(i) and (ii) would provide additional detail on what factors creditors must take into account when considering any monthly payments that the creditor knows or has reason to know the consumer will have to pay into the consumer's escrow account as a result of the PACE transaction that are in excess of the monthly payment amount considered under § 1026.43(c)(2)(iii). Under the escrow requirements in Regulation X, servicers are permitted to charge an additional amount to maintain a cushion of no greater than one-sixth (1⁄6) of the estimated total annual payments from the escrow account,[206] and the Bureau understands that servicers frequently charge the full allowable amount of this cushion. Accordingly, proposed § 1026.43(i)(1)(i) would provide that, in making the consideration required by § 1026.43(i)(1), creditors must take into account the cushion of one-sixth (1⁄6) of the estimated total annual payments attributable to the PACE transaction from the escrow account that the servicer may charge under 12 CFR 1024.17(c)(1), unless the creditor reasonably expects that no such cushion will be required or unless the creditor reasonably expects that a different

[205] As an example, these commenters stated that California's financing estimate and disclosure includes the following advice: ''If you pay your taxes through an impound account you should notify your mortgage lender, so that your monthly mortgage payment can be adjusted by your mortgage lender to cover your increased property tax bill.'' Cal. Sts. & Hwys. Code sec. 5898.17.

[206] 12 CFR 1024.17(c)(1).

cushion amount will be required, in which case the creditor must use that amount. The Bureau preliminarily concludes that it is appropriate to require consideration of this cushion for PACE transactions given the unique potential for consumer uncertainty regarding the timing and amount of the new, higher escrow payments once adjusted to include the PACE transaction.

Proposed § 1026.43(i)(1)(ii) would address specifically the payment spike that can result from a delay in incorporating the PACE transaction into the consumer's escrow payments. It would require that in considering the amount specified by § 1026.43(i)(1), if the timing for when the servicer is expected to learn of the PACE transaction is likely to result in a shortage or deficiency in the consumer's escrow account, the creditor must take into account the expected effect of any such shortage or deficiency on the monthly payment that the consumer will be required to pay into the consumer's escrow account. There may be a significant time lag between when a PACE transaction is consummated and when the first escrow payment reflecting the PACE transaction comes due. As commenters to the ANPR noted, this delay could result in consumers incurring an escrow deficiency and shortage that would lead to significantly higher escrow payments than otherwise would have been required had the PACE transaction been incorporated promptly into the consumer's escrow payments. The Bureau understands that the timing of when the servicer is expected to learn of the PACE transaction can affect the existence and amount of such a deficiency or shortage. This, in turn, would affect the monthly payment that the consumer is required to pay into their escrow account and the amount that would be considered under proposed § 1026.43(i)(1).

As described above, when the servicer is expected to learn of the PACE transaction will depend, in part, on whether the servicer is informed of the covered PACE transaction at or prior to consummation. For example, assume a PACE transaction is consummated in June, the first payment is due November 1 of the same year, and the consumer has an escrow account. The creditor does not notify the servicer of the PACE transaction at consummation and no funds are allocated to pre-pay the consumer's escrow account for any payments related to the PACE transaction. If the creditor considers the consumer's monthly payment on the PACE transaction under § 1026.43(c)(2)(iii) but fails to consider that the consumer will be unable to pay the higher amount required for the initial escrow payments due to the one-sixth (1/6) cushion and escrow shortage or deficiency, the creditor does not comply with § 1026.43(i)(1). On the other hand, if under the same circumstances the creditor notifies the servicer of the PACE transaction at consummation to ensure the transaction will be incorporated into the escrow account promptly and determines that, given the timing of the notification, there will not be an escrow shortage or deficiency, and also confirms the consumer will be able to make initial escrow payments even with the additional one-sixth (1/6) cushion, the creditor complies with § 1026.43(i)(1). For the purposes of proposed § 1026.43(i)(1)(ii), where a creditor provides prompt notification to the servicer of the PACE transaction, it appears that it would be reasonable for the creditor to assume that the time at which the servicer learns of the PACE transaction will likely not result in a shortage or deficiency in the consumer's escrow account. The Bureau seeks comment on proposed new § 1026.43(i)(1) and specifically on whether it would provide additional clarity to include the above examples in commentary to § 1026.43(i)(1).

Although the proposed rule would not require creditors to notify servicers of PACE transactions, the Bureau strongly encourages prompt notice to servicers of the PACE transaction and rapid adjustment of the escrow payments by servicers to minimize payment spikes for PACE consumers. As an alternative approach to addressing the potential delay in incorporating PACE payments into a consumer's escrow account, the Bureau considered requiring all PACE creditors to notify the servicer at consummation that the consumer has entered into a PACE transaction. This requirement would eliminate one source of delay leading to payment shocks—the time between origination and the mortgage servicer learning of the PACE transaction. Such a requirement could reduce the likelihood that a payment spike would be significant enough to result in a consumer being unable to meet the payment obligations of the PACE transaction.

The Bureau considered imposing this requirement pursuant to its authority under TILA section 129B(e)(1).[207] This section authorizes the Bureau to prohibit or condition terms, acts, or practices relating to residential mortgage loans that the Bureau finds to be abusive, unfair, deceptive, predatory, necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA sections 129B and 129C, necessary or proper to effectuate the purposes of TILA sections 129B and 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower. The Bureau believes the act or practice of originating a PACE transaction for a consumer who has a pre-existing non-PACE mortgage and pays property taxes through an escrow account without notifying the servicer of the non-PACE mortgage may not be in the interest of the borrower because it could lead to a payment shock when the PACE transaction is incorporated into the borrower's escrow account, as described above. The Bureau preliminarily concludes, however, that it is preferrable to address the payment shock risk associated with non-notification under proposed § 1026.43(i)(1)(ii), which would grant PACE creditors greater flexibility to determine on a case-by-case basis how best to ensure that consumers have the ability to repay their PACE loans in light of escrow delays. The Bureau nevertheless seeks comment on this alternative approach and any advantages or disadvantages it has in comparison to proposed § 1026.43(i)(1)(ii).[208]

43(i)(2)

EGRRCPA section 307 requires the Bureau to prescribe regulations that carry out the purposes of TILA section 129C(a) with respect to PACE transactions. For the reasons described below, the CFPB is proposing to apply the Regulation Z ATR framework to PACE transactions without providing for a QM presumption of compliance for PACE transactions. Specifically, proposed § 1026.43(i)(2) would provide that, notwithstanding § 1026.43(e)(2), (e)(5), (e)(7), or (f), a PACE transaction

[207] 15 U.S.C. 1639b(e)(1).

[208] Some commenters to the ANPR recommended requiring creditors to consider a consumer's ability to repay the full annual or semi-annual PACE payment (rather than the monthly payment amount, as otherwise required by § 1026.43(c)(2)(iii)) based on a single month's income. The Bureau declines to propose such amendments. The ATR requirements anticipate that covered transactions (and other obligations that must be considered) may feature non-monthly payments and require that these non-monthly payments be converted into monthly payment amounts. Comment 43(c)(5)(i); *see, e.g.,* comment 43(c)(2)(v)–4. The Bureau thus does not believe that the non-monthly payment aspect of PACE transactions is unique and seeks to take an approach here that is consistent with how it has handled other non-monthly payments under the ATR rules.

is not a QM as defined in § 1026.43. If finalized, this provision would exclude PACE transactions from eligibility for each of these QM categories in § 1026.43.[209] For the reasons explained herein, the CFPB preliminarily concludes that it would be inappropriate to provide PACE transactions eligibility for a presumption of compliance with the ATR requirements, particularly given the inherent consumer risks presented by these transactions and the unique lack of creditor incentives to consider repayment ability in this new and evolving market.

The purposes of the QM provisions of Regulation Z include ensuring that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C. The purpose of TILA section 129C is to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive. QMs thus are intended only to be those mortgages for which it is reasonable to presume that the creditor made a reasonable determination of consumer repayment ability. The unique nature of PACE transactions, however, raises serious risks that undermine the Bureau's confidence in the reasonableness of presuming creditor compliance with the ATR requirements.

First, as described above, certain aspects of PACE financing create unique risks for consumers and can result in unaffordable payment spikes that can lead to delinquency, late fees, tax defaults, and foreclosure actions. PACE consumers who make their payments through an existing escrow account may face large and unpredictable payment spikes that make it difficult for them to repay their PACE obligation. For consumers who do not have an existing escrow account, the annual or semi-annual payment cadence with payments due simultaneously with large property tax payments may render loans unaffordable. The super-priority lien status of PACE transactions also heightens the risk of negative outcomes for consumers. These characteristics suggest that it may be inappropriate to provide a presumption of compliance to PACE financing. TILA specifically excludes from the QM definition loans with certain risky features and lending practices well known to present significant risks to consumers, including loans with negative amortization or interest-only features and (for the most part) balloon loans.[210] The CFPB preliminarily concludes that certain aspects of PACE financing can result in unaffordable payments that present similar risks to consumers and therefore should not be granted QM status.

Available data that show the broader effect that PACE transactions have on consumers' finances further highlight affordability risks inherent in PACE financing. The Bureau's PACE Report estimated the causal effect of a PACE transaction on consumer financial outcomes and found clear evidence that PACE transactions increase non-PACE mortgage delinquency rates.[211] For consumers with a pre-existing non-PACE mortgage, getting a PACE transaction increased the probability of a 60-day delinquency on their non-PACE mortgage by 2.5 percentage points over a two-year period.[212] For comparison, the average two-year non-PACE mortgage delinquency rate in the Bureau's data was about 7.1 percent.[213] The PACE Report finds that consumers in lower credit score tiers are most negatively affected by their PACE transaction, with consumers with sub-prime credit scores experiencing an increase in non-PACE mortgage delinquency almost two-and-a-half times the average effect, and more than 20 times the effect on consumers with super-prime credit scores.[214] In addition, the PACE Report finds that a PACE loan increases the probability of both foreclosure and bankruptcy by about 0.5 percentage points over a two-year period.[215] The CFPB also noted in its PACE Report that PACE transactions may impact other credit outcomes if consumers adjust their borrowing and spending behavior to prioritize their payments for mortgage and property taxes.[216] The PACE Report finds that, for the 29 percent of PACE consumers without a pre-existing non-PACE mortgage, their average monthly credit card balance increased by over $800 over a two-year period following origination of the PACE transaction.[217] The PACE Report concludes that consumers without a pre-existing non-PACE mortgage appear to respond to the cost of PACE transactions by increasingly relying on credit cards. Although not tied directly to the consumer's performance on the PACE transaction, these results suggest that at least some consumers without a pre-existing non-PACE mortgage have obtained PACE transactions that were unaffordable at the time of consummation. The CFPB preliminarily concludes that, even with the ATR requirements applied to PACE, affordability risks could remain due to PACE transactions' inherent features that shield creditors from losses, as discussed below.

In addition, the Bureau is concerned that creditors originating PACE transactions may possess a uniquely strong disincentive to adequately consider a consumer's income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income, as required under the Bureau's existing QM definitions, and under the Regulation Z

[209] The Bureau also appreciates that, as a consequence of this proposal, PACE transactions would not be permitted to include prepayment penalties. 15 U.S.C. 1639c(c); 12 CFR 1026.43(g). The Bureau understands that in general PACE transactions currently do not include these penalties.

[210] In the January 2013 Final Rule, the Bureau observed that the clear intent of Congress was to ensure that loans with QM status have safer features and terms than other loans. *See, e.g.,* 78 FR 6407, 6426 (Jan. 30, 2013) (discussing "Congress's clear intent to ensure that qualified mortgages are products with limited fees and more safe features"); *id.* at 6524 (discussing "Congress' apparent intent to provide incentives to creditors to make qualified mortgages, since they have less risky features and terms").

[211] A large majority of PACE borrowers have a primary mortgage at the time of the PACE origination. For consumers with a mortgage, difficulty in paying the cost of a PACE loan will generally manifest in the data as a mortgage delinquency. Payments on PACE transactions are made with property tax payments, and many consumers pay their property taxes through their monthly mortgage payment. *See* PACE Report, *supra* note 12, at 3.

[212] *Id.* at 26–27. As in the Bureau's analysis of the General QM Final Rule, the PACE Report uses delinquencies of at least 60 days as the outcome of interest, to focus on sustained periods of delinquency that may indicate financial distress, rather than isolated incidents or late payments.

[213] *Id.* at 27.

[214] *Id.* at 37.

[215] *Id.* at 33.

[216] The Bureau stated in the PACE Report that it expected that credit card outcomes may be particularly relevant for PACE consumers without non-PACE mortgage loans. The PACE Report finds essentially no impact on credit card balances or delinquency rates for consumers with a pre-existing non-PACE mortgage in the two-year period following consummation of their PACE transaction. *Id.* at 41–42. In general, accumulating revolving debt following a new financial obligation may be probative of difficulty repaying the new obligation. Typically, the Bureau has not evaluated these outcomes in its rulemakings related to the QM categories due to both the availability of more direct measures of ability to repay in the non-PACE mortgage space and the greater data requirements for reliably attributing changes in revolving balances to the effect of a new financial obligation. The data would need to link non-mortgage outcomes to a mortgage application, follow such outcomes over time, and ideally have a similarly situated comparison group that does not receive the new mortgage loan, to capture how non-mortgage outcomes would have evolved absent the new loan. Although the data used in the PACE Report had all of these characteristics, the datasets used in the January 2013 Final Rule and General QM Final Rule and the Bureau's 2018 ATR/QM Assessment, such as the HMDA data, generally lacked one or more of these necessary characteristics.

[217] *Id.* at 41.

ATR framework, because these creditors bear minimal risk of loss related to the transaction. As noted, under most PACE-enabling statutes, the liens securing PACE transactions take the priority of a property tax lien, which is superior to other liens on the property, such as mortgages, even if the other liens predated the PACE lien.[218] In the event of foreclosure, any amount owed on the PACE transaction is paid by the foreclosure sale proceeds before any proceeds will flow to other debt. This, combined with relatively low average loan amounts, appears to significantly limit the economic risk faced by creditors originating PACE transactions. Further, as described in the PACE Report and in part IX.A below, mortgage servicers will often pay a property tax delinquency on behalf of a consumer regardless of whether the consumer had a pre-existing escrow account. This means for the more than seventy percent of PACE consumers with a pre-existing non-PACE mortgage, it is unlikely that the PACE transaction would ever cause a loss to the PACE creditor.[219] In addition, the PACE transaction repayment obligation generally remains with the property when ownership transfers through foreclosure or otherwise. Thus, any balance that remains on the PACE transaction following a foreclosure sale will generally remain as a lien on the property for future homeowners to repay, further reducing the risk of loss to the creditor. These factors limit creditors' economic incentives to determine repayment ability and raise risks of consumer harm that undermine the Bureau's confidence in the reasonableness of presuming creditor compliance with the ATR requirements.

Further, the PACE market is still relatively new and evolving. As discussed in part II.A, PACE has only existed for 15 years, and State PACE authorizing statues have been amended in a number of ways since the product originally emerged. Additionally, some major PACE companies have recently exited the industry. These factors, coupled with the other factors discussed above, make it particularly difficult to draw any inferences that would support providing PACE transactions a presumption of compliance with the ATR requirements.

In addition to these concerns about PACE transactions receiving a QM presumption of compliance, the Bureau also preliminarily concludes that the criteria used to determine QM status under the existing QM definitions in § 1026.43 would not be suitable for PACE transactions. In particular, the Bureau preliminarily concludes that the unique pricing model and risk structure associated with PACE transactions may make any price-based criterion—including the pricing thresholds set forth for the General QM category in § 1026.43(e)(2)(vi) and any PACE-specific thresholds the Bureau might develop—an inappropriate measure of a consumer's repayment ability at consummation.

In the General QM Final Rule, the Bureau noted that loan pricing for non-PACE mortgages reflects credit risk based on many factors, including DTI ratios and other factors that may also be relevant to determining ability to repay, such as credit scores, cash reserves, or residual income, and may be a more holistic indicator of ability to repay than DTI ratios alone.[220] However, the pricing for PACE transactions has some notable differences from the non-PACE mortgage market.[221] The available data on PACE financing demonstrates that the pricing for such transactions is tightly bunched, with about half of PACE transactions analyzed by the Bureau having APRs between 8.3 and 9 percent.[222] The Bureau's available data indicate that pricing is primarily correlated with State and property type, causing the Bureau to doubt that any pricing threshold could serve as an appropriate indicator of a consumer's ability to repay.[223] The PACE Report confirms that PACE transactions are not generally priced based on traditional measures of credit risk; it notes that APRs for PACE transactions are uncorrelated or very weakly correlated with traditional measures of risk such as loan balance, loan-to-value (LTV) ratio, or credit score.[224] Rather, as discussed in part IX.A, the data on PACE pricing shows that it is consistent with the unique and substantial protection from loss enjoyed by parties involved with PACE transactions that is not common in the non-PACE mortgage market.

Further, while the Bureau's research indicates some differences in delinquency rates on non-PACE mortgages correlated to PACE rate spreads, it is not clear that the pricing thresholds for the General QM category would be predictive of early delinquency and could be used as a proxy for measuring whether a consumer had a reasonable ability to repay at the time the PACE transaction was consummated.[225] According to the Bureau's research, PACE transactions with rate spreads above 3.5 percent and between 2.25 and 3.49 percent increase delinquency rates on a consumer's non-PACE mortgage by an estimated 2.8 percent and an estimated 1.4 percentage points, respectively, and that PACE transactions with rate spreads below 2.25 percent have almost zero effect on non-PACE mortgage delinquency.[226] The CFPB preliminarily concludes that this data would not be sufficient to provide a basis for applying the current General QM pricing thresholds to PACE transactions even if a QM were not otherwise inappropriate for the reasons discussed above. As discussed in part IX.A below, the economic logic that normally supports pricing being based on risk is absent in the market for PACE transactions. As a result, even though the PACE Report finds that PACE transactions with low rate spreads had relatively better delinquency outcomes, it does not appear reasonable to presume that a creditor that offers a PACE transaction with a low APR has made a reasonable and good faith determination of a consumer's ability to repay.[227]

The Bureau also preliminarily concludes that the QM categories in § 1026.43(e)(5), (e)(7), and (f) would not

[218] *See, e.g.,* Cal. Sts. & Hwys. Code sec. 5898.30; Fla. Stat. Ann. Sec. 163.08(8).

[219] PACE Report, *supra* note 12, at 18.

[220] 85 FR 86308, 86325, 86361 (Dec. 29, 2020).

[221] *See generally* part II.A.

[222] PACE Report, *supra* note 12, at 22.

[223] For example, projects involving solar panels (comprising over a third of projects in California but less than 7 percent of projects in Florida) are the least expensive among project types, and projects in Florida had substantially lower APRs than projects in California. *Id.* at 22–23.

[224] *Id.*

[225] Pursuant to the General QM Final Rule, a loan generally meets the General QM loan definition in § 1026.43(e)(2) only if the APR exceeds the APOR for a comparable transaction by less than 2.25, 3.5, or 6.5 percentage points, respectively, depending upon the loan amount, whether the loan is a first or subordinate lien, and whether the loan is secured by a manufactured home. Most PACE transactions would qualify for the highest pricing threshold for General QMs, 6.5 percent, which generally applies to transactions with loan amounts of less than $66,156 (indexed for inflation). 12 CFR 1026.43(e)(2)(vi)(A)–(F).

[226] PACE Report, *supra* note 12, at 40.

[227] The Bureau is also skeptical that defining a category of QMs for PACE transactions based on a specific DTI threshold would be suitable for PACE, given the risk factors described above. Moreover, the CFPB's available evidence does not demonstrate a correlation between a PACE consumer's DTI and non-PACE mortgage outcomes. The Bureau estimates that the effect of a PACE transaction on a consumer's non-PACE mortgage is essentially the same for consumers with DTI ratios above and below 43 percent, a threshold commonly used in the mortgage market and, prior to the General QM Final Rule, a criterion for the General QM category. *Id.* at 48–49. In any event, even assuming that the data revealed a DTI threshold that was sufficiently predictive of early delinquency to serve as a proxy for whether a consumer had a reasonable ability to repay at the time of consummation, the Bureau doubts that a presumption of compliance would be appropriate given the unique characteristics of PACE transactions discussed above.

be appropriate for PACE transactions for additional reasons beyond the inherent risk of these transactions. As discussed above, the Small Creditor QM category in § 1026.43(e)(5) extends QM status to covered transactions that are originated by creditors that meet certain size criteria and that satisfy certain other requirements. The Bureau created the Small Creditor QM category based on its determination that the characteristics of a small creditor—its small size, community-based focus, and commitment to relationship lending—and the incentives associated with portfolio lending together justify extending QM status to loans that meet the criteria in § 1026.43(e)(5), including that the creditor consider and verify the consumers DTI or residual income.[228]

The CFPB preliminarily concludes that this reasoning does not apply in the context of PACE transactions. PACE financing is primarily administered by several large PACE companies that administer programs on behalf of government creditors in each State where residential PACE is active. The PACE companies' role in the transaction eliminates the community-based focus or relationship-lending features that in part justified treating certain small creditors differently for purposes of the Small Creditor QM. The Bureau thus has reason to question whether PACE companies have a more comprehensive understanding of the financial circumstances of their customers or of the economic and other circumstances of a community when they administer a program.[229] Moreover, as discussed above, the incentives for creditors are different for PACE financing than they are for other loans, limiting the effect that holding loans in portfolio has on underwriting practices. Even if a loan is held in portfolio, creditors and PACE companies bear little risk associated with PACE financing, making it more likely these entities will be repaid even in the event of foreclosure or other borrower distress.

Similarly, the reasoning for the Seasoned QM loan category set out in § 1026.43(e)(7) would not apply to PACE transactions. In 2020, the Bureau created the Seasoned QM category for loans that meet certain performance requirements, are held in portfolio by the originating creditor or first purchaser for a 36-month period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements. As discussed above, the effect that holding loans in portfolio has on underwriting practices is limited for PACE transactions, so the portfolio lending requirement would provide only a limited incentive to make affordable loans. Additionally, mortgage servicers will often pay a property tax delinquency on behalf of a consumer who has both a PACE mortgage and a non-PACE mortgage regardless of whether the borrower had a pre-existing escrow account. For these borrowers, the payment of their property taxes may have no connection to their actual ability to repay their PACE transaction, let alone to creditor compliance with the ATR requirements at consummation. Given this, it does not seem appropriate to draw any inference from a borrower's successful payment history on a PACE transaction regarding the creditor's ability-to-repay determination at consummation.

Moreover, in the context of PACE financing, successful loan performance over a seasoning period of 36 months would not give sufficient certainty to presume that loans were originated in compliance with the ATR requirements at consummation. While a non-PACE mortgage would typically have 36 payments due in the seasoning period, thus demonstrating that the loan payments were affordable to the consumer on an ongoing basis, a PACE transaction would have no more than three or six payments because PACE transactions are paid annually or semi-annually. Evidence of successful performance over only three or six payments would not be sufficiently probative of the creditor's compliance with the ATR requirements at consummation for PACE transactions to create a presumption of compliance.

Similar concerns apply to the Balloon-Payment QM category in § 1026.43(f). The ATR/QM Rule permits balloon-payment loans originated by small creditors that operate in rural or underserved areas to qualify for QM status, even though balloon-payment loans are generally not eligible for General QM status. In addition to the general reasons discussed above for not having a QM definition for PACE, the same specific concerns noted above with respect to the Small Creditor QM—namely, that the involvement of nationwide PACE companies limits the applicability of any special features of small creditors—are equally applicable to the Balloon-Payment QM criteria. Moreover, the Bureau is not currently aware of PACE financing with balloon payments.

The CFPB recognizes that applying the ATR requirements without providing QM status for any PACE transactions may affect the number of PACE loans made. As discussed in more detail in part IX.D, however, the Bureau expects that many affected consumers will retain access to other forms of mortgage and non-mortgage credit that could serve the purposes of PACE-authorizing statutes, such as energy efficiency improvements. Moreover, the CFPB believes any credit access impacts must be justified against the consumer protection risks of extending QM status to PACE transactions. As discussed, the many distinct features of the PACE market and PACE financing significantly undermine the case that it would be appropriate to afford PACE creditors and companies protection from civil liability under TILA section 130 for claims that they failed to comply with the proposed ATR requirements.

For these reasons, the Bureau is proposing to apply the Regulation Z ATR framework to PACE transactions without providing for a QM presumption of compliance. The CFPB is issuing this proposal consistent with EGRRCPA section 307 and pursuant to its authority under TILA sections 129C(b)(3)(C)(ii), 129C(b)(3)(B)(i), and 105(a). EGRRCPA section 307 makes no mention of PACE loans qualifying for a presumption of compliance with the ATR requirements it directed the Bureau adopt for PACE financing. Rather, it provides in relevant part that the CFPB must prescribe regulations that (1) ''carry out the purposes of subsection (a)''—*i.e.,* that no creditor shall make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that the consumer has a reasonable ability to repay the loan—and (2) apply TILA section 130 with respect to ''violations under subsection (a)'' to such financing. Nowhere does EGRRCPA section 307 mention TILA section 129C(b) (the provisions governing QMs) or otherwise indicate that the Bureau's adoption of ATR requirements specific to PACE loans should make further allowance for any presumption of compliance with those requirements. Instead, by requiring that the Bureau ''account for the unique nature'' of PACE financing, the Bureau preliminarily concludes that Congress understood that elements of the existing ATR regime for residential mortgage loans—including the QM provisions—may not be appropriate in the case of PACE financing.

In any event, TILA 129C(b)(3)(A) directs the Bureau to prescribe

[228] 78 FR 35430, 35485 (June 12, 2013) (''The Bureau believes that § 1026.43(e)(5) will preserve consumers' access to credit and, because of the characteristics of small creditors and portfolio lending described above, the credit provided generally will be responsible and affordable.'').

[229] *See* 80 FR 59947 (Oct. 2, 2015).

regulations to carry out the purposes of section 129C and TILA section 129C(b)(3)(B)(i) in turn authorizes the Bureau to prescribe regulations that revise, add to, or subtract from the criteria that define a QM upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections. TILA section 105(a) likewise provides that regulations implementing TILA may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. Consistent with those authorities, after taking into account the purposes of the ATR and QM provisions and the unique nature of PACE financing, the Bureau preliminary concludes there is ample reason not to extend a presumption of compliance with the ATR requirements to PACE transactions. The Bureau seeks comment on its preliminary conclusion not to extend QM to PACE financing.

43(i)(3)

EGRRCPA section 307 requires the Bureau to ''prescribe regulations that carry out the purposes of [TILA's ATR requirements] and apply [TILA] section 130 with respect to violations [of TILA's ATR requirements] with respect to [PACE] financing, which shall account for the unique nature of [PACE] financing.'' Section 1026.43 currently applies to the creditor of any transaction that is subject to § 1026.43's ATR requirement. Proposed § 1026.43(i)(3) would also apply the requirements of § 1026.43 to any PACE company that is substantially involved in making the credit decision for a PACE transaction. A PACE company would be ''substantially involved'' in making the credit decision if it makes the credit decision, makes a recommendation as to whether to extend credit, or applies criteria used in making the credit decision. A PACE company would not be substantially involved in making the credit decision for purposes of proposed § 1026.43(i)(3) if it merely solicits applications, collects application information, or performs administrative tasks. Proposed § 1026.43(i)(3) would also apply section 130 of TILA [230] to covered PACE companies that fail to comply with § 1026.43. These proposed amendments would implement EGRRCPA section 307 and would account for the unique and extensive role that PACE companies play in PACE financing by creating incentives for those companies to ensure that TILA's ATR requirements are met for PACE transactions and enhancing consumers' remedies in the event that the ATR requirements are not met.

PACE companies play an extensive role in PACE financing programs. As noted in the section-by-section analysis of proposed § 1026.2(a), it is the Bureau's understanding that PACE creditors are typically government entities. At present in the PACE industry, these government creditors generally contract with PACE companies to perform many of the day-to-day operations of PACE financing programs. This encompasses tasks such as marketing PACE financing to consumers, training home improvement contractors to sell PACE transactions to consumers, overseeing originations, performing underwriting, and making decisions about whether to extend the loan. The PACE companies may also contract with third-party companies to administer different aspects of the loans after origination. Some ANPR commenters indicated that it is also common for PACE companies to help raise the private capital needed to fund PACE financing programs through the acquisition and securitization of PACE bonds issued by PACE creditors. In exchange for their role, PACE companies typically receive part of the profit from PACE financing.

Given the unique role that PACE companies play in PACE financing, the Bureau preliminarily concludes that application of § 1026.43 to PACE companies, in addition to creditors, is both appropriate and consistent with the Congressional mandate in EGRRCPA section 307 to implement regulations that carry out the purposes of TILA's ATR provisions.

The Bureau similarly believes that it is appropriate to implement section 307's mandate to apply section 130 to PACE transactions by extending the applicability of section 130 of TILA for violations of the ATR requirements to PACE companies that are substantially involved in making credit decisions. As described above, PACE companies are the entities most likely to perform or oversee the credit decision making, including any ability-to-repay analysis, and to receive much of the profit from operation of PACE financing programs. Applying section 130 to PACE companies that are substantially involved in the credit decision making, therefore, would extend the economic incentive to comply to a party that bears substantial responsibility for the credit decision and that is likely to profit from the transaction.

In addition, application of section 130 to covered PACE companies would enhance consumers' ability to obtain remedies for violation of the ATR rules. TILA section 113(b) [231] provides that no civil or criminal penalties may be imposed under TILA upon any State or political subdivision thereof, or any agency of any State or political subdivision. PACE creditors are generally government entities that would be subject to section 113(b)'s protection, and therefore, without application of section 130 to PACE companies, PACE consumers would be limited in their ability to obtain remedies for violations of the ATR requirements. By specifically directing the Bureau to apply section 130's liability provision as well as the ATR requirements to PACE, while ''account[ing] for the unique nature'' of PACE financing, Congress intended the Bureau to do more than simply apply the ATR requirements to PACE financing. To apply the ATR requirements but not change the liability framework would mean section 130's penalty provisions would be less effective as to ATR violations, since the only creditor available in a consumer civil action is the state or local government entities who are not subject to civil penalties.

The Bureau proposes to use its authority under EGRRCPA section 307 to apply the requirements of § 1026.43 to PACE companies and to apply section 130 of TILA to PACE companies for violations of § 1026.43. For the reasons described above, the Bureau believes that the unique nature of PACE financing supports its proposal to add § 1026.43(i)(3). The Bureau seeks comment on this proposed provision and how best to define when a PACE company should be subject to proposed § 1026.43(i)(3). For example, the Bureau invites feedback on whether ''substantially involved in making the credit decision for a PACE transaction'' is the best way to define the type of involvement a PACE company should have in the PACE transaction to be subject to proposed § 1026.43(i)(3).

[230] 15 U.S.C. 1640.

[231] 15 U.S.C. 1612(b).

Appendix H—Closed-End Forms and Clauses

The Bureau proposes to add forms H–24(H) and H–25(K) to appendix H to Regulation Z. Forms H–24(H) and H–25(K) would provide blank model forms for the Loan Estimate and Closing Disclosure illustrating the inclusion or exclusion of the information as required, prohibited, or applicable under §§ 1026.37 and 1026.38 for PACE transactions. The proposed forms are generally based on existing forms H–24(G), Mortgage Loan Transaction Loan Estimate—Modification to Loan Estimate for Transaction Not Involving Seller, and H–25(J), Mortgage Loan Transaction Estimate—Modification to Closing Disclosure for Transaction Not Involving Seller. The Bureau plans to publish translations of Forms H–24(H) and H–25(K) if the Bureau finalizes the proposed additions to appendix H. The Bureau is also considering modifying proposed forms H–24(H) and H–25(K) in the final rule to provide additional pages for variations in the information required or permitted to be disclosed. For example, existing form H–24(G) contains four versions of page two to reflect the possible permutations of the disclosures under § 1026.37(i) and (j). The Bureau proposes forms H–24(H) and H–25(K) pursuant to the authority and for the reasons described above in the discussion of §§ 1026.37(p) and 1026.38(u), as well as pursuant to its authority to publish such integrated model disclosure forms under TILA section 105(b) and RESPA section 4(a).

VIII. Effective Date

The Bureau proposes that the final rule, if adopted, would take effect at least one year after publication in the **Federal Register**, but no earlier than the October 1 which follows by at least six months the date of promulgation.[232] The final rule would apply to covered transactions for which creditors receive an application on or after this effective date. The Bureau tentatively determines that a one-year period between **Federal Register** publication of a final rule and the final rule's effective date would give creditors enough time to bring their systems into compliance with the revised regulations. The Bureau requests comment on this proposed effective date.

IX. CFPA Act Section 1022(b) Analysis

A. Overview

In developing this proposed rule, the Bureau has considered the proposed rule's potential benefits, costs, and impacts in accordance with section 1022(b)(2)(A) of the CFPA.[233] The Bureau requests comment on the preliminary analysis presented below and submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts. In developing the proposed rule, the Bureau has consulted or offered to consult with the appropriate prudential regulators and other Federal agencies, including regarding the consistency of this proposed rule with any prudential, market, or systemic objectives administered by those agencies, in accordance with section 1022(b)(2)(B) of the CFPA.[234] As discussed in part V.C above, the Bureau also has consulted with State and local governments and bond-issuing authorities, in accordance with EGRRCPA section 307.[235]

Provisions To Be Analyzed

Although the proposal has several parts, for purposes of this 1022(b)(2)(A) analysis, the Bureau's discussion groups the proposed provisions into two broad categories. The provisions in each category would likely have similar or related impacts on consumers and covered persons. The categories of provisions are: (1) the proposal to apply the ATR provisions of § 1026.43 to PACE transactions, with certain adjustments to account for the unique nature of PACE, including denying eligibility for any QM categories; and (2) the proposal to clarify that only involuntary tax liens and involuntary tax assessments are not credit for purposes of TILA, such that voluntary tax liens and voluntary tax assessments that otherwise meet the definition of credit, such as PACE transactions, are credit for purposes of TILA.

Economic Framework

Before discussing the potential benefits, costs, and impacts specific to this proposal, the Bureau provides an overview of its economic framework for analyzing the impact and importance of creditors and PACE companies considering a consumer's ability to repay prior to an extension of credit. The Bureau has previously discussed the general economics of ATR determinations in the January 2013 Final Rule and elsewhere,[236] and focuses here on economic forces specific to PACE.

In normal lending markets, such as the non-PACE mortgage market, creditors generally have an intrinsic profit motive to set loan pricing based in part on ability to repay and in turn have an economic incentive to determine ability to repay. Indeed, in the January 2013 Final Rule, the Bureau noted that even prior to the then-new ATR requirements of Regulation Z, most mortgage lenders voluntarily collected income information as part of their normal business practices. Economic theory says that, to be profitable, a lender must apply high enough interest rates to its loans such that the average *ex ante* expected value of the loans in its portfolio is positive. The higher the likelihood of nonpayment, the higher the interest rate must be to make a profit.[237] Lenders may price based on the average ability to repay in the population, or may price on individual risk after making an effort to determine ability to repay, but they cannot typically remain profitable in a competitive market if they set interest rates while ignoring ability to repay entirely.[238]

The market for PACE financing has some notable differences from the typical non-PACE mortgage market that dampen or eliminate the economic incentive to price based on ability to repay. Those who stand to receive revenues from PACE transactions are shielded from losses in ways that are not common in the mortgage market. First, for the more than 70 percent of PACE borrowers with a pre-existing

[232] Under TILA section 105(d), Bureau regulations requiring any disclosure which differs from disclosures previously required by part A, part D, or part E, or by any Bureau regulation promulgated thereunder, shall have an effective date of that October 1 which follows by at least six months the date of promulgation, subject to certain exceptions. 15 U.S.C. 1604(d). To the extent TILA section 105(d) applies, the proposed effective date would be consistent with it.

[233] 12 U.S.C. 5512(b)(2)(A).

[234] 12 U.S.C. 5512(b)(2)(B).

[235] 15 U.S.C. 1639c(b)(3)(C)(iii)(II).

[236] *See, e.g.,* 78 FR 35430, 35492–97 (June 12, 2013).

[237] This holds empirically as well. In the General QM Final Rule, the Bureau noted that loan pricing for non-PACE mortgages is correlated both with credit risk, as measured by credit score, and with early delinquency, as a proxy for affordability. *See* 85 FR 86308, 86317 (Dec. 29, 2020).

[238] A lender that conducts an ability-to-repay analysis will have a more precise measurement of the risk of non-payment, and can thus profitably price loans to consumers with high ability to repay at a low interest rate, being reasonably assured of repayment, while pricing riskier loans at a higher rate to compensate for the higher risk of default. A lender that does not conduct an ability-to-repay analysis must price loans consistent with the average risk of default in the population in order to make a profit. This pooled risk rate will involve an interest rate higher than the low rates that could otherwise be profitably offered to low-risk consumers. Note that this logic applies even if loans are ultimately sold on the secondary market and securitized. A rational investor will not pay market rate for an asset-backed security where the component mortgages are priced at levels consistent with low risk if the lender cannot verify that the loans are actually low risk.

non-PACE mortgage,[239] it is unlikely that the PACE transaction would ever cause a loss to the PACE company or its investors because mortgage servicers for the non-PACE mortgage will often pay a property tax delinquency on behalf of a borrower. Second, PACE companies generally will be made whole in the event of foreclosure, whether that foreclosure is initiated by the taxing authority or a non-PACE mortgage holder, because PACE transactions are structured as tax liens, and will typically take precedence over any non-tax liens, such as those securing pre-existing mortgage loans. Third, PACE companies may be made whole even if the foreclosure proceeds are insufficient. Because PACE transactions are technically structured as obligations attached to the real property, rather than the consumer, any remaining amounts that are not paid through foreclosure proceeds generally will not be extinguished and will instead remain on the property for subsequent owners to pay.

The empirical evidence on PACE transactions is consistent with the unusual protection from loss that the structure of PACE transactions provides for the parties receiving revenue from the loans. The PACE Report shows that PACE companies largely did not collect income information from applicants when they were not required to by State law, consistent with the lack of an economic incentive to verify ability to repay.[240] Moreover, the PACE Report finds that PACE transactions are not priced based on individual risk.[241] The PACE Report notes that estimated APRs for PACE transactions are tightly bunched, with about half of estimated PACE APRs between 8.3 and 9 percent.[242] The Report also notes the PACE APRs are at best weakly correlated with credit score, with an average difference of less than five basis points between loans made to consumers with deep subprime credit scores and consumers with super-prime credit scores.[243]

B. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion below relies on information that the Bureau has obtained from industry, other regulatory agencies, and publicly available sources, including reports published by the Bureau. These sources form the basis for the Bureau's consideration of the likely impacts of the proposed rule. The Bureau provides estimates, to the extent possible, of the potential benefits and costs to consumers and covered persons of this proposal, given available data.

Among other sources, this discussion relies on the Bureau's PACE Report, as described in part IV above. The Report utilizes data on applications for PACE transactions initiated between July 2014 and June 2020, linked to de-identified credit record information through June 2022. As described above, the Report estimates the effect of PACE transactions on consumers by comparing approved PACE applicants who had an originated PACE transaction to those who were approved but did not have an originated transaction. The Report uses a difference-in-differences regression methodology, essentially comparing the changes in outcomes like mortgage delinquency for originated PACE borrowers before and after their PACE transactions were originated to the same changes for applicants who were approved but not originated. In this discussion of the benefits, costs, and impacts of the proposal, the Bureau focuses on results from what the Report refers to as its ''Static Model'' which considers outcomes over the period between zero to two years prior to the PACE transaction and the period between one to three years after. The Report also estimates the effect of the 2018 California PACE Reforms on PACE lending in that State, using Florida as a comparison group in a difference-in-differences methodology. The Bureau also relies on publicly available data on PACE from State agencies and PACE trade associations, as well as on public comments in response to the ANPR.

The Bureau acknowledges several important limitations that prevent a full determination of benefits, costs, and impacts. The Bureau relies on the PACE Report for many parts of this discussion, but as discussed in the PACE Report itself, the data underlying the Report have limitations.[244] The data used in the report are restricted primarily to consumers with a credit record, with respect to consumer impacts. Further, the comparison groups used in the difference-in-differences analysis are reasonable but imperfect. In addition, while the 2018 California PACE Reforms are informative to the Bureau's consideration of the impacts of the proposed rule on consumers and covered persons, the proposed rule has different requirements from the State laws that made up the 2018 California PACE Reforms, such that the potential impacts may differ.

In light of these data limitations, the analysis below provides quantitative estimates where possible and a qualitative discussion of the proposed rule's benefits, costs, and impacts. General economic principles and the Bureau's expertise, together with the available data, provide insight into these benefits, costs, and impacts. The Bureau requests additional data or studies that could help quantify the benefits and costs to consumers and covered persons of the proposed rule.

C. Baseline for Analysis

In evaluating the proposal's benefits, costs, and impacts, the Bureau considers the impacts against a baseline in which the Bureau takes no action. This baseline includes existing regulations, State laws, and the current state of the market. In particular, the baseline assumes no change in the current State laws and regulations around PACE financing. Also, notwithstanding the proposed clarification that only involuntary tax liens and involuntary tax assessments are excluded from being credit under Regulation Z (such that the commentary would not exclude PACE transactions), the baseline assumes that the current practices of PACE industry stakeholders generally are not consistent with treating PACE financing as TILA credit.

D. Potential Benefits and Costs to Consumers and Covered Persons

This section discusses the benefits and costs to consumers and covered persons of the two main groups of provisions discussed above: the proposed ATR provisions, and the proposal to clarify that only involuntary tax liens and involuntary tax assessments are excluded from being treated as credit under TILA.

Potential Benefits and Costs to Consumers and Covered Persons From the Proposed ATR Provisions

The Bureau proposes amendments under § 1026.43, which generally requires an ability-to-repay analysis before originating a mortgage loan, to explicitly include PACE transactions, with several adjustments for the unique nature of PACE. The Bureau also proposes to provide that a PACE transaction is not a QM as defined in § 1026.43.

Potential Benefits and Costs to Consumers of the Proposed ATR Provisions

Under the proposed rule, consumers who are not found to have a reasonable

[239] PACE Report, *supra* note 12, at 18.

[240] *Id.* at Table 1.

[241] *Id.* at 23.

[242] *Id.* at Table 2.

[243] *Id.* at 23.

[244] *Id.* at 52.

ability to repay the loan would not be able to obtain a PACE loan. In general, the Bureau expects that consumers who would be denied PACE transactions due to the required ATR determination would otherwise struggle to repay the cost of the PACE transaction. These consumers generally would benefit from the proposal.

The evidence in the PACE Report helps to partially quantify the potential benefits to consumers who cannot afford a PACE transaction. The difference-in-differences estimation in the Report finds that, for consumers with a pre-existing non-PACE mortgage, entering into a PACE transaction increases the probability of becoming 60-days delinquent on the pre-existing mortgage by 2.5 percentage points in the two years following the first due date for a tax bill including the PACE transaction.[245] For consumers without a pre-existing non-PACE mortgage, the Report finds that, following a PACE transaction, such consumers' monthly credit card balances increase by over $800 per month.[246]

Additional evidence from the PACE Report indicates that requiring an ability-to-repay analysis could improve outcomes specifically for consumers who would otherwise struggle to repay the PACE transaction. The PACE Report finds that the effect of a PACE transaction on mortgage delinquency is higher for consumers with lower credit scores. The average effect of a 2.5 percentage point increase in the rate of non-PACE mortgage delinquency over a two-year period is composed of a 0.3 percentage point increase for consumers with super-prime credit scores (11.1 percent of all PACE borrowers), a 1.7 percentage point increase for consumers with prime credit scores (42 percent of borrowers), a 3.8 percentage point increase for consumers with near-prime credit scores (23.4 percent of borrowers), and a 6.2 percentage point increase for consumers with subprime credit scores (20.4 percent of borrowers).[247] The consumers with subprime credit scores would be the most likely to be excluded by the ability-to-repay analysis that the proposal would require. Credit score tends to be correlated with income. Moreover, credit scores are based on credit history, and the proposed ATR requirements would require consideration of credit history.

The evidence from the PACE Report also suggests that collecting income information from potential PACE borrowers can lead to better outcomes. The evidence is less direct on this point because PACE companies did not collect income information from a large majority of applicants during the period studied by the Report. For example, the Report indicates PACE companies collected income information from less than 24 percent of originated borrowers in California prior to April 2018, and a little more than 10 percent of originated borrowers in Florida during that time.[248] Income information was primarily available in the data used in the Report for consumers in California after April 2018. After this point, the Report finds that essentially all originated borrowers in California had income information collected, likely because the 2018 California PACE Reforms required consideration of income by PACE companies as part of an analysis that considered consumers' ability to pay the PACE loan. As a result, the PACE Report's analysis of income is largely based on consumers whose PACE transactions were originated under requirements that resemble the proposed ATR requirements in some respects.

The PACE Report finds that PACE transactions increase non-PACE mortgage delinquency less for consumers where the PACE company collected income information.[249] The Report also finds that PACE transactions increased non-PACE mortgage delinquency rates more for consumers in California before the 2018 California PACE Reforms, compared to consumers in California after 2018, with the effect falling by almost two-thirds after the 2018 California PACE Reforms required consideration of income by PACE companies, from a 3.9 percentage point increase to a 1.5 percentage point increase.[250] However, the Report also finds that the effect of PACE on mortgage delinquency decreased somewhat in Florida as well around 2018, which suggests the change could be in part the result of other nationwide trends, rather than solely the requirements of the 2018 California PACE Reforms.[251] The PACE Report was inconclusive with respect to whether income or a calculation of DTI predicted negative effects of PACE on financial outcomes, because income information was not available for enough consumers to draw statistically reliable conclusions about subgroups of the population with income information.[252]

The facts documented by the PACE Report, described above, indicate that the proposed ATR provisions would likely protect some consumers who cannot afford a PACE transaction from entering into a PACE transaction and potentially suffering negative consequences as a result of that transaction. The Bureau does not have data available to precisely determine the number of consumers who would benefit, or the monetary value of those benefits, but the Bureau provides some rough estimates below.

Consumers who become delinquent on their mortgages will, at a minimum, incur late fees on their payments. If a PACE transaction causes a longer delinquency, the consequences could include foreclosure or a tax sale. Consumers' credit scores could also be affected, although the PACE Report finds only small impacts of PACE on credit scores—perhaps in part because PACE borrowers tended to already have relatively low credit scores prior to the PACE transaction. The Bureau quantifies the individual and aggregate monetary benefits of avoiding these consumer harms below to the extent possible. The Bureau uses the estimates from the PACE Report of the average effect of PACE on consumer outcomes to estimate these benefits but notes that these estimates may overstate aggregate benefits to the extent that existing laws in California already protect consumers in that State from some unaffordable PACE transactions.

The PACE Report finds that the average monthly mortgage payment for consumers with PACE transactions originated between 2014 and 2020 was $1,877.[253] Assuming a late fee of five percent, avoiding a PACE transaction would save the average PACE consumer who experiences a 60-day mortgage delinquency at least $188 over a two-year period. The average benefit to such consumers would likely be higher, as many would likely have more than a single 60-day mortgage delinquency caused by the PACE transaction.

Foreclosure is extremely costly, both to the consumer who experiences foreclosure and to society at large. In its 2021 RESPA Mortgage Servicing Rule, the Bureau conservatively assumed the cost of a foreclosure was $30,100 in 2021 dollars, consisting of both the up-front cost to the foreclosed consumer and the resulting decrease in property values for their neighbors, but no other pecuniary or non-pecuniary costs.[254] The Bureau adopts the same assumption here with an adjustment for inflation,

[245] *Id.*

[246] *Id.* at 41–42.

[247] *Id.* at Figure 10.

[248] *Id.* at Table 1.

[249] *Id.* at 45.

[250] *Id.* at 46.

[251] *Id.* at 46–47.

[252] *Id.* at 47–48.

[253] *Id.* at 16.

[254] *See* 86 FR 34889 (June 30, 2021).

noting as it did in the 2021 rule that it is likely an underestimate of the average benefit to preventing foreclosure. Adjusting for inflation to 2023 dollars, the benefit of an avoided foreclosure is $33,169.

The Bureau does not have data available to estimate the benefits to consumers of preventing a reduction in credit score but notes again that the PACE Report finds that PACE transactions only lower scores by an average of about one point,[255] suggesting that such benefits would be negligible in magnitude.

In 2019, the last full year of data studied in the PACE Report, the four PACE companies whose data were included in the Report originated about 2,000 PACE transactions per month, for a total of about 24,000 per year.[256] For the 71.1 percent of such borrowers with a pre-existing non-PACE mortgage,[257] a 2.5 percentage point increase in mortgage delinquency would mean about 600 consumers per year struggling to pay the cost of their PACE transaction and incurring at least a 60-day delinquency. Most loans that become delinquent do not end with a foreclosure sale.[258] The PACE Report finds that PACE transactions increase the probability of a foreclosure by 0.5 percentage points over a two-year period.[259]

Assuming that 0.5 percent of consumers who engage in a PACE transaction would ultimately experience foreclosure as a result of the PACE transaction, the proposed rule could prevent about 120 foreclosures per year, for an aggregate annual benefit of about $4 million per year. If the proposed rule were to prevent a minimum of two months of late fees for each of the 600 consumers who would otherwise become 60-days delinquent as a result of a PACE transaction, that would result in additional aggregate benefits of at least $112,000 per year.

As discussed above, the difference-in-differences analysis in the PACE Report also finds that credit card balances increased significantly for PACE borrowers who did not have a pre-existing non-PACE mortgage, compared to the change in balances for PACE applicants who did not originate a loan and also did not have a pre-existing non-PACE mortgage.[260] The additional credit card balances incurred by consumers without a pre-existing non-PACE mortgage could result in interest charges if they are not paid in full on time.[261] If the proposed rule prevented the 29.9 percent of PACE consumers without a pre-existing non-PACE mortgage from revolving an additional $833 in average credit card balances for an average of one year, with an APR of 24 percent this could result in about $1.4 million in aggregate benefit annually.

The proposed ATR requirements may also benefit consumers by increasing the likelihood that they understand the nature of PACE transactions, particularly in combination with the required TILA–RESPA integrated disclosures discussed below in the next section. Commenters responding to the ANPR, as well as stories in the media, have indicated that some PACE borrowers do not realize they are committing to a long-term financial obligation when they agree to a PACE transaction. This may occur, for example, due to deceptive conduct on the part of a home improvement contractor marketing the PACE transaction, or due to the complexity and unfamiliarity of the PACE transaction itself. Whatever the cause, it is more likely that a consumer who is asked to produce documentation of their income will realize that they are signing up for a loan that must be repaid over time. As such, the proposed rule may benefit consumers who would otherwise misunderstand the nature of a PACE transaction. Consumers who would not agree to a PACE transaction if they understood its nature as a financial obligation they would need to repay may be more likely to understand the nature of the transaction, and thus decline it. In addition, even consumers who would still agree to the transaction understanding its nature as a financial obligation would be more likely to prepare for the increase to their property tax bill caused by the PACE transaction.

For consumers who would not, with full understanding, agree to a PACE transaction, the potential benefits of the proposed rule to each such consumer would depend on whether the consumer would still agree to the home improvement contract the PACE transaction was intended to fund. For consumers who would have been willing to proceed with the home improvement project without a PACE transaction, the Bureau assumes that at least some would seek to pay off the PACE transaction after the first payment becomes due.[262] In this case, the benefit to the consumer would be saving the first year of interest on the PACE transaction, as well as up-front fees and any capitalized interest accrued prior to the first payment. The PACE Report finds that the average fee amount for PACE transactions made between 2014 through 2020 was $1,301, and the average capitalized interest was $1,412.[263] The average interest rate was 7.6 percent.[264] On the average original balance of $25,001,[265] this would result in interest payments of $1,900 in the first year. Thus, each consumer would save about $4,600 in interest and fees if they avoided a PACE transaction rather than repaying it after the first payment becomes due. Further, if the consumer otherwise would not have agreed to the home improvement project (*i.e.,* the consumer only agreed to the project based on a misunderstanding about the

[255] PACE Report, *supra* note 12, at 41.

[256] *Id.* at Figure 16.

[257] *Id.* at 18.

[258] Because of generally favorable conditions in both the housing market and the non-PACE mortgage market in recent years, PACE borrowers may have been more able to avoid foreclosure by either selling or refinancing their homes, compared to the non-PACE mortgage borrowers studied in the Assessment Report using earlier data. Indeed, the PACE Report finds that PACE loans increased the probability of a consumer closing a mortgage (indicating some kind of prepayment), with no increase in new mortgages, suggesting a subset of PACE borrowers may have been induced to sell their homes. Although they would avoid the cost of foreclosure by doing so, moving is also expensive, with real estate agents' fees alone representing typically 5 to 6 percent of the home's value, in addition to other closing costs and the costs related to moving.

[259] *See* PACE Report, *supra* note 12, at 33. The PACE Report notes that the credit record data used in the PACE Report are limited with respect to measuring foreclosures. Nonetheless, the size of this effect relative to the Report's estimate of the effect of PACE transactions on 60-day delinquencies is consistent with prior CFPB research on the share of 60-day delinquencies that end in a foreclosure. The Bureau's 2013 RESPA Servicing Rule Assessment Report found that, for a range of loans that became 90-days delinquent from 2005 to 2014, approximately 18 to 35 percent ended in a foreclosure sale within three years of the initial delinquency. Focusing on loans that become 60-days delinquent, the same report found that, 18 months after an initial 60-day delinquency, between eight and 18 percent of loans had ended in foreclosure sale over the period 2001 to 2016. *See* CFPB, *2013 RESPA Servicing Rule Assessment Report* (Jan. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rule-assessment_report.pdf.*

[260] PACE Report, *supra* note 12, at 41.

[261] Interest charges generally do not result if a balance is paid in full and on time, but it stands to reason that if balances increased in response to another financial obligation, the consumer does not have the resources available to pay the balance in full. The PACE Report does not distinguish between revolving balances and ''transacting'' balances that are paid in full.

[262] If the consumer did not realize they had effectively agreed to a loan at origination, this would become clear when their next property tax bill became due. The PACE Report finds that on average a consumer's total property taxes likely increased by almost 88 percent as a result of the PACE loan payment. PACE Report, *supra* note 12, at 13.

[263] Capitalized interest is calculated using the APR, the fee amounts, and the term and interest rate of the PACE transactions provided in the PACE Report. *See id.* at Table 2.

[264] *Id.*

[265] *Id.*

financing), the benefit of preventing misunderstanding is greater still, depending on the value the consumer nonetheless receives from the project.[266]

The Bureau does not have data indicating how often consumers currently misunderstand the nature of a PACE transaction or what share of those consumers would have, in the counterfactual, opted not to agree to the PACE transaction or the related home improvement project had they understood the nature of the PACE transaction. The data used in the PACE Report do not capture when and whether PACE transactions were paid off. However, publicly available data for California indicate that a significant fraction of PACE transactions to date were paid off early in the term of the transaction. The California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) manages a loss reserve fund for California PACE programs and requires PACE companies to submit information on new PACE transactions semi-annually, and to report their overall portfolio size as of June 30th of each year.[267] CAEATFA reports aggregate statistics from this collection publicly on its website.[268] Using this information, the Bureau can calculate the number of PACE transactions paid off each year as the sum of the prior year's total portfolio and the current year's new transactions, less the current year's total portfolio. This is shown in Table 1.

According to the CAEATFA data, there were 17,401 PACE transactions outstanding in California as of June 30, 2014, and 202,901 new transactions originated after that through June 30, 2020. However, about 89,000 transactions were paid off during this time, based on the change in total outstanding portfolios, meaning that up to 40 percent of PACE transactions may have been paid off early. This likely overstates somewhat the share of transactions that were paid early, and it very likely overstates the share of consumers who misunderstood the nature of the transactions. PACE transactions can have terms as short as five years, such that some transactions may have simply reached maturity. However, the PACE Report shows that only about six percent of PACE transactions have terms of five years.[269] PACE transactions may be paid off early for reasons other than misunderstanding the nature of the transaction, including if the consumer sells their home and is required by the buyer to pay off the PACE transaction.[270] Still, given the frequency of early repayments and the substantial potential benefits to individual consumers of preventing a misunderstanding about the nature of PACE as a financial obligation, the aggregate benefits could be substantial. For instance, if just 10 percent of early repayments on PACE transactions (*i.e.,* 4 percent of all PACE borrowers) were due to a misunderstanding that the proposal could address, the aggregate benefits would be over $4.4 million annually.[271]

TABLE 1

Year	(a) Actual total outstanding portfolio through June 30th, prior year	(b) New financings July 1st–December 31st prior year	(c) New financings January 1st–December 31st, current year	(d) Actual total outstanding portfolio through June 30th, current year	(e) Number paid off ((a) + (b) + (c) − (d))
2015	17,401	7,022	11,515	34,308	1,630
2016	34,308	23,206	32,743	83,904	6,353
2017	83,904	34,036	25,850	119,082	24,708
2018	119,082	25,764	15,482	146,403	13,925
2019	146,403	9,982	6,967	146,525	16,827
2020	146,525	5,541	4,793	131,200	25,659
Total	N/A	97,350	105,551	N/A	89,102

Source: CAEATFA, *https://www.treasurer.ca.gov/caeatfa/pace/activity.pdf.*

To the extent that some consumers continue to receive PACE transactions that they are not able to afford, the proposal would benefit those consumers by providing an avenue for obtaining relief under the civil liability provisions of TILA and Regulation Z. The Bureau does not have data indicating how often this would occur, although as noted below in its discussion of litigation costs to covered persons, the Bureau expects that in the long run this would be infrequent.

If the rule is finalized as proposed, consumers would face the time costs of gathering the required documentation for an ability-to-repay analysis, such as finding and producing W–2s to document proof of income. The Bureau has previously noted in the context of

[266] Generally, the economic loss to a consumer from being induced to purchase something they would not otherwise purchase is the difference between the price paid and the consumer's willingness to pay for the good or service. If the consumer is not willing to make the purchase, by definition their willingness to pay is less than the price. In the context of a PACE transaction for an otherwise unwanted project, the consumer's willingness to pay would be less than the price paid to the contractor, which in turn is less than the full original balance due to fees and capitalized interest. Potentially a consumer's willingness to pay for a project could be zero, or even negative (*i.e.,* the consumer would have to be paid to be willing to permit the project, had they understood). However, consumers may frequently have willingness to pay greater than zero for projects funded by PACE transactions, if only due to realized energy, water, or insurance savings.

[267] *See* Cal. State Treasurer, *Property Assessed Clean Energy (PACE) Loss Reserve Program, https://www.treasurer.ca.gov/caeatfa/pace/activity.asp* (last visited Apr. 6, 2023).

[268] *Id.; see also* Cal. State Treasurer, *PACE Loss Reserve Program Enrollment Activity, https://www.treasurer.ca.gov/caeatfa/pace/activity.pdf* (last visited Apr. 20, 2023).

[269] *See* PACE Report, *supra* note 12, at Figure A1.

[270] The Bureau does not have data indicating how often homeowners are required to pay off a PACE transaction when selling their home. However, as noted in part II.A.4, some mortgage lenders or investors prohibit making a new loan on a property with an outstanding PACE transaction. *See supra* note 16.

[271] Similar to the discussion above regarding the benefits of avoiding unaffordable PACE transactions, this calculation may overstate the aggregate benefits to the extent that existing State law in California prevents consumers from misunderstanding the nature of PACE transactions in that State. Given that the number of PACE transactions paid off each year remained high after the implementation of the 2018 California PACE Reforms, and given that the Bureau is being conservative in assuming that only 10 percent of early repayments were due to misunderstandings, the Bureau preliminarily determines that this estimate is, on balance, likely an underestimate.

non-PACE mortgages that the time required to produce pay stubs or tax records should not be a large burden on consumers. This may differ in the case of PACE transactions, as these transactions are typically marketed in conjunction with home improvement contracts, and consumers may not be prepared to produce income documentation at the point of sale for a home improvement. In any event, the proposal likely would not increase time costs in a meaningful way for PACE applicants in California, because these consumers already must produce documentation similar to what might be necessary for an ATR determination as part of a PACE application under the proposal. In addition, the PACE Report indicates that at least some PACE companies have collected income information from applicants even in Florida, so again there may be little change for some consumers in that State.[272] Further, the Bureau understands that, even in California after the effective date of the 2018 California PACE Reforms, PACE companies do not always collect full income documentation if other eligibility standards are not met. For instance, State laws governing PACE often prohibit PACE transactions from being made to consumers with evidence of recent payment difficulty, such as a recent bankruptcy, mortgage delinquency, or property tax delinquency. The Bureau understands that PACE companies in California set up their eligibility determination process to check these criteria before requesting income documentation from the consumer. The evidence in PACE Report is consistent with this—the Report finds that income information was not available for a sizeable minority of applications in California after 2018 where the application did not result in an originated PACE transaction.[273]

The PACE Report shows that, in 2019, the last full year for which data are available, the PACE companies that participated in the voluntary data collection received about 45,500 applications from prospective borrowers in Florida.[274] As discussed further below, the number of applications would likely fall significantly if the proposal is finalized, possibly by as much as half. In addition, the PACE Report indicates that about a third of PACE applications in Florida after April 2018 included income information.[275] Moreover, about one quarter of PACE applications in California after April 2018 *(i.e.,* when the 2018 California PACE Reforms took effect and began requiring such income information as part of the ability-to-pay analysis) did not,[276] indicating that such consumers in California were rejected before being asked for income information. Together, this suggests that, on average, approximately 11,400 additional consumers might be asked to provide income documentation annually under this rule as proposed.[277] The Bureau does not have data indicating the average amount of time it takes a PACE applicant to produce the documentation for an ATR determination as would be required under the proposed rule. Assuming the time to be one hour and using the median hourly wage in Florida of $18.63,[278] the aggregate time cost to consumers would be about $212,000 annually.

Consumers would also face costs under the proposed rule due to losing access to PACE financing. This would include consumers whose PACE applications are denied due to failing the proposed ATR determination, as well as consumers who do not apply for PACE as a consequence of the proposal.[279] For consumers who cannot, in fact, afford the cost of a PACE transaction, being denied is likely a benefit on net. However, no ATR determination can perfectly predict ability to repay, and some consumers who could, in fact, afford and benefit from a PACE transaction may be denied as a result of the proposed rule, if finalized.

To quantify the cost to consumers of having applications for PACE transactions denied, the Bureau would need to be able to calculate the number of consumers that could afford the cost of a PACE transaction but would be denied as a result of the proposed rule, and the cost to the average consumer of being denied. The Bureau can roughly quantify the number of consumers and discusses this below, but it does not have the data necessary to quantify the average cost, and thus its discussion is ultimately qualitative in nature.

The experience of California under the ability-to-pay regime of the 2018 California PACE Reforms provides a possible benchmark as to how the proposed rule might affect PACE application approval rates. The PACE Report shows that approval rates dropped sharply in California following the effective date of the 2018 California PACE Reforms in April 2018, falling from around 55 percent to around 40 percent.[280] However, the Report also finds that approval rates recovered over time, rising back to around 55 percent by the end of 2019. Using Florida as a comparison group, the Report finds that the 2018 California PACE Reforms lowered the approval rate for PACE applications in California by about seven percentage points, although this average includes both the initial drop and the later recovery.[281] Although the provisions of the proposed rule differ from the requirements of the 2018 California PACE Reforms, it is likely that the rule would have limited additional effect on PACE transaction approval rates in California. Instead, the proposal, if finalized, would primarily reduce approval rates in Florida.

As noted above, the PACE Report indicates that PACE companies in Florida received about 45,500 applications in Florida in 2019, the last full year of data available. Again assuming that the proposed rule would lead to about half as many applications, and assuming that approval rates fall by seven percentage points, that would mean at most about 1,600 consumers annually might have a beneficial PACE application denied. This is an overcount, as many of these consumers in fact would not be able to afford a PACE transaction, and, moreover, the PACE Report shows that approval rates recovered over time. Some of the expected reduction in PACE applications may represent a cost to consumers as well, to the extent this arises from PACE financing being less available in general to consumers who could afford and benefit from it. However, as discussed above, one benefit of the proposal would be that consumers would be less likely to misunderstand the nature of a PACE

[272] *See* PACE Report, *supra* note 12, at Table 1. As noted in part II.A.6, in 2021, the main trade association for PACE companies announced a set of consumer protection policy principles that includes considering ability to pay, although the Bureau does not know to what extent this translates to requiring documentation from consumers where it is not required by State law.

[273] PACE Report, *supra* note 12, at Table 1.

[274] *Id.* at 50.

[275] *Id.* at 10.

[276] *Id.* at Table 1.

[277] The calculation is the product of 45,500 current applications, 0.5 (the assumed reduction due to proposal), 0.67 (the share of Florida applications that do not currently collect income), and 0.75 (the share of the remaining applications that would collect income, based on the share in California that currently collect income), which equals 11,375.

[278] *See* Bureau of Lab. Stats., *May 2021 State Occupational Employment and Wage Estimates, Florida, https://www.bls.gov/oes/current/oes_fl.htm* (last visited Mar. 6, 2023).

[279] Consumers might not apply for PACE due to the effect of the proposal if home improvement contractors who otherwise might have marketed PACE withdraw from that market, or if they opt not to proceed with a PACE transaction as a consequence of the provisions of the proposed rule.

[280] PACE Report, *supra* note 12, at Figure 16.

[281] *Id.* at Table 13.

transaction, which would also reduce PACE applications. As also noted above, a substantial fraction of PACE transactions are paid off early in the term of those transactions, which may be related to such misunderstandings. Although the Bureau expects the volume of PACE transactions in Florida and other States would decline if the proposed rule were finalized, it does not have data that would indicate how much of this decline would be a cost to consumers who miss out on a transaction they would prefer to engage in, and how much is a benefit to consumers who had no interest in participating in a PACE transaction once they understood its true nature or would not have been able to afford the PACE transaction.

The Bureau can characterize qualitatively the consumer costs of not receiving a PACE transaction. The immediate impact to a consumer who might otherwise have agreed to a PACE transaction but is either denied or is not offered a PACE transaction due to the proposed rule is that the consumer either must pay for the home improvement project in cash or with another financing product, or else the consumer must forgo the home improvement project.

Paying in cash for a home-improvement project is not likely to be costly to consumers who choose to do so. Although this involves a large, upfront expenditure, it is unlikely that consumers will frequently agree to pay cash for a home improvement project they cannot afford—they will generally forgo the project instead, the costs of which are discussed below, or find other means of financing. Moreover, even if a consumer's budget might be strained in the short term by the expenditure, the consumer would then save on the—potentially substantial—cost of interest and fees on a loan.

The impact on consumers, relative to the baseline, of using another credit product may be either a cost or a benefit depending on the cost of the other credit product. If the next best alternative has a lower APR than the relevant PACE transaction, consumers who may have received a PACE loan but did not due to the proposed rules relating to ATR could be better off than they would be without the proposed rule. Conversely, if the next best alternative for a consumer has a higher APR, those consumers would be worse off. The PACE Report shows that estimated APRs for PACE transactions averaged 8.5 percent.[282] This is greater than typical rates for home equity lines of credit, but less than typical rates for credit cards.[283] The interest rate on PACE transactions may be more or less than the cost of an unsecured loan for the same home improvement project, which can vary widely depending on the consumer's credit score.

The PACE Report suggests that under the proposal, many consumers who would not receive a PACE transaction would be able to obtain credit through another source, potentially at a better APR than the PACE transaction. The Report shows that the vast majority of PACE borrowers had other credit available. The report shows that almost 99 percent of PACE borrowers have sufficient credit history to have a credit score, almost 90 percent of PACE borrowers had a credit card pre-PACE, and on average PACE borrowers had more than seven unique credit accounts of any type pre-PACE.[284] More than half of PACE borrowers had prime or super-prime credit scores at the time they entered into a PACE transaction.[285] The Bureau notes, however, that this aspect of the PACE Report's analysis was limited to consumers who had a credit report. The Report had to exclude roughly a quarter of the consumers in the data submitted to the Bureau because they could not be matched to a credit report with the credit reporting company that acted as the Bureau's contractor. Some of these consumers may simply have had a mismatch in name or address with the credit reporting company's database, but likely at least some of these consumers had no credit report and were credit invisible. The true share of PACE borrowers with substantial access to credit is likely smaller than what is noted above.

If the consumer does not opt to proceed with the home improvement project, the cost is the loss of the benefits of that project. The nature of these costs would depend on the type of project and the reasons the consumer was considering the project. For the types of home improvement projects that might be eligible for PACE financing, the benefit of the project is primarily the energy, water, or insurance savings the project would have delivered.[286] Other projects may be used to replace critical home equipment such as an HVAC system, without which the consumer would face the cost of not having that equipment. The Bureau does not have data available to estimate the average energy, water, or insurance savings actually obtained by PACE borrowers, nor is the Bureau aware of any research to estimate real-world savings from PACE transactions. One study the Bureau is aware of estimates aggregate energy savings from customers of one PACE company, but this is based on engineering estimates of the savings from each project.[287] The academic literature has found that engineering estimates can frequently overestimate real-world savings from energy efficiency programs.[288] Public comments from consumer advocacy groups in response to the ANPR also cited instances where consumers received smaller energy savings than what was advertised to them.

Potential Benefits and Costs to Covered Persons of the Proposed Ability-to-Repay Provisions

The proposed ATR provisions would primarily affect PACE companies. Although the Bureau understands that local government sponsors are generally the creditor, as defined in TILA, for PACE transactions, the Bureau expects that the required ATR determination, and in practice the liability for any failures to make that determination, would fall on the PACE companies that

[282] *Id.* at Table 2.

[283] Average credit card interest rates on accounts assessed interest were between 13 and 17 percent during the period studied by the PACE Report. *See* Fed. Rsrv. Econ. Data, Fed. Rsrv. Bank of St. Louis, *Commercial Bank Interest Rate on Credit Card Plans, Accounts Assessed Interest* (Apr. 8, 2023), *https://fred.stlouisfed.org/series/TERMCBCCINTNS.* Interest rates for personal loans averaged around 10 percent. *See* Fed. Rsrv. Econ. Data, Fed. Rsrv. Bank of St. Louis, *Finance Rate on Personal Loans at Commercial Banks, 24 Month Loan* (Apr. 8, 2023), *https://fred.stlouisfed.org/series/TERMCBPER24NS.* The median interest rate on home equity lines of credit was 5.34 percent in 2019 based on HMDA data. *See* CFPB, *An Updated Review of the New and Revised Data Points in HMDA: Further Observations using the 2019 HMDA Data,* (Aug. 2020), *https://files.consumerfinance.gov/f/documents/cfpb_data-points_updated-review-hmda_report.pdf.*

[284] *See* PACE Report, *supra* note 12, at Table 6.

[285] *See id.* at Figure 1.

[286] Home values may also increase as a result of the home improvement projects, but generally this will be the consequence of capitalizing the value of future energy, water, or insurance savings already considered here. With respect to insurance savings, industry stakeholders and local government stakeholders in Florida have asserted to the Bureau that consumers may have difficulty obtaining homeowners' insurance for homes in Florida with roofs above a certain age. If a consumer cannot obtain homeowners' insurance on real property that secures a non-PACE mortgage, lenders may force-place insurance, generally at higher premiums than consumer-purchased insurance. PACE transactions may be used for roof replacements in Florida, and consumers may save on insurance costs if they utilize a PACE transaction for this purpose.

[287] Adam Rose & Dan Wei, *Impacts of Property Assessed Clean Energy (PACE) program on the economy of California,* 137 Energy Pol'y 111087 (2020).

[288] *See, e.g.,* Meredith Fowlie, Michael Greenstone & Catherine Wolfram, *Do Energy Efficient Investments Deliver? Evidence from the Weatherization Assistance Program,* 133 Q J of Econ. 3 (Aug. 2018).

run PACE programs.[289] Although the PACE Report provides some information on potential impacts of the ATR provisions on PACE companies, many of the potential benefits and costs to PACE companies are outside the scope of the Report. The Bureau discusses these benefits and costs qualitatively here.

PACE companies may benefit from legal clarity provided by the proposed ATR provisions. As described above in part II.A, some PACE companies have been targets of legal actions from consumers and regulators. Some PACE companies have exited the industry citing such actions as at least a partial cause.[290] These legal actions were not necessarily related to PACE companies consideration of consumers' ability to repay—many related to conduct by home improvement contractors who marketed the PACE transactions. However, as described above in reference to benefits to consumers, the act of collecting income documentation as part of the proposed ATR provisions may make it more likely that consumers correctly understand the nature of a PACE transaction, potentially preventing some legal actions. Again, the required TILA–RESPA integrated disclosures (discussed in more detail below) would also assist in this respect. The Bureau does not have data on the frequency of lawsuits facing PACE companies currently, nor does it have data on the claims in those lawsuits that would allow the Bureau to determine what share might be prevented by following the proposed ATR provisions.

By providing a Federal ability-to-repay standard, the proposal may also encourage greater consistency across States. For example, the Bureau understands that PACE companies currently adhere to different processes for determining consumer eligibility for PACE transactions in California, involving some collection and verification of income and other documentation, than in Florida, where eligibility determinations generally involve less documentation. If the proposed rule encourages more standardized processes across States, this could result in reduced operating cost for PACE companies, which may offset some of the costs described below.

More broadly, the nationwide minimum standard provided by the proposed rule could make it easier for PACE companies to expand into additional States, leading to additional business. As noted above, the Bureau understands that many States have legislation authorizing PACE transactions,[291] but currently PACE companies are primarily active in just two States. Local governments in States with legislation authorizing PACE transactions may have a variety of reasons for opting not to engage with a PACE company to start a PACE program. However, the Bureau finds it plausible that controversies and consumer protection concerns discussed in part II.A.4 above may in part hold some government entities back from engaging in PACE. To the extent this is the case, the proposed rule could address those concerns and provide opportunities for PACE companies to grow, or for new PACE companies to enter the market. To the extent this occurs, the benefits could be considerable. The PACE Report documents that PACE origination volumes grew rapidly in both California and Florida when PACE companies entered those States.[292] However, rapid growth may not materialize to the same extent in other States if the rapid growth in California and Florida was premised on business practices that would be prohibited by the proposal.

Although PACE companies would likely receive some of the benefits discussed above from the proposed ATR provisions, PACE companies would also likely experience significant costs under the proposal, including reduced lending volumes in Florida and Missouri, one-time adjustment costs, and ongoing costs for training and compliance.

The PACE Report documents that, following the effective date of the 2018 California PACE Reforms, PACE applications and originations fell sharply in that State, with no corresponding decline in Florida around the same time.[293] Using Florida as a control group, the Report finds that PACE applications in California declined by more than 3,400 per month due to the provisions of the 2018 California PACE Reforms, from an average of over 5,300 per month in that State prior to the reforms.[294] The Report finds that the number of originated PACE transactions in California declined by about 1000 per month due to the 2018 California PACE Reforms, representing about a 63 percent decrease from a pre-reform average of about 1600 originations per month in California.[295] The specific requirements of the 2018 California PACE Reforms differ from those of the proposal, even with respect to provisions having to do with the California ability-to-pay requirements and the proposal's Federal ATR requirements, but the Bureau expects that PACE companies would see a similar decline in originated loans in other States if the proposal is finalized. Conversely, the Bureau does not expect that the ATR requirements in the proposal would cause an additional reduction in PACE transactions in California due to the mechanisms discussed above.

In addition, the decline in PACE applications in California following the 2018 California PACE Reforms that is documented in the PACE Report may have been accentuated by adjustments to firm behavior. That is, it is possible that PACE companies refocused marketing and other efforts on Florida following the implementation of the 2018 California PACE Reforms. This type of shifting would not occur in response to a Federal regulation that applies nationwide, such as the proposed rule.

PACE companies will also likely experience one-time adjustment costs to update their systems and processes to accept and consider income and other information related to the proposed ATR requirements. These costs may include software and development, training of both PACE company staff and home improvement contractor affiliates, and costs for legal and compliance review of the changes to ensure compliance with the regulations. The Bureau does not have data indicating the magnitude of these costs. However, the Bureau notes that some of these costs may be ameliorated by the existing requirements in California. The Bureau understands that all currently active PACE companies are engaged in PACE financing in California and thus

[289] The Bureau is aware that there may be programs authorized or administered by government entities that are not commonly understood as PACE, but that nonetheless meet the definition of PACE financing established in EGRRCPA section 307 and implemented under the proposed 12 CFR 1026.43(b)(15). Data on such programs is dispersed, and so the Bureau does not have sufficient information to reliably estimate how many such programs exist or to assess their current practices in providing financing. The Bureau understands these programs to operate independently of one another, under differing laws and practices. Consequently, the Bureau is unable to quantify (1) the number of such programs that are not commonly understood as PACE, but would meet the definition of PACE financing; (2) how many of those programs are operated by covered entities; or (3) the effects the proposed rule would have on each such covered entity. Any such program's additional costs under the proposed ATR provisions would depend on its current procedures. The Bureau requests comment on how the proposed rule may affect such programs.

[290] *See, e.g., Decl. of Shawn Stone, CEO of Renovate America, In Support of Chapter 11 Petitions and First Day Motions*, Case No. 20–13172 (Bankr. D. Del. 2020).

[291] *See* part II.A.2, *supra.*

[292] PACE Report, *supra* note 12, at Figure 16.

[293] *Id.*

[294] *Id.* at Table 13.

[295] *Id.*

must already have systems in place to allow for collection of income information and other documentation needed for the ATR determination the proposal would require. The Bureau thus expects that costs related to software changes would be relatively small, and that costs for training would likely be less than if there were no existing ability-to-pay requirements for PACE in any jurisdiction. The Bureau acknowledges that legal and compliance review costs would likely apply in all States, as the specific proposed requirements differ from the requirements of California State law and regulation.

PACE companies may also experience additional litigation costs due to alleged violations of the proposed ATR provisions. As noted earlier in this analysis, the Bureau is proposing to apply civil liability in TILA section 130 to PACE companies that are substantially involved in making the credit decision. As the Bureau stated in the January 2013 Final Rule, even creditors making good faith efforts when documenting, verifying, and underwriting a loan may still face some legal challenges from consumers ex-post. This will occur when a consumer proves unable to repay a loan and wrongly believes (or chooses to assert) that the creditor failed to properly assess the consumer's ability to repay before making the loan. This will likely result in some litigation expense, although the Bureau believes that over time, that expense will likely diminish as experience with litigation yields a more precise understanding regarding what level of compliance is considered sufficient. After some experience, litigation expense will most likely result where compliance is insufficient or from limited novel sets of facts and circumstances where some ambiguity remains. Moreover, as Bureau also stated in the January 2013 Final Rule, the Bureau believes that even without the benefit of any presumption of compliance, the actual increase in costs from the litigation risk associated with ability-to-repay requirements would be quite modest. This is a function of the relatively small number of potential claims, the relatively small size of those claims, and the relatively low likelihood of claims being filed and successfully prosecuted. The Bureau notes that litigation likely would arise only when a consumer in fact was unable to repay the loan (*i.e.,* was seriously delinquent or had defaulted), and even then only if the consumer elects to assert a claim and, in all likelihood, only if the consumer is able to secure a lawyer to provide representation; the consumer can prevail only upon proving that the creditor lacked a reasonable and good faith belief in the consumer's ability to repay at consummation or failed to consider the statutory factors in arriving at that belief.

Beyond PACE companies, the proposed ATR provisions would impose some costs on local government entities and home improvement contractors.[296]

Some local government entities would also experience costs due to the proposed ATR provisions, if finalized. The Bureau understands that local government entities receive some revenues from originated PACE transactions, in the form of fees, or a small percentage of the PACE payments collected through consumers' property tax bills. The Bureau does not have data indicating the average revenue that government entities receive from each PACE transaction. To the extent that the proposal reduces the volume of PACE transactions, the Bureau expects that it would also reduce revenue to such government entities, in proportion to the revenue they currently receive from such transactions. Similar to the discussion above related to PACE companies, the Bureau expects that government entities in California would be less affected by the proposed rule than government entities in other States. If, as discussed above, the proposal were to facilitate growth of PACE transactions in States that do not currently have active programs, local government entities in those State might benefit as a result.

Home improvement contractors involved in PACE transactions would experience costs under the proposal due to the additional staff time required to collect the required information for the proposed ATR determination. As with time costs for consumers discussed above, the Bureau assumes these costs would primarily affect home improvement contractors in Florida and that the volume of applications in Florida would decrease from current levels if the proposal is finalized; see above for details. The PACE Report indicates that roofs and disaster hardening are the most common type of project for PACE transactions in Florida, and so the Bureau uses the median wage for roofers in Florida, $18.43 per hour,[297] to value the time costs to home improvement contractors. Under these assumptions, the total costs to home improvement contractors from additional staff time would total about $210,000 annually.[298]

Potential Benefits and Costs to Consumers and Covered Persons of Clarifying That PACE Financing Is Credit

The proposal would revise the official commentary for Regulation Z to clarify that PACE transactions are credit for purposes of TILA.[299] In practice, this would impose a number of new requirements on PACE companies and other covered persons. Some relevant provisions whose benefits and costs are discussed below include (1) a three-day right of recission;[300] (2) disclosure requirements, including provision of relevant TILA–RESPA integrated disclosure forms and a mandatory waiting period between provision of the disclosure and consummation;[301] (3) requirements related to loan originators;[302] and (4) certain requirements for PACE transactions that meet the definitions of a high-cost mortgage or a higher-priced mortgage loan.[303] The Bureau is not addressing in depth certain other provisions.[304]

[296] Local government entities and home improvement contractors currently involved in PACE transactions may or may not be covered persons depending on the specific facts and circumstances of their involvement in PACE financing; to the extent they are not covered persons the Bureau exercises its discretion to consider benefits, costs and impacts to these entities.

[297] *See* Bureau of Lab. Stats., *May 2021 State Occupational Employment and Wage Estimates, Florida, https://www.bls.gov/oes/current/oes_fl.htm* (last visited Mar. 6, 2023).

[298] In the January 2013 Final Rule, the Bureau noted that most non-PACE mortgage lenders already collected income information as part of the normal course of business, and so assumed no significant costs relative to the baseline. *See* 78 FR 6546 (Jan. 30, 2013). This likely would not be the case for PACE companies outside of California. The Bureau requests comment on the actual time costs of gathering this information and typical wages of staff employed to collect it.

[299] *See* section-by-section analysis of proposed § 1026.2(a)(14), *supra.*

[300] Consumers have the right to rescind within three business days of consummation, delivery of the notice informing the consumer of the right to rescind, or delivery of all material disclosures, whichever occurs last. If the notice or disclosures are not delivered, the right to rescind expires three years after consummation. *See* 12 CFR 1026.23(a)(3)(i).

[301] *See, e.g.,* 12 CFR 1026.37, 1026.38.

[302] *See, e.g.,* 12 CFR 1026.36(a)(1)(i), 1026.36(d)–(g).

[303] 12 CFR 1026.32, 1026.34.

[304] For instance, PACE companies would also be required to comply with the prohibition on prepayment penalties under 12 CFR 1026.43(g), but the Bureau does not expect this would create significant costs or benefits for consumers or covered persons, as the Bureau understands that PACE loans being made currently do not include these penalties. PACE contracts would also be prohibited from requiring the use of mandatory arbitration under 12 CFR 1026.36(h), but the Bureau does not have information sufficient to determine the extent to which PACE contracts currently include mandatory arbitration clauses. To the

Continued

The right of recission could benefit consumers and impose costs on covered persons to the extent that consumers decide a PACE transaction is not appropriate for them during the rescission period and exercise the right. As discussed above, many PACE borrowers pay off their PACE transactions early, which suggests that some of these consumers may decide they do not want a PACE transaction after origination, or may not have intended to take out the PACE transaction at all. A rescission period could give consumers more time to exercise such preferences. However, the Bureau does not have data indicating whether PACE borrowers typically realize such a preference during the three-day period following origination of a PACE transaction. In addition, PACE borrowers in California already have a three-day right to cancel under State law,[305] and PACE companies may currently voluntarily provide a recission option outside of California. As a result, the Bureau expects the application of this provision of TILA to impose few benefits or costs on consumers and covered persons.

The disclosure requirements would likely benefit consumers by increasing their understanding of the terms of the PACE transaction and mandating a waiting period between disclosure and consummation. As discussed above in the context of collecting income information, mandating disclosures and a waiting period for PACE transactions conforming with TILA–RESPA integrated disclosure requirements would make it more likely that consumers understand the terms of their proposed PACE transactions. The disclosure requirements would also likely increase understanding of the fundamental nature of PACE transactions as financial obligations that must be repaid over time. The potential benefits of avoiding consumer misunderstanding of the nature of a PACE transaction are discussed above.

By providing detailed information about the terms and payment amounts expected in a PACE transaction, TILA–RESPA integrated disclosures may also assist consumers in preparing for their first PACE payment, which can be a significant shock to their finances regardless of whether the consumer pays their property taxes directly or through a pre-existing mortgage escrow account. The PACE Report finds that the average PACE consumer's property tax bill likely nearly doubles as a result of the PACE assessment.[306] Particularly for consumers who do not pay property taxes through an escrow account, this can be a major expenditure shock. For consumers who do pay property taxes through an escrow account, the Report finds that mortgage payments increase substantially over the two years following the PACE transaction, indicating an expenditure shock as well.[307] Some of the disclosures on the proposed modified TILA–RESPA integrated disclosure form for PACE transactions may prompt consumers with a pre-existing non-PACE mortgage to inform their mortgage servicer of the PACE transaction. This, in turn, could prompt the servicer to conduct an escrow analysis to account for the PACE payment sooner than it otherwise would have and thus create a smaller monthly payment increase for the consumer.

PACE companies would experience one-time adjustment costs related to the TILA–RESPA integrated disclosure if the proposal is finalized. The Bureau understands that PACE companies generally provide some disclosures with similar information at the point of sale, but not in the format or with precisely the same information as the disclosure that would be required under the proposal. The Bureau expects that ongoing costs will be minimal relative to the baseline, since PACE companies already provide disclosures. To the extent that the proposed TILA–RESPA integrated disclosures for PACE require that PACE companies gather information that they do not currently collect, they may face additional costs of gathering that information if the proposal is finalized.

The required seven-day waiting period between provision of the Loan Estimate and consummation may also impose costs on both PACE companies and the home improvement contractors who market PACE transactions. As discussed in part II.A.4 above, the Bureau understands that, currently, PACE transactions are frequently originated on the spot, on the same day as the home improvement contractor approaches the consumer about a potential project. PACE industry stakeholders have expressed to the Bureau that this speed of origination is necessary to compete with unsecured financing options. It is possible that the seven-day waiting period would lead to a further reduction in PACE transaction volume due to reduced contractor participation if contractors prefer to offer only credit options that do not have such a waiting period. No States currently have a similar mandatory waiting period under State law as far as the Bureau is aware, so this aspect of the proposal would likely affect PACE lending volumes in all States. The Bureau does not have data to indicate how large this effect might be.

TILA and Regulation Z include a variety of provisions that apply to loan originators. With current PACE industry practices, the Bureau understands that, if the proposal is finalized, these provisions would primarily apply to home improvement contractors. If home improvement contractors continue in their current roles and act as loan originators for PACE transactions, both the individual contractors and related companies would face compliance costs, including costs relating to applicable State or Federal licensing and registration requirements.[308] The Bureau does not have data available to quantify the costs to home improvement contractors from complying with TILA as loan originators.

It is possible that, if the proposal is finalized, home improvement contractors would opt not to bear the cost of complying with TILA provisions to the extent they apply and would instead exit the PACE market. The home improvement contractors themselves would incur costs in this case. The Bureau does not have data available to estimate these costs. The costs to home improvement contractors from exiting the PACE industry depend on what would happen to prospective home improvement contracts for which PACE financing would no longer be an option. If contractors are able to make the sale of the home improvement contract based on a cash payment or another financial product, they generally would not experience any cost.[309] However, contractors could lose some sales due to the unavailability of a PACE transaction as a financing option. The Bureau does not have data that would indicate how frequently this would happen. It is also possible that, if the proposal enables PACE financing to expand into additional States, home improvement contractors in those States would benefit from additional business. Again,

extent mandatory arbitration clauses are currently in use, consumers and covered persons could incur benefits and costs as a result of this prohibition.

[305] Consumers have the option to cancel within three business days after signing the agreement, receipt of the Financing Estimate and Disclosure, or receipt of the cancellation notice, whichever occurs last. *See* Cal. Sts. & Hwys. Code sec. 5898.16.

[306] PACE Report, *supra* note 12, at 13.

[307] *Id.* at 18–20.

[308] 12 CFR 1026.36(f).

[309] The Bureau's understanding is that home improvement contractors do not receive a commission from PACE companies for originating a PACE contract. To the extent that contractors do receive commissions, exiting the PACE market would cost them these commissions, although they might be replaced by commissions from an alternate financial product, if any.

the Bureau does not have data that would indicate how many contractors might benefit if this were to occur, or how much they would benefit.

Consumers may experience both costs and benefits due to the proposed application of TILA's loan originator provisions to PACE, if finalized. The costs and benefits to consumers of not being offered a PACE transaction are discussed above in this analysis; that discussion also applies to cases where consumers are not offered a PACE transaction because the home improvement contractor has exited the PACE market. To the extent that home improvement contractors opt to remain in the PACE market or PACE transactions are marketed by PACE companies or local governments directly as a result of the proposal being finalized, consumers may benefit from such changes to the way PACE transactions are marketed. Many consumer protection issues identified in the comments responding to the ANPR are related to conduct by home improvement contractors. Either mandatory compliance with TILA's loan originator provisions by home improvement contractors, or a shift to marketing PACE transactions directly by PACE companies or local governments could ameliorate some of these issues.

Finally, under TILA, certain additional protections apply to high-cost mortgages as defined by HOEPA. High-cost mortgages generally include those that: (1) have an APR 6.5 or 8.5 percentage points higher than the APOR for a comparable transaction, depending on whether it is a first- or subordinate-lien mortgage; (2) have points and fees exceeding 5 percent of the total loan amount or the lesser of 8 percent of the total loan amount or $1,000 (adjusted annually for inflation), depending on the size of the transaction; or (3) include certain prepayment penalties.[310] Few PACE transactions have appear to have APRs high enough to meet the first prong,[311] and the Bureau understands that more recent PACE transactions generally do not include prepayment penalties, although certain early PACE contracts did include prepayment penalties. The PACE Report finds that about 35 percent of PACE transactions in the data the Report studies had up-front fees exceeding the relevant HOEPA points-and-fees threshold.[312] However, this varied sharply by State, with over half of all PACE transactions in California having fees exceeding the threshold, compared to just 8 percent of PACE transactions in Florida.[313]

Some of the requirements of HOEPA may be difficult for PACE companies to comply with. This could lead to PACE companies declining to make PACE transactions that would be high-cost mortgages. Given the variation in fees across States, it seems possible that PACE companies could make PACE transactions profitably with lower fees than they currently do. As a result, the Bureau expects that, if the proposal is finalized, PACE companies would reduce fees or interest rates on PACE transactions that would otherwise exceed HOEPA thresholds rather than declining to make a PACE transaction at all. This would impose costs on PACE companies and the affiliated local government entities in the form of lost revenue and will benefit PACE consumers by the same measure.

PACE companies may also experience costs due to the requirements of Regulation Z with respect to higher-priced mortgage loans. Regulation Z generally requires creditors to obtain a written appraisal of the property to be mortgaged prior to consummating higher-priced mortgage loans if the amount of credit extended exceeds a certain threshold—currently $31,000 in 2023—and to provide the consumer with a written copy of the appraisal.[314] The PACE Report indicates that about a quarter of PACE transactions originated between June 2014 and July 2020 had original principal amounts above that threshold, and moreover shows that most PACE transactions have APR–APOR spreads above the threshold for higher-priced mortgage loans.[315] The Bureau understands that PACE companies typically do not obtain written appraisals for properties securing PACE transactions, relying instead on automated valuation models. Switching to written appraisals, or lowering loan amounts to be under the threshold, would impose costs on PACE companies. Consumers may also experience costs to the extent that the price of conducting an appraisal is passed on to them. The Bureau does not have data on the amount of these costs, and requests comment on this.

E. Potential Specific Impacts of the Proposed Rule on Access to Credit

As discussed above, the proposal, if finalized, may reduce access to PACE credit. Potential PACE borrowers who cannot qualify for a PACE transaction due to the proposed ATR analysis will not have access to PACE credit. As also noted above, the PACE Report finds that the implementation of the 2018 California PACE Reforms, which included a required ability-to-pay analysis, resulted in a substantial reduction in new PACE transactions.[316] Some of the decrease in California was likely due to increased denials of PACE applications, and some was likely due to reduced marketing of PACE transactions, such as reduced participation by home improvement contractors. It seems likely that, if the rule is finalized as proposed, a similar reduction would occur in other States. However, it is not clear how much of the reduction in PACE transactions in California was due to credit supply factors, versus reduced demand for PACE transactions. As discussed above, a substantial fraction of PACE transactions are paid off early, suggesting that at least some consumers who engage in a PACE transaction currently may not desire to have a long-term financial obligation. Some provisions of the proposed rule could prompt some consumers to avoid the transaction, which would reduce the volume of PACE transactions, but this would be due to a reduction in demand for credit, not a change in access to credit. In addition, consumers who have a PACE application denied, or who are not offered an opportunity to apply for a PACE transaction, may be able to access other forms of credit, potentially at more favorable APRs.

To the extent that the legal clarity provided by the proposal were to enable PACE financing to expand into additional States, this would increase access to PACE credit for consumers in those States.

The Bureau quantifies the potential impacts of the proposal on access to credit in its discussion above in part IX.D where possible but seeks comment on this issue, particularly in the form of additional studies or data that might inform the potential impact of the proposal on access to credit.

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[310] *See* TILA section 103(bb)(1)(A); 12 CFR 1026.32(a)(1).

[311] *See* PACE Report, *supra* note 12, at 15 (finding that 96 percent of PACE transactions made between 2014 and 2020 had estimated APR–APOR spreads below 6.5 percent).

[312] *Id.* at Table 5.

[313] *Id.*

[314] *See generally* 12 CFR 1026.35(c); comment 35(c)(2)(ii)–3.

[315] *See* PACE Report, *supra* note 12, at Table 2, Table 5.

[316] *Id.* at 45.

F. Potential Specific Impacts on Consumers in Rural Areas and Depository Institutions With Less Than $10 Billion in Assets

The proposed rule would not have a significant impact on consumers in rural areas. If anything, the proposed rule would impact consumers in rural areas less than consumers in non-rural areas. The PACE Report shows that consumers who take part in PACE transactions are less likely to live in rural areas than other consumers in their States. Moreover, the Report notes that California and Florida, the States with the most PACE lending to date, have the smallest and sixth-smallest rural population shares among all States, respectively.

The Bureau understands that depository institutions of any size are not typically involved with PACE transactions, and thus the proposed rule would have no direct impact on such entities, regardless of asset size.

X. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (SISNOSE).[317] The Bureau is also subject to specific additional procedures under the RFA involving convening a panel to consult with small business representatives before proposing a rule for which an IRFA is required.[318] As the below analysis shows, an IRFA is not required for this proposal because the proposal, if adopted, would not have a SISNOSE.[319]

Small entities, for purposes of the RFA, include both small businesses as defined by the Small Business Administration, and small government jurisdictions, defined as jurisdictions with a population of less than 50,000.[320]

For the reasons discussed below, the Bureau does not believe that the proposed rule will have a SISNOSE. While it is possible that the proposed rule would have a significant impact on some entities, based on the information available it appears that most of those entities are not ''small'' as defined by the RFA, and that any small entities that may be impacted, significantly or otherwise, are unlikely to constitute a substantial number of small entities.

The Bureau understands that any economic impact from the proposed rule would primarily fall on PACE companies, as defined under proposed § 1026.43(b)(14). Most of these entities are private firms. A small number of local government entities administer their own PACE programs, and may be affected in similar ways as PACE companies. The proposed rule may also have a direct economic impact on the local government entities that authorize PACE programs within their jurisdictions and are parties to the financing agreements but do not otherwise administer the originations, and it may also have a direct economic impact on the home improvement contractors who market PACE to consumers.

The Bureau is aware of five entities that currently are administering PACE programs as commonly understood, including four private firms and one local government entity. Based on the information available to the Bureau, none of these entities currently are small entities. The local government entity that directly originates PACE transactions has population greater than 50,000.[321]

For private firms, Small Business Administration (SBA) size standards differ by industry based on the 6-digit North American Industry Classification System (NAICS) industry code that represents the primary business of a firm.[322] For private firms whose primary business is originating PACE transactions, the relevant SBA threshold is $47 million in annual receipts.[323] The Bureau's understanding is that PACE companies' annual receipts for purposes of the SBA criteria are based on the principal balance of the financing obligations they originate in a given year.[324] This is consistent with how PACE companies tend to describe the volume of their business.[325]

Based on the evidence available to the Bureau, it does not appear likely that any of the currently active private PACE companies averaged less than $47 million in annual receipts over the past five years.[326] Moreover, even if some PACE companies are small entities, PACE companies would not represent a substantial number of the small entities in any of the industries they could reasonably be classified in, which have between hundreds and thousands of small firms.[327] Even if all currently

[317] 5 U.S.C. 601 *et seq.*

[318] 5 U.S.C. 609.

[319] This analysis considers collectively the potential impacts of all aspects of the proposal on small entities, including both the affirmative proposed new requirements and the proposed revisions to the official commentary.

[320] 5 U.S.C. 601(3), 601(5).

[321] Sonoma County operates its own PACE program, called Sonoma County Energy Independence Program. Sonoma County, California had population 485,887 in 2021, according to the Census Bureau. *See* U.S. Census Bureau, *Annual Estimates of the Resident Population for Counties in California: April 1, 2020 to July 1, 2021, https://www2.census.gov/programs-surveys/popest/tables/2020-2021/counties/totals/co-est2021-pop-06.xlsx.*

[322] The NAICS system is produced by a partnership between the Office of Management and Budget and partner agencies in Canada and Mexico, with the aim of providing a consistent framework for analyzing industry statistics.

[323] The SBA generally defines receipts as '' 'total income' . . . plus 'cost of goods sold', as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms.'' The SBA provides that the classification should be based on a five-year average of receipts, with adjustments if a firm has been in business for less than five full fiscal years. *See* 13 CFR 121.104. PACE is a small and relatively new industry that began around 2008, and there is more than one 6-digit NAICS industry that could reasonably apply to PACE companies (the NAICS system is comprehensive, such that every firm should fit into exactly one 6-digit industry code). The 6-digit NAICS industry codes that private PACE companies could arguably belong to include codes 522292 (Real Estate Credit), code 522299 (International, Secondary Market, and All Other Nondepository Credit Intermediation), or code 523910 (Miscellaneous Intermediation). *See* U.S. Census Bureau, *North American Industry Classification System 2022, https://www.census.gov/naics/?58967?yearbck=2022.* For all these industries the SBA size threshold is $47 million in annual receipts. 13 CFR 121.201.

[324] This will somewhat undercount annual receipts, which would also include revenues the firms receive from the sale of PACE securities to the secondary market.

[325] *See, e.g.,* Ygrene Energy Fund Inc., *RE: Advanced Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy (RIN 3170–AA84)* (May 7, 2019) (describing the change in the volume of PACE assessments following the 2017 California PACE statute legislation in terms of the change in number of assessments and dollar value of those assessments).

[326] Although the data used in the Bureau's PACE Report did not identify revenue separately by individual companies, publicly available data from CAEATFA indicates that the currently active PACE companies generally averaged over $50 million in new PACE transactions in California alone between 2018 and 2020. *See* Cal. Alt. Energy & Advanced Transp. Fin. Auth., *PACE Loss Reserve Program Enrollment Activity* (Mar. 2021) *https://www.treasurer.ca.gov/caeatfa/pace/activity.pdf.* Moreover, the PACE Report shows that PACE lending in Florida exceeded that in California after 2018. Similarly, statistics from the PACE trade association indicate that the PACE industry made around $500 million in new PACE transactions in 2021. *See* PACE Nation, *PACE Market Data* (updated Dec. 31, 2021), *https://www.pacenation.org/pace-market-data/.* Even if these revenues were not evenly distributed among the four companies, it seems unlikely that any one company had revenues less than $47 million averaged over five years.

[327] The Bureau can determine the approximate number of small firms active in each industry through the 2017 Economic Census (the most recent version available at this writing), which gives counts of firms categorized by NAICS code and annual revenues. *See* U.S. Census Bureau, *2017 Economic Census, Finance and Insurance (NAICS Sector 52), Establishment and Firm Size Statistics, https://www.census.gov/data/tables/2017/econ/economic-census/naics-sector-52.html.* The revenue categories in the public Economic Census data do not line up perfectly with the SBA size thresholds, but even excluding categories that overlap the threshold, the 2017 Economic Census indicates that there were at least 2,372 small firms in the Real

operating PACE companies were small, they would not represent a substantial number within any of the relevant 6-digit NAICS industries.

The Bureau also considered whether a substantial number of small government entities could experience a significant impact if this proposal were finalized. As noted above, the Bureau is only aware of one government entity that is currently acting as its own administrator to provide PACE financing as it is commonly understood, and it is not small under the RFA. However, other government entities authorize and oversee PACE programs, are parties to the financing agreements, and receive some revenues from the program.[328] To the extent that the proposed rule could directly impact these other government entities, the Bureau must consider whether the proposed rule would create a significant economic impact on a substantial number of these entities.

As discussed above, under the RFA, government entities are small if they have populations of less than 50,000. The 19 States plus the District of Columbia which the Bureau understands currently have legislation authorizing PACE contained 17,209 total small governments, consisting of 715 counties, 7,716 incorporated places and 8,778 minor civil divisions.[329] Of these small governments, currently, only small governments in California, Florida, and Missouri would be directly impacted by the proposed rule in any meaningful way because they are the only States with active PACE programs.[330] There are exactly 2,000 small government entities in those three States combined, consisting of 134 counties, 1,583 incorporated places, and 283 minor civil districts. Even if all government entities in the three States were significantly impacted by the rule (which is unlikely, as not all local governments in those States sponsor PACE programs), this would be only about 11.6 percent of small government entities in States with active PACE legislation, which the Bureau does not consider to be a substantial number. In addition, those small government entities that would be directly impacted by the proposed rule are unlikely to receive a significant proportion of their revenue from PACE financing, such that even eliminating this revenue stream would not cause a significant economic impact.[331]

The proposed rule may impact the home improvement contractors who market and help originate PACE financing. Here again it appears that the rule would not directly impact a substantial number of small entities, even assuming that any small home improvement contractor would experience a significant economic impact. In the most recent Economic Census there were more than 233,000 small entities in the relevant NAICS codes for home improvement contractors.[332] By comparison, there are currently approximately 2,000 firms registered in California as PACE solicitors.[333] Even if all of these entities are small and there were a similar number of small entities acting as PACE solicitors in Missouri and Florida, this would be less than three percent of all relevant small entities, and so not a substantial number.[334]

Accordingly, the Director hereby certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel is required for this proposal. The Bureau requests comment on the analysis above and requests any relevant data.

XI. Paperwork Reduction Act

The information collections contained within TILA and Regulation Z are approved under OMB Control Number 3170–0015. The current expiration date for this approval is May 31, 2023. The Bureau has determined that this proposed rule would not impose any new information collections or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.

XII. Severability

The Bureau preliminarily intends that, if any provision of the final rule, or any application of a provision, is stayed or determined to be invalid, the remaining provisions or applications are severable and shall continue in effect.

Estate Credit industry, at least 1,725 small firms in the International, Secondary Market, and All Other Nondepository Credit Intermediation industry, at least 1,573 small firms in the All Other Nondepository Credit Intermediation industry and at least 6,715 in the Miscellaneous Intermediation industry.

[328] As discussed in part VII above, the Bureau understands that government entities are legally the ''creditor'' for purposes of the TILA requirements as implemented in Regulation Z. *See* 12 CFR 1026.2(a)(17). However, for programs administered by PACE companies, in general the Bureau does not expect significant economic impact on these government entities from these provisions, as the Bureau expects that the private PACE companies will continue to administer origination activity on behalf of the government entities, such that most of the economic burden will fall on the private entities. As discussed above, an exception to this would be small government entities running programs that are not commonly understood as PACE but meet the definition of PACE financing under proposed 12 CFR 1026.43(b)(15). Even in this case, the Bureau does not believe the rule would impose a significant economic impact, as such programs represent a small fraction of any given entity's overall revenue.

[329] The States used for this calculation are Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Maine, Maryland, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Rhode Island, Vermont, and Wyoming.

[330] *See* PACENation, *PACE Programs, https://www.pacenation.org/pace-programs/* (''Residential PACE is currently offered in California, Florida, and Missouri.'') (last visited Mar. 16, 2023).

[331] The Bureau understands that local government entities are typically funded in large part by property taxes. Although the PACE Report finds that PACE assessments can nearly double property tax payments for individual homeowners, the Bureau understands that most of the revenue of those payments accrues to the investors in the resulting PACE bonds. Moreover, the vast majority of residential properties in any given jurisdiction do not have PACE assessments. As such, revenue related to PACE received by small government entities will typically be a small fraction of overall revenue.

[332] Home improvement contractors that serve as solicitors for PACE fall under NAICS industry codes 236118, (''Residential Remodelers''), 238150 (''Glass and glazing contractors''), 238160 (''Roofing contractors''), 238170 (''Siding Contractors''), 238210 (''Electrical contractors''), and 238220 (''Plumbing, heating, and air-conditioning contractors''). *See* U.S. Census Bureau, *North American Industry Classification System 2022, https://www.census.gov/naics/?58967?yearbck=2022.* The relevant SBA threshold for industry 236118 is $45 million per year in annual receipts; for the other industries the threshold is $19 million. 13 CFR 121.201. According to the 2017 Economic Census, these industries had at least 70,000, 4,600, 14,000, 6,000, 58,000, and 81,000 small entities, respectively. *See* U.S. Census Bureau, *2017 Economic Census, Construction (NAICS Sector 23), Establishment and Firm Size Statistics, https://www.census.gov/data/tables/2017/econ/economic-census/naics-sector-23.html.* The Economic Census data does not disaggregate firm counts by State at the 6-digit NAICS level.

[333] *See* Cal. Dep't of Fin. Prot. & Innovation, *Enrolled PACE Solicitors Search* (updated Feb. 27, 2023), *https://dfpi.ca.gov/pace-program-administrators/pace-solicitor-search/?emrc=63ee970c63d06* for California's database of solicitors, however note that many companies are duplicated to the extent they are enrolled with multiple PACE companies. California law and regulation defines a ''PACE solicitor'' as a person authorized by a program administrator to solicit a property owner to enter into an assessment contract. Cal. Fin. Code sec. 22017(a); *see also* 10 Cal. Code Regs. sec. 1620.02(f).

[334] Limiting consideration to contractors operating in States with PACE legislation is not appropriate in this case. Unlike local governments, contractors can and do operate across State lines, so contractors currently operating in non-PACE States could possibly be affected by the proposed rule if finalized. As a result, it makes sense to consider all home improvement contractors as part of the total for purposes of the ''substantial number'' calculation. In addition, the Economic Census does not provide industry-level data disaggregated by State in a way that would allow the Bureau to determine the number of firms by industry and annual revenue.

List of Subjects in 12 CFR Part 1026

Consumer protection, Credit, Housing, Mortgage servicing, Mortgages, Truth-in-lending.

Authority and Issuance

For the reasons set forth in the preamble, the CFPB proposes to amend Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING ACT (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 2. Amend § 1026.35 by adding paragraph (b)(2)(i)(E) to read as follows:

§ 1026.35 Requirements for higher-priced mortgage loans.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(E) A PACE transaction, as defined in § 1026.43(b)(15).

* * * * *

■ 3. Amend § 1026.37 by adding paragraph (p) to read as follows:

§ 1026.37 Content of disclosures for certain mortgage transactions (Loan Estimate).

* * * * *

(p) *PACE transactions.* For PACE transactions as defined in § 1026.43(b)(15), the creditor must comply with the requirements of this section with the following modifications:

(1) *Escrow account.* The creditor shall not disclose the information in paragraph (c)(2)(iii) of this section.

(2) *Taxes, insurance, and assessments.* (i) In lieu of the information required by paragraph (c)(4)(iv), the creditor shall disclose a statement of whether the amount disclosed pursuant to paragraph (c)(4)(ii) of this section includes payments for the PACE transaction, labeled ''PACE Payment''; payments for other property taxes, labeled ''Property Taxes (not including PACE loan)''; amounts identified in § 1026.4(b)(8); and other amounts described in paragraph (c)(4)(ii) of this section, along with a description of any such other amounts;

(ii) In lieu of the information required by paragraph (c)(4)(v) and (vi), a statement that the PACE transaction, described as a ''PACE loan,'' will be part of the property tax payment and a statement directing the consumer, if the consumer has a pre-existing mortgage with an escrow account, to contact the consumer's mortgage servicer for what the consumer will owe and when.

(3) *Contact information.* If the PACE company as defined in 12 CFR 1026.43(b)(14) is not otherwise disclosed pursuant to paragraphs (k)(1) through (3) of this section, the creditor shall disclose the name, NMLSR ID (labeled ''NMLS ID/License ID''), email address, and telephone number of the PACE company (labeled ''PACE Company''). In the event the PACE company has not been assigned an NMLSR ID, the creditor shall disclose the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the PACE company is licensed and/or registered, with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word ''License'' in the label, if any.

(4) *Assumption.* In lieu of the statement required by paragraph (m)(2) of this section, a statement that, if the consumer sells the property, the buyer or the buyer's mortgage lender may require the consumer to pay off the PACE transaction, using the term ''PACE loan'' as a condition of the sale, labeled ''Selling the Property.''

(5) *Late Payment.* In lieu of the statement required by paragraph (m)(4) of this section:

(i) A statement detailing any charge specific to the transaction that may be imposed for a late payment, stated as a dollar amount or percentage charge of the late payment amount, and the number of days that a payment must be late to trigger the late payment fee, labeled ''Late payment,'' and

(ii) For any charge that is not specific to the transaction:

(A) A statement that, if the consumer's property tax payment is late, the consumer may be subject to penalties and late fees established by the consumer's property tax collector, and directing the consumer to contact the consumer's property tax collector for more information, or

(B) A statement describing any charges that may result from property tax delinquency that are not specific to the PACE transaction. The statement may include dollar amounts or percentage charges and the number of days that a payment must be late to trigger the late payment fee.

(6) *Servicing.* In lieu of the statement required by paragraph (m)(6) of this section, a statement that the consumer will pay the PACE transaction, using the term ''PACE loan,'' as part of the consumer's property tax payment, and a statement directing the consumer, if the consumer has a mortgage escrow account that includes the consumer's property tax payments, to contact the consumer's mortgage servicer for what the consumer will owe and when.

(7) *Exceptions*—(i) *Unit-period.* Wherever form H–24(H) of appendix H uses ''annual'' to describe the frequency of any payments or the applicable unit-period, the creditor shall use the appropriate term to reflect the transaction's terms, such as semi-annual payments.

(ii) *PACE nomenclature.* Wherever this section requires disclosure of the word ''PACE'' or form H–24(H) of appendix H to this part uses the term ''PACE,'' the creditor may substitute the name of a specific PACE financing program that will be recognizable to the consumer.

■ 4. Amend § 1026.38 by adding paragraph (u) to read as follows:

§ 1026.38 Content of disclosures for certain mortgage transactions (Closing Disclosure).

* * * * *

(u) *PACE transactions.* For PACE transactions as defined in § 1026.43(b)(15), the creditor must comply with the requirements of this section with the following modifications:

(1) *Transaction information.* In addition to the other disclosures required under paragraph (a)(4) of this section under the heading ''Transaction Information,'' the creditor shall disclose the name of any PACE company involved in the transaction, labeled ''PACE Company.'' For purposes of this paragraph (u)(1), ''PACE company'' has the same meaning as in § 1026.43(b)(14).

(2) *Projected payments.* The creditor shall disclose the information required by paragraph (c)(1) of this section as modified by § 1026.37(p)(1) through (2) and shall omit the information required by paragraph (c)(2).

(3) *Assumption.* In lieu of the information required by paragraph (l)(1) of this section, the creditor shall use the subheading ''Selling the Property'' and disclose the information required by § 1026.37(p)(4).

(4) *Late payment.* In lieu of the information required by paragraph (l)(3) of this section, under the subheading ''Late Payment,'' the creditor shall disclose the information required by § 1026.37(p)(5).

(5) *Partial payment policy.* In lieu of the information required by paragraph (l)(5) of the section, under the

subheading ''Partial Payments,'' the creditor shall disclose a statement directing the consumer to contact the mortgage servicer about the partial payment policy for the account if the consumer has a mortgage escrow account for property taxes and to contact the tax collector about the tax collector's partial payment policy if the consumer pays property taxes directly to the tax authority.

(6) *Escrow account.* The creditor shall not disclose the information required by paragraph (l)(7) of this section.

(7) *Liability after foreclosure.* The creditor shall not disclose the information required by paragraph (p)(3) of this section. If the consumer may be responsible for any deficiency after foreclosure or tax sale under applicable State law, the creditor shall instead disclose a brief statement that the consumer may have such responsibility, a description of any applicable protections provided under State anti-deficiency laws, and a statement that the consumer should consult an attorney for additional information, under the subheading ''Liability after Foreclosure or Tax Sale.''

(8) *Contact information.* If the PACE company is not otherwise disclosed pursuant to paragraph (r) of this section, the creditor shall disclose the information described in paragraph (r)(1)–(7) of this section for the PACE company, as defined in § 1026.43(b)(14) (under the subheading ''PACE Company'').

(9) *Exceptions*—(i) *Unit-period.* Wherever form H–25(K) of appendix H uses ''annual'' to describe the frequency of any payments or the applicable unit-period, the creditor shall use the appropriate term to reflect the transaction's terms, such semi-annual payments.

(ii) *PACE nomenclature.* Wherever this section requires disclosure of the word ''PACE'' or form H–25(K) of appendix H to this part uses the term ''PACE,'' the creditor may substitute the name of a specific PACE financing program that will be recognizable to the consumer.

■ 5. Amend § 1026.41 by adding paragraph (e)(7) to read as follows:

§ 1026.41 Periodic statements for residential mortgage loans.

* * * * *

(e) * * *

(7) *PACE transactions.* PACE transactions, as defined in § 1026.43(b)(15), are exempt from the requirements of this section.

* * * * *

■ 6. Amend § 1026.43 by adding paragraphs (b)(14), (b)(15), and (i) to read as follows:

§ 1026.43 Minimum standards for transactions secured by a dwelling.

* * * * *

(b) * * *

(14) *PACE company* means a person, other than a natural person or a government unit, that administers the program through which a consumer applies for or obtains a PACE transaction.

(15) *PACE transaction* means financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer.

* * * * *

(i) *PACE transactions.* (1) For PACE transactions extended to consumers who pay their property taxes through an escrow account, in making the repayment ability determination required under paragraphs (c)(1) and (2) of this section, a creditor must consider the factors identified in paragraphs (c)(2)(i) through (viii) of this section and also must consider any monthly payments that the creditor knows or has reason to know the consumer will have to pay into any escrow account as a result of the PACE transaction that are in excess of the monthly payment amount considered under paragraph (c)(2)(iii) of this section, taking into account:

(i) The cushion of one-sixth (1/6) of the estimated total annual payments attributable to the PACE transaction from the escrow account that the servicer may charge under 12 CFR 1024.17(c)(1), unless the creditor reasonably expects that no such cushion will be required or unless the creditor reasonably expects that a different cushion amount will be required, in which case the creditor must use that amount; and

(ii) If the timing for when the servicer is expected to learn of the PACE transaction is likely to result in a shortage or deficiency in the consumer's escrow account, the expected effect of any such shortage or deficiency on the monthly payment that the consumer will be required to pay into the consumer's escrow account.

(2) Notwithstanding paragraphs (e)(2), (e)(5), (e)(7), or (f) of this section, a PACE transaction is not a qualified mortgage as defined in this section.

(3) For a PACE transaction, the requirements of this section apply to both the creditor and any PACE company that is substantially involved in making the credit decision. A PACE company is substantially involved in making the credit decision if it, as to a particular consumer, makes the credit decision, makes a recommendation as to whether to extend credit, or applies criteria used in making the credit decision. In the case of any failure by any such PACE company to comply with any requirement imposed under this section, section 130 of the Truth in Lending Act, 15 U.S.C. 1640, shall be applied with respect to any such failure by substituting ''PACE company'' for ''creditor'' each place such term appears in each such subsection.

■ 7. Appendix H to part 1026 is amended by adding the entries for Model Forms H–24(H) and H–25(K) to read as follows:

Appendix H to Part 1026—Closed-End Model Forms and Clauses

* * * * *

H–24(H) Mortgage Loan Transaction Loan Estimate—Model Form for PACE Transactions

BILLING CODE 4810–AM–P

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED
APPLICANTS

PROPERTY
EST. PROP. VALUE

LOAN TERM
PURPOSE
PRODUCT
LOAN TYPE ☐ Conventional ☐ FHA ☐ VA ☐ ______
LOAN ID #
RATE LOCK ☐ NO ☐ YES, until
Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

Loan Terms

Loan Terms	Can this amount increase after closing?
Loan Amount	
Interest Rate	
Annual Principal & Interest *See Projected Payments below for your Estimated Total Annual Payment*	
	Does the loan have these features?
Prepayment Penalty	
Balloon Payment	

Projected Payments

Payment Calculation	
Principal & Interest Mortgage Insurance	
Estimated Total Annual Payment *PACE payments will be part of your property tax payment*	
Estimated Taxes, Insurance & Assessments *Amount can increase over time*	**This estimate includes** ☐ PACE Payment ☐ Property Taxes (not including PACE loan) ☐ Homeowner's Insurance ☐ Other: *Your PACE loan will be part of your property tax payment. If you have a mortgage with an escrow account, contact your mortgage servicer for what you will owe and when.*

Costs at Closing

Estimated Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See details on page 2.*
Estimated Cash to Close	Includes Closing Costs. See Calculating Cash to Close on page 2 for details ☐ From ☐ To Borrower

Visit **www.consumerfinance.gov/mortgage-estimate** for general information and tools.

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

D. TOTAL LOAN COSTS (A + B + C)

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes
Transfer Taxes

F. Prepaids

Homeowner's Insurance Premium (__ months)
Mortgage Insurance Premium (__ months)
Prepaid Interest (per day for days @)
Property Taxes (__ months)

G. Initial Escrow Payment at Closing

Homeowner's Insurance per month for mo.
Mortgage Insurance per month for mo.
Property Taxes per month for mo.

H. Other

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS

D + I
Lender Credits

Calculating Cash to Close

Loan Amount
Total Closing Costs (J)
Estimated Total Payoffs and Payments
Estimated Cash to Close ☐ **From** ☐ **To Borrower**

Estimated Closing Costs Financed
(Paid from your Loan Amount)

Additional Information About This Loan

LENDER
NMLS/__LICENSE ID
LOAN OFFICER
NMLS/__LICENSE ID
EMAIL
PHONE
PACE COMPANY
NMLS/__LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/__LICENSE ID
LOAN OFFICER
NMLS/__LICENSE ID
EMAIL
PHONE

Comparisons	Use these measures to compare this loan with other loans.
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Selling the Property If you sell the property, the buyer or their mortgage lender may require you to pay off the PACE loan as a condition of the sale.

Late Payment If your property tax payment is late, you may be subject to penalties and late fees established by your property tax collector.

Refinance Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Servicing You will pay your PACE loan as part of your property tax payment. If you have a mortgage escrow account that includes your property tax payments, contact your mortgage servicer for what you will owe and when. Otherwise, you will pay your taxing authority directly.

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature	Date	Co-Applicant Signature	Date

LOAN ESTIMATE PAGE 3 OF 3 • LOAN ID #

* * * * *

H–25(K) Mortgage Loan Transaction Closing Disclosure—Model Form for PACE Transactions

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information	Transaction Information	Loan Information
Date Issued **Closing Date** **Disbursement Date** **Settlement Agent** **File #** **Property** **Estimated Prop. Value**	**Borrower** **Lender** **PACE Company**	**Loan Term** **Purpose** **Product** **Loan Type** ☐ Conventional ☐ FHA ☐ VA ☐ ______ **Loan ID #** **MIC #**

Loan Terms

Loan Terms	Can this amount increase after closing?
Loan Amount	
Interest Rate	
Annual Principal & Interest *See Projected Payments below for your Estimated Total Annual Payment*	
	Does the loan have these features?
Prepayment Penalty	
Balloon Payment	

Projected Payments

Payment Calculation	
Principal & Interest Mortgage Insurance	
Estimated Total Annual Payment	
Estimated Taxes, Insurance & Assessments *Amount can increase over time*	**This estimate includes** ☐ PACE Payment ☐ Property Taxes (not including PACE loan) ☐ Homeowner's Insurance ☐ Other: *Your PACE loan will be part of your property tax payment. If you have a mortgage with an escrow account, contact your mortgage servicer for what you will owe and when.*

Costs at Closing

Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See details on page 2.*
Cash to Close	Includes Closing Costs. *See Calculating Cash to Close on page 3 for details* ☐ From ☐ To Borrower

Closing Cost Details

Loan Costs	Borrower-Paid At Closing	Borrower-Paid Before Closing	Paid by Others
A. Origination Charges			
01 % of Loan Amount (Points)			
02			
03			
04			
05			
06			
07			
08			
B. Services Borrower Did Not Shop For			
01			
02			
03			
04			
05			
06			
07			
08			
09			
10			
C. Services Borrower Did Shop For			
01			
02			
03			
04			
05			
06			
07			
08			
D. TOTAL LOAN COSTS (Borrower-Paid)			
Loan Costs Subtotals (A + B + C)			

Other Costs	Borrower-Paid At Closing	Borrower-Paid Before Closing	Paid by Others
E. Taxes and Other Government Fees			
01 Recording Fees Deed: Mortgage:			
02			
F. Prepaids			
01 Homeowner's Insurance Premium (mo.)			
02 Mortgage Insurance Premium (mo.)			
03 Prepaid Interest (per day from to)			
04 Property Taxes (mo.)			
05			
G. Initial Escrow Payment at Closing			
01 Homeowner's Insurance per month for mo.			
02 Mortgage Insurance per month for mo.			
03 Property Taxes per month for mo.			
04			
05			
06			
07			
08 Aggregate Adjustment			
H. Other			
01			
02			
03			
04			
05			
06			
07			
08			
I. TOTAL OTHER COSTS (Borrower-Paid)			
Other Costs Subtotals (E + F + G + H)			

J. TOTAL CLOSING COSTS (Borrower-Paid)			
Closing Costs Subtotals (D + I)			
Lender Credits			

Payoffs and Payments Use this table to see a summary of your payoffs and payments to others from your loan amount.

TO	AMOUNT
01	
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
K. TOTAL PAYOFFS AND PAYMENTS	

Calculating Cash to Close Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Loan Amount			
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Total Payoffs and Payments (K)			
Cash to Close	☐ From ☐ To Borrower	☐ From ☐ To Borrowe	Closing Costs Financed (Paid from your Loan Amount)

Additional Information About This Loan

Loan Disclosures

Selling the Property
If you sell the property, the buyer or their mortgage lender may require you to pay off the balance of this obligation as a condition of sale.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☐ does not have a demand feature.

Late Payment
If your property tax payment is late, you may be subject to penalties and late fees established by your property tax collector.

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ do not have a negative amortization feature.

Partial Payment
If you pay your property taxes directly to your tax collector, contact your tax collector about its partial payment policy. If you have a mortgage escrow account for your property taxes, contact your mortgage servicer about the partial payment policy for the account.

Security Interest
You are granting a security interest in ____________________

____

____

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
Amount Financed. The loan amount available after paying your upfront finance charge.	
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	

? **Questions?** If you have questions about the loan terms and costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/mortgage-closing**

Other Disclosures

Appraisal
If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Refinance
Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Settlement Agent	PACE Company
Name				
Address				
NMLS ID				
___License ID				
Contact				
Contact NMLS ID				
Contact___License ID				
Email				
Phone				

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature Date Co-Applicant Signature Date

BILLING CODE 4810–AM–C

* * * * *

■ 8. Amend Supplement I to Part 1026—Official Interpretations, as follows:

■ a. Under *Section 1026.2—Definitions and Rules of Construction*, in *2(a)(14) Credit*, revise comment 2(a)(14)1.ii;

■ b. Under *Section 1026.37—Content of disclosures for certain mortgage transactions (Loan Estimate)*, add as a heading *37(p) PACE transactions* and add the following comments: *37(p)(3) Contact information; 37(p)(5) Late payment; 37(p)(7) Form of disclosures—Exceptions;* and *37(p)(7)(ii) PACE nomenclature;*

■ c. Under *Section 1026.38—Content of disclosures for certain mortgage transactions (Closing Disclosure)*, add as headings *38(u) PACE transactions* and *(u)(9) Exceptions* and add the following comment: *38(u)(9)(ii) PACE Nomenclature;*

■ d. Under *Section 1026.43—Minimum standards for transactions secured by a dwelling,*

■ i. in *43(b)(8) Mortgage-related obligations,* revise comment *43(b)(8)–2,*
■ ii. add as a heading *43(b)(14) PACE company* and add comment *43(b)(14)–1,*
■ iii. in *43(c) Repayment ability,* add comment *43(c)(2)(iv)*–4, and revise comment *43(c)(3)*–5; and
■ e. Under *Appendix H—Closed-End Forms and Clauses,* revise comment–30.

The additions and revisions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.2—Definitions and Rules of Construction

* * * * *

2(a)(14) Credit.

1. *Exclusions.* The following situations are not considered credit for purposes of the regulation:

i. * * *

ii. Involuntary tax liens, involuntary tax assessments, court judgments, and court approvals of reaffirmation of debts in bankruptcy. However, third-party financing of such obligations (for example, a bank loan obtained to pay off an involuntary tax lien) is credit for purposes of the regulation.

* * * * *

Section 1026.37—Content of disclosures for certain mortgage transactions (Loan Estimate).

* * * * *

37(p) PACE transactions.

37(p)(3) Contact information.

1. Section 1026.37(p)(3) requires disclosure of information about the PACE company if the PACE company is not otherwise disclosed pursuant to § 1026.37(k)(1) through (3). For example, if a PACE company is a mortgage broker as defined in § 1026.36(a)(2), then the name of the PACE company is disclosed as a mortgage broker and the field for PACE company may be left blank. See comments 1026.37(k)–1 and–2 for more guidance.

37(p)(5) Late payment.

1. For purposes of § 1026.37(p)(5), a charge is specific to the PACE transaction if the property tax collector does not impose the same charges for general property tax delinquencies.

37(p)(7) Form of disclosures—Exceptions.

37(p)(7)(ii) PACE nomenclature.

1. Wherever § 1026.37 requires disclosure of the word ''PACE'' or form H–24(H) in appendix H uses the term ''PACE,'' § 1026.37(p)(7)(ii) permits a creditor to substitute an alternative name for the specific PACE financing program that will be recognizable to the consumer. For example, if the name XYZ Financing is used in marketing and branding a PACE transaction to the consumer, such that XYZ Financing will be recognizable to the consumer, the creditor may substitute the name XYZ Financing for PACE on the Loan Estimate.

Section 1026.38—Content of disclosures for certain mortgage transactions (Closing Disclosure).

* * * * *

38(u)—PACE transactions

38(u)(9) Exceptions.

38(u)(9)(ii) PACE nomenclature.

1. Wherever § 1026.38 requires disclosure of the word ''PACE'' or form H–25(K) in appendix H uses the term ''PACE,'' § 1026.38(u)(9)(ii) permits a creditor to substitute an alternative name for the specific PACE financing program that will be recognizable to the consumer. For example, if the name XYZ Financing is used in marketing and branding a PACE transaction to the consumer, such that XYZ Financing will be recognizable to the consumer, the creditor may substitute the name XYZ Financing for PACE on the Closing Disclosure.

* * * * *

Section 1026.43—Minimum standards for transactions secured by a dwelling

* * * * *

43(b)(8) Mortgage-related obligations.

* * * * *

2. *Property taxes.* Section 1026.43(b)(8) includes property taxes in the evaluation of mortgage-related obligations. Obligations that are related to the ownership or use of real property and paid to a taxing authority, whether on a monthly, quarterly, annual, or other basis, are property taxes for purposes of § 1026.43(b)(8). Section 1026.43(b)(8) includes obligations that are equivalent to property taxes, even if such obligations are not denominated as ''taxes.'' For example, governments may establish or allow independent districts with the authority to impose levies on properties within the district to fund a special purpose, such as a local development bond district, water district, or other public purpose. These levies may be referred to as taxes, assessments, surcharges, or by some other name. For purposes of § 1026.43(b)(8), these are property taxes and are included in the determination of mortgage-related obligations. Any payments for pre-existing PACE transactions are considered property taxes for purposes of § 1026.43(b)(8).

* * * * *

43(b)(14) PACE company.

1. Indicia of whether a person administers a PACE financing program for purposes of § 1026.43(b)(14) include, for example, marketing PACE financing to consumers, developing or implementing policies and procedures for the origination process, being substantially involved in making a credit decision, or extending an offer to the consumer.

* * * * *

43(c) Repayment ability.

* * * * *

43(c)(2) Basis for determination.

* * * * *

Paragraph 43(c)(2)(iv).

* * * * *

4. *Knows or has reason to know—PACE transaction.* In addition to the guidance provided under comment 43(c)(2)(iv)–2, a creditor originating a PACE transaction knows or has reason to know of any simultaneous loans that are PACE transactions if the transactions are included in any existing database or registry of PACE transactions that includes the geographic area in which the property is located and to which the creditor has access.

* * * * *

43(c)(3) Verification using third-party records.

* * * * *

5. *Verification of mortgage-related obligations.* Creditors must make the repayment ability determination required under § 1026.43(c)(2) based on information verified from reasonably reliable records. For general guidance regarding verification see comments 43(c)(3)–1 and –2, which discuss verification using third-party records. With respect to the verification of mortgage-related obligations that are property taxes required to be considered under § 1026.43(c)(2)(v), a record is reasonably reliable if the information in the record was provided by a governmental organization, such as a taxing authority or local government. The creditor complies with § 1026.43(c)(2)(v) by relying on property taxes referenced in the title report if the source of the property tax information was a local taxing authority. A creditor that knows or has reason to know that a consumer has an existing PACE transaction does not comply with § 1026.43(c)(2)(v) by relying on information provided by a governmental organization, either directly or indirectly, if the information provided does not reflect the PACE transaction. With respect to other information in a record provided by an entity assessing charges, such as a homeowners association, the creditor complies with § 1026.43(c)(2)(v) if it relies on homeowners association billing statements provided by the seller. Records are also reasonably reliable if the information in the record was obtained from a valid and legally executed contract. For example, the creditor complies with § 1026.43(c)(2)(v) by relying on the amount of monthly ground rent referenced in the ground rent agreement currently in effect and applicable to the subject property. Records, other than those discussed above, may be reasonably reliable for purposes of § 1026.43(c)(2)(v) if the source provided the information objectively.

* * * * *

Appendix H—Closed-End Forms and Clauses

* * * * *

30. *Standard Loan Estimate and Closing Disclosure forms.* Forms H–24(A) through (H), H–25(A) through (K), and H–28(A) through (J) are model forms for the disclosures required under §§ 1026.37 and 1026.38. However, pursuant to §§ 1026.37(o)(3) and 1026.38(t)(3), for federally related mortgage loans forms H–24(A) through (H) and H–25(A) through (K) are standard forms required to be used for the disclosures required under §§ 1026.37 and 1026.38, respectively.

* * * * *

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2023–09468 Filed 5–10–23; 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Parts 5, 92, 93, et al.

Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE); Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 92, 93, 200, 570, 574, 576, 578, 882, 884, 886, 902, 965, 982, 983, and 985.

[Docket No. FR–6086–F–03]

RIN 2577–AD05

Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Office of the Assistant Secretary for Community Planning and Development, Office of the Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This final rule establishes a new approach to defining and assessing housing quality: The National Standards for the Physical Inspection of Real Estate (NSPIRE). This rule is part of a broad revision of the way HUD-assisted housing is inspected and evaluated. The purpose of NSPIRE is to strengthen HUD's physical condition standards and improve HUD oversight through the alignment and consolidation of the inspection regulations used to evaluate HUD housing across multiple programs. This final rule also incorporates provisions of the Economic Growth and Recovery, Regulatory Relief and Consumer Protection Act that will reduce administrative burden on small rural public housing authorities (PHAs).

DATES: This final rule is effective July 1, 2023, except amendments to the following parts, which are effective October 1, 2023: 24 CFR part 92 (instructions 4 through 7); 24 CFR part 93 (instructions 9 and 10); 24 CFR part 200 (instructions 12 and 13); 24 CFR part 570 (instruction 15); 24 CFR part 574 (instruction 17); 24 CFR part 576 (instruction 19); 24 CFR part 578 (instruction 21); 24 CFR part 882 (instructions 23 and 24); 24 CFR part 884 (instruction 26); 24 CFR part 886 (instructions 29 through 31); 24 CFR part 982 (instructions 45 through 55); 24 CFR part 983 (instructions 57 through 61); and 24 CFR part 985 (instructions 62 through 65). For more information, *see* **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Tara J. Radosevich, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW, Suite 100, Washington, DC 20410–4000, telephone number 202–708–1112 (this is not a toll-free number), *NSPIRERegulations@hud.gov.* HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

Effective Dates

This rule has two effective dates:

1. Amendments to 24 CFR parts 5, 902, and 965 are effective on July 1, 2023. These amendments implement the NSPIRE regulations at 24 CFR part 5, subpart G and affect the Public Housing regulations.

2. Amendments to 24 CFR parts 92, 93, 200, 570, 574, 576, 578, 882, 884, 886, 982, 983 and 985 are effective on October 1, 2023. These amendments affect the Multifamily Housing regulations, the Housing Choice Voucher regulations, the Project-Based Voucher regulations, Section 8 Moderate Rehabilitation regulations and the Community Planning and Development (CPD) programs such as HOME Investment Partnerships Program (HOME), the Housing Trust Fund (HTF), Housing Opportunities for Persons with AIDS (HOPWA), Emergency Solution Grants (ESG) and Continuum of Care (COC) regulations. Participants and owners subject to these regulations are subject to the Code of Federal Regulations as it exists on the publication date of this rule, and are not subject to the regulatory changes being made by this rule on July 1, 2023, until October 1, 2023.

I. Background

On January 13, 2021, HUD published the ''Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE)'' proposed rule (''proposed rule'') in the **Federal Register**.[1] In the NSPIRE proposed rule, HUD proposed to align and consolidate its inspection standards and procedures and incorporate provisions of the Economic Growth and Recovery, Regulatory Relief and Consumer Protection Act (Pub. L. 115–174) for all of HUD's programs. Specifically, HUD proposed to revise 24 CFR part 5 to become the focal point of consolidated standards, and proposed changes to other regulations to cross-reference to the new streamlined part 5 standards.

The proposed rule also sought to consolidate, update, and improve the Housing Quality Standards (HQS) and the Uniform Physical Condition Standards (UPCS) to prevent standards and procedures from becoming out of date. In addition, the rule proposed to implement the Economic Growth and Recovery, Regulatory Relief and Consumer Protection Act (''Economic Growth Act'') to implement an alternate performance indicator and rating system for the Public Housing Assessment System (PHAS) and Section 8 Management Assessment Program (SEMAP).

HUD's proposed rule and this final rule were informed by HUD's NSPIRE Demonstration. On August 21, 2019, HUD established through notice [2] the implementation of the NSPIRE demonstration to develop a new inspection model for HUD programs. Through the demonstration, HUD built updated standards, procedures, and scoring methodologies. The NSPIRE Standards and procedures for the demonstration were first published on HUD's website in August 2019 and were subject to and improved through stakeholder feedback and test inspections. The Demonstration will continue for enrolled properties until implementation of this rule for the relevant program, or as otherwise announced by notice.

For additional background, please see the proposed rule.

II. NSPIRE Final Rule and NSPIRE Notices

Consistent with the proposed rule, this final rule will create a unified inspection protocol for three different overarching programs: programs for housing assisted under the U.S. Housing Act of 1937 other than section 8 of the Act (''public housing''), programs previously under the Housing Quality Standards regulations at 24 CFR 982.401 (HQS regulations), and programs previously covered under 24 CFR part 5, subpart G (''Multifamily housing''). CPD programs and regulations are included because these programs pointed to the HQS program regulations. This final rule maintains a regulatory framework that streamlines, consolidates, and aligns inspection standards over 14 sections of regulations for HUD's programs. This new framework for inspection focuses on inside the building, outside the building and

[1] 86 FR 2582.

[2] ''Notice of Demonstration To Assess the National Standards for the Physical Inspection of Real Estate and Associated Protocols,'' 84 FR 43536.

within the units of HUD housing and ensures that they are ''functionally adequate, operable, and free of health and safety hazards.'' Because of the scope of changes to the inspection process, HUD is setting a different implementation date for HUD's programs to create as smooth a transition as possible.

A. Implementation Timeline

This rule will be implemented in two phases. On July 1, 2023, Public Housing will transition to NSPIRE. On October 1, 2023, the Multifamily Housing programs, Housing Choice Voucher (''HCV'') and Project Based Voucher (''PBV'') programs, and the CPD programs included in this rulemaking will transition to NSPIRE.

Public Housing regulations will be amended on July 1, 2023, and Public Housing program participants will be required to comply with this final rule and use the NSPIRE standards starting July 1, 2023. HUD will prioritize PHAs with a fiscal year end of June 30, 2023, to receive their next inspection under the updated regulations. Because the universe of Public Housing properties is smaller than those participating in Multifamily Housing programs, HUD is better able to prioritize and complete inspections of these properties first under NSPIRE, and then launch inspections in Multifamily Housing programs in October.

The Housing Choice Voucher (HCV), Project Based Voucher (PBV), Section 8 Moderate Rehabilitation Program, HOME, HTF, HOPWA, ESG and CoC regulations will be amended on October 1, 2023, and program participants will be required to comply with this final rule and begin using the NSPIRE standards on October 1, 2023. These programs are unique because inspections are done by PHAs, program participants, and participating jurisdictions (PJs) and not by HUD. These entities will need additional time to update forms and implement technological solutions. Therefore, programs that follow HQS will continue to follow HQS and will not need to comply with these regulations until October 1, 2023.

The Multifamily Housing programs will also begin to use the NSPIRE standards starting on October 1, 2023. After Uniform Physical Condition Standards (UPCS) inspections were delayed due to the COVID–19 pandemic, HUD has committed to providing Multifamily Housing program participants one more UPCS inspection before the transition to NSPIRE. HUD intends to meet this goal by the end of the 2023 Federal fiscal year. Therefore, HUD will transition Multifamily Housing programs to NSPIRE on October 1, 2023. Part 5, subpart G, as it existed before this rule, provided at § 5.703 for the physical condition standards for Multifamily Housing and authorized HUD at § 5.705 to establish UPCS through notice. On July 1, 2023, when Public Housing transitions to NSPIRE, these regulations will be overwritten by the new part 5, subpart G. To enable Multifamily to continue using UPCS, HUD will delay the effective date for Multifamily Housing such that Multifamily Housing program participants are not subject to the new part 5, subpart G until October 1, 2023. Part 5, subpart G as it exists on the publication date of this rule, prior to the changes which will be made on July 1, 2023, will apply to Multifamily Housing until September 30, 2023.

Further transition information will be provided in three core ''Subordinate Notices'' which will follow this final rule. These core Subordinate Notices are the NSPIRE Standards notice, the NSPIRE Scoring notice, and the NSPIRE Administrative notice. HUD will also issue additional notices on the NSPIRE Standards for the HOME, HTF, ESG, HOPWA, and CoC programs. PIH will issue additional Departmental notices to implement the Small Rural Assessment requirements under part 902, subpart H and part 985. The function of each of these notices is provided in more detail below. All updated Standards and Scoring methodologies will be published—as required by this rule—through a **Federal Register** notice at least once every 3 years with the opportunity for public comment prior to implementation.

B. NSPIRE Standards Subordinate Notice

This rulemaking establishes at 24 CFR 5.705(a) that HUD will establish Standards through a subordinate **Federal Register** notice. HUD proposed standards through notice in the **Federal Register** with request for comments on June 17, 2022 (''Proposed NSPIRE Standards notice'').[3] These proposed standards were developed in consideration of the NSPIRE Demonstration and feedback received in response to that demonstration. The notice sought comments on the proposed NSPIRE Standards and included thirteen specific questions for public input, including questions related to mold, safe drinking water, requirements for a permanent heating source, minimum temperature, electrical outlets, deficiency correction time frames, and pest infestation. The individual NSPIRE Standards, posted on HUD's website,[4] provided detailed descriptions of housing components and hazards for inspection with descriptions of potential deficiencies and correction timeframes. The notice also proposed an update to the list of life-threatening conditions covered by the Housing Opportunity Through Modernization Act of 2016 (''HOTMA''). The comment period for the Proposed NSPIRE Standards notice closed on August 1, 2022. HUD will publish the final NSPIRE Standards notice before the effective date of this rule, which will consider feedback received in the NSPIRE proposed rule, the NSPIRE Demonstration, and the proposed NSPIRE Standards.

C. NSPIRE Scoring and Administrative Subordinate Notices

This rulemaking establishes at 24 CFR 5.705(b) that HUD will establish scoring methods through a **Federal Register** notice. The proposed NSPIRE Scoring notice was published in the **Federal Register** on March 28, 2023.[5] It will be final and effective before HUD begins inspections under NSPIRE. The NSPIRE Scoring notice will outline the methodology for weighting the deficiencies found during inspections using the NSPIRE Standards notice and scoring those deficiencies for each program . It will discuss the gradations and severity levels of the new scoring system, including thresholds for potential enforcement action.

The NSPIRE Administrative notice will be published as a final notice shortly following this final rule. This notice will replace all UPCS guidance that HUD's Real Estate Assessment Center (REAC) previously issued including the Compilation Bulletin for RAPID 4.0, Version 3, Inspector Notices, and other web-based guidance on requesting appeals, exigent health and safety reporting, and other inspection process topics. This subordinate notice will outline the updated NSPIRE process for inspections, submitting evidence of deficiency correction, technical reviews, administrative referrals and other administrative requirements changing with the final NSPIRE rule. It will also include the process HUD will use to gather resident feedback on property conditions. In an additional notice, HUD will provide

[3] ''Request for Comments: National Standards for the Physical Inspection of Real Estate and Associated Protocols,'' 87 FR 36426.

[4] Available at: *www.hud.gov/sites/dfiles/PIH/documents/6092-N-02nspire_propose_standards.pdf.*

[5] 88 FR 18268.

guidance for PHAs on the new small rural assessment processes.

D. NSPIRE Implementation and PHAS Score Transition for Public Housing Authorities

With the implementation of the NSPIRE rule, REAC will begin performing physical inspections using the NSPIRE Standards after the effective date of the rule for each program. Recognizing that there may be operational or system transition issues in the initial year of NSPIRE implementation, HUD is specifying in the regulation at § 5.705(c)(1) that an inspection ''shall be conducted no earlier than 6 months before and no later than 6 months after the date marking the anniversary of the previous inspection'' for a period of one year after the effective date of this rule. After this transition period, the time frame will return to ''no earlier than 3 months before and no later than 3 months after the date marking the anniversary of the previous inspection'' or at a time period approved by HUD upon a PHA's or owner's good cause request.

For PHAS scores issued after this rule is effective, REAC will use scores calculated as described in the subordinate NSPIRE Scoring notice and aggregate these scores on a unit-weighted basis as described in § 902.25 to create the Physical Assessment Sub-system (PASS) indicator score. Additional information about NSPIRE and PHAS Score transition, including PHAs rated as Troubled, will be provided in the subordinate NSPIRE Administrative notice.

E. Other NSPIRE Notices

HUD's Office of Community Planning and Development will issue separate notices before October 1, 2023, (''CPD NSPIRE notices'') to implement the rule for the individual programs, which generally do not adopt the methods in the three ''core'' Subordinate Notices discussed above, and provide guidance for how the NSPIRE Standards cover differing CPD program situations, such as homebuyer acquisition or where assistance is tied to a bedroom in shared housing. These notices will be published before the effective date of the rule. Also with this rule, HUD will issue a Departmental notice to provide guidance for the Small Rural PHAS and SEMAP scoring processes. At a later date, HUD will publish a third additional notice to implement a process for collecting and utilizing resident feedback as part of the inspection process.

III. Changes Made at the Final Rule Stage

In response to public comments, and in further consideration of issues addressed at the proposed rule stage, HUD is publishing this final rule with the following changes from the proposed rule.

Section 5.703 National Standards for the Condition of HUD Housing

Affirmative Requirements at § 5.703

In the proposed rule, HUD requested comment on the addition of affirmative requirements for ground-fault circuit interrupter (GFCI) outlets, an arc-fault circuit interrupter (AFCI); heating, ventilation, and air conditioning (HVAC) related to a permanent heating source; guardrails; and interior lighting. The final rule includes requirements for GFCI outlets near a water source, a permanent heating source for certain climate zones, guardrails, and permanent lighting in some living areas. In some cases, these requirements only apply to habitable rooms of the unit. HUD defines a habitable room as it is typically defined in model codes: a room in a building for living, sleeping, eating, or cooking, but excluding bathrooms, toilet rooms, closets, hallways, storage or utility spaces, and similar areas. Additional detail on the affirmative requirements will be provided in the NSPIRE Standards and Administrative notices. HUD makes the following changes from the proposed rule to the NSPIRE affirmative requirements:

Application of Affirmative Requirements to Inside and Outside at § 5.703(b) and (c)

In this final rule, HUD is clarifying that some of the affirmative requirements not only apply to ''Units'' but also apply to Inside and Outside requirements. This final rule applies the requirements for smoke detectors, carbon monoxide detectors, GFCI outlets, guardrails, and lighting to Inside, and applies the requirements for GFCI outlets and guardrails to Outside. HUD also added pipes to the non-exhaustive list of components that provide domestic water in § 5.703(b).

Smoke Detector Requirement at § 5.703(b)(1) and (d)(3)

In the proposed rule, HUD proposed to require that properties follow the National Fire Protection Association Standard (NFPA) 72 or successor standards, consistent with existing statutory obligations. This final rule removes the reference to NFPA 72 and instead lists requirements consistent with NFPA 72. HUD also provides that following these requirements satisfies the specifications of NFPA 72. HUD also adds that properties must follow these standards and additional standards established by HUD through **Federal Register** notification. This clarifies that HUD may adjust its Standards to include additional requirements in the future, such as future added statutory requirements.

Safe Water Requirement at § 5.703(d)(1)

HUD is removing the requirement that water be ''potable'' from the proposed rule and instead requiring that water must be ''safe.'' After consideration of comments and further deliberation, HUD believes that these two words are, for the purposes of this rule, duplicative and it is not necessary to use both. HUD is also clarifying that this ''safe'' requirement applies to drinking water in the kitchen and bathroom and clarifies that the requirement that the unit have ''hot and cold'' running water applies in both the bathroom and the kitchen.

Sanitary Facility and Kitchen Area Requirements at § 5.703(d)(2) & (d)(4)

In the proposed rule, HUD requested comment on whether to define a ''sanitary facility'' and ''kitchen area.'' After considering comments, HUD has included additional language in the regulations for both terms at the final rule stage; this new language serves the same function as the definition suggested in the proposed rule for comment. HUD is requiring that sanitary facilities (or bathrooms) include a sink, a bathtub or shower, and an interior flushable toilet. HUD is removing the requirement that the sanitary facility be ''adequate for personal hygiene and the disposal of human waste'' because listing these elements adequately covers this same requirement. HUD is also requiring that kitchens must include a sink, cooking appliance, refrigerator, food preparation area, and food storage area.

Removal of the Occupancy Requirement Related to Children of the Opposite Sex From § 5.703(d)(5)

In this final rule, HUD is removing the requirement at § 5.703(d)(5) for units assisted under HCV or PBV that children of opposite sex may not be required to occupy the same bedroom or living/sleeping room. HUD views the restriction based on gender to be unnecessary and unrelated to physical conditions, and wanted to provide more flexibility to families and PHAs to determine the number of bedrooms needed as part of determining the payment standard. Removal of the term ''opposite sex'' is also consistent with the January 20, 2021, Executive Order on ''Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.'' This language also avoids the implication that PHAs must inquire about gender identity to determine occupancy.

Addition of Carbon Monoxide Detection Requirement at § 5.703(d)(6)

Section 101, ''Carbon Monoxide Alarms or Detectors in Federally Assisted Housing'' of Title I of Division Q, Financial Services Provisions and Intellectual Property, of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 2162 (2020) (''2021 Consolidated Appropriations Act'') included amendments to sections 3(a) and 8 of the United States Housing of 1937 (42 U.S.C. 1437a(a) and 42 U.S.C. 1437f) (1937 Act), section 202(j) of the Housing Act of 1959 (12 U.S.C. 1701q(j)), and Section 811(j) and 856 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013(j) and 42 U.S.C. 12905). These amendments, which took effect on December 27, 2022, concern the installation of Carbon Monoxide alarms or detectors in public housing owned or operated by a PHA, dwelling units occupied by individuals with Housing Choice Vouchers, dwelling units assisted with project-based vouchers or project based rental assistance, dwelling units assisted under the 202 and 811 programs, and dwelling units assisted under the HOPWA program. In the proposed rule, HUD stated its intent to publish a separate proposed rule concerning the implementation of requirements to install carbon monoxide detectors in HUD-assisted and -insured Housing. HUD is still considering a proposed rule which would implement carbon monoxide detectors beyond what is now required by statute. In this rule, however, HUD has determined to make conforming changes so that the regulations of the programs covered by NSPIRE include the new statutory carbon monoxide detector requirement for each program. Because these conforming rule changes merely codify the new statutory requirements, HUD has determined that additional notice and public comment procedure is unnecessary.

Additionally, HUD notes that the 2021 Consolidated Appropriations Act only adds carbon monoxide-related requirements to the HUD programs listed above and the USDA programs authorized by sections 514 and 515 of the Housing Act of 1949. HUD programs such as HUD-insured housing not subject to an assistance contract and the ESG, CoC, HOME, and HTF programs are not subject to statutory requirements concerning carbon monoxide detection. HUD has made corresponding changes at the final rule stage in §§ 92.251(b)(1)(viii), 93.301(b)(1)(viii), 576.403(c), 578.75(b) to clarify that these units will not be subject to the new carbon monoxide requirements. HUD urges grantees, owners, developers, and project sponsors in these programs to take action for the safety of residents and reminds them that there may be additional property standard requirements under applicable State and local laws regarding carbon monoxide detection.

Finally, HUD notes that this final rule only implements the statutory carbon monoxide detector requirement for programs covered under NSPIRE. However, programs not covered by NSPIRE are still subject to the statutory requirement where applicable. Specifically, the statutory requirement covers all of HOPWA, but NSPIRE only applies where HOPWA funds are used under § 574.300(b)(3), (4), (5), and (8). HUD intends to modify the HOPWA regulations to reflect the existing statutory requirement in a future rulemaking related to HOPWA.

Other Changes to § 5.703

Addition of Example Unit Components at § 5.703(d)

HUD is including balconies, carbon monoxide devices, and enclosed patio to the non-exhaustive list of components which may be included in a unit.

Addition of ''Structural Soundness'' and ''Extreme Temperature'' Health and Safety Concern Examples at § 5.703(e)(1)

HUD has added structural soundness to the non-exhaustive list of health and safety concerns at § 5.703(e)(1) previously required under § 576.403(c)(1).

HUD has also added ''extreme temperature'' to the non-exhaustive list of health and safety concerns at § 5.703(e)(1). HUD considers the failure to provide an adequate heat source to prevent extreme cold a deficiency as described in the NSPIRE Standards notice. By adding this language to the regulation and NSPIRE Standards, HUD further implements HOTMA Section 111, which required HUD to publish model guidelines for minimum heating requirements for public housing. As part of the consolidation under NSPIRE, HUD is removing § 982.401(e) regarding the thermal environment and making this addition here. HUD has added language from § 982.401(e) prohibiting the indoor use of unvented fuel-burning space heaters in § 5.703(b) and (d).

Addition of ''Carbon Monoxide'' as a State and Local Requirement at § 5.703(f)(1)

At this final rule stage, HUD is adding ''carbon monoxide'' as an example in its non-exhaustive list of examples of State or local requirements that are not superseded by these regulations. This change has no substantive effect.

Section 5.705 Inspection Requirements

Inspection Standards Notice Clarification at § 5.705(a)(1)

In the final rule, HUD clarifies that in addition to the standards and procedures for identifying safe, habitable housing being set out by the Secretary and published in the **Federal Register**, HUD will also provide the scoring and ranking for HUD housing by publication in the **Federal Register**. HUD has also added language identifying the different levels of deficiency which will be used in the NSPIRE Standards notice.

Correction of Typographical Error at § 5.705(b)(2)

In the final rule, HUD corrects a citation in the proposed § 5.705(b)(2) which cited to ''§ 982.352(b)(iv)'' but should have cited to ''§ 982.352(b)(1)(iv).'' HUD instead cites to parts 982 and 983 generally.

Timing of Inspections at § 5.705(c)(1) and (c)(2)

HUD has added language to § 5.705(c)(1) clarifying that HUD may approve extension requests for good cause as determined by HUD. In HUD's experience, inspections occasionally need to be rescheduled due to events outside the owner's or PHA's control or for other reasons which would cause the extension request to be justified. HUD has also added language making clear that HUD may extend inspection deadlines without the PHA or owner's request, to account for situations in which HUD decides to grant a general extension, such as in an emergency situation.

HUD is also removing from paragraph (c)(1) the restriction that inspections must be done in the calendar year in which they are due. HUD does not find that this restriction is necessary or important to ensuring timely inspections, nor does it serve another administrative purpose.

In paragraph (c)(2), HUD proposed a default annual inspection for Multifamily and project-based housing, with the potential for alternative timelines for inspection, such that a property or project may be inspected on a timeline between two and five years. After considering comments and reviewing inspections, HUD believes that such an extended timeline as four or five years would, in most cases, be too long to adequately review HUD-assisted housing. HUD believes that the current ''3–2–1'' approach utilized in Multifamily and Public Housing properly allocates HUD inspection resources to ensure the regular inspection of all properties while prioritizing those properties which require additional oversight. Properties of PHAs that meet the definition of Small Rural under § 902.101 will be inspected every three years, as described in § 902.103(b).

Addition of Citation Regarding Small PHAs at § 5.705(c)

In § 5.705(c)(4), HUD is adding a citation to § 902.13(a) to clarify that small PHAs shall continue to be inspected in accordance with the relevant regulation, and in paragraph (c)(8), HUD is adding a citation to § 882.516 to clarify that Section 8 Moderate Rehabilitation housing shall continue to be inspected under its own regulation.

Tenant Involvement in Inspections at § 5.705(f)

This final rule adds § 5.705(f) stating that HUD will allow, through notice, for tenant involvement in the inspection process of Public Housing and Multifamily housing programs by making recommendations regarding particular units to be inspected. Any units inspected in addition to the standard unit sample will not be part of the property's score, but the owner or PHA will be required to repair any identified deficiencies. HUD has made this addition after consideration of public comments regarding tenant involvement and the aim to balance the need for tenant input with the procedural integrity of the inspection process.

Section 5.707 Uniform Self-Inspection Requirement and Report

HUD is revising § 5.707 to remove the electronic reporting requirement of self-inspections, and is instead requiring that the owner or PHA maintain records related to the self-inspection for three years. HUD agrees with commenters who suggested a universal reporting requirement for self-inspection results would pose an additional administrative burden. Additionally, HUD has removed language from § 5.707 that offered an additional announcement and opportunity for public comment in the **Federal Register**. This language was removed because HUD will not use the results of self-inspections as proposed to determine risk or the frequency of REAC inspections. The results of self-inspections will also not affect a property's score. Because the final version of the self-inspection requirement largely reflects current requirements for Public Housing and Multifamily programs and properties that score under 60, there is no need for additional comment. The process to perform self-inspections will be in the NSPIRE Administrative notice, which will be published without comment. For properties scoring below 60, HUD believes that this information would be uniquely useful as a tool to ensure all deficiencies are identified and corrected. HUD is also adding language to allow properties the option to perform the self-inspection in conjunction with the follow up inspection at § 5.711(c)(2). HUD has added additional language to § 5.711(c)(2) to clarify the post-inspection survey process and the self-inspection requirement related to the inspection score.

Section 5.709 Administrative Process for Defining and Revising Inspection Criteria

HUD is amending § 5.709 at the final rule stage to make two clarifying changes. First, HUD is distinguishing between the Standards notice and the Scoring notice. In the proposed rule, both were discussed as though they would be one notice. However, Standards and Scoring represent two distinct elements of the assessment of HUD housing, and HUD is publishing separate notices. Both notices are subject to the same procedures.

Second, HUD is clarifying, consistent with the proposed rule's discussion of the matter, that HUD will publish its Standards and Scoring notices ''at least'' once every three years, to make clear that HUD may publish its notices before it has been three years, at HUD's discretion.

Section 5.711 Scoring, Addressing, and Appealing Findings

Change to the Name of § 5.711

HUD is renaming § 5.711 to more accurately reflect the purpose of this section.

Changes to Deficiency Terminology at § 5.711(c)

HUD is revising the different levels of deficiency to Life-Threatening (LT), Severe, Moderate, and Low. This change is reflected in the proposed NSPIRE Standards notice and HUD is also amending § 5.709(a)(2)(i) for consistency with this change. As discussed further in the NSPIRE Standards and Scoring notices, Low deficiencies are deficiencies which are critical to habitability but do not present a substantive health or safety risk to a resident. HUD is requiring that Low deficiencies be repaired within sixty days unless specified otherwise in the NSPIRE Standards.

Meaning of Correction at § 5.711(c)(1)

HUD also amends § 5.711(c)(1) to require that LT and Severe items must be ''corrected'' instead of mitigated. In the context of § 5.711, ''corrected'' means the owner or PHA has resolved or sufficiently addressed the deficiency in a manner that it no longer poses a severe health or safety risk to residents. A correction could include controlling or blocking access to the hazard by performing a temporary relocation of the resident while repairs are made.[6] HUD recognizes that to permanently repair some deficiencies, the PHA or owner may need additional time for a licensed professional, or supplies that may not be available in a 24-hour timeframe. In some cases, for lead hazard control work, exterior paint stabilization can be delayed due to season conditions, or the resident family may need to be relocated temporarily while the work is completed, and HUD can approve extensions based on good cause.[7] Additional information will be provided in the subordinate NSPIRE Standards and Administrative notices. For LT and Severe defects, HUD expects that permanent repairs will be completed expeditiously, and that evidence of the repair will be provided to HUD as described in § 5.711(c)(2). HUD has also removed the word ''contiguous'' from paragraph (c)(1) as unnecessary. In practice, PHAs, owners and HUD all understand that the 24-hour timeframe commences immediately upon notification and does not pause for non-working hours, including the weekend.

Timeline for Correction at § 5.711(c)(1)

HUD also amends § 5.711(c)(1) to clarify the timeline for the correction of health or safety deficiencies. The

[6] HUD notes that correction of a LT deficiency has a specific meaning under HOTMA. § 5.711 does not apply to HCV or PBV, and therefore this definition of ''corrected'' does not apply to HCV or PBV.

[7] Relocation for lead hazard control work may be required under 24 CFR 35.1345 and is subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

timeline for correcting LT and Severe health or safety deficiencies remains 24 hours after the inspection. The timeline for repairing Moderate and Low deficiencies has been revised from ''expeditiously'' to ''within 30 days,'' consistent with HUD's intent as stated in the preamble of the Proposed Rule. HUD can authorize permanent repair timelines that exceed 30 days if the deficiency cannot be permanently repaired in 30 days.

The NSPIRE Standards provide HUD's expectations regarding the timeline for repair of each type of deficiency. HUD will not change the requirement that LT health and safety deficiencies must be corrected within 24 hours. Under the NSPIRE Standards, for the Public Housing and Multifamily housing programs, Severe will also require correction in 24 hours.

Post-Report Inspection at § 5.711(c)(2)

HUD is removing the requirement that owners or PHAs provide electronic evidence of correction of Moderate deficiencies as HUD believes, after considering comments, the burden both of reporting and processing this evidence would outweigh the benefit. Paragraph (c)(1) continues to require evidence that Severe deficiencies have been corrected be provided to HUD within established timeframes. HUD is also adding a requirement that properties which score below a 60 must complete a full self-inspection, and not the limited self-inspection described in this regulation for identified deficiencies in units and areas of the property not inspected by REAC. This addition is necessary to ensure that owners and PHAs survey 100 percent of their properties when they have poor physical performance (*i.e.,* scores below 60) in order to identify additional health and safety defects in the units that were not part of the inspection sample. PHAs and owners that conduct a full inspection after the HUD inspection can consider this inspection to satisfy the requirements of § 5.707 for that year.

Start of the 45-Day Deadline To File a Request for Technical Review at § 5.711(d)(1)

In response to a public comment, HUD is revising § 5.711(d)(1) to clarify that the 45-day deadline to file a request for a technical review begins on the day the inspection report is provided to the owner or PHA.

Basis for Technical Review at § 5.711(d)(4)

Based on comments received, HUD revised § 5.711(d)(4) for clarity and renumbered the three types of material errors appropriately.

HUD is also adding in paragraph (d)(4) the three qualifiers for requesting a database adjustment previously at 24 CFR 902.24. Commenters noted this was inadvertently removed, especially the exclusion of adjustments for modernization work in progress. At this final rule, HUD is combining these three qualifiers for adjustment with the three bases for technical review. These three qualifiers will have the same appeal and review process as the technical review process for errors. Given these revisions, HUD is removing paragraph (c)(3) and removing part of paragraph (e) which HUD believes is repetitive with revised paragraphs (d) and (d)(4).

HUD also removed the term ''year built'' as an item not scored under § 5.711(d)(4)(i), since a visual lead-based paint evaluation is now part of the NSPIRE inspection, and the results of this evaluation will be scored.

Posting on the Availability of Materials at § 5.711(h)(3)

HUD has revised this section to clarify that the owner or PHA must post a notice to residents on the date of submission to the owner of the inspection score for the property in which the residents reside. The notice must advise the residents of the availability of the inspection materials described in 24 CFR 5.711. HUD is also specifying that the notice must be translated into other languages if necessary to provide meaningful access for limited English proficient (LEP) individuals, consistent with HUD's LEP guidance and Title VI.[8]

Departmental Enforcement Center (DEC) Evaluation at § 5.711(i)

HUD is revising the introductory text of § 5.711(i) to add that HUD will also take administrative review action against properties with two successive scores under 60. HUD also clarifies that while a score of 30 points or less automatically leads to DEC referral, referral is not automatic for the two successive scores under 60. Regarding the two successive scores under 60, HUD recognizes that there may be mitigating circumstances and HUD will take other review actions before HUD decides whether DEC referral is necessary. As proposed, this regulation covered both public and Multifamily housing programs, and HUD has retained this in the final rule and clarified applicability. For public housing properties, HUD recognizes that there are situations where the responsible PHA's PHAS score may have already triggered other forms of administrative review, rendering DEC review repetitive. HUD has also made other minor, technical changes to this paragraph.

No Limitation on Existing Enforcement Authority at § 5.711(j)

HUD has added the term ''grant agreement'' as an example of a potential authorizing authority.

Sections § 92.251 and 93.301 Property Standards

HUD has removed the clause, ''pursuant to 24 CFR 5.705,'' from §§ 92.251(b)(1)(viii), 92.251(c)(3), 92.251(f)(1)(i), 93.301(b)(1)(viii), 93.301(c)(3), and 93.301(e)(1)(i) because the requirements in 24 CFR 5.705 through 5.713 do not apply to HOME participating jurisdictions (PJs) under 24 CFR part 92 or HTF grantees under 24 CFR part 93. HUD included the clause in the proposed rule in these sections of 24 CFR part 92 and 24 CFR part 93 only to refer to the part in § 5.705 describing inspection standards and procedures that would be published in the **Federal Register**. However, to avoid further confusion, HUD is removing the clause. HUD will publish the specific deficiencies that must be addressed by HOME PJs and HTF grantees and explain how the requirements in 24 CFR 5.703 apply to PJs and HTF grantees in a standards document published in the **Federal Register**. This standards document for HOME and HTF will be separate from, although similar to, the NSPIRE Standards notice and apply only to HOME and HTF.

HUD is also making changes to these sections to clarify that ''decent, safe, sanitary, and in good repair'' means compliance with § 5.703 and deleting ''as referenced in § 5.703'' because § 5.703 does not use this term.

HUD is also making clarifying changes that the affirmative requirements at § 5.703 apply to single-room occupancy (''SRO'') housing where the housing contains the room or facility referenced in the affirmative requirements. This is necessary, for instance, where the SRO does not contain its own restroom and therefore does not need to meet affirmative requirements related to restrooms.

HUD is also revising §§ 92.251(f)(1) and 93.301(e)(1) to clarify that any property standards established by a participating jurisdiction must ''require'' instead of ''ensure'' that the

[8] For more information on HUD LEP and Title VI guidance, see ''Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons'', 72 FR 2731 (Jan. 22, 2007).

owners maintain the housing as decent, safe, sanitary, and in good repair. HUD believes that these two words, in this context, have the same meaning, but has made the change to make the requirement clear.

Sections 92.504 and 93.404 Regarding Inspectable Areas

HUD has revised the language in § 92.504(d)(1)(ii)(D) and § 93.404(d)(2)(v) to describe ''inspectable areas for each building housing HOME-assisted units.'' The regulation previously required that for HOME projects with one-to-four HOME-assisted units, the participating jurisdiction must inspect ''100 percent of the HOME-assisted units'' and 100 percent of the ''inspectable items (site, building exterior, building systems, and common areas) for each building housing HOME-assisted units.'' However, the parenthetical described the inspectable areas (*e.g.,* site, building exterior, building systems, and common areas) within a HOME project and not ''inspectable items.'' In this final rule, HUD is correcting the language to require that when projects of one-to-four units are being inspected by the participating jurisdiction or HTF grantee, all of the units and 100 percent of the inspectable areas for each building must be inspected by the PJ or HTF grantee.

Section 570.208 Criteria for National Objectives

This final rule also updates an outdated citation in § 570.208(b)(1)(iv) to create a standard for determining whether Community Development Block Grant (CDBG) funds were used to rehabilitate a substandard residential building. Section 570.208(b)(1)(iv) describes whether an assisted activity is considered to have met the public benefit standard for an activity to address slum or blight on an area basis. One of the criteria for determining whether a CDBG-assisted activity qualifies as an area benefit standard is that the assisted activity must eliminate substandard housing, which is housing that would also fail to meet the housing quality standards for the Section 8 Housing Assistance Payments Program—Existing Housing (24 CFR 882.109).

On April 30, 1998, the final rule entitled ''Section 8 Certificate and Voucher Programs Conforming Rule'' removed and reserved 24 CFR 882.109 as part of comprehensive rulemaking where HUD revised 24 CFR part 882 to move requirements applying to the Section 8 voucher and certificate programs into 24 CFR part 982 and 983.[9] Therefore, this citation is out of date. This final rule updates the citation in § 570.208(b)(1)(iv) from 24 CFR 882.109 to 24 CFR 5.703. This change is technical in nature, and HUD believes that this is an appropriate technical correction to incorporate into this final rule.

Section 574.310 General Standards for Eligible Housing Activities

At the final rule stage, HUD is removing certain housing covered under HOPWA from applicability from NSPIRE. Specifically, HUD is removing from § 574.310(b) NSPIRE's applicability to housing for which HOPWA funds are used under permanent housing placement to pay an eligible person's security deposit, utility hookup and processing costs, or move in costs, except rental application and credit check fees (§ 574.300(b)(7)). HUD has decided to no longer include stand-alone permanent housing placement (§ 574.300(b)(7)) due to the administrative burden it would place on HOPWA housing assistance providers for these one-time costs. Many HOPWA grantees utilize permanent housing placement in combination with the other permanent housing activities that will be subject to the HUD housing standards under the NSPIRE rule.

Section 576.403 Shelter and Housing Standards

For clarity and consistency, HUD is revising the organizational structure of the proposed § 576.403 consistent with the format of § 574.310(b)(2). HUD is also clarifying in § 576.403(c)(2) that the exemption from requiring self-inspection prior to move in for the first thirty days does not exempt the requirement under part 35 to inspect for lead-based paint.

Part 880—Section 8 Housing Assistance Payments Program for New Construction

In the proposed rule, HUD proposed to amend § 880.612 to require that contract administrators inspect projects to determine compliance with part 5, subpart G. Since the proposed rule was published, § 880.612 was modified by HUD's ''Streamlining Management and Occupancy Reviews for Section 8 Housing Assistance Programs'' rule.[10] Because of this change, HUD is now choosing not to amend § 880.612. Part 880 is already made subject to part 5, subpart G through § 880.104(d), which states that ''the provisions of 24 CFR part 5 apply to all projects [under this part.]'' Therefore, no substantive change is made by the decision not to amend § 880.612.

Section 884.217, 886.123, 886.323 Maintenance, Operation, and Inspections

HUD is making a technical edit to §§ 884.217(b), 886.123(b), and 886.323(c). The previous regulation required the owner and family to certify before move-in that the unit had been inspected by both parties and the unit was decent, safe, and sanitary. The proposed rule, consistent with other changes, proposed changing ''decent, safe, and sanitary'' to read ''compliant with part 5, subpart G.'' HUD does not intend to require that a family is familiar with HUD's housing requirements to certify compliance. Therefore, for clarity, HUD has revised the regulation to require that only the owner must certify compliance with part 5, subpart G. Both parties must still certify that they have each inspected the unit. Families are still entitled and encouraged to identify any deficiencies they believe may exist and, where an owner fails to make repairs, report those deficiencies to HUD.

Section 902.3 Definitions

At the final rule stage, HUD is removing the definition of ''Subarea'' from § 902.3. As discussed further in HUD's proposed Scoring notice, HUD is not using ''Subareas'' in NSPIRE. HUD is also making a technical revision to the definition of ''Inspectable item'' to remove the reference to the ''Item Weights and Criticality Levels document'', which no longer exists (as discussed in the proposed rule) under NSPIRE.

Section 902.13 Frequency of PHAS Assessments

The proposed rule removed from § 902.13(b)(2) language relating to inspection frequency under PHAS and replaced it with a citation to § 5.705(c). Incidentally, this change removed language clarifying that, for properties with a physical inspection score at or above 80—*i.e.,* properties scored less than annually—the most recent physical inspection would be used in calculating the overall PHAS physical condition indicator score for a given fiscal year.

At this final rule stage, HUD has revised § 902.13(b)(2) to clarify that HUD will use the most recent physical inspection score for all properties, regardless of inspection frequency, in calculating the PHAS physical condition indicator score. Section 5.705(c), which provides the requirements for the timing of

[9] 63 FR 23826 at 23854.

[10] 87 FR 37990 (June 27, 2022).

inspections, does not tie inspections to a particular fiscal year. Therefore, this revision makes clear that an inspection does not have to occur during the PHA's assessed fiscal year to be included in that fiscal year's PHAS score Troubled PHAs will continue to be assessed annually as previously required by § 902.13(b)(3).

Additionally, this final rule adds language to § 902.13(b)(2) regarding the transition from UPCS-based physical condition indicator scores to NSPIRE-based scores. For simplicity, and to prevent technical issues related to calculating scores using both the old UPCS system and the new NSPIRE system, HUD will not provide a PHAS physical condition indicator score that uses both UPCS scores and NSPIRE scores in its calculation. Instead, starting July 1, 2023, PHAs will keep their most recent physical condition indicator score until every public housing property associated with the PHA has been inspected under NSPIRE. After every property under a PHA has received an NSPIRE inspection, the PHA will receive a new physical condition indicator score which will exclusively use NSPIRE inspections in its calculation. After this transition period, scores will be calculated using the normal method laid out in § 902.13(b)(2). This exception does not apply to small PHAs under § 902.13(a) or to small rural PHAs under part 902, subpart H. These PHAs have a relatively small number of buildings compared to PHAs covered by § 902.13(b)(2) and inspections of these buildings are usually more coordinated in a specific period of time. Therefore, while this exception does not apply to these PHAs, HUD intends to ensure that all properties under small and small rural PHAs receive an NSPIRE inspection before calculating a PHA's new physical condition indicator score.

Section 902.103 Public Housing Assessment of Small Rural PHAs

HUD is revising § 902.103(a) to add one additional point for physical condition and neighborhood environment to better align the small rural PHAS regulation with the ordinary PHAS assessment. This additional consideration ensures consistency with 42 U.S.C. 1437d(j)(1), which acknowledges the differences in the difficulty of managing individual projects that result from their physical condition and their neighborhood environment. HUD is also revising the parenthetical examples in paragraphs (c)(1) and (2) to only provide one example to avoid implying that the list of examples is exhaustive.

Section 902.107 Withholding, Denying, and Rescinding Troubled Designation

The final rule includes Conciliation Agreements as a type of special agreement with HUD in § 902.107(a)(1) because a Voluntary Compliance Agreement refers to agreements under Section 504, Title VI, and the ADA, whereas Conciliation Agreement refers to agreements under the Fair Housing Act.

Section 983.101 Housing Quality Standards

In the proposed rule, HUD proposed to replace all of § 983.101 with a citation to § 5.703. After further consideration, HUD has decided, for clarity, to keep the entirety of § 983.101 in place, and to revise paragraph (a) to cite to § 5.703. HUD also makes minor conforming edits to paragraphs (b) and (c).

Section 985.205 Determination of Assessment Rating

HUD has revised the proposed § 985.205(a)(1)(i) at the final rule stage to add that a small rural PHA will be judged based on the last two years of HCV budget authority data. HUD has made this change because, for some PHAs, the sample size would be too small to rely on one year only as an accurate picture of the PHA's performance. The increased review period will improve a PHA's ability to achieve 98 percent in related indicators.

Conforming Changes

HUD makes the following conforming changes which do not impose or change substantive requirements.

Terminology in Part 5

In the proposed rule, in certain places HUD inadvertently used the term ''owner'' when the correct term should have been ''owner or PHA.'' There are also instances in the proposed rule where HUD used the term ''public housing'' when the correct term should have been ''HUD housing'', which includes all the programs listed in § 5.701(a). HUD has corrected the terminology, where appropriate, in this final rule.

Sections 884.217 and 886.123

HUD is also making minor changes to the proposed §§ 884.217(c) and 886.123(c). HUD is removing language regarding the sample of units to be inspected and removing language regarding the frequency of inspections to ensure that these paragraphs are consistent with each other, and consistent in applying part 5, subpart G.

Part 965, Subpart I—Fire Safety

This final rule removes part 965, subpart I regarding fire safety. This subpart applied fire safety regulations to public housing. The NSPIRE rule applies these same requirements to public housing, rendering this subpart redundant.

Sections 982.402 and 982.618

This final rule updates part 982 to remove citations to paragraphs in § 982.401 to reflect the update to § 982.401.

Part 982, Subpart M—Special Housing Types

This final rule amends 24 CFR part 982, subpart M, which lays out alternative and additional requirements to the Housing Quality Standards. This final rule makes no substantive changes to subpart M, but only updates and removes citations and references to the Housing Quality Standards consistent with the changes proposed and now made. This is consistent with § 5.703(h) of both the proposed and final rule, which states that special housing types under part 982, subpart M are subject to different and additional requirements.

Part 983—Project-Based Voucher (PBV) Program

This final rule amends § 983.2(c)(4) to remove the citation to ''§ 982.401(j),'' which was removed in both the proposed and final rule. This does not change the lead-based paint obligations which apply to the part 983, as discussed at § 983.4.

IV. Public Comments

General Support Comments

Several commenters expressed general support for the changes in the proposed rule. A commenter stated that the rule would advance affordable housing. Another commenter anticipated a responsive real-life process to effect improvement in housing standards. Another commenter stated that the proposed rule would be an avenue for managing the workload and incentivizing properties that perform well, and also as a way for HUD to manage its own backlog of inspections. A commenter stated that there are many communities that do not enforce code regulations but having all agencies on the same platform would help local officials understand what is needed. One commenter supported the decreased subjectivity and increased accuracy of the proposed rule to achieve positive outcomes. Commenters also supported HUD's NSPIRE demonstration.

HUD Response: HUD appreciates this input and support for the changes in the rule. HUD agrees that having focused, objective, accurate and up to date regulations, processes, and standards can help achieve positive outcomes for millions of families while at the same time improving the way HUD operates. In this final rule, HUD has largely maintained the same framework as in the proposed rule.

Additional General Support Comments

Commenters expressed support for HUD's dedication to seeking stakeholder feedback. One commenter supported HUD engaging with the public to address the industry's difficulties with existing inflexibility on technical, mechanical, and engineering issues that have limited impact on the safety and habitability of existing structures but absorb a disproportionate amount of time and difficulty on sites. Another commenter stated that HUD has made clear that equity and transparency are key goals for this rule. One commenter noted that, while it is important that HUD lays out an expansive framework at the Federal level, it will be important that HUD works frequently with public authorities as they facilitate this transition to promote efficiency while limiting administrative burden when possible. A commenter urged HUD to expand outreach to include residents, State and local code enforcement agencies, legal service attorneys, housing advocates, public health advocates, and environmental justice advocates, to make enforcement effective and efficient.

HUD Response: HUD thanks commenters for their input on this topic. HUD continues to improve outreach efforts and obtain feedback from stakeholders and the general public. HUD agrees that equity and transparency are key considerations in this rule. HUD has retained the requirement at § 5.709(a)(1) to regularly revisit the requirements through public comment, allowing all stakeholders an opportunity to be heard. HUD also believes outreach efforts should include residents, State and local code enforcement agencies, and other housing stakeholders and advocates and continues to seek their feedback through this rulemaking process. The proposed NSPIRE Standards notice was posted for comment on June 17, 2022, for 45 days for public comment. HUD considers these comments important in finalizing the Standards notice. To promote feedback and encourage transparency, HUD also published information on the NSPIRE demonstration effort on its website and sought feedback from participants through the demonstration.

Residents of HUD-assisted housing were encouraged to comment as members of public, but also through other available opportunities for participation. In public housing, residents can participate in resident advisory councils and attend regular meetings held by their Board of Commissioners. Board members are typically appointed by elected officials and include at least one resident member. All members of the public, including legal service attorneys and housing and public health advocates, can report housing standard violations or other concerns to HUD offices. A list of contacts for HUD's local offices can be found at *https://www.hud.gov/local.*

Economic Growth and Recovery Act

Question for Comment #1: Standards for Small Rural Section 8 Projects and PHA Public Housing Projects

Commenters recommended that HUD follow Congress's intent to provide less burdensome regulations for small PHA properties. One commenter supported HUD's proposal to align standards for small rural PHAs. Another commenter supported taking an expansive view and defining ''standards . . . for the acceptable condition of public housing projects'' to mean the entire NSPIRE model. A commenter also recommended HUD provide more technical assistance options for small rural PHAs. One commenter suggested the same standards should apply to all projects to ensure fair and equitable living conditions across PHAs.

A commenter stated that Housing Quality Standards (HQS) inspections for Section 8 properties were more consistent and objective than the Uniform Performance Condition Standards (UPCS) inspection protocol used for their public housing properties, and therefore small rural agencies should be allowed to use the HQS protocol to comply with inspection requirements. This commenter recommended that if HUD determines that maintaining HQS inspection protocols for small rural agencies is infeasible, then HUD should allow public housing units at small rural agencies to be inspected similar to Section 8 properties.

HUD Response: Through this rule, HUD is adopting the statutory requirement for specific relief for small rural PHAs but requires that properties of these PHAs will be assessed using the NSPIRE standards for physical conditions in both the Public Housing and HCV programs. The changes will apply to PHAs as described in 24 CFR part 902, subpart H and 24 CFR part 985, subpart D. HUD declines to implement the recommendation to utilize Housing Quality Standards (HQS) for small rural PHAs. One of HUD's objectives is to align standards across numerous housing portfolios, and with this rule the HQS regulations incorporate the NSPIRE standards and refer to § 5.703. HUD believes that the NSPIRE standards provide more consistent and objective criteria with which to evaluate the safety and habitability of HUD-assisted housing. Residents that live in units managed by small rural PHAs should be provided the same level of safety and habitability as residents of other 572 public or HUD-assisted housing.

As proposed and now made final, HUD will make the initial determination of PHAs that qualify as small rural as defined in § 902.101 of this title no later than 120 days after the effective date of the final rule for Public Housing, or July 30, 2023. Additional deregulation efforts for other small PHAs are outside the purview of this rule but could occur through future rulemaking including updates to the Public Housing Assessment System (PHAS). Relief under this rule is provided in 24 CFR part 985, subpart D and a new subpart H under the current 24 CFR part 902. Section 902.103(b) includes a three-year cycle for overall scoring based on physical conditions for non-Troubled small rural PHAs.

HUD agrees with the need to align standards for small rural PHAs for Public Housing and Section 8 properties with other PHAs, and this rule provides the framework for this alignment to the NSPIRE standards. The NSPIRE standards were proposed for comment on June 17, 2022, and final standards will be published before this rule's effective date. Additional implementing information for the new standard, including the process for PHAS rule and SEMAP assessments, will be provided through a Departmental notice. HUD plans to provide more technical assistance for small rural PHAs with the administrative notice.

Section 5.701 Applicability

Commenters stated that the proposed rule should be broad in scope. Two commenters suggested expanding applicability to include tax credit communities and Section 232 properties. Another commenter welcomed HUD's efforts to codify uniform standards across HUD-assisted housing, noting that establishing uniformity will help empower residents to navigate different HUD assisted housing systems over time and also improve the interface with local code inspection agencies, who otherwise may have to navigate conflicting standards and expectations across HUD programs.

A commenter expressed concern that the proposed rule does not take into account the differences between insured housing and affordable housing, pointing out that some types of HUD-insured housing, *e.g.,* assisted living and nursing homes, are subject to various State-imposed requirements and regulations. One commenter suggested that HUD should clearly state which specific program regulations are superseded or supplemented elsewhere, noting that part 5 may become the first stop a PHA, owner, or owner/agent (''POA''), member of the public, or other interested party makes to find housing quality regulations, and it may be their last stop if they are not directed to other applicable regulations. The commenter stated that absent this direction, individuals will have to cross-check program regulations manually which could lead to unnecessary confusion.

HUD Response: HUD agrees with the comments about the scope of the rule and believes that the rule improves the consistency and uniformity of housing standards for HUD-assisted programs given its broad applicability to all HUD-assisted residential properties and units. In order to ensure regulated parties know which standards apply to them, this rule revises specific program regulations to reference the new NSPIRE standards. The framework for evaluating physical condition addresses safety and habitability regardless of the type of HUD-assisted housing.

This rule applies to all types of HUD housing including health care facilities insured under Section 232 of the National Housing Act and Low-Income Housing Credit (LIHTC) properties receiving some form of HUD assistance and other properties under a HUD-assisted housing contract (*e.g.,* annual contributions contract). HUD does not have authority to create rules that apply to the Department of Treasury's Internal Revenue Service LIHTC and therefore cannot apply this rule to the LIHTC generally, but can apply this rule whenever the LIHTC property also receives some form of HUD-assistance. HUD will engage other Federal agencies with potentially overlapping subsidies to further evaluate the applicability of the NSPIRE rule to these other Federal housing subsidy types.

With respect to conflicting standards and expectations, HUD physical condition requirements have always overlapped with State and local physical condition standards and sometimes exceed these standards. In other cases, State and local standards exceed HUD standards. This rule does not change the proposed § 5.703(f) which states that for all covered programs, the NSPIRE Standards for the condition of HUD-assisted housing do not supersede State and local Housing codes. This rule establishes nationwide Federal minimum requirements for HUD-assisted housing and does not attempt to unify or preempt State and local housing standards. Because all HUD-assisted housing must meet the NSPIRE rule requirements, residents and other HUD-assisted housing stakeholders should have a nationwide expectation for the safety and habitability of housing; however, it will continue to be necessary to review all other applicable requirements including Federal accessibility requirements and State and Local requirements.

Section 5.703 Inspection Standards

Comments Regarding Alignment and Streamlining of Standards

Commenters expressed support for the alignment of standards and inspection processes, stating that this would have a positive impact on properties with mixed financing or subsidy layering, eliminate the need to subject residents to multiple, separate oversight mechanisms, and reduce administrative and cost burden to owners and agents. Commenters supported the proposed rule's streamlining of the number of inspection categories and focus on the condition of individual units and stated that this approach is more aligned with municipal laws governing health and safety in rental housing. A commenter supported moving away from ''curb appeal'' deficiencies toward ''substantial safety deficiencies,'' while another commenter supported the linguistic change from ''exigent health and safety'' to ''severe health and safety'' deficiency, as reducing bias and variability in the inspections process.

One commenter noted that federally assisted rental properties are in varying states of disrepair with multiple deficiencies, and suggested that irrespective of the housing program HUD might require the same standards to be applied across the board, and according to the housing program requirements, require different levels of risk management measures or approaches to address the health and safety risks posed by the identified hazards.

One commenter stated that the proposed rule lacks coherence between HUD standards and other groups' standards. The commenter further stated that given how housing has been contracted out and privatized, it can be more difficult to assess program-assisted housing.

HUD Response: HUD agrees with commenters that the regulatory consolidation, use of consistent standards across housing program, and program alignment within this rule will allow HUD and regulated entities to realize administrative benefits.

HUD agrees with commenters that the rule will reduce the administrative and cost burden to owners while improving the habitability and safety of HUD-assisted properties and units, which are not mutually exclusive objectives. HUD evaluated many other third-party organization standards and believes its standards are consistent with industry best practices for residential real estate. This rule provides a consistent means of assessing all types of HUD-assisted housing.

This rule will align all listed HUD-assisted programs under the NSPIRE Standards that were proposed on June 17, 2022 and will be final before the effective date of this rule. Resolution of identified deficiencies will be mostly consistent with resolution of deficiencies under the UPCS and HQS standards but scoring and pass/fail decisions will be driven by the NSPIRE program requirements and applicable statutes. With this consolidation, HUD will better focus on habitability and the health and safety of residents.

Minimum Habitability Requirements

A commenter agreed with the idea of reinforcing the importance of minimum habitability requirements and adding the word ''safe'' to the existing rule and suggested that ''safe'' take on issues regarding lead exposure and mean ''protected from the amount of exposure that will cause harm or damage after exposure.''

HUD Response: The term ''safe'' has been, and will continue to be, an important term for HUD inspection standards. This rule will reinforce the priority of maintaining a safe and habitable dwelling. HUD declines to adopt additional language around lead exposure in this regulation, as it is covered by 24 CFR part 35.

Environmental Factors

A commenter noted that ''standard public health and safety metrics related to morbidity and mortality'' are largely foreign to housing providers, and whether they align well with the unique environment of housing maintenance and management is unknown. This commenter agreed that the built environment's effect on the health and safety of residents is more important than any building damage that is strictly cosmetic in nature but cautioned that HUD must ensure that protocols reflect that PHAs are constrained by funding and other funding priorities.

A commenter suggested HUD require inspection of roofs, foundations, storm water runoffs, trash receptacles, ERV systems, heat pumps, and air ducts. This commenter further suggested HUD require screens to prevent bugs, and humidity and environmental control to avoid unnecessary power bills. Another commenter stated that HUD must specifically consider hazards created by the outside environment and their effects on subsidized properties and on the low-income tenants who reside in these developments or are eligible to live there, and that the comment period should either be extended, or a new comment period opened, to specifically consider these important factors. This commenter suggested specifically that HUD should include 24 CFR 982.401(l) in the regulations, as well as 24 CFR 982.401(h), and other environmental hazards considerations (*e.g.,* the proximity of the property to large polluters and transportation infrastructure, toxins in the soil and water, and the area's air quality).

A commenter proposed several additions to address general health and safety concerns. The commenter suggested that HUD address toxic mold and indoor air, largely caused by water leaks and poor ventilation in aging housing stock, by equipping REAC inspectors with moisture meters to detect moisture behind walls that may signal plumbing or roof leaks that cause mold. The commenter also suggested adding and/or revising requirements around a number of health and safety issues, including clogged ventilation; presence of asbestos/radon; presence of lead-based paint; presence of mice, rats, bedbugs and roaches. Finally, the commenter recommended that HUD re-adjust or remove the Point Loss Caps to allow for accurate deductions for deficiencies. The commenter opined that the practice artificially inflates REAC scores, negates the point of a "random sample," and is inherently biased against the health and safety of residents.

Commenters also focused on the issue of water-borne lead poisoning and provided several lead-related suggestions, including that HUD update its lead inspection requirements, by, for example, no longer allowing visual inspections to suffice as a valid way to assess lead risks, and by using a portable x-ray fluorescence tool, or XRF gun to assess lead hazards. A commenter expressed concern that HUD's proposal to make no substantive changes to the lead-based paint requirements of its current regulations misses a critical opportunity to make long-overdue updates to outdated lead standards.

HUD Response: HUD appreciates acknowledgement of the built environment's effect on health and safety of residents; as such this rule focuses on the built environment supported by HUD subsidies and/or assistance, as described in § 5.703 for outside, inside and units and in the NSPIRE Standards notice. HUD acknowledges that capital funding across both its Public Housing and Multifamily programs has been limited in recent years, and this may have resulted in deferred maintenance and modernization. However, this cannot result in units that are unsafe for residents, and so the NSPIRE program has made life-threatening conditions a priority for standards development and scoring.

Comments concerning the scope of inspectable items will be addressed through the subordinate **Federal Register** notice on the NSPIRE physical condition standards, which was proposed for public comment on June 17, 2022.

In the final NSPIRE Standards notice, a screen will be considered a component of the window, and will be cited if damaged, missing or not functionally adequate. HUD acknowledges that some HUD-assisted housing may be located in areas with industrial contamination, and takes very seriously the comment concerning the risks posed to residents by the external environment. Contamination can be addressed as a health and safety concern under § 5.703(e) of this rule. HUD will provide additional information about the applicability of this section in the NSPIRE Administrative notice. Lead-based paint evaluation and hazard control is covered under 24 CFR part 35 and is outside the scope of this rulemaking.

With respect to the dangers posed by water-borne lead, HUD continues to work with the Office of Lead Hazard Control and Healthy Homes and the Environmental Protection Agency (EPA) where there are active, environmental hazards to residents, including lead in water. More information on the review of site contamination is available at: *https://www.hudexchange.info/programs/environmental-review/site-contamination/.*

With respect to other health and safety issues such as mold, moisture and pest intrusion, this rule and the associated standards cover these housing-related hazards. The NSPIRE Standards were proposed on June 17, 2022, for public comment and will be finalized before this rule takes effect. NSPIRE will continue to include visual assessments only, but HUD will continue to consider other, specialized inspections for environmental health issues. The use of a moisture meter to assess moisture intrusion is one of several tools HUD has considered and, because this pertains to inspection standards, HUD will discuss this further in the final NSPIRE Standards notice.

HUD will elaborate more on its scoring methodology in its Scoring notice. HUD will take these comments and all additional comments into consideration before scoring under NSPIRE commences, including whether the point-loss cap will be retained.

Affirmative Requirements

A commenter cautioned that several of HUD's proposed affirmative safety requirements would exceed local building codes and create significant costs for housing stakeholders and create unnecessary confusion and urged HUD to base standards on existing International Building Code or fire Life Safety Codes wherever possible. The commenter suggested that if HUD proceeds with these affirmative safety requirements, the agency should be mindful of these impacts and help owners defray costs, while allowing transition times or the possibility to "earn" extra points, rather than lose points, for new affirmative safety requirements. The commenter further suggested that HUD make efforts to mitigate inconsistencies between inspectors to the extent possible.

HUD Response: HUD considered the costs and benefits of this rule and considered model codes in its development, where appropriate. The affirmative requirements in the final rule at § 5.703 align with the International Property Maintenance Code (IPMC) which is currently adopted for use in 40 States & 1000 plus local jurisdictions as their housing maintenance codes. Affirmative requirements are the basic requirements for an assisted unit and property that must be met for participation. These standards are what HUD considers the minimum requirements for habitability, and generally will not be scored for their presence or absence but will be designated as pass/fail. If they are not met, they will be cited, and must be corrected if the unit is approved for participation or continued occupancy. HUD has evaluated the costs of the new rule in its Regulatory Impact Assessment. The NSPIRE Standards notice was published for comment on June 17, 2022; additional information regarding affirmative requirements will also be included in the forthcoming Scoring notice.

HUD agrees that inconsistencies between inspections and inspectors is an important issue that should be mitigated and has revised the requirements for eligibility and ongoing training as described in the subordinate NSPIRE Administrative notice which will be issued soon after this rule. This notice, and the contract used to procure REAC inspectors will include requirements for quality assurance and control to ensure consistency between inspectors and inspections.

The NSPIRE scoring methodology will be published in the Scoring notice. This Scoring notice will be published for effect but will seek public comments, including regarding scoring changes that reward certain properties for adoption of affirmative requirements, but HUD does not plan to award bonus points for standards that must be met and are not optional.

Alternative Standards

A commenter noted that Federal agencies are required to use voluntary consensus standards wherever possible in their procurement and regulatory activities in lieu of expending public resources developing government unique standards and encouraged HUD to leverage private sector codes by, at minimum, accepting the IPMC across HUD's programs as an optional, alternative compliance mechanism. The commenter opined that allowing adherence to the IPMC to satisfy HUD's maintenance requirements would harmonize these requirements and standardize practices, and that inspectors would be more efficient and effective at implementing a single maintenance standard than they would at three or more variations. The commenter noted the IPMC exceeds HUD's standards because HUD's standards have not been substantively updated for decades., while the IPMC is updated every three years.

HUD Response: HUD considered the IPMC as a model but believes the NSPIRE Standards are more appropriate for HUD programs. To apply the IPMC, the current inspector workforce would need to learn a new set of standards in addition to the statutory requirements that HUD must oversee that exceed IPMC. The IPMC also does not publish standards in areas that are safety concerns for HUD and is often a prescriptive standard that does not consider current conditions.

Accessibility Compliance

Several commenters recommended that HUD require that common areas, indoor mailboxes, parking lots, waste disposal areas, walkways, and other areas should be ADA compliant for persons with disabilities.

HUD Response: Compliance with the requirements of the Americans with Disabilities Act (ADA) is already required for services, programs, and activities of State or local governments, as described in 28 CFR part 35. HUD-assisted properties must also comply with Section 504, as described in 24 CFR part 8. The Office of Fair Housing and Equal Opportunity (FHEO) is responsible for inspection and administrative enforcement related to compliance with accessibility standards under both the ADA and Section 504, as well as the Fair Housing Act. Those regulations are not proposed for modification through this rulemaking. The NSPIRE Standards will include elements of accessibility within the standards, but these elements are not the same as the Federal accessibility standards as they relate to housing. Compliance with these NSPIRE Standards does not mean the participant has complied with the Federal accessibility standards. HUD also notes that the NSPIRE standards include common areas under § 5.703(b), Inside, and the areas outside the property such as waste disposal areas, walkways in § 5.703(c), Outside.

Area Names and Definitions

A commenter suggested clarifying in paragraph (a) that ''outside the building'' includes the building site. This commenter also suggested that paragraph (b) be renamed as ''Inside common areas,'' that both mechanical rooms and utilities rooms be stricken, and that the definition be qualified as applying only to areas that are accessible to residents. With respect to paragraph (c), the commenter suggested renaming it to ''Outside areas'' and that the definition be qualified as applying only to areas that are accessible to residents.

One commenter stated that HUD must define ''functionally adequate'' and also questioned the basis of the universal habitability requirements and design specifications.

HUD Response: HUD streamlined the number of inspection categories (or areas as previously defined) from five to three to simplify the inspection program and improve transparency for all stakeholders. HUD believes that properties should be free from health and safety hazards, including all of the areas as described in (b) Outside, (c) Inside, and (d) Units. Section 5.703(c) includes the building site, building exterior components, and any building systems located outside of the building or unit. Examples of ''outside'' components on the site may include fencing, retaining walls, grounds, lighting, mailboxes, project signs, parking lots, detached garage or carport, driveways, play areas and equipment, refuse disposal, roads, storm drainage, non-dwelling buildings, and walkways. Regarding ''inside common areas,'' mechanical rooms and utilities are included as areas to inspect, regardless of access because they could present a safety hazard that could impact units. For example, combustible materials near a water heater or furnace in a utility room could cause a fire that impacts the entire building. Regarding the definition of the term ''functionally adequate,'' each standard in the NSPIRE Standards notice will define what ''functionally adequate'' means for that particular standard.

Living Rooms as Bedrooms

Commenters suggested that § 5.703(d)(5) should not count living rooms as a bedroom and should be modified to include Public Housing and Multifamily housing. A commenter stated that families with a member who experiences a disability should not be forced to use the living areas as a bedroom in lieu of granting the family's reasonable accommodation request for a larger voucher.

HUD Response: Proposed § 5.703(d)(5) included requirements that for units assisted under the HCV or PBV program, the unit must have at least one bedroom or living/sleeping room for each two persons. While HUD appreciates comments on bedroom sizes, the regulation has been retained with a modification to exclude gender qualifiers but retained language around age regarding what PHAs could require for families. The commentor's concerns, however, touch also on subsidy standards in § 982.402, which are not proposed for revision. The requirements for family size and composition are not applied to the Public Housing and Multifamily housing programs because those programs did not previously have strict occupancy requirements linked to the unit size. Families that include a person with a disability may request a waiver of the occupancy requirements to accommodate their needs as a reasonable accommodation. The Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 each prohibit discrimination against persons with disabilities, and PHAs and owners are obligated to grant requests for reasonable accommodation when it may be necessary to afford a person with a disability with equal opportunity to use and enjoy housing. For more information or to file a complaint, see *www.hud.gov/fairhousing.*

Superseding State and Local Code

A commenter suggested that § 5.703(f)(1) should be amended to state that HUD standards supersede local or State codes when HUD standards exceed local or State codes.

HUD Response: HUD declines to state that HUD's standards supersede local or State code. The NSPIRE rule establishes a standard for housing quality across covered HUD programs, while allowing applicability of State/local building codes that are more protective or necessary for local conditions. Superseding State or local code only where HUD standards exceed that code, and only for HUD housing, would be administratively difficult and unnecessary. HUD Housing is required to follow both Federal standards and State and local law.

Application to HCV and PBV Units

Commenters suggested that § 5.703(f)(2) should be amended to require HCV and PBV units (not just Public Housing and Multifamily housing) to meet State and local standards that are greater than those established by HUD in order to comply with the subpart. A commenter asserted that the inapplicability of State and local housing code to HCV and PBV units is in opposition of the statute and HUD's historical practices and stated that HCV and PBV units should not pass inspection if they do not comply with Federal, State, and local codes, asserting that voucher families should be able to benefit from using State and local laws to improve their housing conditions without the risk of their losing their subsidies, and that to the extent HUD is concerned that State and local codes are being used to target and exclude voucher holders, HUD could clarify that local and State code violations cannot result in the termination of the subsidy or used in a manner to penalize the tenant household. A commenter stated that HUD must ensure that inspection standards applicable to the HCV program do not impose requirements that exceed typical rental market standards and unintentionally limit housing choice or discourage landlords from participating. The commenter stated specifically that the standard for units to have ''a living room and a kitchen area'' should reflect the existing definitions used in the HCV program and that the phrase ''other than very young children'' must be defined, or it must be clear that the housing provider has the discretion to define the age.

HUD Response: HUD believes that the language under § 5.705(a)(3) is sufficient to address these concerns. State and local codes still apply to HUD assisted housing, but the requirements would not be incorporated in the NSPIRE inspection. For the HCV and PBV programs, PHAs have the ability to consider variations in local laws and practices and provide appropriate flexibility to facilitate the efficient provision of assistance. Multifamily owners, managers and PHAs are encouraged to include State and local requirements in their annual self-inspections. HUD agrees that the HCV and PBV program should have certain flexibilities to ensure that the program does not unintentionally limit housing choice or discourage landlords from participating, while still requiring that units be healthy and safe for residents.

With respect to definitions of ''living rooms'' and ''kitchens,'' HUD has not created new definitions for these spaces in regulatory text, and State/local standards will continue to apply. In the Administrative notice, HUD will include definitions that align with the American Housing Survey. HUD appreciates the comment on defining ''very young children.'' As discussed elsewhere, HUD removed the regulation requiring separate bedrooms for children of the opposite sex, and therefore the term ''very young children'' is no longer used.

Comments Regarding Smoke/Carbon Monoxide Detectors and Fire Extinguishers

Commenters had concerns about the burden associated with providing the various items. One commenter suggested that requirements for CO/Smoke detectors in every sleeping room be grandfathered to requirements at the time of construction. The commenter noted that current regulations and code require them on each living level but, unless a minimum threshold is crossed in rehab/modification in any unit, they are not required in each bedroom. The commenter also opined that the likelihood for tampering and/or removal will increase by a level times the number required to be provided.

Another commenter opined that the proposed change of requiring fire extinguishers in every unit is a costly and bad idea to implement, and that it will be highly difficult to regulate extinguishers owned by residents, and costly in dollars and points to the project. Another commenter urged HUD to reconsider the draft standard that would require a fire extinguisher in every unit, and to replace it with a requirement to install extinguishers regularly at a certain measure throughout the hallways of properties. The commenter stated that having a fire extinguisher in the unit will increase the likelihood that a resident will remain in the unit in the case of the fire and try to extinguish it, instead of exiting the unit as quickly as possible.

A commenter stated that requiring a fire extinguisher inside each rental unit would exceed local requirements and create administrative burden. Some commenters supported requiring carbon monoxide detectors. One commenter stated that HUD must move quickly to require the installation of carbon monoxide detectors in HUD-assisted and HUD-insured housing, and that, given that most local codes require the presence of carbon monoxide detectors, there is no need for delay. A commenter noted that HUD did not require carbon monoxide detectors to be installed consistent with the 2018 edition of the International Fire Code but noted that the IPMC has required carbon monoxide detectors in each of the last two editions. A commenter asked if fire stops could be used in place of fire extinguisher and noted success in installing fire stops, which deploy automatically, above stoves to prevent kitchen fires, which they found to be safer than using a fire extinguisher.

HUD Response: Regarding carbon monoxide detectors, the requirements in the 2021 Consolidated Appropriations Act took effect on December 27, 2022. The Act requires that PHAs adopt the provisions of the 2018 edition of the International Fire Code (IFC) Standards, sections 915 and 1103 (or subsequent versions if amended) for the covered programs. The NSPIRE Standards proposed to incorporate this requirement, but the statute is prescriptive for public housing owned or operated by a PHA, dwelling units occupied by individuals with Housing Choice Vouchers, dwelling units assisted with project-based vouchers or project-based rental assistance, dwelling units assisted under the 202 and 811 programs, and dwelling units assisted under the HOPWA program and required that units in these covered programs have carbon monoxide detection devices installed, effective December 27, 2022. No action from HUD was necessary to cause this requirement to take effect, and HUD is making these conforming changes at the final rule stage without notice and comment because they only incorporate these statutory requirements.

Regarding fire extinguishers and other fire safety requirements, the proposed NSPIRE Standards notice published on June 17, 2022, included a fire extinguisher requirement and HUD will discuss this requirement, including comments received on this requirement, more in the final Standards notice. With respect to the comment about ''fire stops,'' HUD interprets the comment as actually relating to a ''StoveTop Firestop system.'' HUD does not intend to include such a system as an alternative manner of compliance because these systems do not have national standards and must be acceptable to the local authority having jurisdiction.

Other Suggestions

A commenter supported requiring pictures of failed items and recommended requiring pictures of items that are not fails but should nonetheless be documented. Another commenter supported current HUD asbestos abatement standards. Another commenter urged HUD to provide a single document with clear and objective scorable defects and weight of defects and required condition.

Two commenters suggested that HUD, in the final rule, refine the characteristics of some of the identified unit components, such as adequate heat (and cooling where appropriate) directly or indirectly in each room, well-functioning windows and doors with functioning locks, and an adequate number of electrical outlets and built-in lighting fixtures.

HUD Response: HUD appreciates the comments about the need for a clear and objective scoring methodology. NSPIRE will require documentation of deficiencies which inspectors will upload into a new streamlined system. Further guidance regarding documentation of deficiencies will be published in the final Standards notice, Scoring notice, and Administrative notice which will be published before the effective date of this rule.

The proposed rule did not propose new standards for asbestos in federally assisted housing and HUD is choosing not to do so now. Property owners, managers and PHAs are advised to continue to monitor any known or suspected asbestos containing materials (ACM) and ensure that they are not damaged or friable. If ACM will be disturbed during renovation activities, follow all applicable OSHA and EPA laws.

Comments Regarding Water Safety (Questions for Comment #1 and #2)

HUD asked several questions about water safety. HUD received comments on all of these questions, which are combined and discussed below. The first group of questions was directed at definitional issues, i.e., how should ''safe and potable water'' be defined and whether ''safe'' should mean that a public water system is in compliance with the Safe Drinking Water Act?

A number of commenters pointed out that PHAs are not in a position to monitor water safety, which is the responsibility of local water suppliers and local government agencies. Commenters also noted that there is an important distinction, unaddressed in the proposed rule, between properties served by public water systems and those served by well water systems. Some commenters stated that HUD had no business attempting to define ''safe and potable water,'' with a few recommending specifically that ''safe'' be removed. These commenters stated that this determination is the province of other State and Federal entities, most notably the EPA, and that HUD lacks the requisite expertise with respect to determinations of water safety.

Many commenters did suggest definitions for ''safe and potable water.'' Some commenters suggested keeping the definitions very basic: ''Running water with temperatures of hot and cold running thru the pipes''; ''water that is safe to drink and for food preparation''; potable water is water that is ''safe to drink.'' One commenter suggested that HUD should define safe water as having ''reasonable certainty that no harm will result,'' and that ''there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the conditions of its intended use.'' This commenter, with respect to ''potable water,'' suggested that potable means more than just safe, and that water can be used for drinking, cooking, bathing, and other household needs, and therefore must meet the required (chemical, biological and physical) quality standards at the point of supply to the users, and be of an acceptable color, odor and taste for each personal and domestic use. One commenter stated that ''if water is coming from a public source, it is safe to assume the water is fit to drink.'' A commenter believed that HUD should establish a national definition, not driven by local standards or politics. Many commenters stated that it is appropriate for HUD to rely on EPA determinations under the Safe Drinking Water Act (''SDWA''). At least two commenters, however, while supporting a general reliance on EPA's SDWA determinations, pointed out that those determinations are not acceptable in the presence of lead service lines.

HUD also asked several questions related to detection and enforcement of safe water standards, including how should HUD monitor whether water is safe; what elements should be reviewed during a physical inspection to determine water safety; and whether inspectors should verify that a municipal water supply authority is in compliance with EPA's Safe Drinking Water Act?

A number of commenters expressed an opinion that HUD should not be involved in ''monitoring'' water safety; rather, HUD should defer to the agencies that currently monitor the water supply under State and Federal law. One commenter noted that should HUD choose to enter this area, participation should be limited to confirmation that the property is served by a municipal water system through a water bill or that any private well system is monitored and tested regularly. Another commenter stated that adding a new safe water monitoring layer to something that is already regulated and monitored on a State and Federal level seems a bit redundant and unnecessary. Another commenter offered that if HUD is concerned about water quality, then HUD, either internally or through the EPA, should be able to perform regular, routine inquiries about public water systems around the country to ensure that those systems are in compliance with the Safe Drinking Water Act.

Similar to monitoring, a number of commenters expressed an opinion that HUD should not be involved in conducting inspections related to water safety; or, in the alternative, that HUD conduct only the most cursory inspection with respect to water safety. One commenter opined that no elements should be reviewed during the physical inspection to determine water safety; that a PHA has met its responsibility if there is hot and cold running water. Another commenter suggested that HUD's inspection be limited to a visual observation of water for contamination or discoloration. Other commenters suggested that no elements should be included by HUD in requirements for physical inspections other than a visual inspection for poorly maintained pipes and valves and confirmation that water flow is present and can maintain at least 120 degrees.

One commenter suggested that as one element of inspection, HUD should seek to determine that owners are not delinquent in their water and sewer accounts for individual properties, in order to ensure that properties are not at risk for service disconnection. Several commenters suggested that HUD could review local Water Quality Reports that are compliant with the U.S. EPA's National Primary Drinking Water Regulation for Consumer Confidence Reports, and/or other reports provided by municipalities/water supply authorities.

Two commenters opined that inspectors trained in water sampling techniques could take the water samples directly and send them to a certify laboratory for analysis. One commenter stated that HUD should monitor drinking water safety by testing housing facility infrastructure for contamination, not just public water systems. Another commenter stated that HUD, either internally or through the EPA, should be able to perform regular, routine inquiries about public water systems around the country to ensure that those systems are in compliance with the Safe Drinking Water Act. If not, the Federal Government should work with the local jurisdiction managing the public water system to ensure those systems are upgraded and safe. The commenter noted that HUD can also inform PHAs in those areas that there may be water contamination so that they may inform their residents and provide those residents options for safe drinking water if the local or State government has yet to do so.

One commenter recommended that HUD must conduct its own monitoring of water safety in order to ensure that housing it supports provides safe and potable water to its residents. The commenter suggested periodic monitoring of every unit for lead; PFAS and other unregulated yet harmful contaminants; Legionella; and, objectionable smell, taste, color, or clarity, and that monitoring and sampling should be done in accordance with the best science to achieve accurate results. The commenter also stated that HUD must immediately notify residents of unsafe or unpotable water, what is being done to rectify the condition, and when the condition has been resolved.

With respect to whether HUD inspectors should verify that a municipal water supply authority is in compliance with EPA's Safe Drinking Water Act, the majority of commenters replied in the negative with several noting that building owners have zero recourse if the water provider is not in compliance with the Safe Drinking Water Act. One commenter expressed that if HUD seeks to verify the availability of safe and potable water for residents, the Department should communicate with local water system administrators rather than with property owners and agents. One commenter stated that SDWA is designed to measure a water system's compliance with Federal standards, which the commenter finds lacking in several respects. This commenter stated that Federal lead standards, EPA enforceable limits, and maximum SDWA contaminant levels are out of date and do not reflect latest scientific evidence, with the result that some dangerous contaminants can be present in water within homes even though the water provided by the water system is free of the bacteria.

Some commenters supported the notion that HUD should verify SDWA compliance; one commenter strongly supported this idea. This commenter stated that HUD should create a uniform standard of water safety monitoring at HUD facilities nationwide. Another commenter opined that water safety should be determined using the guidelines of the EPA's Safe Drinking Water Act and that an inspector needs to ensure that the local municipal water supply authority is in compliance.

Those commenters who did suggest physical inspection criteria offered a number of recommendations. Multiple commenters suggested primary reliance on official reports from other governmental entities; one of these suggested that where there is no public water supply HUD's inspection should rely on appearance, odor and/or taste. Another commenter suggested that a basic turbidity test from randomly selected units at the property might give some immediate feedback for an inspection report about whether a plumbing issue might be impacting the potable drinking water, and that an inspector could also take a quick pH test at the same source. This same commenter suggested that privately sourced water could be sent to a laboratory for testing.

A commenter suggested that any Point of Use or Point of Entry treatment device should be identified and inspected to ensure it is properly installed and maintained, and that hot water tanks be inspected and drained, as appropriate. This commenter recommended inspection criteria for well water systems, including well inspection; proximity to and quality of any onsite or neighboring septic system; total coliform/microbial testing; lead and copper testing, and chemical testing for all known potential chemical contaminants in the aquifer.

HUD Response: HUD appreciates comments on how water is monitored, and the shared responsibility for ensuring drinking water safety. HUD notes that drinking water requirements are not new to HUD standards. Requirements already exist within the HQS and UPCS regulations, with additional details in the HQS inspection guidance; the NSPIRE regulations consolidate and clarify the requirement. At this final rule stage, HUD is including a requirement that the unit provide safe drinking water, regardless of the source (well vs. municipal water supply). Additional information about this requirement is provided in the NSPIRE Standards notice proposed for comment on June 17, 2022.

When there is public health risk related to drinking water from a public source, the public water system is required under US Environmental Protection Agency (EPA) regulations [11] to notify its customers. Notice typically includes local media alerts, postings on public water system websites and alerts in water bills. Given this, HUD expects that PHAs, residents and landlords participating in the Section 8 programs will have a minimal burden to monitor public water safety. If a local public water system notifies a landlord or PHA that the public water is contaminated and recommends action, landlords participating in the Section 8 program are already expected to ensure that the action is taken. This same expectation applies to PHAs operating public housing. This rule standardizes both regulations to a single requirement and adopts the existing approved acceptability criteria for drinking water for all applicable programs.

HUD adopted the term ''safe'' to align its regulations with the term used under the Safe Drinking Water Act, as well as to support the broad HUD-wide goal to provide safe, habitable housing for residents. Water for drinking, bathing and other activities must be available to residents. After consideration of public comments, HUD has decided to continue to defer to EPA's determinations for allowable levels of drinking water contaminants, and what is considered safe. HUD expects that landlords, PHAs, and residents will be advised by a public water system, State or local health departments, or the EPA when the public water is unsafe and can rely on this determination without further testing. These alerts will be distributed through local media alerts, the public water system website or within water bills. PHAs and owners should be aware of local water safety alerts and take action to either implement recommendations or provided an alternate source of safe

[11] 40 CFR part 141, subpart I.

water, such as bottled water. Often, the impacted jurisdiction will provide bottled water for free. For more information about requirements for public notification, see *https://www.epa.gov/dwreginfo/lead-and-copper-rule.* Regarding the suggestion of a visual inspection for contamination or discoloration, this observation would not indicate if the water had high levels of lead. Additional details about the water inspection process will be provided in the NSPIRE Standards notice.

The NSPIRE rule, and the REAC physical inspection, does not require detailed reviews of documentation, and there is no current HUD regulatory requirement that PHAs and property owners maintain documentation of water and sewer payments or local water quality reports. This would be a substantial new administrative burden not contemplated in the proposed rule. Additionally, since this information is not federally standardized, it would add a significant time burden to the inspection. HUD has consulted with the EPA on whether it could monitor reporting in the Safe Drinking Water Information System (SDWIS), but the information reported is delayed, and may not indicate whether there is a current exposure risk. For example, when lead is identified through routine system monitoring, the public water supply can take actions to alter water chemistry to reduce leaching. In HUD's administrative notice, HUD intends only to include a requirement that PHAs and landlords be aware of local drinking water alerts that are already required under EPA regulations and to take action to implement an acceptability criteria variation (*e.g.,* point of use water filtration) when necessary. These alerts are issued when actions taken by the public water system are not sufficient and there may be a risk of exposure. HUD also continues to evaluate means of using publicly available data to keep residents safe.

HUD declines to include a requirement under NSPIRE for inspection of water treatment devices, point of use filters, well systems, or water testing. Section 5.703(d)(1) requires that the unit include an adequate source of safe water and does not specify or establish different contaminant standards for whether the source is municipal or well. As discussed above in the preamble, HUD has removed the term ''potable'' and has clarified that safe drinking water must be provided in the kitchen.

Question for Comment #3: Site and Neighborhood Standards

HUD asked whether the site and neighborhood standards as found in 24 CFR 982.401(l), should be included in the regulation or only in the inspection standards. HUD also asked whether all of the explicit standards should be included or if there are certain site and neighborhood standards that HUD should consider changing. HUD received the following comments in response.

Site & Neighborhood Standards Generally

Several commenters stated that PHAs should be held responsible for environmental conditions within their control and that the standards remain relevant because it may sometimes be necessary to invoke site and neighborhood standards when conditions are genuinely unsafe, especially for children. A commenter stated that site and neighborhood standards have historically been important to ensure a balanced distribution of public housing projects within a locality.

A commenter suggested that a regulation for a site & neighborhood inspection is unnecessary because most of the facilities already follow the HUD and Tax Credit guidelines to not build in areas of industry, railroad tracks or traffic congestion; another noted that it would not make sense to include these standards in the regulation when the vast majority of inspection standards will not be in the regulation. Another commenter pointed to the difficulty inspectors would have enforcing local site and neighborhood standards.

Commenters cautioned that these standards could be prejudicial against older housing and transit-oriented properties and suggested that historical buildings should be exempted from the testing standard to preserve the rarity and quality of materials and finishes in these buildings.

Commenters expressed concerns that site and neighborhood standards can be subjective and very hard to judge, unless an area clearly represents a serious health hazard or safety concern. Thus, commenters urged HUD to provide explicit standards and to clarify how it determines whether there is a danger because it is important for HUD to provide specific and measurable guidance so that PHAs are able to incorporate any changes into existing processes. A commenter urged HUD to write the regulations to specify that properties must be ''reasonably free'' of ''serious adverse environmental conditions''; another suggested HUD add ''landslide'' and ''hill slide'' to the term ''mudslide'' and cited to examples of HUD-assisted properties being vacated due to hill slide events in both public housing and project-based housing.

With respect to the Section 8 program, where there is no scoring system similar to the PHAS system, a commenter suggested HUD clarify whether these items require failure of an HQS inspection.

One commenter opined that the site and neighborhood standards should be included in the inspection standards and the regulation, because there are no qualifications for inspectors and leaving enforcement to individuals who can only rely on instructions provided by their locality would defeat the implementation of establishing a uniform standard. This commenter also opposed giving these inspectors discretion, which the commenter said would effectively render them legislators.

HUD Response: HUD appreciates the comments related to the importance of site and neighborhood standards to the NSPIRE rule. HUD believes that expanding the existing HQS site and neighborhood standards from § 982.401(l) to apply to additional programs would negatively impact existing properties for circumstances beyond their control and threaten already scarce affordable housing resources. With this final rule, the original text of § 982.401 is removed and the regulation refers to § 5.703. Site is included as the example ''building site'' at § 5.703(c). Neighborhood conditions are not directly included in § 5.703(c). The listed elements of the outside must be functionally adequate, operable, and free of health and safety hazards. The final subordinate NSPIRE Standards notice, to be published before this rule is effective, will provide more details on areas and components inspected. HUD will continue to update and publish guidance on other environmental hazards that are not fully addressed by NSPIRE, such as radon, lead-based paint, carbon monoxide, and other environmental health hazards. The NSPIRE inspection is not intended to serve as the only way HUD assesses compliance with all environmental health laws and related requirements. Compliance is verified through other oversight processes performed by different HUD staff. For example, radon is considered as part of certain environmental reviews conducted under 24 CFR parts 50 and 58. Because the revised § 982.401 will refer to the new § 5.703, the term ''mudslide'' is no longer in regulation, and there is no need to add ''landslide'' or ''hill slide'' as examples in regulatory text. Finally, NSPIRE inspections will include the elements identified as ''outside,'' including the site as provided in the NSPIRE Standards notice. But the NSPIRE inspection will not include environmental sampling. The focus of NSPIRE is more toward residents' units, where residents spend the most time.

Inspectors using the NSPIRE standards will be trained in the standards and have experience in performing housing inspections. The final NSPIRE Standards notice will provide guidance on what to evaluate, and the NSPIRE Scoring notice will provide factors for scoring. A software tool will be available to inspectors and PHAs to help ensure assessments are consistent and accurate. Property owners and managers will continue to have a process to appeal physical inspection scores to HUD, and REAC will continue to have a quality assurance team to monitor inspection scoring and trends. The process for appeals is provided in this final rule at § 5.711(c), (d) and (e) and the Administrative Procedures notice.

Environmental Conditions

Many commenters stated that the property or PHA should not be held accountable for adverse environmental conditions outside of its control, such as flooding, poor drainage, sewage hazards, mudslides, air pollution, smoke or dust, excessive noise of vehicular traffic, and issues with adjacent lots or buildings. A commenter noted that property owners' ability to address these issues may be restricted by local laws. Another noted that fire hazards, garbage and infestations can be the result of tenant behaviors within their units, common areas or the site grounds.

Commenters pointed out that if properties are penalized for these issues, the voucher program may have fewer units available for families as landlords are increasingly frustrated with the inspection process. One commenter stated the neighborhood standards may also preclude provision of assistance to existing homeowners in substandard housing conditions that reside in rural communities where drainage, streets, sidewalks and other neighborhood improvements are not found or also require improvement.

Commenters suggested that the site and neighborhood standards should be considered for properties only at the time of development, prior to final endorsement, or prior to entering into a rental subsidy contract.

HUD Response: HUD appreciates the comments regarding site and neighborhood standards and environmental conditions that may be outside the control of the property owner or PHA. In addition to HUD's responses above, NPSIRE inspections and scoring are more focused on the units, versus other inside and outside areas. This is because the unit is where residents spend most of their time, and the safety and habitability of the unit is critical. Additional details on inspectable areas and deficiencies were proposed for comment in the subordinate NSPIRE Standards notice and will be finalized before the rule is effective.

Questions for Comment #4–11 on HOME and HTF

HUD asked a number of related questions pertaining to minimum housing condition standards, minimum deficiencies, and other appropriate standards across HOME and HTF, including HOME Tenant-based rental assistance (TBRA) properties, in a variety of contexts (e.g., rehabilitation, rental, home ownership and affordability period) to solicit feedback on appropriate standards to ensure that HOME-assisted and HTF-assisted housing remains decent, safe, sanitary and in good repair.

Comments Regarding HOME and HTF Standards Generally

Across the different scenarios presented, several commenters expressed a need for a uniform, consistent set of standards, not only for HOME and HTF, but across all federally assisted housing programs. One commenter stated that minimum standards should not be asymmetrical depending on program or resident type, but broad sweeping to fit all sorts of housing units. The same commenter recommended that inspectors for HOME and HTF programs be provided clear definitions to limit firsthand interpretations of the guidance as well as appropriate supplemental training on future guidance.

HUD Response: HUD appreciates and agrees with the comment with respect to consistency and has aligned standards with only minor exceptions. The NSPIRE rule aligns HOME and HTF standards with other HUD-assisted housing programs subject to NSPIRE. There will be some differences by project type in certain cases (*e.g.,* rental project, homebuyer acquisition, or units occupied by tenants receiving HOME TBRA). While the NSPIRE rule aligns standards for HUD-assisted housing programs where these programs share common attributes (*e.g.,* within the dwelling unit), HUD agrees with comments pointing out that the minimum deficiencies that must be corrected in a HOME- or HTF-assisted project should vary in certain cases. This is because NSPIRE includes standards for areas or components of a Multifamily building that do not exist in a single unit assisted with HOME TBRA or HOME or HTF-assisted single-family housing of one to four units. In addition, HOME and HTF may be used to assist a homebuyer to acquire housing, which is a fundamentally different type of housing project compared to the HUD rental programs for which NSPIRE is designed. HUD is concerned that unduly onerous property standards may severely limit the choice of unit for an individual or family receiving assistance for homebuyer acquisition. It is HUD's intent to impose property standards that ensure both HOME- or HTF-assisted homebuyer acquisition projects are decent, safe, sanitary and in good repair but also sustainable so that the homebuyers are not subject to the financial burden of a system replacement or major repairs soon after acquisition.

Consequently, HUD has determined that it is necessary to impose HOME and HTF minimum property standards consistent with NSPIRE's focus on safety and habitability, but which vary based on project type to balance the need for both quality and availability of housing. As requested by commenters, HUD will provide additional guidance and training to ensure that all PJs and HTF grantees understand the property standards requirements. HUD's Office of Community Planning and Development (''CPD Office'') will issue an NSPIRE notice describing the applicability of the NSPIRE Standards for HOME and HTF.

Comments Regarding Minimum Housing Condition Standards for HOME and HTF Housing

Some commenters discussed the suitability of the current HQS as an appropriate standard to ensure that the housing remains decent, safe, sanitary and in good repair. One commenter believed that HQS in and of itself could apply across the programs covered by the proposed rule. Another commenter stated that HQS, in combination with the current HomeFirst inspection form, would establish a robust minimum housing condition standard.

One commenter recommended adoption of International Residential Code (IRC) for single family new construction projects and rehabilitation projects. With respect to rehabilitation, the commenter further recommended inclusion of minimum health and safety standards in addition to IRC, as not all health and safety concerns are addressed by IRC rehabilitation requirements.

With respect to HOME TBRA specifically, the commenter urged HUD to consider that many participants elect to reside in single-family housing that may not meet the requirements set forth for HOME rental properties and expressed an opinion that existing Housing Quality Standards are well suited to both homebuyer, acquisition only, and HOME TBRA projects.

A commenter recommended that HUD include § 982.401(l) and (h) and other environmental hazard considerations.

HUD Response: HUD understands that some commenters prefer HQS as a standard for ensuring that HOME- and HTF-assisted housing is decent, safe, sanitary and in good repair upon completion and throughout the period of affordability for rental housing. HUD believes that the transition to NSPIRE will retain what commenters appreciate about HQS while accomplishing NSPIRE's goal of aligning standards across HUD programs.

For the HOME and HTF programs, CPD will issue a notice to implement the NSPIRE Standards and identify deficiencies related to the NSPIRE Standards for these specific programs. In CPD's experience with HQS as a minimum property and inspection standard for HOME TBRA units and certain HOME and HTF rental projects, HOME- and HTF-assisted housing have different statutory requirements than other NSPIRE programs and therefore, other factors that must be considered in implementing revised property standards. This rule revises the HQS regulations at § 982.401 to point to § 5.703. Due to this, HUD will implement requirements for HOME- and HTF-assisted projects that limit the applicability of the NSPIRE Standards to accommodate program-specific requirements.

HOME and HTF programs are formula block grants that allow for local decision-making by the State and local governments that administer these programs. Therefore, HOME and HTF cannot impose property standard requirements that ignore State and local codes. This requirement for compliance with State and local codes is also statutory under the HOME program. Consequently, it is not possible for the NSPIRE Standards to replace State and local codes in HOME and HTF-assisted projects. In the absence of applicable State or local codes, HOME and HTF program regulations apply the IRC or International Building Code (IBC) of the International Code Council to new construction projects, as applicable to the type of housing, and the International Existing Building Code (IEBC) of the International Code Council to rehabilitation projects, as applicable.

References in HOME to § 982.401(l) and (h) and other environmental hazard considerations are now covered by § 5.703(c) and have been updated. HUD agrees that elements of § 982.401(l) and (h) and other environmental hazards are important and will be addressed in the supplemental CPD NSPIRE notice that will apply to HOME and HTF.

Comments Comparing NSPIRE Standards to HOME and HTF Housing and Minimum Deficiencies

One commenter, in comparing the NSPIRE Standards to minimum deficiencies that must be corrected in HOME- and HTF-assisted rehabilitation projects at §§ 92.251(b) and 93.301(b) or which must be corrected prior to HOME- and HTF-assisted homebuyer acquisition of standard housing, opined that the HomeFirst inspection form meets or exceeds the NSPIRE standards for minimum deficiencies that must be corrected since it incorporates State and local standards of housing safety and maintenance. Another commenter stated that there should not be a minimum or maximum of deficiencies that must be corrected during an onsite inspection; rather, there should be a system in place by which as many hazards are identified in a home, evaluated, and prioritized based on their severity for potential health and safety outcomes affecting the occupants. Once there is a prioritized list, the owner would address those hazards in the order of outcome severity. The same commenter specifically noted that addressing lead hazards should be part of that high standard for housing assisted with HOME or HTF, and that lead hazards assessed should include lead-based paint, lead in the drinking water with point of use testing, and soil contamination.

With respect to whether HUD should establish different minimum deficiencies that must be corrected in HOME- or HTF-assisted rental housing and homebuyer or owner-occupied housing rehabilitation projects at §§ 92.251(b) and 93.301(b), a commenter stated that instead of having minimum deficiencies that must be corrected, the property owner/manager should address the hazards based on the severity (*i.e.,* extreme, severe, serious, or moderate) of potential health and safety outcomes affecting the occupants.

HUD Response: Under the HOME and HTF regulations, an owner of a rental property must immediately correct health and safety deficiencies. In addition, the lead-based paint requirements at 24 CFR part 35 continue to apply to HOME and HTF-assisted rehabilitation projects and during the period of affordability for rental projects; these regulations are not proposed for revision and this final rule includes cross-references to the applicable sections of part 35, including subparts B, J, K, M, and R. HUD disagrees that the programs should not set minimum deficiencies that must be corrected following an onsite inspection of rental housing during the period of affordability. If HOME or HTF funds are invested in a rental development project, HUD must ensure that the project remains decent, safe, sanitary and in good repair throughout the period of affordability. This is a statutory requirement for HOME. Furthermore, the HOME and HTF programs require that PJs and HTF grantees underwrite a rehabilitation or new construction rental project to ensure that funding is available to make necessary repairs throughout the period of affordability. Therefore, it is reasonable to expect HOME and HTF projects to support necessary repairs to maintain the housing at a standard that meets HOME and HTF minimum requirements and the PJ or HTF grantee's ongoing property standards.

HUD does not agree that the HQS, in combination with the current HomeFirst inspection form, would meet the new standards established with the NSPIRE final rule.

Comments Regarding Minimum Deficiencies for Small HOME and HTF Rehabilitation Projects

With respect to whether HUD should establish different minimum deficiencies that must be corrected in large and small HOME- or HTF-assisted rehabilitation projects at § 92.251(b) and § 93.301(b), commenters replied in the negative, and generally repeated the feeling that standards should be uniform across programs and occupancy categories. With respect to how HUD should define a large housing project, one commenter suggested that the appropriate threshold is 40 or more units.

HUD Response: HUD agrees with commenters and will not establish different minimum deficiencies for large and small HOME- and HTF-assisted rehabilitation projects in this final rule.

Comments Regarding Minimum Deficiencies That Must Be Corrected for HOME or HTF Housing

With respect to whether HUD should establish different minimum deficiencies that must be corrected for HOME or HTF-assisted rehabilitation and homebuyer or owner-occupied acquisition of standard housing projects at § 92.251(c)(3) and § 93.301(c)(3), one commenter opined that no updates to the minimum deficiency standards are recommended at this time.

Another commenter responded in the affirmative, noting that the current requirement for single-family housing to meet the requirements of UPCS includes inspecting for non-applicable items, and exceeds the standard for other federally assisted or insured mortgage programs. The commenter recommended that units for acquisition be subject only to homebuyer inspections as required by FHA financing, and not subject to a separate standard.

HUD Response: Updates to the required minimum deficiencies that must be corrected in a HOME- or HTF-assisted rehabilitation or homebuyer acquisition project are necessary because the current regulation references UPCS, which will no longer exist when this rule becomes effective. HUD agrees with the commenter that minimum deficiencies to be corrected should vary based on project type in certain cases because not all the standards of NSPIRE, which was developed for ongoing inspections of Multifamily rental developments, will apply to single-family housing.

Comments Regarding Minimum HOME TBRA Written Property Standards

With respect to whether HUD should establish minimum written property standards requirements for housing occupied by tenants receiving HOME TBRA at § 92.251(f) that exceed or are different than minimum requirements for the ongoing condition of HOME-assisted rental housing, one commenter noted that tenants of HOME TBRA often reside in single-family housing rather than in multifamily rental developments and that the use of a standard that is heavily focused on large rental developments, such as UPCS, would include items that are not present in single-family housing, and may neglect to fully inspect for hazards that are generally only present in single-family housing.

With respect to whether HUD, in the alternative, should apply the NSPIRE standards (not to include the inspection procedures, administrative processes for scoring and ranking, or the enforcement requirements of NSPIRE) to housing occupied by tenants assisted with HOME TBRA at § 92.251(f), one commenter stated that this was a reasonable approach. The commenter stated that HUD can apply NSPIRE standards but allow local jurisdictions to establish stronger local standards which would apply in that jurisdiction. The NSPIRE standard should be a minimum, but if there are higher quality standards that local jurisdictions establish, those should be allowable as well. Another commenter replied in the negative, stating that HUD should treat this situation consistent with the proposed rule for HCV and PBV, and not another standard.

In response to whether another national housing quality or condition standard exists that HUD should apply to housing occupied by tenants assisted with HOME TBRA, one commenter recommended the use of the same standard for HOME TBRA as for the Section 8 HCV program, even if this standard is different than the standard for HOME rental projects. The commenter reasoned that HOME TBRA closely mirrors the Section 8 HCV program, and both programs are often administered by the same agencies, allowing them to utilize one common standard that is most applicable to the project type.

HUD Response: HUD agrees with commenters who requested consistency. The NSPIRE rule establishes standards that will cover all listed programs, with exceptions only where there are differing statutory or programmatic requirements. For example, the regulation at § 92.251(b)(1)(viii) continues to exclude HOME-assisted projects and units from using the scoring, item weights, criticality, and other requirements contained in §§ 5.705–5.713. Additionally, HOME PJs must create their own ongoing property standards for HOME rental housing or housing occupied by tenants receiving HOME TBRA, which must comply with State and local code requirements and ordinances. Where there are no applicable State or local code requirements and ordinances, the HOME PJ will be required to inspect the property so that the property does not contain the specific deficiencies prescribed by HUD based on the applicable standards in 5.703 and published in the **Federal Register**. By doing this, HUD is establishing c HOME PJs require owners maintain the housing as decent, safe, and sanitary housing in good repair.

Question for Comment #12: Special Housing

HUD asked whether the application of unique standards to certain specific special types of housing (i.e., single room occupancy housing; congregate housing; shared housing; and manufactured homes) in the HCV, PBV, and Moderate Rehabilitation Programs should be expanded to apply to CoC, ESG, and HOPWA programs as well.

Two commenters expressed general agreement with the expansion of the unique standards; however, one of these commenters limited endorsement of the application of the unique standards to CoC PBRA. One commenter stated that the unique standards should be expanded to apply to CoC, ESG, and HOPWA programs. The commenter opined that if a recipient of CoC, ESG, or HOPWA funding determines that using a special type of housing is the best course of action for a specific household, then they should be able to use that type of housing and not be penalized through poor inspection scores based off of standards that do not make sense for the unit. The commenter also noted that applying the unique standards to CoC, ESG, and HOPWA will help standardize inspection protocols across HUD programs.

One commenter stated that the unique standards should apply to CoC, ESG, and HOPWA programs in order to fulfill HUD's intent to align inspection requirements for all housing assistance programs to decrease the complexity and uncertainty associated with participating in HUD's programs that may deter some owners from future involvement, as well as to decrease regulatory burden. The commenter further suggested that HUD consider other housing types recently implemented by municipalities to address their housing crises such as the approval of Accessory Dwelling Units.

One commenter stated that the NSPIRE protocol should consider universally accepted norms associated with healthcare, assisted living and memory care occupancies, and that these should include specific allowances for egress issues associated with normal elopement risk reduction inherent to these facilities. The commenter further stated that the health care facility concept of ''RACE'' (Rescue, Alarm, Contain and Extinguish) should be accepted by NSPIRE as a standard method of fire and life safety within healthcare and senior facilities, greatly reducing the necessity of window egress exits.

One commenter stated that the unique housing standards in part 982 should not be applied to ESG since the minimum standards for permanent housing in § 576.403 provide more flexibility for the program participant and consistency for the administrator. The commenter also recommended that the proposed addition of § 576.403(d) should be revised to state, ''for the first 30 days in which a program participant receives homelessness prevention assistance, the recipient or subrecipient may provide services under § 576.105(b) and § 576.106 to help the program participant remain in their unit without inspecting the unit or determining whether it meets the requirement in this section.'' The commenter reasoned that the payment of rental arrears or rental assistance under § 576.106 are often necessary to prevent eviction, and that requiring the habitability inspection within 30 days of assistance while also providing rental arrears or assistance would decrease the disruptive process of eviction. The commenter recommend further that HUD provide guidance about what resolution is required of a grantee if the unit that was assisted in the 30-day period does not meet the standard but should not require repayment of assistance provided during that term.

HUD Response: HUD appreciates the comments related to special housing types and the needs of participants in tenant-based rental assistance, as well as the feedback about consistent standards across housing programs, including expanding unique standards to certain types of housing within CoC, ESG and HOPWA programs. The NSPIRE Standards will apply to these programs, with some limitations that will be described in the CPD NSPIRE notices. For the HCV and PBV programs, Section 982.605 continues to allow for alternate requirements for sanitary facilities, food preparation, and space and security if there is no applicable local code standard for SRO housing. Housing that meets the affirmative habitability standards in § 5.703(d) can be eligible for HUD assistance, including Accessory Dwelling Units. With alignment of housing standards, the Department will better focus on habitability and the health and safety of residents.

With respect to universally accepted norms associated with health care, HUD evaluated many of these norms including RACE. Facilities that need to keep doors or windows locked for resident safety (*e.g.,* memory care facilities) or to comply with other legal requirements, such as Federal civil rights laws, will be allowed to request a technical correction and score adjustment after the inspection. More information will be in the Administrative Procedures notice. In addition, § 5.703(d) of this rule requires smoke detectors consistent with the requirements in NFPA 72, and more information will be provided in the NSPIRE Standards notice.

HUD will issue additional guidance on § 576.403(f) as pertains to payment of rental arrears or rental assistance and preventing evictions.

Question for Comment #13: Affirmative Requirements

HUD asked for input with respect to the inclusion of certain affirmative requirements at the final rule stage by adding deficiencies for the lack of a presence of certain specific features in HUD-assisted units. Specifically, HUD asked for input related to electrical outlets and switches; GFCIs and AFCIs; HVAC (permanently installed heating source); guardrails; and lighting.

General Comments

Two commenters noted their general agreement with all of HUD's suggestions, without providing any specific comments. Many commenters sounded a common theme that HUD should weigh very carefully any attempt to introduce affirmative requirements across the entire portfolio of HUD-assisted housing, in light of all of the relevant considerations to the differences in such housing. One common theme was centered on the difference between older and newer housing. For example, one commenter noted that most new construction units have more than enough electrical outlets in each bedroom and living room. However, older cities, such as New York City, have aging housing stock which might not support multiple new outlets without upgrading to a new wiring system. Another commenter opined that properties built in the 1940s should not be held to the same standards as those more recently built, and that even those that may have undergone some modernization since initially built were modernized to the codes and standards of the time during which they were modernized. The commenter pointed out that to hold older properties to the same standards of recent buildings would be a financial burden and that the PHA has neither the funds nor the staff to stay in compliance and would discourage private property owners from participating in HUD programs.

Another common theme related to suggestions for HUD restraint centered around the existence of various housing codes, which commenters argued obviated the need for HUD to impose additional requirements. For example, one commenter pointed out that HUD's proposed requirements would not be in alignment with local code and would set higher expectations than local code, which could have far-reaching implications on the development and maintenance of properties and lead to much higher costs. Another commenter opined that in some cases the proposed changes represent very significant upgrades or overhauls and urged HUD to either defer to local building codes, or to slowly phase in the affirmative safety requirements, as well as to consider approving additional project or capital funds to cover the costs of these upgrades. Two commenters noted that to the extent that existing properties are subject to new standards, HUD must refrain from penalizing (unintentionally or otherwise) PHAs, owners, and operators that may not have funds for upgrades, particularly when those properties are in compliance with local/State codes which reflect local needs and conditions. Commenters suggested that the electrical requirements should match the code at the time the building was built, and that requiring electrical upgrades to existing building would be a financial hardship on building owners unless the building is being renovated. A commenter expressed that HUD should align the proposed requirements to the UCC and PHA's local codes.

With respect to the proposed addition of new standards, generally, one commenter noted that some owners with older properties may decide not to participate if HUD requires significant upgrades to their units that they are not required to perform if they rent to someone in the private market. Another commenter noted that funding to maintain and improve properties is in limited supply, and that properties that are compliant under current standards should be considered compliant under the new standards, and that any new standards should apply only to new construction and properties that undergo renovation. One commenter agreed that all potential deficiencies that HUD is considering appear to be reasonable for safety considerations, but noted that to the extent that existing properties are subject to new standards, PHAs, owners and operators should have an ample notice period to bring their units into compliance. Another commenter opined that the proposed requirements could create new costs for PHAs and limit the supply of housing available to voucher holders. As such, HUD should assess the total cost to PHAs to comply. One commenter, while agreeing that the proposed features may be necessary, cautioned that the cost to produce the features must be heavily weighed in view of additional affordable units lost versus created or preserved, and that dollars invested in these features will ultimately reduce the available subsidies for those applicants waiting to be housed, further straining American's scarce affordable housing stock.

HUD Response: HUD appreciates the comments about differences in housing stock related to age and location and reaffirms that the NSPIRE Standards will balance the need for housing with the mission to ensure that the housing is decent, safe, sanitary and in good repair, as well as the challenge of having consistent housing standards across programs with very different levels of Federal investment and assistance. HUD recognizes, and agrees with the commenters, that if inspection standards and process for tenant-based programs are onerous and delay lease up, private landlords may decline to accept a voucher and lease to other renters.

HUD also recognizes the challenge of meeting State or local housing codes for properties that will be covered by the NSPIRE Standards. Most importantly, the forthcoming NSPIRE Standards will apply nationally and provide standards for areas where there are no codes or safety requirements. In other areas, the State or local requirements may be more or less stringent. Often, State or local requirements account for special conditions in that jurisdiction such as local climate variation. Where a State or local requirement is more stringent that NSPIRE, the property must meet that requirement as well as the NSPIRE Standards.

With respect to comments regarding timelines to correct identified deficiencies, and the ability of property owners or PHAs to fund required renovations, the available time frame for response will vary depending on the deficiency, the program, and the process. In this final rule, HUD has revised ''severe health and safety'' to LT. HUD also developed a secondary category for other severe, but not LT deficiencies. Where a LT deficiency as described in § 5.711(c) is identified, the owner or PHA must correct it in 24 hours. For the HCV program, response times for LT deficiencies must be corrected in accordance with the HOTMA statute. HUD will discuss this matter further in the final NSPIRE standards. Other deficiencies can be resolved as described in existing program regulations. Those regulations are not included in this rulemaking for revision. HUD recognizes that standards should include reasonable expectations for repair, and the need for work to be completed quickly and affordably. These expectations will be described in the Administrative Procedures notice which will be published before this final rule takes effect.

Comments Regarding the Electrical Outlet and Switch Requirement

Two commenters referred expressly to the presence of extension cords. One of them, in agreeing with the proposed requirement, explained that inadequate number of outlets within all habitable rooms leads the occupant to rely on the usage of power-strips and extension cords, and that these power strips and extension cords are often overloaded with plugs from multiple appliances, a condition that could lead to overheating and potential electrical fires. The commenter further noted that the presence of such cords is also the cause of trips and falls hazards which significantly affect elderly occupants. The other stated that the proposed requirement should not be addressed as an issue unless there are extension cords that could cause a trip hazard.

Several commenters raised the issues of the age of the property in question. One commenter stated that meeting this requirement may be challenging in older units that do not have either two electrical units or an electrical unit and a permanent light in all habitable rooms, as older buildings may have to undergo substantial electrical work on the unit, adding significant cost and burden to meeting the standard. Another commenter stated that many older units include bedrooms where there is only one outlet and no overhead lighting. One commenter specifically noted that the age of the building should be considered when determining the distance of the outlet to the sink. One commenter felt that establishing minimum standards to be maintained by properties that have already been constructed and under contract as affordable housing for decades exceeds the reach of an inspection which is supposed to ensure the property is being adequately maintained as safe, decent, and sanitary, and crosses into the realm of specifying how that property should have been constructed instead of confirming the adequacy of its maintenance.

Two commenters specifically expressed concerns with respect to historic properties. One noted that, because insured buildings are so diverse in age and design, to add this requirement would be a hardship on owners especially in older historic occupancies; the other opined that historic buildings should be exempted from this proposed requirement in order to preserve the high quality of fixtures and materials.

One commenter expressed that the rationale in the rule (safety, usability, and illumination) demonstrates why a one-size-fits-all approach is inappropriate and opined that HUD should attempt to create standards around safety, usability, and illumination or demonstrate, with data, why the proposed requirements are necessary before adding the proposed deficiency. One commenter, while expressing general support for the proposed requirement, noted that wiring a second outlet can represent a significant undertaking, and therefore urged HUD to incorporate a mechanism for providing relief for housing under existing rental assistance contracts which may not have been built/renovated to this standard, providing a grace period until improvements can be made.

HUD Response: HUD appreciates feedback about the question of adding a deficiency for an inadequate number of outlets. HUD took these comments into consideration in drafting the proposed Standards notice and will address this matter more fully in the final NSPIRE Standards notice.

Comments Regarding the GFCI & AFCI Requirement

As with ''electrical outlet and switch,'' many of the comments on GFCI and AFCI centered on issues of existing codes and/or implementation with respect to older properties. One commenter noted that while new and rehabilitated properties are in compliance with this standard, older properties that have not been upgraded may not be able to comply. Specifically, a commenter noted that bathrooms in older properties tend to be smaller and built before the era of ground fault indicators, but it is likely that GFCIs were installed at a later date during an electrical modernization, and that to now require that an outlet be located more than 6 feet from a shower or sink or be upgraded with a GFCI is not only unreasonable but unfeasible as well.

Another commenter repeated its position that imposition of this proposed requirement crosses into the realm of specifying how that property should have been constructed instead of confirming the adequacy of its maintenance. Commenters stated that GFCI outlet requirement should be grandfathered, *i.e.,* required where minimum rehabilitation thresholds for modification have been surpassed and that, if required in older Section 8 HCV units, owner participation may be discouraged due to prohibitive costs to modify. One commenter stated that it does not believe that owners of older construction (pre-1975) housing units with proper operating outlets need to be forced to upgrade to GFCI and AFCI outlets in order for the unit to pass inspection and that, if HUD decides to move forward with this requirement, additional capital resources should be made available to convert to this protection. The commenter further urged that all NSPIRE inspectors should be equipped with the proper equipment to test the GFCI and AFCI outlets and not be reliant on a visual inspection.

With respect to AFCI in particular, two commenters noted that AFCI protection is a newer concept and would be burdensome and costly to install in older buildings. Another commenter, while supporting the GFCI proposal, distinguished AFCI as a higher standard that represents a significant undertaking because it requires the removal and replacement of circuit breakers. The commenter encouraged HUD to defer to local building code requirements rather than imposing a blanket AFCI requirement, and that, if the AFCI requirement is imposed, HUD should incorporate a mechanism for providing relief for housing under existing rental assistance contracts which may not have been built/renovated to this standard, providing a grace period until improvements can be made.

Several commenters provided comments with respect to the GFCI location standard (*i.e.,* within 6 feet of sinks, tubs, showers; or exterior, garage, or unfinished basement areas). Two commenters stated that while it is reasonable to expect GFCI protection when an outlet is within 6 feet of water or on the exterior of the building, it does not believe it is necessary to require GFCI protection in garages and unfinished basement areas.

With respect to refrigerators, a commenter questioned the need for GFCI protection as they are often located within 6 feet of a sink but are on their own dedicated circuit which does not have a GFCI installed. The commenter felt that such a requirement would be confusing.

HUD Response: HUD agrees that ARC Fault Circuit Interrupter (AFCI) should not be required in existing buildings. The ARC Fault Circuit Interrupter (AFCI) standard under consideration does not require the installation of AFCI breakers where they are not present. The standard requires the test button, when present, to function properly when pressed.

With respect to the physical placement of Ground Fault Circuit Interrupter (GFCI) protected outlets or breakers, HUD continues to believe that Ground Fault Circuit Interrupter (GFCI) protected outlets or breakers should be a requirement near water sources as specified in the current Electrical—Outlet and Switch standard [12] HUD agrees that major appliances do not need to be plugged into a GFCI outlet. HUD will address this matter further in the final NSPIRE Standards notice. The requirement for GFCI outlets was added to the affirmative requirements in § 5.703(b), (c) and (d).

Comments Regarding HVAC (Permanently Installed Heating Source)

Several commenters expressed general approval of including a requirement for a permanently installed heating source and suggested there should be a deficiency for lack of proper heating. One commenter opined that because not having heat could be a life-threatening situation, not having a working and reliable heating system should be a deficiency; another pointed out that use of a portable heater (with HUD approval) is generally approved only in rural areas with warm climates, and that HUD should include a requirement for a permanently installed heat source. Another agreed that all units should have a heating source but suggested that HUD define this to include a properly installed and vented wood stove as a permanent heating source. One commenter urged consideration for existing properties which do not meet this standard and are not going through a substantial rehabilitation and suggested that it might be appropriate to exclude existing developments from the proposed requirement.

Other commenters differed. Two commenters stated that the requirement would greatly burden older and historic homes that do not have permanent heat sources installed, and that it would be more reasonable to require heating to be UL rated for use as a heating device so long as it is in safe, operable condition. One commenter pointed out that many areas do not require the use of HVAC systems to maintain a living space at a safe temperature, and that forcing tropical properties to install heating equipment and polar communities to install air conditioning is wasteful and unnecessarily complicates property maintenance. The commenter suggested that establishing that a target temperature range be attainable would be a more cost-effective manner of protecting stakeholder interests.

One commenter stated that the heating source requirement is addressed under flammable materials and that the proposed requirement would be redundant and should be eliminated.

HUD Response: HUD agrees with the comments regarding the importance of properly functioning heating systems. Adequate heat is essential for the health and comfort of residents. The NSPIRE HVAC standard will include a deficiency for a minimum temperature requirement during the winter to prevent the potential negative health and safety effects of cold temperatures, including hypothermia, which can be fatal. HUD has replaced language originally in § 982.401(e) regarding the ''thermal environment'' with a requirement in § 5.703(e)(1) that the unit not be subject to ''extreme temperatures'' and will finalize provisions to meet the requirement in the NSPIRE standards.

HUD appreciates feedback particularly regarding tropical climates and will take it into consideration for future standards iterations. Additional consideration may be given to areas with extreme cold weather that falls within the 3rd standard deviation of winter temperatures. This will be revisited in subordinate Standards notices. HUD agrees that presence of air conditioning units should not currently be a requirement. The proposed NSPIRE HVAC standard does not include a requirement for air conditioning, just that installed AC units provide cool air, which is specified as lower than room temperature. NSPIRE does not have a deficiency for a maximum temperature requirement during the summer that is analogous to the minimum temperature winter requirement for heat. Where State or local jurisdictions have such requirements, covered programs must follow the more stringent requirement.

HUD does not agree with commenters that suggested that portable space heaters or fireplaces should be allowable as sources of heat. Portable space heaters, electric and fuel burning, have been associated with property fires and carbon monoxide poisoning. Fires and carbon monoxide poisoning resulting from space heater usage have caused serious injuries and deaths. Space heaters have also caused substantial property damage to properties throughout the United States sometimes leading to the complete loss of housing. Residents without adequate heating have occasionally used gas and electric ovens to provide heat, which have resulted in property fires and

[12] Electrical Safety Foundation International (ESFI), ''Ground Fault Circuit Interrupters: Preventing Electrocution Since 1973'' *https://www.esfi.org/ground-fault-circuit-interrupters-preventing-electrocution-since-1971/* (Last accessed May 2, 2022).

carbon monoxide poisonings as well. Requiring a properly functioning permanent heating source as an affirmative requirement in § 5.703(c) removes the health and safety risks associated with portable space heaters.

HUD also does not agree that a fireplace should be considered as a permanent heating source. Permanent heating sources are typically specified as being self-fueled. They are permanently affixed within the unit or building, safely connected to the unit or building electrical system, thermostatically controlled by the unit or building and appropriate for the size of the unit. The energy source for a permanent heating system can be electric, gas or oil. A fireplace does not meet the self-fueled criteria. Fireplaces also do not evenly distribute heated air throughout a property as effectively as permanently installed heating sources and are one of the leading causes of heating system caused fires in properties.

HUD notes that there have been instances of properties experiencing a heating emergency if a boiler or furnaces fail. In these situations, a temporary, back up heating source may be necessary.

Comments Regarding the Guardrail Requirement

While some commenters supported the proposed requirement, several noted the need for additional details. Two commenters stated that the requirement needs to have a minimum horizontal distance associated with it within which the 30-inch vertical drop exists; one recommended that HUD better explain the proposed requirement depending on site conditions such as hills, slopes, *etc.;* otherwise, the requirement could adversely affect the scoring while posing no threats to the residents or general public. One commenter noted that because a 30″ drop over a 2″ run is dramatically different from a 30″ drop over a 20″ run, a better definition of conditions requiring a railing would be helpful. The same commenter felt that the standard for handrails on an exterior ramp are excessively vague and in need of clarification about what constitutes a ramp versus an inclined sidewalk. One commenter requested additional details for the design of the railing, such as height, material, presence of balusters/spindles, etc.

One commenter stated that guardrails should be installed in elderly or disabled facilities only, and not in family facilities. One commenter suggested that HUD collect data to evaluate the costs associated with the proposed guardrail requirement, as it could impose significant financial burdens on certain properties, and HUD should perform a comprehensive assessment of the potential impacts of this proposal before implementation. The commenter indicated support for a guardrail adjacent to a ''walking surface,'' but not to an area of raised grass (*e.g.,* single family home with a front yard where there is a low retaining wall by the sidewalk).

HUD Response: HUD appreciates the commenters' feedback. Guardrails were added as an affirmative requirement in § 5.703, so they apply to all housing covered by that section. In addition, all HUD-assisted housing must comply with accessibility requirements, where applicable, including Section 504, the Americans with Disabilities Act, and the Fair Housing Act. The Section 504 accessibility standards, which are the Uniform Federal Accessibility Standards or the 2010 ADA Standards for Accessible Design as specified in the Deeming Notice (79 FR 29,671, May 23, 2014), have certain technical requirements for guardrails (referred to as handrails under the Federal accessibility standards) for ramps. In general, trip and fall related injuries occur with high frequency across multiple age groups throughout the country. These injuries result in emergency room visits, life altering impacts and sometimes death. Installing guardrails in higher risk walking locations will decrease the risk for residents throughout the HUD portfolio. The deficiency criteria for guardrails are closely aligned with housing codes throughout the country. The deficiency criteria reflect observable conditions documented during extensive field testing and demonstration inspections. HUD is not including specifications for balusters or spacing for vertical railing within the guardrail due to variations in building code requirements over time across the HUD property portfolio.

Comments Regarding the Interior Lighting Requirement

Several commenters were in general agreement with the proposed requirement. Two commenters expressed general agreement with the proposed requirement but opined that special considerations should be allowed for historic buildings or other special circumstances related to older buildings. One commenter agreed with the proposed requirement and added that similar consideration should be given to adequate illumination on interior stairs and to some extent on exterior entrances/stairs. The commenter further opined that a standard should be provided with respect to what constitutes proper lighting (*e.g.,* lumens). One commenter stated that the rule should explicitly require a light fixture in the bathroom.

One commenter stated that there are already HUD guidelines for lights installed in bathrooms and kitchens, and that they are also included in building codes. One commenter urged that if HUD moves forward with this requirement, consideration be given to existing properties which do not meet this standard and are not going through a substantial rehabilitation.

HUD Response: HUD appreciates the comments regarding the safety and well-being of residents and quality of the HUD-assisted housing stock. Without artificial illumination, residents may not have a means of illumination at night when natural light is not available. Lighting is critical for safe egress during a potentially life-threatening emergency, allows people to see unsanitary and unsafe conditions, and thus leads to a healthier and safer living environment. Proper lighting also removes usability barriers allowing people to fully utilize the features of the built environment. HUD will take this feedback into consideration as it drafts the final Standards notice, which will be subject to further public comment.

With respect to historic properties, HUD's position is that a light source in the kitchen and bathrooms is the minimum standard for health and safety and has added this as an affirmative requirement in § 5.703. In the rare case that a historic property designation would not permit a permanent light fixture in the kitchen and bathroom, the PHA or owner may apply to HUD for a waiver of this affirmative requirement. If the unit is occupied, HUD will suspend the correction timeframe until the waiver is reviewed.

Question for Comment #14: Risk-Based Annual Inspection Requirement Expansion

HUD solicited comment on the proposed risk-based annual inspection requirement expansion from 2 to 5 years and received comments both for and against the proposal.

Several commenters supported the proposal, noting that most properties are compliant with inspection standards and therefore do not need such frequent inspection. Another noted generally that the proposed 2–5-year inspection cycle would be reasonable and welcome. Several commenters focused on the relief the proposal would provide to high performers and low risk properties. Two commenters noted that the proposal's flexibility will allow PHAs to shift inspection capacity and resources to properties, units and households with the greatest need, with one adding that the inspection process is very costly for PHAs and the expansion of the requirement from 2 to 5 years would be consistent with the ever-decreasing funding.

Commenters specifically noted the appropriateness of the proposal in connection with self-inspections. Two commenters, in indicating strong support for the proposal, opined that paired with the annual self-inspection requirement, a risk-based inspection schedule would provide adequate oversight over the portfolio. Another commenter stated since HUD is adding an annual self-inspection requirement for its insured multifamily properties, project-based assisted properties, and public housing portfolio, this change is appropriate, and that expanding the time between risk-based physical inspections will reward high-performing properties, alleviate administrative burdens associated with inspections, minimize disruptions to residents and allow HUD to focus its resources on lower scoring properties that may require more oversight. One commenter, while supporting the proposal, urged HUD to leverage self-inspection reporting to require onsite inspector presence less often and recommended that HUD should maintain portfolio data through self-inspections that can continue to insulate against criticism of the condition of the portfolio.

Conversely, multiple commenters were opposed to the proposed risk-based annual inspection requirement expansion from 2 to 5 years, believing that such a change is not reflective of HUD's desire to improve oversight over assisted properties. These commenters generally felt that five years is too long between inspections and suggested a maximum interval of three years. Commenters stated that 5 years, and even 2 years, is a long time and a property may fundamentally change within that time, citing potential adverse occurrences within a five-year timeframe, including high turnover in the industry leading to change in management or ownership, natural disasters, unexpected capital needs or discovery of environmental hazards, mold caused by water line ruptures, fire hazards, heating/cooling systems breakdowns, pest infestations, and hazards resulting from extreme weather events.

A commenter stated that stretching REAC inspections out over a five year, rather than three-year maximum period, would be an extremely risky move, not warranted by any evidence that owners are suddenly more compliant with health and safety codes than they have been in the past. Another commenter noted that Public Housing and Multifamily housing properties are already in extremely poor condition, another agreed and stated that even one property with poor living conditions is one too many and urged HUD to catchup on its backlog of inspections and focus resources on the lowest performing properties. Another commenter noted that while inspections on a more frequent basis are arguably costly for housing providers, it is localities that often bear the brunt of the cost burden when a property is not adequately maintained—both through inspection costs and the cost to the community if residents lose their housing or are forced to relocate due to dangerous conditions.

With respect to self-inspections, a commenter pointed out that self-inspections necessitated by the COVID pandemic were not appropriately diligent and that many units failed subsequent inspections, in some cases requiring relocation of tenants, and suggested that all units should have annual inspections for the first five years under this system in order to properly enforce the requirements.

A commenter suggested that for the Multifamily Section 8 or PBRA programs, the Contract Administrators could be a second source to ''inspect'' or follow-up on the units/property during years that an official REAC inspection is not performed and to verify POA self-inspections and work order system efficacy, and that the combination of POA self-inspections (annually), Contract Administration MOR inspection/follow-up, and REAC Inspections would ensure the physical health of the property and safe, habitable unit dwellings for the residents, all within a 3–4 year cycle.

A commenter noted specifically that the proposed rule also allows for changes in the inspection protocol to happen three years after implementation of previous changes to the inspection protocol, and that coupling five-year inspections with changes in the inspection protocol may result in a property being inspected under different protocols, calling into question the reliability of the assessment of the property's physical health.

Several commenters provided mixed support for the proposal. One commenter noted that in addition to providing a strong positive incentive for POA performance, the prospect of less-frequent unit inspections is likely to be attractive for many residents, for whom the unit inspection can feel invasive and traumatic but also noted that the criteria for determination of inspection frequency, including the proposed risk assessment, will be crucial to ensuring this system both protects residents and provides incentives for strong performance and strongly urged HUD to work closely with stakeholders to develop these criteria, including publication of draft criteria for comment in the **Federal Register**. This commenter suggested that such criteria include not only the recent performance of the subject property, but also the POA's track record of performance at other HUD-assisted properties as well as the timespan since the property's construction or most recent renovation.

One commenter expressed that increasing the number of years in between inspections should be looked at in the context of the annual self-inspection and how burdensome that process will be as well as the triggers for reinspection, and that the proposed rule is not clear around the reinspection procedures, and suggested that HUD should make clear that only an owner or manager of HUD housing may request a reinspection and HUD may determine whether it is advisable and should specify the grounds on which HUD will make this determination. Another commenter expressed general support for the proposal, suggesting that if the property is in good shape and has passed all previous health and safety inspections the time for the next inspection should be pushed to 5 years, while cautioning that inspection intervals should always be based on the condition of the property and how well the inspections are conducted.

Some commenters suggested specific metrics related to proposal. One commenter suggested that a property achieving a score in the 90s could be inspected every 5 years, in the 80s every 4 years, in the 70s every 3 years, and in the 60s or below every 2 years. Another commenter suggested every 5 years for a score of 96–100; every 4 years for a score of 90–95, every 3 years for a score of 80–89, every 2 years for a score of 70–79 and annually for a score below 70. Two commenters suggested that 5-year inspection cycles should be reserved only for the highest-performing properties (90–100), with the inspection frequency increasing as the score drops by every 10 points. The commenters further suggested that HUD maintain the ability to override this schedule if needed, *e.g.,* in the case of significant tenant-input to HUD that seems to indicate a poor building quality.

A commenter noted that the risk of a major problem increases in older properties and suggested that an option may be to require regular inspection every 1–2 years for older properties, and 2–3 years for newer constructions and that, intermingled throughout each period, it might be convenient to have less invasive, virtual home assessments which have the right sensitivity to capture health and safety hazards caused by major sudden events in the home.

One commenter distinguished between Public Housing and HCV, recommending that for the former inspection should occur every other year on a pass/fail basis, and for the latter that the interval between inspections be no more than three years, and then only for landlords with a good history of maintaining their units.

One commenter expressed that it would be best to implement an inspection schedule based on a risk-based method. Another commenter suggested that HUD should reform REAC's scoring system, improve tenant participation and otherwise adopt lessons learned from NSPIRE to secure housing improvements first, before considering the relaxation of inspection protocols.

One commenter opined that HUD should give PHAs the discretion to define higher and lower risk categories, *i.e.,* a PHA should have the ability to place in the high-risk category those property owners who consistently take multiple attempts to pass inspections and/or have a high number of abatements while those who consistently pass on the first attempt can be placed in a low-risk category.

Three commenters expressed general support for the proposal but noted the need for additional details on how it would be put into practice. One commenter noted that under the current scheme properties that score 90 or over are scheduled for their next inspection on the 3rd anniversary, while those scoring 80–89 are inspected on the 2nd anniversary, and those scoring 79 or less annually. The commenter questioned how HUD is proposing to spread the scores over a 1–5 year period. Another commenter opined that HUD needs to provide additional information about how they would evaluate whether PHAs qualify for a 2- to 5-year inspection cycle, and that it would oppose an extended inspection cycle based on requirements that include submitting all self-inspection results and related work orders to HUD, which would likely negate any resource savings achieved through an extended inspection cycle. Another commenter expressed that determining the criteria that HUD will use to decide whether a PHA qualifies for a longer inspection time period or not must be clear and attainable, and that if the criteria for a longer inspection time period is too stringent then the incentive PHAs have for expanded inspection periods would be decreased.

HUD Response: HUD appreciates the comments on the timeline for inspections, and has gained valuable insight into this issue as a result of the ongoing COVID–19 pandemic. REAC UPCS inspections resumed in June of 2021 and the almost two-year break in third-party inspections proved to be too long for some properties with performance issues. Five years is a very long period of time to go without visiting a property and presents a risk to the tenants and the Department—even a high-quality property could degrade in that time. Therefore, HUD supports maintaining the current risk-based inspection requirements ranging from 1 to 3 years (3–2–1).

For small rural PHAs the statute requires a three-year inspection cycle unless the PHA is Troubled. For PHAs that will continue to be assessed under PHAS and for multi-family properties, the inspection frequency would be either a 3-, 2-, or 1-year cycle based on the anniversary of the last inspection. HUD will continue to evaluate efforts to provide administrative relief to high performing properties, including the circumstances under which self-inspections may be accepted, through subordinate notices and additional public comment.

With respect to the suggestion that the entire portfolio of Public Housing and Multifamily assisted housing be inspected annually for the first five years under NSPIRE, HUD does not consider it feasible to do so with current resources. Because HUD is declining to adopt an extended timeline of two to five years for physical inspections, there is no need to provide information about how properties will be assessed, the process for implementation, and what information will be considered to allow less frequent inspections of up to five years. HUD notes that small rural PHAs that are not troubled under 902.105 will be inspected every three years.

HUD appreciates the feedback regarding self-inspections as it relates to risk-based annual inspections. HUD's risk-based approach seeks to balance administrative burden on owners and management and HUD will continue to review the appropriateness of self-inspection processes for its public housing and project-based portfolios in context with inspection timing. For the requirement for self-inspection reporting at § 5.705, HUD has limited the collection of these reports to those properties that receive a score of less than 60. This aligns with the current process for Multifamily Housing programs. HUD will continue to rely on the results of independent, HUD-funded inspectors for scoring and to determine inspection frequency.

Question for Comment #15: Tenant Involvement

HUD solicited comments on how tenants could be involved in identifying poor performing properties.

Commenters asked HUD to provide more context around these ideas and how HUD would use these ideas so that the industry can respond in a more productive way. Some commenters opposed resident involvement in the inspection process, noting that tenant reviews, like consumer reviews, could be biased and unreliable and that disgruntled tenants may unduly influence inspection results, analogizing to disproportionate numbers of 1- or 5-star reviews for restaurants and products online. Commenters stated that tenant involvement would complicate the tenant-landlord relationship. For example, a tenant may give an unearned good review to gain favor with a landlord, or urge residents to participate in a survey prior to inspection could obligate property staff to please residents to get a positive review.

Several commenters opined that tenant involvement in the inspection process is simply not needed, noting that inspectors are the best, most reliable source for inspecting and reporting on the property, that residents have always had the ability to notify HUD when their work orders or repairs are not completed in a timely manner, that owners are already required to inform residents of their rights to notify HUD of any such concerns, and that tenants are already adequately protected by local landlord tenant laws, by the REAC process generally and by the residents' relationship with the HUD Account Executive. As an alternative to an added review program, commenters urged that HUD make sure that the reporting systems work well to inform the appropriate HUD staff of conditions and to ensure that these resources are fully staffed and communicated to residents through multiple channels. Another alternative offered was that HUD explore ways to facilitate and clarify this complaint/enforcement process through the NSPIRE demonstration and intervene to enforce its physical standards and compel owner/agents (OAs) to resolve identified issues.

Several commenters focused on the appropriate weight that should be assigned to tenant input, suggesting that resident reviews should not be given so much weight as to disrupt the value of the random selection of units under the current scheme; that creating a separate inspection agenda that does not contribute to the final inspection result would create confusion; and that the results of tenant surveys should not increase or alter sample size, or affect the frequency of inspections. Commenters cautioned that an inspection not based on a statistical random sample is not a legitimate representation of the property's physical condition. A commenter noted that residents would only want units inspected that they feel illustrate deficiencies, another noted that pre-identifying units to be inspected would allow prior targeting of those units either by OAs or residents to influence scoring.

Two commenters urged HUD not to turn the REAC inspection into a complaint-based inspection scheme and suggested investigation of tenant complaints should remain outside the purview of the REAC inspector.

HUD received a large number of comments with respect to the use of tenant surveys, with several commenters suggesting that a proper survey to all tenants could yield higher-than-average concerns about specific deficiencies which HUD could treat as a factor among others in determining inspection frequency or intensity.

Commenters advocating the use of surveys sounded several common themes: that HUD or its contract administrators administer the tenant survey to ensure confidence in the survey's independence; that tenant-based questions should not be subjective and should include clear definitions for a rating system with significant training and administrative system to avoid subjectivity; that surveys solicit specific information so responses would be less subjective; that surveys include random, anonymous questionnaires to residents; and that the survey be accessible to persons with disabilities and include a paper option.

Some commenters suggested a single, targeted question or short series of questions asked by inspectors to some residents during inspection, while another suggested an annual mailing to residents with a request to rate specific performance issues. A commenter suggested a simple, accessible tenant inspection form uploaded in a similar manner to owner self-inspection and on the same frequency/timeline. A commenter supported REAC's initial protocols (dropped in early 2000s), which required a Tenant Survey, by mail, of a sample of REAC-inspected properties; however, another commenter opined that this resident questionnaire was not representative of the property.

Commenters recommended tenant surveys include questions about health and safety generally, water leaks, mold, insects such as bedbugs, rodents, lead-based paint, smoke detectors, carbon monoxide detectors, and other environmental hazards, management performance and treatment of tenants, the right to organize, and the existence of a working stove. A commenter suggested anonymized survey data be provided to properties to permit responses with respect to identified issues. Commenters suggested that tenant survey data (together with REAC scores) could be used by HUD to evaluate the accuracy of self-inspections. A commenter suggested that survey information that identifies a life-threatening condition(s) should trigger an inspection.

Commenters also suggested that tenants be allowed to recommend their unit for inspection. Commenters recommended adding five units to REAC's random selection if requested by a tenant organization. A commenter suggested that residents should be allowed to recommend homes for inspection as they are best positioned to direct HUD to conditions on the property, another opined that allowing tenants to designate substandard units for inspection will help offset the ''point loss cap'' bias built into the REAC system. A commenter suggested that an additional procedure to account for extra units inspected per resident request could be developed; one commenter suggested a resident council could work to ensure adding a more representative group of individuals' units to the inspection sample. A commenter supported the inclusion of units/issues subject to such enforcement action within the sample for the next REAC/NSPIRE inspection, to ensure ongoing compliance.

HUD Response: HUD appreciates the comments related to tenant involvement in the NSPIRE inspection process. HUD regularly hears from groups representing tenants about how residents can be more engaged in the inspection process and sought comment through the proposed rule as a way of advancing this conversation and agrees that HUD should consider working through resident councils and tenant organizations, for example. HUD's process will be addressed further in a subordinate notice specifically on tenant engagement.

HUD does not intend for resident feedback to supersede trained inspectors, nor does it intend to use resident ratings to score properties. HUD's intent in proposing a rating of 1 (poor) through 5 (excellent) was to provide a mechanism for residents to identify additional units for inspection; however, HUD does not intend for these units to comprise part of the property score. HUD can direct owners and PHAs to repair identified deficiencies even if those deficiencies are not scored, because the requirement for housing to be maintained in accordance with 5.703 always applies. Based on public comment and other analysis, HUD will further evaluate scaled 1 to 5 responses as suggested in the question and other means of collecting tenant feedback. This aligns with comments about eliminating as much subjectivity as possible. HUD will also continue to explore tenant participation in an accessible manner to align feedback with potential deficiencies. The NSPIRE Scoring notice will provide more information about the sample that will be considered for the score. HUD agrees that professional inspectors are the most reliable source for assessing property conditions but believes tenant involvement in NSPIRE and feedback about the condition of properties is also very meaningful and should be taken seriously. HUD will continue to evaluate how the NSPIRE inspection process design best results in independent assessments of property condition while balancing a desire for more tenant feedback about property condition. HUD does not consider these two objectives mutually exclusive.

HUD takes into account the potential administrative burden on both the owners and the residents and plans to add additional units to the NSPIRE inspection if they are requested by the residents. Additional details will be provided in the Administrative Notice. With respect to tenant-selected units in the sample biasing an inspector, HUD will consider ways to protect anonymity of personally identifying factors, such as unit address and number. HUD will also consider the suggestion that an inspection be triggered or when a survey identifies the existence of a life-threatening condition.

HUD agrees with the comments regarding existing channels for tenants to report property conditions and engage with OAs and HUD Account Executives. HUD will look at ways to strengthen the existing operational protocols while exploring ways to expand tenant engagement in the NSPIRE process. Residents can also contact the State HUD field office.

HUD appreciates the feedback suggesting strengthening existing procedures before adding tenant participation into the unit selection process. HUD agrees that more robust communication about REAC processes and final scores could improve overall conditions of HUD-assisted properties. HUD also agrees with the sentiment of improving REAC through NSPIRE—and the demonstration program—to compel OAs to resolve identified issues. HUD believes that NSPIRE's focus on health and safety of the residents will lead to better living conditions and outcomes. NSPIRE procedures for inspections, scoring, and collection of resident-nominated units will be in the NSPIRE Administrative notice.

With respect to comments about tenant-selected units influencing the overall inspection outcome and potential to turn into an alternative complaint process, HUD does not intend for tenant feedback to HUD to supersede existing work order and tenant complaint processes. HUD sees tenant involvement in the inspection process as an additional means to improve the overall quality of HUD-assisted housing by bringing the resident's voice to the table. HUD sees this as useful where random sampling falls short—*e.g.,* it's possible that a random sample could completely miss units with infestation, and where pests are active only at night. Tenant involvement also provides an opportunity for HUD to ensure that known deficiencies raised by tenants are corrected. HUD will take into consideration the suggestions to engage Tenant Organizations, resident councils and other means to allow residents to select certain units to be included in the inspection sample, but these units will not impact the overall score, unless they were already randomly selected as part of the REAC inspection sample. HUD considered the suggestion that tenants to designate certain units for the inspection could help offset the ''point loss cap'' for system-based scoring and ensure accurate deductions for deficiencies, but determined that resident-selected units would not be scored unless randomly selected as part of the inspection performed by HUD. Additionally, as provided in the proposed Scoring notice, 88 FR 18268 (Mar. 28, 2023), HUD is proposing to eliminate point-loss caps allowed under UPCS.

Other Suggestions

HUD received a number of additional comments regarding tenant involvement that relate to current REAC processes. Commenters recommended tenants be notified about REAC matters and results and given the opportunity to comment and that HUD remove the current 60-day limitation on the availability to tenants of REAC Reports, scores, and related correspondence. Commenters also suggested REAC inspectors should access local code reports in localities if available online, as well as summary work order reports that many management companies maintain to provide a REAC inspector with a quick overview of how many repairs were reported, how long it took to complete them, and tenant satisfaction. Commenters requested HUD require a meeting between a REAC inspector and any legitimate tenant organization before starting an inspection and allow a representative of any legitimate tenant organization to accompany an inspector if a tenant organization requests, but not into an individual unit unless invited by a tenant. Commenters also suggested that tenants should have the opportunity to trigger a REAC inspection when at least 25 percent of the residents, or the local government, request one.

Other comments related to tenant involvement include a suggestion that HUD develop a separate and distinct program, with allocated funding and resources, to engage residents in evaluating their housing experience and the quality of their housing; that HUD require owners and agents to make tenants aware of reporting options, for example by requiring the phone number(s) to be posted or distributed with lease documents; and that HUD support tenants' right to organize and support building tenant association capacity by making $10 million annually in Section 514 funding to local nonprofit tenant assistance organizations. In connection with the last suggestion, commenters noted that Congress has made available funding through Section 514 of MAHRAA to provide for tenant organizing and capacity building, and HUD currently has available funding for this purpose.

A commenter suggested that HUD resident feedback measures adopted for Multifamily and Public Housing could, in principle, be extended to any HUD-supported apartment complex, including RAD converted properties, Mod Rehab and PBVs.

HUD Response: HUD appreciates feedback regarding communication with residents regarding the REAC inspection results, including the opportunity to comment and suggested participation of tenant organizations. HUD regularly publishes its REAC physical inspection scores on its website and will continue to do so. Tenants also have the opportunity to review the REAC inspection report after the score is finalized. The owner must make the physical inspection report and all related documents available to residents during regular business hours upon reasonable request for review and copying. Related documents include the owner's survey plan, plan of correction, certification, and related correspondence. HUD will take this feedback into consideration as it seeks to improve communication with HUD-assisted residents.

The comment suggesting a separately funded tenant evaluation program in parallel with the REAC NSPIRE inspection process is outside the scope of this rulemaking.

With respect to the suggestion that management provide HUD and REAC inspectors with summary work order reports for evaluation, HUD and/or its Performance Based Contract Administrators currently review work order processes as a component of their management reviews. HUD will take into consideration the suggestion to include evaluation of local code violations.

Regarding the comment suggesting that HUD require owners to inform residents about their rights and responsibilities, specifically in regard to complaints and physical conditions, HUD programs already require Owner/Agents to inform residents of the procedures for raising complaints and the various appeals available if the landlord, management agent, or Housing Authority is unresponsive. HUD will nonetheless take this feedback into consideration as it looks at ways to reinforce tenant education.

HUD appreciates comments on tenants' right to organize and supports building tenant association capacity but has not proposed changes in this rulemaking. Additional information about resident opportunities to provide HUD feedback will be provided in the NSPIRE Administrative notice and in a subsequent notice once HUD considers public and stakeholder burden. Comments about expanding resident feedback to other HUD-assisted programs, such as RAD conversions, Mod Rehab and PBVs, were shared with the program offices. At this time, HUD is not planning to require a resident feedback requirement in properties not inspected by REAC, as that would be new requirement and burden on PHAs and other owners that was not proposed. HUD will also take into consideration comments suggesting that appropriate triggers for an inspection should include when 25 percent of tenants request one.

Section 5.705 Inspection Requirements

Comments Regarding § 5.705(a), Procedures

A commenter suggested HUD extend the exception for Section 8 housing in proposed § 5.705(a)(3) to public housing, and that PHAs should be able to use variant inspection standards based on local building codes; otherwise, a PHA's inspection score may be adversely impacted even though the condition comports with local codes and has been determined to be safe.

HUD Response: HUD appreciates this feedback. With NSPIRE, HUD intends to further align the inspection standards for the Public Housing and Multifamily portfolios, while acknowledging the Housing Choice Voucher and Project-Based Voucher programs have some unique qualities that are taken into consideration with variant inspection standards in § 5.705(a)(3), as these are privately owned properties. HUD does not support expanding those to public housing because public housing does not have these unique qualities and under the U.S. Housing Act must meet HUD-defined standards for decent, safe, sanitary and in good repair. HUD recognizes that there may be situations in which a property comports with local codes, but still does not meet the standard for public housing. In those instances, HUD believes that the public housing must meet the higher NSPIRE standards.

Comments Regarding § 5.705(b), Entity Conducting Inspections

A commenter stated that in § 5.705(b)(2), the reference to the voucher regulation should be corrected to reference § 982.352(b)(1)(iv).

HUD Response: HUD thanks the commenter and has made this correction in this final rule.

Comments Regarding § 5.705(c), Timing of Inspections

A commenter suggested revising paragraph (c)(6) regarding Section 232 facilities to require a case-by-case analysis, remove a ''complaint'' as a basis of information received, and take into consideration whether the physical integrity of the project is at risk.

Another commenter objected to changing the timing of inspection from being linked to the previous inspection date to being linked with the property's anniversary date. This commenter recommended amending paragraph (c) such that, during the transition from the current timing protocol to the proposed timing protocol, HUD requires the inspection to take place on the earliest of either the previous inspection date or the property's anniversary date, rather than delaying the inspection.

HUD Response: While HUD appreciates the commenters' concern about the quality of assisted living, board and care, and intermediate care facilities, HUD does not agree with these suggested revisions to § 5.705(c)(6). This final rule tracks with current policy and allows flexibility where needed for special circumstances, such as complaints about assisted living and care facilities. HUD has the authority to inspect properties where there are concerns about the safety of residents or project preservation.

With respect to the suggestion regarding inspection timing, HUD believes that the commenter misunderstood the meaning of ''anniversary'' in the proposed rule. This was meant to still be linked to the previous inspection date, not to any other date. With the exception of small PHAs as described in § 902.13(a), public housing properties will no longer be scored based on the fiscal year end for the portfolio and previous PHAS score, and properties will be assessed based on the anniversary and score of the previous inspection.

Comments Regarding § 5.705(d), Inspection Costs

Two commenters, while supporting a reinspection fee to increase accountability, urged HUD to clarify that it is not establishing a *new* reinspection protocol, only the ability for a fee to be imposed if the work that was reported complete is not in fact complete. The commenters further urged HUD to establish and maintain caps or benchmarks on reinspection fees to encourage reasonableness and standardization and to clarify whether the fee is authorized for Video Remote Inspections or only for onsite inspections.

Another commenter suggested limiting the reinspection payment to an amount no more than $500, and also allowing such payment to be passed on to the household residing in the unit when the tenant has caused the damage at issue. A commenter noted that paragraph (d) does not provide for the imposition of such a reinspection fee on PHAs and suggested that the language should be amended to include PHAs.

HUD Response: HUD appreciates the commenters' recommendations regarding reinspection fees but is not making these changes in this final rule. A fee cap could be problematic if this requirement is in place indefinitely and does not allow for inflation. Additionally, landlords and PHAs can collect fees for tenant-caused damages in accordance with their lease and policies and existing regulations. Adjusting a fee at the time it is assessed would create an additional burden. However, HUD took these comments into consideration in the subordinate notice for Administrative Procedures, which will specify the circumstances and details for re-inspections. For units in the HCV and PBV programs, HOTMA Section 101(a)(3) allows for the PHA to consider tenant-caused damage as a factor for HQS enforcement.

Comments Regarding § 5.705(e), Access to Property for Inspection

Commenters stated that giving a PHA a physical condition score of zero if the inspector is unable to access even one unit is unreasonably punitive, is a higher standard than the standard placed on other POAs and could lead to penalization for actions of residents beyond the PHA's control, such as where a tenant prevents an inspection or is ill. Another commenter suggested that HUD should not require access to an apartment where there is a sufficient number of similar apartments that the inspector can visit as alternates, as it is unreasonable to require all households to either stay home all day or have an adult present throughout the inspection, and that, in the alternative, inspectors should select a higher sample and larger number of alternate apartments or visit any additional units to reach the sample size required before providing a physical condition score of zero for the project. Another commenter suggested amending paragraph (e) to require reasonable advance notice of an inspection to the property owner.

A commenter noted that the opening paragraph of § 5.705(e) refers to HUD inspections of ''HUD housing,'' yet paragraph (e)(2) provides important details applicable only to public housing. The commenter suggested that paragraph (e)(2) should be revised to apply to all HUD housing.

HUD Response: HUD thanks the commenters for feedback concerning access to the property, advance notice and conformity of language concerning HUD housing. Because these matters are related to scoring methodology, HUD will further specify its scoring methodology including how access to the property impacts the methodology by which HUD scores or assesses property condition through the forthcoming NSPIRE Scoring notice. HUD continues to believe, however, that property access is a fundamental component of independent assessment. HUD will similarly address the notice of inspections requirements for its NSPIRE inspections under the forthcoming subordinate Administrative Procedures notice, but believes its recent, existing notice period (ranging from 14–28 days) is reasonable. HUD declines the suggestion to include language in § 5.705(e) requiring reasonable advance notice of an inspection to the owner in regulation and will continue to provide advance notice of inspections to allow PHAs and owners may comply with lease agreements that require reasonable notice for residents. In this final rule HUD has, where appropriate, revised ''public housing'' where it meant to state ''HUD housing'' in the proposed rule.

Section 5.707 Uniform Self-Inspection Requirement and Report

Question for Comment #16 and Question for Comment 17 Regarding Self-Inspection

HUD solicited comment on how the clarification to self-inspect all HUD housing units in certain programs would impact operations.

Comments Supporting Requiring Self-Inspection

Many commenters supported annual self-inspections, noting that this requirement is a generally accepted best practice and it is good for HUD to make it a formal requirement. A commenter supported extending this requirement to any programs that do not currently require them; another noted that expanding the scope of the inspection across all the three inspectable areas will promote increased confidence in the self-inspection process, on the whole. Commenters noted that the self-inspection process has the potential advantage of decreasing the financial cost to HUD or the PHA of conducting a physical inspection.

A commenter stated that the time cost to the property was worth it because self-inspections allow staff to catch maintenance issues that might otherwise go unnoticed or unreported by the tenant. This commenter noted that if the maintenance problem is severe or persistent it could negatively impact the health of the tenant or cause long-term physical maintenance issues for the building.

Another commenter noted that a random unit selection like that used in a housing inspection cannot capture all maintenance issues, so it is important that the managing agent sees each unit firsthand annually.

HUD Response: With respect to the self-inspection requirement, HUD notes that an annual self-inspection was already required for the Public Housing program at 42 U.S.C. 1437d(f)(3), and the requirement in the proposed rule was intended to mitigate gaps in inspections with the 2–5-year REAC inspection time frame, to ensure that unit conditions do not deteriorate in between inspections. HUD has retained the regulation that added this requirement to properties participating in Multifamily Housing programs. HUD considered the burdens associated with submission of self-inspection results of all properties and decided not to implement the proposed regular submission of self-inspection results for all properties. The full process for conducting self-inspections according to the NSPIRE standards will be detailed in the NSPIRE Administrative notice.

Comments Regarding Third Party Self-Inspections

A commenter cautioned against allowing a third party to complete self-inspections because allowing properties to shop for a friendly inspection company defeats the purpose of this potentially eye-opening tool. Conversely, another commenter suggested HUD require that annual inspections be conducted by a neutral third party, which often motivates PHAs and owners to finally address long overdue maintenance.

HUD Response: HUD appreciates these observations concerning the pros and cons of third-party self-inspections and will take this feedback into consideration as it further refines and details the NSPIRE self-inspection requirements in subordinate implementing notices. HUD will design quality assurance processes to achieve a high degree of confidence in the quality and objectivity of all types of inspections conducted under NSPIRE.

Comments Regarding Implementation and Enforcement of a Self-Inspection Requirement

Commenters had several questions about how HUD would implement a self-inspection requirement. Commenters suggested HUD provide a user-friendly and intuitive public software tool to perform the inspections at the property level. A commenter suggested including a mechanism for triggering a direct electronic report to HUD where an inspection revealed serious deficiencies. Another commenter asked what computer hardware would be required to perform the inspection and advised against requiring expensive hardware.

A commenter asked how property staff would be able to know all the rules that REAC NSPIRE inspectors are required to know, which the commenter stated may require training and technical knowledge.

A commenter suggested self-inspection should be waived on years that an NSPIRE inspection is due to occur. A commenter asked how the requirements of a self-inspection approach align with a potential risk-based model.

Commenters urged HUD to provide details regarding the submission methods and self-inspection criteria that will be expected of owners and agents and urged HUD to carefully consider the feasibility of the new reporting requirements. A commenter cautioned that the process will not be efficient if owners aren't providing HUD with sufficient information in a usable format. A commenter noted that owners currently inspect different components of the unit during self-inspections, and flexibilities for COVID–19 have further adjusted self-inspection techniques. A commenter urged HUD to be transparent about what the submitted data/information will be used for and how it will be handled by the agency. A commenter urged the self-inspection protocol be as simple and intuitive as possible. A commenter recommended safe harbor guidelines around unit inspections, since issues such as tenants not allowing access often arise.

A commenter urged HUD to weigh the benefits of a standardized approach, which would supply data to the agency and allow HUD to compare ''apples to apples'' in terms of the state of the portfolio, vs. the ease of submission or completion of this requirement. This commenter urged HUD to maintain the lowest lift possible for owners to complete the self-inspection and reporting requirements.

A commenter urged HUD to make clear that the self-inspections can take place at any point throughout the year instead of all at once.

Commenters suggested HUD could seek to rely on local code enforcement history for a property, which is frequently complaint driven. A commenter suggested HUD should also accept complaints by local legal aid offices, public health officers, or other entities who have observed poor housing conditions or potential violations of State or local code violations. This commenter supported the NSPIRE demonstration's requirement that local code violations must be reported to HUD by participants and suggested HUD expand it to other complaints received.

A commenter urged HUD to utilize systems already in place for submitting information to HUD (*e.g.,* the annual recertification process) or conducting oversight (for example file reviews) instead of creating new systems for properties to submit self-inspection results to HUD. This commenter noted that if communities could simply document in the file that they have inspected 100 percent of units at any point throughout the year, or if they could submit a certification to that effect during the annual recertification process, it would eliminate the need to create new processes and systems.

A commenter asked what ramifications a property would face for failing to complete an inspection to REAC's expectations and how REAC would know if a 100 percent inspection is valid and reliable statistically.

A commenter asked how HUD will use information gathered from the self-inspections and what penalties housing providers could face as a result of the information obtained.

Another commenter suggested HUD make clear that any submitted results of self-inspections do not have any bearing on a property's official property inspection score. A commenter urged that the REAC inspection should be the central evidence for that claim.

A commenter suggested a self-inspection requirement must be coupled with an auditing process to verify the veracity of self-inspection reports. A commenter asked whether HUD has sufficient staff to review annual submissions from all covered properties. A commenter suggested HUD or PHAs verify self-inspection results when available, potentially every other year, but noted the administrative cost of doing so.

Comments Regarding Self-Inspection in Particular Programs

Commenters urged HUD to consider the differences between inspection requirements for the Public Housing program and the HCV, PBV, Mod Rehab, and CPD programs. A commenter stated that HCV landlords, especially small landlords, would be unable to absorb the cost of additional self-inspection.

A commenter suggested that the HCV, PBV, Mod Rehab, and CPD programs, which currently do not require self-inspection, should benefit from a reduction in risk-based annual inspections, similar to the 2–5-year inspection time period proposed for the Public Housing program. Other commenters stated that because these projects have annual or biennial unit inspections, they should not also have self-inspection requirements. A commenter stated it appeared that 232 health care facilities would have NSPIRE inspections waived and asked if they would still be required to perform the annual 100 percent inspections.

A commenter asked who HUD believes would be responsible for self-inspections of voucher holder units. Commenters noted that since CoC-funded rental assistance projects have annual unit inspections, an additional self-inspection is onerous on the subrecipient as well as the PHA that would have to track and monitor subrecipients' compliance to this new requirement and recommended HUD not extend the self-inspection requirement to CPD programs.

A commenter advised against requiring self-inspections in the HOME program, which has a significantly different regulatory framework than the covered programs.

HUD Response: HUD notes that the requirement for a self-inspection was already a statutory requirement for public housing under 42 U.S.C. 1437d(f)(3) and was proposed to be extended to other programs under NSPIRE, except for owners participating in the HCV, PBV, and Moderate Rehabilitation Programs under proposed § 5.707. The final regulations include edits to clarify HUD's expectations for electronic submission only for properties scoring under 60 and retains the language that provides for additional notice with public comment before implementation. Generally, results of self-inspections will be used by HUD to monitor resolution of deficiencies and ongoing compliance with the NSPIRE Standards in failing properties, or those that score under 60 points. Requiring them broadly for all properties will help PHAs and Multifamily Housing owners ensure properties are regularly monitored and maintained. Reducing reporting burden for these inspections serves to align the Public Housing program with existing procedures in Multifamily Housing Programs.

HUD appreciates comments regarding the use of technology to facilitate self-inspection and swift transfer of information between the property and HUD. The Department is in the process of developing technology solutions and will take this feedback into consideration. Regarding concerns about the cost of hardware, HUD is developing a technology solution based off of the Salesforce platform. Inspection results will be uploaded via a phone, tablet, or computer—no specialized equipment will be necessary for the inspection, except a moisture meter as proposed in the NSPIRE Standards notice, if finalized. HUD also appreciates concerns regarding methods for uploading/transferring inspection data to HUD, inspectable areas, how data will be used, timing, and user experience of inspection reporting systems. HUD's REAC is developing new technology to help facilitate easy transfer of the inspection results without any specialized hardware.

HUD agrees that adding this burden to small landlords participating in tenant-based programs may discourage landlords from accepting residents participating in the programs. PBV and moderate rehabilitation units are already subject to frequent inspections by the PHA, including PHA inspections resulting from tenant complaints. Additionally, the HCV, PBV, and Moderate Rehabilitation inspections are not numerically scored. Section 5.707 exempts owners participating in the HCV, PBV, and Moderate Rehabilitation Programs from self-inspection requirements. HUD declines to include Healthcare Programs, CPD-funded programs and Office of Multifamily properties that do not have an assistance contract at this time. The requirement to perform and upload an NSPIRE inspection would be a new burden for these programs.

When HUD implements the self-inspection requirements, training opportunities will be provided along with the implementing notice. Self-inspections performed to comply with § 5.707 shall be done in accordance with the NSPIRE Standards.

With respect to the comment about waiving self-inspections on the same year as the NSPIRE inspection of record, HUD has not allowed this flexibility under the NSPIRE rule because it would conflict with the statutory requirements for public housing under 42 U.S.C. 1437d(f)(3). Revisions to § 5.711(c)(2) allow PHAs and owners to fulfill this requirement in conjunction with the follow-up already required under that regulation.

With regard to the comments regarding local code violations or input from local organizations, HUD continues to seek ways to facilitate information sharing with local authorities. HUD-assisted housing will continue to be subject to local code requirements as covered in the regulations, but local code violations will not be included in the NSPIRE Standards or scoring at this time.

Comments Regarding How To Involve Residents in Self-Inspection

Commenters urged HUD to require the self-inspection be reported to residents and provided at no cost and also to add a provision providing a formal mechanism for residents to raise challenges to the HUD Field Office that must be investigated and addressed by

Field Office staff, requiring owners to cure any material deficiencies.

A commenter suggested that the tenant and the landlord walk the unit together and sign certifying the results, which would allow PHAs to have a reward program for tenants and landlords with good track record of completing the universal inspection certification (UIC). Another commenter urged HUD to make clear that self-inspections do not need to have a tenant signature attesting to the inspection, because many inspections occur while the residents is outside the unit.

A commenter urged HUD to implement the system allowing tenants to provide a ''1–5'' rating of their units, applied to categories including ''HVAC,'' ''water,'' and ''electrical,'' and recommended HUD aggregate these ratings for multi-unit properties to identify common issues at a single location. This commenter further recommended allowing feedback to be submitted both electronically and via regular mail to ensure involvement of all age demographics and avoid technological barriers.

A commenter requested HUD require PHAs and Owners provide at least 48 hours advance notice of inspections and notice of the completion of the inspection to residents and any present tenant organization, with information about the inspection that is accessible to the family.

A commenter recommended that during COVID the resident can do a self-evaluation inspection distributed by the management/owner with work orders being generated for completion, noting that it would cost less money to know that repairs are done immediately and not allowed to cause further damage.

HUD Response: HUD appreciates the suggestions related to tenant involvement in self-inspections but declines to implement them at this time. The self-inspection process will be spelled out in the NSPIRE Administrative notice, and HUD will provide an opportunity for tenant feedback in other areas of NSPIRE. There are formal procedures in place for residents to submit complaints regarding their property or unit and residents of HUD-assisted housing may call their local HUD office when they are unsure of how to navigate this process, as it varies by program. Public housing and HCV program residents can also bring concerns to their Board of Commissioners and attend board meetings. PHA Boards of Commissioners usually include at least one resident member. HUD also has field office coverage for every State and territory, see *www.hud.gov/local.*

Comments Opposing the Self-Inspection Standard and Suggesting Alternatives

Commenters stated that a self-inspection requirement is unnecessary, stating that most owners already do self-inspections and take good care of their property, rendering a requirement unnecessary and burdensome for owners and managers as they familiarize themselves with yet another protocol of inspection and reporting, especially if the owner chooses to hire a third party; that there is no convincing rationale for why REAC needs this level of information or how they plan to use it; and that HUD's assumption that a universal self-inspection requirement would increase the quality of HUD-assisted housing is false because, were it true, there would be substantial differences in inspections scoring between Public Housing where self-inspections are required and other programs that do not require self-inspections. One commenter urged against new requirements being merely a ''signal'' and suggested new requirements must lead to improved outcomes which are predicted by data, particularly when there is no direct statutory basis for the requirement.

Other commenters opposed the self-inspection requirement as too costly, noting the increase in administrative burdens on staff and the PHA itself. Commenters expressed concerns that a self-inspection requirement would cause capacity constraints to private landlords that rent to voucher holders, threaten the ability to recruit and retain landlords, and prevent these landlords from urgently addressing move in inspection issues A commenter opposed the requirement on the grounds that an annual self-inspection requirement might also be overly intrusive to tenants who are able to successfully care for their units, especially since many tenants in tax-credit properties also undergo inspections as part of tax-credit compliance.

Other commenters expressed an inability to assess the magnitude of the proposed requirement without understanding the parameters of the self-inspection or self-reporting requirements.

Commenters also stated that the proposed requirement would go beyond the Housing Act, which requires that PHAs ''shall make an annual inspection of each Public Housing project to determine whether units in the project are maintained in accordance with'' housing quality standards and noted the statute does not require that PHAs inspect each unit annually. A commenter noted that in a HUD Public Housing Management E-newsletter in January 2012, HUD recognized that Congress did not intend that every unit be inspected every year, and noted that using another method, such as inspecting a representative sample of units or inspecting historically problematic units more frequently allows PHAs to ''free up resources, especially those necessary to provide unit maintenance.''

As an alternative, a commenter suggested HUD work with Congress to remove the annual self-inspection requirement to be replaced by the risk-based inspection protocol as established by HUD to further deregulate and devolve control of public housing units to their owners.

Finally, commenters expressed concern that a self-inspection may not be effective if the inspector is not qualified to conduct a proper inspection and therefore will likely miss or misreport important issues. A commenter additionally expressed concern that housing providers might falsely self-certify compliance with lead-based paint certification and the remediation of defects.

HUD received the following comments in response to HUD's request for alternatives to the self-inspection protocol.

Two commenters stated that the current annual self-inspection is adequate. Another suggested HUD require PHAs to inspect each public housing unit once every two years, rather than annually.

A commenter suggested HUD allow a documented entry for a maintenance purpose, during which a smaller scale inspection for safety hazards is conducted, to count as a self-inspection.

A commenter recommended implementing a Quality Control program that would provide Healthy Homes Assessment capacity to PHAs to ensure uniformity/consistency in the way the PHAs identify, evaluate, prioritize, and manage the hazards found in the home and provide random QC-checks to inspected homes using a combination of on-site and virtual home assessments.

Commenters suggested making the self-inspection protocol less burdensome. One recommended creating a self-inspection protocol that is the least burdensome possible, including no more than three categories, less than 5 sub-categories, and either paper or electronic submissions; another suggested HUD allow properties to simply document the inspections and work orders in the file instead of requiring the actual submission of an electronic report until requested by

HUD or monitored in an MOR. A commenter expressed concern over the submission of a self-inspection report, or a requirement that all a property's work order receipts for a rolling year be provided, as overly burdensome to property owners, and questioned what role the information will play in the REAC inspection or scoring.

Commenters suggested that HUD limit the reporting requirement so that properties will only report on the Health and Safety Risks identified and corrected at property within a given year. These commenters noted a narrower scope will ensure that the NSPIRE requirements are practicable while providing HUD with data on each property's most critical maintenance activities.

A commenter suggested that owners should not be allowed to self-certify that they have addressed severe health and safety citations on the grounds that HUD should not trust the certification.

Commenters suggested giving autonomy or options to residents to minimize the inconvenience or trauma of unit inspections, such as requiring 48 hours notice to residents before self-inspection, as well as allowing residents to opt in to doing a self-inspection, potentially with photo or video documentation. A commenter suggested allowing a resident to opt into less frequent inspections where historically the unit has been in very good condition. A commenter urged HUD to require that the annual inspections be no more than annual.

HUD Response: HUD appreciates the thoughtful feedback regarding self-inspections, and that property owners, managers and PHAs understand their obligation to provide decent, safe, sanitary housing in good repair at all times. HUD agrees that regular inspections should be occurring in well-managed properties, and that annual self-inspections should result in improved conditions and outcomes.

The United States Housing Act of 1937 requires that all PHAs ''make an annual inspection of each Public Housing project to determine whether units in the project are maintained in accordance with the requirements.'' [13] The requirement to perform an annual self-inspection in public housing did not change with the NSPIRE rule; however, in this rule, HUD has added a requirement for self-inspections for housing participating in Multifamily Housing programs, and a new regulatory requirement to electronically transmit the results of self-inspections for all properties that score less than 60. Collecting self-inspections of every unit is consistent with current Multifamily Housing policy.[14] HUD disagrees that self-inspections are overly burdensome and unnecessary and reminds PHAs and owners that they should not rely solely on HUD's inspections to manage their properties. If self-inspections are occurring as part of routine operations, or for compliance with the Housing Act, a new regulation clarifying this requirement is not a new burden.

HUD clarifies that self-inspections submitted to HUD should include all units. Inspecting every unit during a self-inspection (vs. sampling) was discussed in the preamble to the ''Uniform Physical Condition Standards (UPCS) and Physical Inspection Requirements for Certain HUD Housing'' rule published on September 1, 1998.[15] While this final rule requires self-inspections for all properties on an annual basis, only properties scoring below 60 will be required to transmit a report with the results of the inspection to HUD. Self-inspections submitted to HUD must also adhere to the NSPIRE standards. The process for performing a self-inspection and transmitting it to HUD will discussed in detail in a subordinate notice.

HUD is aware of the obligation on owners to certify to lead-based paint compliance through other processes and its limitation. These requirements are not included or changed in the NSPIRE rule. HUD agrees that results of self-inspection will not be used as part of calculating the physical inspection score, and instead will be part of the follow up HUD performs on properties that are failing, *i.e.,* score below 60. This requirement creates an incentive for PHAs and owners to ensure their properties are maintained and in good repair. If HUD program offices or the DEC are following up on results, they may request additional documentation, such as work orders, but the regulation at § 5.707 does not require that. For self-inspections, HUD continues to allow the use of remote video inspections as described in PIH Notice 2020–31, which could be done in coordination with the resident. PHAs and owners should continue to follow lease agreements for notice to residents before an inspection occurs.

HUD understands that residents are interested in the results of NSPIRE inspections and self-inspections, but because inspections contain detailed information down to the unit level, they may contain sensitive information. For example, residents with pest infestations may not want that information made public along with their unit number. Information from REAC-performed inspections will be available to residents as described in § 5.711(h).

HUD acknowledges the suggestion to include Mod Rehab, PBVs and other CPD-funded programs in the self-inspection requirement but declines to include such a requirement at this time. First, these properties are not scored as Multifamily Housing and Public Housing programs. Secondly, for the PBV and Mod Rehab programs, these owners work directly with PHAs and do not submit reports to HUD. Moreover, under CPD-funded programs such as HOME and HTF, grantees already have the flexibility to require self-inspection as part of their ongoing property standards. To minimize the burden of inspections, HUD has allowed flexibility to PHAs and owners to combine the self-inspection requirement in the years HUD performs an inspection with the follow up inspection in § 5.711(c)(2). With respect to ''Healthy Homes Assessments'' and their use to identify, evaluate, prioritize, and manage the hazards found in the home, REAC collaborates with HUD's Office of Lead Hazard Control and Healthy Homes to help ensure inspections include hazards that can cause death, illness, and injury in residents, and intends to include many elements of a health and safety assessment in the NSPIRE Standards notice. HUD will require that self-inspections use the NSPIRE Standards so that results are consistent and can be compared to inspections performed by REAC. For quality assurance, HUD will provide information on the qualifications and training recommended for persons performing self-inspections. Additional details about the self-inspection process will be discussed in detail in the Administrative notice. This process will also allow PHAs and owners additional time to establish or modify a self-inspection program.

Section 5.709 Administrative Process for Defining and Revising Inspection Criteria

Comments Regarding Updating Revisions to Inspection Procedures Every 3 Years

Commenters supported revisions of standards every three years to allow HUD to respond to the changing needs of an evolving housing portfolio. One commenter opposed any new changes to inspection standards and requirements

[13] 42 U.S.C. 1437d(f).

[14] See Housing Notices H 2015–02 and H 2018–08.

[15] 63 FR 46566.

that are made outside of the **Federal Register**.

Some commenters cautioned that HUD should avoid upending inspection standards every three years. One commenter, while supporting the transparency behind continual updates to standards on a 3-year cycle, noted concerns with respect to the impact on building systems and suggested that HUD should be mindful of costs and impacts on housing owners, managers, and tenants caused by significant updates and changes. Commenters suggested HUD adopt advisory scores and transition times for major changes to standards, and support properties as they make significant new upgrades, including when new standards are first implemented, and that stakeholders be given ample time to comment and understand the guidelines. A commenter recommended 30 days' notice prior to new procedures becoming effective.

HUD Response: HUD believes that a periodic scheduled review of the Standards and Scoring Model will allow for iterative improvements to the NSPIRE inspection process, adapting to changing technologies and circumstances in our portfolio. The routine triennial revision process will allow for a public comment period of no less than 30 days in the **Federal Register**. HUD will take feedback related to advisory scores and transition times for major changes into consideration. Scoring under PHAS may have a transition period to be announced at a later date. Additional guidance will be in subordinate notices which will be published in the **Federal Register** and available for public comment.

Comments Regarding Emergency Revisions to the NSPIRE Standards

Some commenters opposed the proposed changes to § 5.709(a)(2), which would allow HUD to publish a notice implementing changes to the inspection standards without public comment in an emergency, defined as ''a significant health hazard, a new safety concern due to changing construction technology, or another event as defined by the Secretary.'' One commenter stated that HUD did not provide an example of what changes would constitute an emergency under this definition, and urged HUD to provide a comment period for all significant changes made to the standards so that various stakeholders have an opportunity to weigh in. Another commenter suggested that no type of severe health or safety deficiencies, new safety concerns, or other events would necessitate the Secretary to publish a final notice without 30 days of public comment in the case of an emergency that permanently changes inspection standards and scoring methodology. This commenter suggested that the regulation should be amended to make it clear that any regulations published without notice and comment will be implemented on an emergency basis, time-limited, and subject to notice and comment prior to final implementation. Another commenter suggested that if HUD decides to proceed with emergency provisions without such a comment period, there must be a grace-period of at least 30 days for inspections that occur immediately following the release of the emergency revision, and that such deficiencies should not negatively impact a property's score for the first inspection which such emergency revisions are included. A commenter expressed preference for a 30-day public comment period on all published notices but understood health and safety emergencies require swift action.

Commenters also noted that § 5.709(a)(2) concerning emergency revisions refers only to public housing and suggested that the provision in the final rule should include all HUD housing.

HUD Response: HUD thanks commenters for their suggestions about the process to announce and implement emergency provisions without public comment. HUD believes that there are types of LT and Severe concerns that would require an emergency notice, and as written in the final rule the provision is available for ''HUD housing'', or programs covered by this rule. When a significant health or safety hazard exists, allowing 30 days for public comment before taking corrective action may cause severe injury or loss of life. HUD intends to weigh the exigency of the situation in advance of decisions and limit provisions to a reasonable timeframe, or to the duration of the declared emergency. HUD may also consider notices that are final upon issuance but still include an option for comment.

Question for Comment #18: Definitions for Kitchens and Sanitary Facilities

HUD sought input on whether and how it should define kitchens and sanitary facilities. HUD received the following responses.

Comments Regarding Whether To Define Kitchens and Sanitary Facilities

Many commenters supported definitions for both kitchens and sanitary facilities, stating that definitions would ensure everyone is inspecting and providing the same standard across the board and that doing so would help eliminate ambiguity during inspections.

Other comments opposed defining these facilities, suggesting they are already adequately represented by local building codes and any effort to standardize these definitions nationally could result in a discrepancy between HUD's definitions and State or local approaches. A commenter cautioned that defining these rooms could limit the number of units available to voucher holders and may risk owner participation in the HCV program if units do not meet HUD's proposed specifications.

Other commenters had suggestions for both standards. Commenters suggested that HUD defer to local code or go no further than local code. One commenter stated that a definition should be defined by the number of fixtures, another stated that definitions should apply only to new construction or properties that are renovated, and only if the definitions match current building code. A commenter recommended that if HUD decides to amend or change these definitions, HUD do so in a uniform manner across programs; another suggested that the definitions used in the HCV program are reasonable and should be used as a guide for the purposes of NSPIRE.

A commenter suggested that the definitions be broad enough to account for different types and eras of housing, such as variations in SROs, micro-studios, and older housing. This commenter noted the NSPIRE standards currently require kitchen ventilation or a range hood that filters air to the exterior, a building design that is uncommon in older homes and apartment buildings and which could be costly for some owners to upgrade.

Comments Regarding How To Define Kitchen and Sanitary Facilities and Their Related Components

Commenters supported defining a kitchen and its related components.

Commenters recommended that a kitchen be defined as having an approved cooking appliance (such as a stove or oven with overhead vent fan, range, or heating plate), a sink (with hot and cold running water), a refrigeration unit, and a garbage disposal, sufficient light and ventilation, and a minimum clear working space of 30 inches. A commenter cautioned that HUD should keep in mind the size of the units. A commenter recommended using the IPMC.

A commenter cautioned that HUD should not define ''functional adequacy'' to allow stoves and refrigerators when they have outlived their ''useful life'' because residents should not be saddled with outmoded, unsightly, antiquated appliances that send a message that HUD tenants are ''second class citizens'' or that that HUD tenants do not deserve the best.

A commenter recommended HUD provide some flexibility to ensure that units, like SROs for example, that do not have cook tops or other components typically associated with kitchens are not penalized if the unit does not come equipped with those components. A commenter urged HUD not to regulate by equipment type.

Commenters supported defining a sanitary facility and its related components, noting that the quality of these facilities in closely tied to the ability of residents to be safe and healthy in their homes, and HUD should clearly identify its expectations for these critical facilities. A commenter stated that because bathrooms are more standard than kitchens, it is appropriate to define a bathroom in the standards.

Commenters suggested HUD require a toilet, sink, and bathtub or shower in sanitary, safe working condition. A commenter noted that this would be consistent with the IPMC. A commenter noted that the bathroom should have hot and cold running water.

Some commenters recommended a ventilation requirement to avoid mold. Another comment noted that many building codes across the country do not require bathroom ventilation, and as such ventilation should not be considered a component required for functional adequacy unless it is required by local codes.

A commenter suggested standards should reflect appropriate standards for compact and micro units. A commenter suggested that a bathtub be replaced with only a way of washing that is not necessarily a shower or bathtub depending on the size of the unit. Another commenter suggested a sanitary facility should also provide privacy to those using the facility.

A commenter opposed adding a definition for sanitary facility and stated that the inspectors are trained professionals and based on general HUD guidance should be able to assess each component/fixture normally tested during the NSPIRE inspection.

HUD Response: HUD appreciates the diverse comments received on kitchens and sanitary facilities and agrees that there are variations in different types and eras of housing, and that some level of definition is needed. HUD will include definitions that align with the American Housing Survey in the Administrative notice. Further, all HUD-assisted units should meet a minimum standard for habitability, but this definition could allow for some flexibility. HUD also reviewed how kitchens and sanitary facilities are defined in the American Housing Survey. As provided in the final regulation at § 5.703(d) as an affirmative habitability requirement, kitchens must have a sink with hot and cold water, a cooking appliance, a refrigerator, food preparation area and a food storage area. Sanitary facilities must have a sink with hot and cold water, a bathtub or shower, interior flushable toilet and be usable in private. For the HCV and PBV programs, the regulations for Special Housing Types at part 982 subpart M will continue to apply.

Outside of the minimum affirmative habitability requirements, the NSPIRE standards will also account for health and safety concerns related to kitchens and bathrooms, such as minimum ventilation and mold. Additional information on the individual components, their definition and functionality will be in the NSPIRE Standards notice, within the relevant standard (*e.g.,* Bathtub and Shower Standard, Kitchen Countertop Standard).

Section 5.711 Scoring, Ranking Criteria, and Appeals

Comments Regarding § 5.711(a), Applicability

A commenter recommended HUD include a cross-reference to the Section Eight Management Assessment Program regulations in § 5.711(a).

HUD Response: HUD notes that this cross-reference already existed in HUD's proposed rule. HUD is keeping this cross-reference at the final rule stage.

Comments Regarding § 5.711(c)(1), Inspection Requirements

A commenter objected to expanding what qualifies as an exigent health and safety deficiency in need of a 24-hour work order as unnecessary.

A commenter urged HUD to provide a formal mechanism for residents to raise challenges to the certification and supporting evidence to the HUD Field Office that must be investigated and addressed.

Commenters noted that the proposed rule's preamble stated that severe health or safety deficiencies would have to be addressed within 24 hours, while other deficiencies would need to be corrected within 30 days, but the text of paragraph (c)(1) only discusses severe health or safety deficiencies that must be ''mitigated'' within 24 hours and paragraph (c)(2) merely directs an owner to correct non-life-threatening severe health and safety deficiencies ''expeditiously''—not within 30 days. Commenters urged HUD to clearly require an owner to correct non-life-threatening severe health and safety deficiencies within 30 days. A commenter noted that establishing clear timelines for redressing deficiencies is paramount to health and safety of citizens, and noted that deficiencies may be regionally contextual, such as the failure of HVAC in a warm climate in summertime.

Commenters objected to the term ''mitigated'' as it does not mean to eliminate or abate and recommended HUD use ''corrected or resolved or sufficiently abated.''

A commenter recommended that HUD should state the party responsible for the physical inspection will provide the owner and PHA with the entire physical inspection report (electronically through the internet or by mail), which provides the physical inspection results and other information relevant to inspections, including all deficiencies, similar to the language currently in § 200.857(c)(1).

HUD Response: HUD is designing its NSPIRE standards with the goal of prioritizing the health and safety of residents. In this final rule, the term ''Severe Health and Safety'' is revised to LT to better align NSPIRE to the terminology and correction time frames in HOTMA. As described in the NSPIRE Standards notice, LT deficiencies are those that, if evident in the home or on the property, present a high risk of death or severe illness or injury to a resident. For the HCV and PBV programs, HOTMA also defines the response times for LT deficiencies to be corrected within 24 hours, and for all other deficiencies to 30 days. Because different deficiencies will have different ways to resolve the deficiency, the expectation for what can be completed in these time frames will be adjusted, while still allowing for some local flexibility and discretion. For a LT deficiency in the context of Multifamily and Public Housing, ''corrected'' means that the PHA or owner has either completed all repairs, or at least controlled or blocked access to the hazard in a manner that it no longer poses a severe health or safety risk to residents of the property. HUD recognizes that to permanently repair some deficiencies, the PHA or owner may need additional time for a licensed professional or specialized supplies that may not be available in a 24-hour timeframe. Guidance for correction timeframes and evidence that correction is complete is in the Administrative notice. Repairs will vary by the component and level of deficiency, and some mitigations will be approved on a case-by-case basis to meet the statutory and regulatory timeframes. For example, if a PHA has to procure specialized or certified trades professionals, it may take 30 days just to prepare a request for proposals and get approval from the Board of Commissioners.

HUD does not agree that all non-life-threatening deficiencies can be completely resolved in 30 days or less and wants to retain the flexibility already available. Some deficiencies may be property-wide, require special expertise, and/or the services may not be readily available to fully address the deficiency. HUD also appreciates that some deficiencies may be exacerbated by local conditions, especially local climates, and this should be considered to ensure the health and safety of residents. For LT deficiencies, HUD has used the term ''corrected'' to align with HOTMA. If the PHA or owner at least prevents or blocks potential harm to residents in 24 hours, more extensive repairs can be done over a longer time frame, with approval from HUD and as described in the NSPIRE Administrative notice. HUD can also allow temporary relocation of residents as a method to prevent harm to residents while repairs are completed. In some cases, temporary relocation of residents is required.[16] Under § 5.711(c)(1), the deficiency must be corrected, and owners and PHAs cannot simply block access in perpetuity. With respect to comments about providing the owner with a copy of the inspection report, HUD is developing technology solutions to provide quick, seamless transmittal of results to owners and agents.

Comments Regarding § 5.711(c)(2), Post-Report Inspection

A commenter stated that submitting all work orders related to an NSPIRE inspection would be an unnecessary administrative burden and noted HUD did not provide a rationale for requiring this data or plan for how HUD would use it. This commenter questioned whether HUD has the capacity to review and respond to such a data flood effectively and consistently and asked if HUD is going to require PHAs/POAs to use a specific type of maintenance work order reporting platform.

A commenter suggested § 5.711(c)(2) should be modified to remove the extra post-inspection 100 percent self-inspection, noting that this is now a second 100 percent self-inspection and a REAC inspection in one year, and that three inspections in one year is burdensome to owners and managers.

HUD Response: At the final rule stage, HUD has changed the reporting requirement to only apply to LT and Severe deficiencies, and offered flexibility to combine the self-inspection under § 5.707 with the post-report inspection described in § 5.711(c)(2).

Comments Regarding § 5.711(c)(4), Technical Review of Inspection Results

Commenters noted in § 5.711(c)(4) the language references ''four sources of error'' but there appear to be only three sources. Commenters supported making the ''fourth source of error'' the currently entitled ''database adjustment'' and suggested it should be moved to this section.

A commenter recommended HUD indicate that the basis for a technical review is a material error associated with the physical inspection score, and that building data errors, unit count errors, and non-existent deficiency errors are types of material errors.

A commenter suggested that paragraph (c)(4)(ii) be amended such that HUD's system of records do not actually need to be updated, but the owner only needs to notify HUD and request that HUD's system of records is updated, to account for situations in which it is not the owner's fault that the system is not updated.

HUD Response: HUD agrees that the numbering of this part of the proposed rule was incorrect. HUD has corrected this numbering. HUD is also amending the final rule to restore the language for database adjustments in §§ 902.24 and 200.857.

Comments Regarding § 5.711(d), Technical Reviews

A commenter supported the extension of technical review submission from the current 30 days to 45 days and the ability for electronic submissions. Another commenter opposed the change because the increased time period to submit a request for a technical review would unduly delay the remediation of deficiencies at properties, particularly in light of HUD not including a time period for which a PHA or owner must complete its survey of the property and remediation of any non-life threatening severe health and safety defects. This commenter also asked HUD to define what day will be considered the ''day of release'' of the physical inspection report.

HUD Response: In this final rule, HUD has retained 45 days in § 5.711(d) for technical reviews. The technical review process should not delay the process to remediate deficiencies. LT conditions will still require correction in 24 hours. With regard to ''day of release,'' HUD has revised this term to be ''the day the inspection report is provided to the owner or PHA.''

Comments Regarding § 5.711(d)(2), Request for Technical Review

A commenter noted that currently REAC can issue a new physical condition score or keep the same physical condition score and asked why HUD needed to change this option. This commenter stated that in order to fully comment on this HUD should provide the parameters pursuant to which REAC will make these determinations and urged that REAC should only undertake a new inspection if the owner requests it. Another commenter urged HUD to accept for review any property's technical review regardless of the number of points at stake for any individual property.

HUD Response: HUD appreciates the feedback and will discuss this matter in the subordinate Administrative Procedures notice.

Comments Regarding § 5.711(d)(3), Burden of Proof That Error or Adverse Conditions Occurred

A commenter agreed that the burden of proof should rest with the PHA/POA, but noted HUD has the obligation to carefully consider the evidence presented, to research and carefully examine the protocol, guidance and precedent, and to provide a response that lists what was considered and the reasoning for the decision so that the response serves as a teaching tool, providing insight about the deficiency in question, not just to those who requested the technical review, but to others as well.

A commenter suggested all technical reviews and decisions need to be available and accessible to the public to provide residents the ability to know more about the final result of the inspection, serve as a teaching tool for PHAs/POAs who can see if there is any precedent for a deficiency they are attempting to appeal, and ensure a more consistent application of the protocol by inspectors who will be able to see if they are citing deficiencies that are non-existent. This commenter noted that REAC has rejected documentation and arguments that they previously accepted without any explanation as to the change in standards.

A commenter recommended HUD should revise ''owner'' to read ''owner or PHA'' in § 5.711(d)(3) for clarity.

[16] See, *e.g.,* § 35.1345(a)(2).

HUD Response: Details regarding burden of proof are included in the Administrative Procedures notice which will be published before this final rule is effective. HUD regularly used ''owner'' for either the PHA or Multifamily owner entity but has revised the regulations that apply to both PHAs and owners to indicate applicability more clearly.

Comments Regarding § 5.711(d)(5), Significant Improvement

A commenter asked how ''significant improvement'' is to be interpreted and noted that for any one property, even a 1–5 point improvement in a score might not move that property's ranking from one level (such as standard) to another (high performer), but can collectively within a portfolio improve the PHA's overall PHAS score.

HUD Response: HUD agrees that moving a ranking level up (*e.g.,* substandard vs. standard) is significant. The term ''significant improvement'' was included to ensure that PHA, owner and government resources are used efficiently. Additional details about the technical review are in the Administrative Procedures notice.

Comments Regarding § 5.711(d)(6) Reinspection

A commenter believed that HUD should bear the expense from reinspection where HUD determines that the reinspection is required, and suggested that if there is a threat to the inspecting party of bearing the cost if the new inspection score results in a significant improvement, then that inspection will not be impartial. This commenter also noted that if a PHA/POA has the threat of bearing the cost if no significant improvement occurs, that will have the effect of discouraging them from requesting the technical review even if they strongly believe there was an error.

A commenter cautioned that an inspector could fail a site to get additional money from reinspection, and also that tenant-induced damage or a tenant's refusal to allow access could lead to a fail that management does not deserve.

Commenters asked for clarification on what HUD considers a reasonable inspection fee. A commenter opposed HUD determining whether a reinspection is appropriate and suggested that the inspection occur only upon request from an owner or manager, and that HUD should make the inspection within 30 days of the owner's request.

HUD Response: HUD appreciates the comments on issues surrounding reinspection and cost, but has decided not to change this language at the final rule stage. If a new inspection is undertaken by the inspecting party and the new inspection score results in a significant improvement in the property's overall score, the entity responsible for the inspection shall bear the expense of the new inspection. If no significant improvement occurs, then the owner or PHA responsible for the property must bear the expense of the new inspection. Owners and PHAs can collect reasonable fees for tenant damages through lease enforcement.

Comment Regarding § 5.711(d)(7), Deficiencies

A commenter suggested § 5.711(d)(7) is punitive and the triple point deduction should be removed as it would bar earnest owners and managers from appealing or requesting reinspection.

HUD Response: HUD appreciates the commenter's feedback and accepts this recommendation. The regulations include other enforcement mechanisms to ensure that deficiencies are corrected.

Comments Regarding § 5.711(e) Independent HUD Review

A commenter also suggested that ''modernization work in progress,'' which is a common ground for appeal for aged properties undergoing moderate substantial rehabilitations, should be grounds for independent HUD review. A commenter noted the language in the proposed text mirrors 24 CFR 200.857(e)(1), but the proposed language does not include ''owners'' and recommended HUD include ''owners'' in the proposed language along with PHAs to ensure clarity. A commenter also urged HUD to include the process and timing for requesting a score adjustment in the final rule for clarity.

HUD Response: Modernization work in progress was previously included in § 902.24(c) and was not included in the proposed rule. HUD has added this language at the final rule stage. The final rule keeps the proposed rule's requirement that a score adjustment request be made no later than the 45th calendar day following the release of the inspection report. Because the basis for the technical correction may be complicated, HUD has not provided a limit on the time it may take to review these requests. HUD intends to provide additional information on this issue in guidance.

Comment Regarding § 5.711(f) Responsibility of Final Score and Publication of Scores

A commenter stated there should be no reinspection mandated by HUD outside of the 2–5-year range or as required by statute and only the owner should be able to request reinspection. This commenter also suggested HUD should have clear guidelines around when and how it will grant a reinspection to requesting parties and noted that the new inspection score should be considered the final score only if the owner requested it.

HUD Response: HUD appreciates the feedback but disagrees with the commenter's perspective. Reinspection can be a necessary tool for HUD to review score disputes and to conduct oversight at properties and ensure compliance with the regulatory agreement at the property. While having some guidelines around how reinspections will be conducted is appropriate, HUD needs to have the flexibility to make dynamic decisions to reinspect in response to emergency situations. Once a reinspection occurs the resulting score will become a score of record and will be made available to the owner.

Comments Regarding § 5.711(g) Issuance of Final Score and Publication of Score

A commenter stated it is unclear whether posting of the final score will be publicly available and suggested HUD must maintain confidentiality in terms of providing access to reports or ownership information and this should be clarified. Another commenter requested HUD correct § 5.711(g)'s two references to paragraph (c), stating that both of these references should be references to paragraph (e).

HUD Response: The final rule keeps the proposed rule's language at § 5.711(g) that HUD will make final scores public on HUD's internet site or other appropriate means. Section 5.711(h) also provide a process for owners, managers or PHAs to notify residents of inspections and make the results available. HUD regularly publishes its REAC inspection scores on the HUD website for both Public Housing and Multifamily properties: *www.huduser.gov/portal/datasets/pis.html.* HUD program areas also maintain websites with certain data. The Office of Multifamily Housing regularly publishes REAC inspection scores here: *www.hud.gov/program_offices/housing/mfh/rems/remsinspecscores/remsphysinspscores.*

Under § 5.711(h)(2), tenants may request to view inspection reports after the 45-day appeals process is complete. Section 5.711(h) is based on and replacing the old Multifamily Housing requirement which was previously included in 24 CFR 200.857(g). HUD has corrected the citation to paragraph (c) to paragraph (e) and thanks this commenter for identifying this incorrect citation.

Comments Regarding Paragraph (h)(1), Notification to Residents

Commenters suggested HUD require 7-days notice to residents before an inspection, with a minimum notice of 48 hours, or at least the time period proscribed by State and local law. A commenter noted that the current 24 hours is not enough time for residents to prepare their units or make appropriate arrangements.

Commenters suggested owners be required to explain to residents the details about the inspection such as why it is happening, residents must be informed of their right to be present during an inspection, to identify problems to the inspector, to meet with the inspector prior to its start, and to designate a tenant representative to accompany the inspector on their rounds. Commenters recommended HUD prescribe specific, plain language for owners to utilize regarding REAC inspections, as it does for Section 8 Opt Out Notices, to mitigate this problem.

A commenter suggested that HUD clarify that notification to residents must be done in accordance with the resident lease.

HUD Response: HUD appreciates the feedback but declines to expand the language in this provision to include a 48-hour to 7-day notification window for unit/property inspection. Notification requirements are already included in leases and will vary by owner and program. In the Public Housing program, for example, the model lease requires at least 48-hours notice. HUD therefore declines to revise this requirement in this rulemaking.

With respect to additional tenant guidance regarding the inspection process, this final rule does require owners and PHAs to post in the management office and on common bulletin boards availability of the final inspection report for review along with supporting documents and correspondence as specified in § 5.711(h)(2). HUD continues to seek avenues to expand tenant participation in the NSPIRE inspection process which will be addressed in subordinate notices via the **Federal Register** and available for public comment.

HUD supports the suggestion to include language that notification should also be in accordance with the resident lease, as this is consistent with current practices.

Comments Regarding Paragraph (h)(2), Availability of Documents for Review

Commenters recommended that these documents should be provided at no additional cost. A commenter recommended HUD specify that documents available for review, including but not limited to the REAC inspection Report and related correspondence and the results of any re-inspection and appeals, should be available for residents to copy during normal business hours upon request.

Commenters recommended owners and agents should be required to retain these documents for inspection or review by tenants or the tenant association for five years, not just the current 60-day limitation. A commenter stated this would echo the five-year retention and availability provision of the statute creating the Comprehensive Housing Affordability Strategy (CHAS), one of the statutory underpinnings of the Consolidated Plan. Another commenter recommended removing the time limit requirement entirely.

HUD Response: As stated in § 5.711(h)(2)(i) of this rule, tenants of HUD housing have a right to review and copy the final inspection report and related documents upon reasonable request during regular business hours. There is no cost associated with reviewing the documents. The rule language specifies related documents include the owner's survey plan, plan of correction, certification, related correspondence, appeals, reinspection, etc.

HUD declines to mandate a longer document tenant-review period. Program record retention periods are determined in accordance with agency document retention policies and applicable Federal law. Because property conditions can change over time, inspections that are four or five years old may not still be current. Members of the public interested in older property inspection information from REAC can submit a Freedom of Information Act (FOIA) request to HUD.

Comments Regarding Paragraph (h)(3)

A commenter asked for more details regarding the required date on which the notice must be posted and the duration of the posting.

Commenters recommended HUD add that the materials provided by the owner for resident inspection should include the owner's certification that severe health and safety deficiencies have been abated within three days and the owners' materials should also be provided to any legitimate tenant association, as defined by HUD at 24 CFR part 245, subpart B.

Commenters also recommended HUD require that the notices in § 5.711(h)(3) should encourage residents to comment directly to the HUD Field Office with the name of the responsible Field Office staff and their direct phone number and email address, and Field Office staff must acknowledge receipt of comments from residents with seven days of receipt and respond substantively within 14 days.

HUD Response: HUD agrees and added a requirement that owners and PHAs post this notice within three days of the inspection. HUD also appreciates the feedback that the rule should require owner certification that severe health and safety deficiencies have been corrected. This final rule keeps language from the proposed rule that states that certification must be made available for tenant review and copying, which would include severe health and safety certification. HUD believes the final rule language addresses the commenters' concerns by keeping language from the proposed rule that requires that the owner's posts include the name, work address and telephone number of the HUD Account Executive and tenants are encouraged to contact HUD with any concerns or noted discrepancies.

Comments Regarding § 5.711(i) Administrative Review of Properties

Commenters recommended residents should receive notice and DEC should be obligated to consult residents when evaluating the property.

Commenters recommend that HUD add that owners must post the notice regarding submission of the property for DEC evaluation and enforcement to tenants explaining what a below 30 score means, why the property has been referred, and what that implies. A commenter suggested the explanation must state that transfer of the file does not mean the subsidy will be terminated but is a process to address concerns and bring the property into compliance. A commenter suggested tenants and their representatives should be encouraged to submit their own comments to DEC, if they choose. A commenter noted it has often been the efforts of residents and advocates that have resulted in the preservation of assisted properties and improved housing conditions for families.

A commenter recommended HUD amend paragraph (i) to clarify that documents, reports and correspondence between the owner and DEC shall be made available to residents and their representatives, with the aim of including their input in DEC's analysis, recommendations and remedial action, before final decisions are made, consistent with Housing Notice 2018–8.

Commenters supported paragraph (i)(2) but stated that DEC's analysis ''may'' include input from tenants, along with HUD, elected officials and others and requested should be changed to ''shall'', and that any subsequent site visit by DEC to the property include a meeting with residents and/or the legitimate tenants association, if any.

A commenter recommended HUD clarify that ownership and management need 2-week advance written notice of DEC evaluation site visits.

A commenter noted that the proposed rule did not incorporate important language about DEC's compliance and enforcement from 24 CFR 200.857(h)(2) and (i) and urged HUD to include it, especially regarding supporting and relevant information and documentation, and the development of a compliance plan.

A commenter suggested HUD should make information regarding enforcement actions taken by HUD publicly available and noted proactive residents and local advocates are essential to the type of efficiency HUD says it is seeking, such that HUD must publicly provide property-level information regarding conditions, mortgage maturity dates, housing assistance payment contract expiration dates, and HUD's actions to enforce its programmatic requirements.

HUD Response: Referrals to the DEC will be automatic for Public Housing and Multifamily Housing properties that score 30 or below. Properties receiving two successive scores of less than 60 may also be referred. Additional information about this process will be in the Administrative notice including a requirement that the PHA, owner or agent must provide a copy of notification of referral to the Department Enforcement Center to residents and certify it has done so by reasonable means such as leaving a notice under each door, posting in a mail room and on each floor, which is consistent with past practice outlined in Housing Notice 2018–08. HUD is not planning any additional notice or communication to residents or the public about referrals to the DEC, or information about the investigation and follow up, but the public has the right to submit a Freedom of Information Act Request. If a DEC review includes unit inspections, residents will receive notification in accordance with their lease. HUD declines to include a two-week notification requirement to owners and PHAs in regulation for site visits. HUD acknowledges the role tenants and advocates play in identifying conditions in housing and advocating for repair and preservation of existing affordable housing but declines to require that all administrative reviews include tenant input by adding ''shall.'' HUD believes that the addition of tenant participation into the REAC inspection process via the NSPIRE final rule gives residents a substantive feedback apparatus and that additional tenant participation during a DEC referral should be at the discretion of the DEC after consultation with program offices. Additional administrative procedures will be provided in a subordinate notice. This notice will include guidance on supporting and relevant information and documentation and the development of a compliance plan.

Other Comments Regarding § 5.711

A commenter suggested HUD remove ''significant'' from ''significant improvement'' in paragraphs (c)(3) and (d)(2), and other instances. This commenter stated there is no intent to waste the Department's time with appeals and to make an appeal takes time and resources from the owner or manager appellant, such that this is a sufficient bar to frivolous appeals. This commenter noted that under the current scoring system, it is not simple to ascertain whether different appeals will result in improvements to the score and going from a 29 score to a score of 32 may not be ''significant'' in terms of scoring, but is significant enough to withdraw a trigger for DEC referral. This commenter noted that increasing your score from a 59 to a 61, while not being a ''significant'' improvement in score, does take an owner or manager from ''failing'' to ''passing.''

A commenter recommended generally that tenants, legitimate tenant associations, and their representatives be given Notice, Comment and Appeal rights parallel to owners and agents, at each step of the REAC process and requested that HUD recognize this explicitly at each step, and allow tenants to post comments and photos electronically and/or in writing, in response to each stage, from initial inspection report; a final report after technical appeals; and an owners certification that severe health and safety citations have been addressed.

A commenter recommended HUD set a stationary scoring threshold to be used to refer properties to the Departmental Enforcement Center (DEC) and retain HUD's ability to send properties scoring higher than the stationary threshold to DEC so that HUD sets clear expectations for the owner, residents, and advocates regarding what will trigger HUD's enforcement action. This commenter noted HUD's current enforcement practices for specific properties are often inaccessible or unknown to residents and advocates. This commenter stated that the stationary scoring threshold should not be lower than 30 and suggested HUD also consider if properties scoring at the specified threshold generally have numerous life-threatening severe health and safety deficiencies, have difficulty correcting the defects within the HUD given timeframe, have difficulty substantially raising their score in the subsequent inspection, and have numerous State or local code violations.

HUD Response: HUD appreciates the feedback but declines to implement the suggested revisions with respect to use of the term ''significant'' in paragraphs (c)(3) and (d)(2). This language was added to discourage owners and PHAs from requesting technical reviews that will likely not result in substantial change to the score. In drafting this regulation, HUD considered current Federal resources and the administrative burden that technical reviews require and establishes a basis for HUD to decline a request.

With regard to expanding tenant participation in the appeals process, HUD will continue to explore the appropriate ways in which to engage tenants in the NSPIRE inspection process outside of what is already included in § 5.711(i)(2). Adding a required tenant element to this process would be administratively challenging for HUD, the DEC, PHAs and owners and could delay case resolution. Consultation with residents will remain as an option under the regulations. Tenant participation outside of administrative referrals will be outlined in future subordinate notices published in the **Federal Register**.

The scoring threshold for DEC referrals will be 30 and under, and properties that score under 60 in two successive inspections. The language in § 5.711(i)(1) and (3) has been revised to reflect that this process will include both Multifamily housing programs and Public Housing and the relevant HUD program offices. The addition of properties with scores of less than 60 in two successive inspections matches the current process outlined in Housing Notices H 2015–02 and 2018–08. HUD notes that an administrative referral to the DEC is not the only way HUD's program offices follow up on physical deficiencies. Staff in HUD's program offices, field offices and the Performance-based Contract Administrators (PBCAs) also do this oversight and follow-up. HUD will take this feedback into consideration as it details administrative procedures in subordinate notices.

Question for Comment #19: How To Approach Tenant-Induced Damage

HUD solicited comment on how to fairly approach tenant-induced damage and received the following responses.

Comments Regarding Problems Caused by Tenant-Induced Damage

Commenters noted that tenant-induced damages can be expensive and often go unreimbursed. A commenter stated that HUD has long been aware of the problem of tenant-induced damage and should have acted long ago. Commenters noted HUD's intended update to inspectable areas would increase the weight of in-unit scoring, which has the potential to significantly increase the impact of tenant-induced damage on the scoring.

Commenters stated that the biggest problem with tenant-induced damage isn't the cost of repair but being penalized by HUD for the damage. A commenter noted that most repairs can be easily handled in due course, another noted that tenant-induced damage can be inside and outside the unit.

Commenters noted that properties are often not aware of tenant-induced damage and that scoring physical deficiencies caused by tenants forces owners to invade residents' privacy to check for tenant-induced damage.

A commenter identified the following as types of tenant-induced damage: (i) deficiencies for blocked egress where a tenant has moved furniture in front of doors and windows, even after owner or its agent has requested that the item be moved and verified that it was moved; (ii) resident installed fans and air conditioning units; (iii) improper storage of items in the oven by residents; and (iv) condition of tenant owned appliances over which the owner has no control.

A commenter stated that owners and managers often use ''tenant induced damage'' as an excuse to avoid responsibility for ordinary wear and tear, or other damage not induced by the tenant to pass along charges to tenants, and to harass tenants. This commenter noted that owners and agents blame tenants for mold in their units, when the mold is due to the presence of moisture caused by water leaks and poor ventilation. This commenter stated that owners and managers seek to foist on residents charges through questionable ''House Rules'' for items which should be part of the ordinary maintenance of the property such as lightbulb or lock/key replacement. This commenter recommended HUD investigate this matter further and carefully construct future rules on this matter with consultation from tenant leaders and legal service agencies.

Support for HUD's Current Method of Handling Tenant-Induced Damage

Commenters stated that HUD should not treat tenant-induced damage differently because tenant-induced damage is still damage and an indicator of a problem that needs to be addressed by property management.

Commenters stated that sufficient protections are already in place, noting that: tenant-induced damages are already addressed by current regulatory provisions under family obligations which covers disincentives and program termination; the owner already has the right to pursue damages against the tenant; many housing authorities already include tenant damage charges in their ACOP and in their standard leases; properties can collect security deposits, and properties can have systems in place to deal with extraordinary damage caused by tenants.

HUD Response: HUD understands the commenters' concerns about the potential impact of tenant-induced damage on costs, scoring, and the burden of additional owner/management inspections. The Department also appreciates the comments and concerns about normal wear and tear and ownership responsibilities of maintaining units. PHAs and landlords can use policies and lease enforcement to prevent and collect fees for tenant damages. With the addition of affirmative habitability requirements in § 5.703(d) there is a clear expectation that the landlord is responsible for certain elements of the unit. If there are tenant-owned items cited in the inspection, the PHA or owner can request a technical review.

For units in the HCV and PBV programs, HOTMA provides that if a PHA determines that any damage (other than any damage resulting from ordinary use) was caused by the tenant, the agency may waive the applicability of the housing quality standards, except as it applies to the tenant. As HUD progresses with notices around Scoring and Standards, the Department will continue to seek to strike a balance to hold all parties accountable to their responsibilities outlined in their respective contractual documents and HUD guidance in caring for and maintaining units.

HUD generally agrees with the sentiment that damage, regardless of the source, must be addressed and that excessive tenant-induced damage may also indicate problems with property management and enforcement of lease provisions and house rules. Lease agreements and security deposits are essential vehicles for managing these issues.

Comments Regarding Incentives

Several commenters stated that landlords should use existing tools to handle tenant-induced damage. Commenters suggested that property owners should hold residents accountable for severe damage to units by issuing lease violations, going through mediation, charging for the damages, terminating the tenancy, and evicting tenants. Commenters recommended that properties use minimum monthly repayment agreements. Commenters suggested that providing a list of potential charges at move-in might help discourage a tenant from damaging the unit beyond normal wear and tear; one commenter suggested properties serve a 3-day notice to quit in situations where the amount of damage is equal to a year of rent.

Commenters recommended several incentives to tenants for maintaining their units, including: a gift card for the best kept unit administered by the management/owner, yearly community awards, privileges, recognition ceremonies for the apartment/unit/block/building kept in best conditions, rent incentives, a small saving account with deposits for taking care of units, or a new microwave. Other commenters noted that the incentive to maintain the unit should be the opportunity to live in the unit, and most do maintain their units. A commenter suggested that owners and PHAs can establish incentive programs if they want to.

A commenter noted that non-MTW PHAs do not have funding flexibility to provide creative incentives outside of current regulatory provisions and funding levels; another noted a disincentive requiring residents to pay additional charges due to damage and neglect would not work because residents would not be able to afford to pay.

HUD Response: HUD agrees that owners and agents must abide by their rights and responsibilities which includes enforcing lease provisions and house rules and PHA policies alongside of their responsibilities to maintain the physical condition of the property. PHAs and owners can ensure that residents are aware of policies, understand their responsibilities, and collect reasonable fees for damages. PHAs and owners can also stay abreast of property conditions with regular inspections and the annual self-inspection process included in NSPIRE. HUD also agrees that additional punitive financial charges above what is allowed in the lease provisions and security deposit administration would likely not be an effective means to discourage tenant-induced damage.

Comments Regarding How Inspections Should Take Into Account Tenant-Induced Damage

Commenters stated that tenant-induced damage should not be scored against an owner or PHA. One commenter stated, in the alternative, that tenant-induced damage should result in the minimum point deduction; another suggested that tenant-induced damage should count only if the PHA failed to address it. Commenters suggested adding an appeal option to allow demonstrating that damage is repeatedly caused by tenants and repaired by the owner. A commenter suggested that if the owner can show the tenant caused the damage, the owner should not be sanctioned or see score reductions through the NSPIRE process.

Commenters suggested that HUD should use an advisory approach which allows properties to remove deficiencies for superficial damage that is likely to have occurred in the days immediately preceding the inspections, or if the damage was not reported to the property by the tenant, if the owner submits work orders showing the repairs within a certain number of days following the inspection. A commenter suggested that inspectors negate any point deductions where the housing authority can provide documentation to substantiate resident noncompliance as is often required when these lease infractions are taken before local courts.

A commenter suggested that HUD allow a property to negate points if they can identify a significant number of such deficiencies attributable to an individual unit that are not present in other units in the sample and are otherwise unreflective of the property condition. A commenter suggested an inspector should be given latitude to assign blame for damage to a resident and not the property management. Another commenter suggested that a property could gain points back based on especially pristine condition of a property.

HUD Response: HUD appreciates the feedback but disagrees with the comments suggesting that tenant-induced damage not be scored as part of an inspection. HUD believes this approach would be overly subjective as it is not always clear what damage may be tenant-induced versus normal wear and tear. Additionally, inspectors would not be able to account for poor property management or other potential factors. Scoring should reflect the overall condition of the property regardless of the source of the damage, and inspectors will not be able to fully assess and determine responsibility for damages while onsite. With respect to the comment regarding pristine properties, HUD believes NSPIRE will result in scores that accurately reflect the health and safety of a property. If a property is pristine, it will be reflected in the inspection score.

Other Suggested Changes

Commenters recommended that HUD support lessor rights under the lease. Other commenters recommended that the HUD lease be modified to include language such that the lease is more enforceable regarding property damage.

Commenters made several additional specific recommendations with respect to tenant-induced damage, including: that HUD clearly define ''tenant-induced damage,'' provide guidance on what timeline is appropriate for tenant-induced damage, and provide guidance on what legal recourse is available to the owner; that HUD make distinctions between tenant-induced damage and wear-and-tear and provide clear examples; and that tenants receive training on how to maintain their home and how the condition of their home impacts their health and safety.

Commenters recommended HUD allow the collection of a security deposit or increased security deposit that can cover damages, with one commenter noting that many programs currently have a limit on what can be collected. A commenter requested that HUD permit payment of surety bonds in programs where payment of security deposits is an eligible program expense which would result in a cost-savings to the tenant and the program, and would protect the asset to a greater degree for less cost than a traditional security deposit.

A commenter suggested that tenant-induced costs should be reportable similar to debts owed to PHAs. Commenters suggested that tenant-induced damage could be a sign that the tenant needs additional resources from HUD such as resident service coordinator assistance, or help with behavioral or other problems.

Commenters suggested that PHAs should have the discretion to disallow transfers both within the program and between programs (from Public Housing to HCV for example) if the tenant has caused damage. A commenter suggested HUD explore reduced utility reimbursements, or ineligibility to receive utility reimbursements, for tenants who cause damage.

A commenter recommended that HUD require notice and opportunity to respond, with copies to HUD, to tenants who are assessed charges or fees for alleged ''tenant-induced'' damage. A commenter suggested HUD conduct listening sessions with both tenant and owner stakeholders on this topic to determine the best path forward.

HUD Response: Regarding comments on lessors and the lease, HUD supports a balanced approach where all parties to the lease agreements understand their rights and responsibilities. HUD appreciates the feedback on providing further clarification and guidance on tenant-induced damage. Regarding HUD's ability to provide guidance on legal recourse, State and local jurisdictions administer landlord-tenant laws and eviction processes vary by jurisdiction.

Regarding resident training or service coordinators, HUD encourages Multifamily owners and agents to speak with their Account Executive about service coordinator funding opportunities and eligibility. HUD also encourages owners and agents to explore local social service providers who may help assisted residents with housekeeping skills. Any participation with social services must be voluntary, and providers must comply with nondiscrimination laws.

With respect to suggestions related to security deposits, surety bonds, debt reporting, and punitive responses to tenant-based damage, HUD believes these program issues are beyond the scope of this rule.

Insufficient Information

A commenter stated that due to the weight HUD will place on unit condition, there is insufficient information about how HUD will address tenant-created issues.

HUD Response: REAC inspectors will not consider whether tenants caused the damages that lead to the deficiency, because they will not be able to fully assess and determine responsibility for damages while onsite. For the HCV and PBV programs, however, the PHA may provide more flexibility to owners as provided in a future HOTMA rulemaking. HUD will publish a Scoring notice before this final rule becomes effective.

Question for Comment #20: Scoring Threshold for Referring Properties to the DEC

HUD sought input on the scoring threshold to use for referring a property to the Departmental Enforcement Center. HUD received the following responses.

Factors To Consider

Commenters recommended HUD periodically review its referral system, and a commenter recommended this review be in consultation with tenants and other stakeholders. A commenter recommended HUD develop a threshold that includes automatic referral to the DEC when certain significant issues are discovered, such as: structural concerns, severe roof conditions, foundation failure, significant water intrusion, or severe exterior dilapidation or deterioration. Another commenter recommended that HUD consider building code violations, abatements and emergency fail items.

A commenter recommended that HUD elaborate that the DEC may include input from residents in its analysis of the property, noting that tenants have not been able to consult with the DEC recently and that FOIA requests to the DEC for a copy of REAC report and scores have denied on the grounds that the referral is a ''judicial proceeding.'' This commenter noted that this type of consultation is important to ensure that HUD pursues the proper remedies and pursues termination or abatement only as a last resort option, by seeking input from residents as to the most appropriate remedy.

HUD Response: HUD will take the input regarding its referral system and factors that it should evaluate in its administrative referrals to the DEC into consideration. The basis for referrals under NSPIRE will be the property score. More information on the scoring process will be provided in the NSPIRE Scoring notice. Section 5.711(i) covers administrative enforcement of the NSPIRE Standards and regulations, which may include elements of structural concerns, severe roof conditions, foundation failure. Other building code violations that are not in the NSPIRE Standards would not be enforced by HUD unless specified in HUD program regulations (*e.g.* 24 CFR part 92 for HOME and 24 CFR part 93 for HTF). HUD will consider better information sharing with State and local code enforcement agencies. Regarding sharing of information under review by the DEC, many areas of enforcement are exempted under FOIA. HUD will provide other avenues for resident input and notification through its field offices. Where there are direct impacts to residents—such as a need for temporary or permanent relocation, there are other resident notification processes in other HUD regulations. That process is not part of the NSPIRE rulemaking.

Point Based Referrals

Commenters recommended that HUD keep the DEC threshold as stable as possible and maintain the 30-point automatic referral and the 31–59 optional referral, paired with the additional requirements of owners below the 60-point threshold.

A commenter urged HUD to adopt the recommendations put forth by the Government Accountability Office in their 2019 report titled ''Real Estate Assessment Center: HUD Should Improve Physical Inspection Process and Oversight of Inspectors'' (GAO–19–254) to strengthen its oversight mechanisms and ensure adequate quality of life in HUD-assisted communities. The 2019 report calls attention to the discrepancy between the 2017 and 2018 Consolidated Appropriations Acts (which stipulate that HUD must provide a notice to owners of properties that score 60 or below on the REAC physical inspection), and current and long-standing HUD practice (which is to send notices at scores 59 and below). The report also discusses the sampling margin of error, in particular instances in which the longer range of the margin could encompass scores of 59 or below, and yet because the score itself is above 60, no administrative consequence results. The report states that ''If REAC were to resume reporting on sampling errors and develop a process to address properties that fall below certain cutoff scores when the sampling error is taken into account, it would have the information it needs to identify properties that may require more frequent inspections or enforcement actions''.

HUD Response: HUD evaluated the GAO Report as part of its efforts to identify mechanisms to improve its inspection program under NSPIRE. HUD will take this input into consideration as part of the Administrative Procedures notice. This notice will include information about its sampling methodology. For administrative referrals, HUD clarifies in this final rule that these referrals will be essentially consistent for both Public Housing and Multifamily housing programs.

Suggested Standards for Referring Properties to the DEC

Commenters suggested that a property should be referred to the DEC only when there is blatant disregard for the property condition and/or the significant presence of health and safety issues. Commenters noted that an inspection can have as little as 5–6 specific deficiencies, some of which could be fixed in seconds or are unknown to property staff and fail the UPCS inspection. Another commenter noted that some repairs may be expensive but not relevant to maintaining a safe living environment. A commenter noted that an agency may not be aware of all tenant-induced damage on their property.

Several commenters stated that HUD should refer a property to the DEC only where there are multiple low scores or repeat failures on the same issue. Commenters expressed that due to the wide variance in how HUD inspectors evaluate properties, a single score, that could be an outlier, should not trigger corrective action.

Commenters suggested DEC referrals should be reserved for serious cases of malfeasance or misappropriations of funds that rise to potential violations of the law. A commenter noted that DEC does not have the resources to be utilized as an additional entity providing oversight to the physical condition of assisted properties and inspection scoring should be considered as one element in determining if referral to the enforcement center is warranted; another stated that HUD should consider the history and condition of other properties in an owner's portfolio before referral.

Commenters suggested that, if a property is about to undergo a renovation (or is in the midst of a renovation) which will address the factors leading to a score which might otherwise lead to its referral to DEC, HUD should factor the renovation scope into its decision as to whether to refer.

A commenter suggested lenience for older properties regarding certain areas that are not avoidable and are not necessarily health and safety issues.

HUD Response: Properties that score under 60 under the NSPIRE Standards will have health and safety hazards that merit follow up, and in some cases, administrative review by the DEC or HUD. The method for scoring properties under NSPIRE will be discussed further in the NSPIRE Scoring notice. HUD's process regarding administrative or DEC referrals will be for properties that score 30 or less or have two successive scores of under 60, as described in Housing notices 2015–02 and 2018–08. The DEC can also investigate cases under the False Claims Act, including situations when a PHA or owner certifies that deficiencies have been corrected when they have not. Additional information on administrative referrals will be provided in the NSPIRE Administrative notice.

Regarding scores that did not consider renovations, owners or PHAs can request a technical review of the inspection to determine if the inspection considered these factors. If these conditions would raise a score over 30 or 60, HUD would consider that significant. For tenant-induced damages, REAC inspectors will not attempt to determine this at the site, and owners and PHAs already have options under their lease and policies to discourage damage and collect fees.

Timeline for Repair of Severe Health and Safety Defects

A commenter suggested that the requirement of severe health or safety defects being repaired within 24 hours should be conditional on what the deficiency is, and that replacing a smoke detector battery on 5–10 units is reasonable to perform in 24 hours, but, in cases where some disagreement exists as to whether a fix is required due to the potential for an appeal or local code allowances, an alternative to this requirement should be in place. This commenter also suggested that, for issues found outside of normal resident access areas, especially in cases requiring the use of qualified professionals outside of the property for proper repair, there should be alternative requirements for repair timelines.

This commenter stated that the requirement of all non-life-threatening defects to be repaired within 30 days is burdensome because certain capital improvements may require time to analyze, budget, and obtain bids for and complete. This commenter noted that areas affected by natural disasters frequently have labor shortages that need to be considered, and non-catastrophic repairs of roofing, siding, trip hazards or repairs associated with concrete or asphalt repairs may be delayed or made impossible by seasonal weather delays.

HUD Response: HUD appreciates this feedback about the timeline of correcting severe health and safety defects, now referred to as LT to align the NSPIRE rule with HOTMA statute. Under HOTMA Section 101(a)(3) life threatening conditions must be corrected within 24 hours after such notice has been provided, and non-life-threatening conditions within 30 days after such notice has been provided or such longer period as the PHA may establish. Because NSPIRE is aligning requirements across its programs, these timeframes will also apply to Public Housing and Multifamily housing programs, except that Severe deficiencies for Public Housing and Multifamily housing will require 24 hour repairs, HUD will provide additional flexibility for Public Housing and Multifamily housing programs on what is considered an acceptable correction within the timeframes for other programs covered by this rulemaking. HUD understands that in 24 hours, PHAs and owners may only be able to prevent exposure to a hazard and that some permanent repairs may take longer, and also that that some repairs may require specialized services that will need to be procured, or professionals that may not be immediately available. These determinations will be made case-by-case, with the understanding that HUD can allow flexibility on what is acceptable given the time frame, provided the immediate hazard is corrected. PHAs and owners should avoid relying on ''quick fixes'' and plan for effective or permanent repair (*e.g.,* at least 20 years) where possible, so that hazards do not re-develop. More detail about correcting deficiencies will be published in the subordinate NSPIRE Administrative notice.

Not Enough Information To Respond

Commenters responded that this question cannot be adequately commented upon until the scoring model is released because it is known that it will be different from the model currently in existence, and therefore using the current model to assess findings under an unknown model is incomplete and unreliable.

HUD Response: HUD appreciates this feedback. The NSPIRE Scoring notice will be final before this regulation is effective. More detail about correcting deficiencies will be published in subordinate notices.

Section 5.713 Second- and Third-Party Rights

Commenters opposed the proposed exclusion of third-party beneficiary rights to tenants and others regarding enforcement of HUD contracts with owners or PHAs. A commenter noted that when HUD or owners fail to enforce standards, tenants should have the opportunity to pursue remedies in court. This commenter also noted that some HUD Multifamily programs, such as Mark Down to Market, already include tenant third-party rights and HUD has not been overburdened with frivolous claims.

Another commenter suggested there is no need to include this language in 24 CFR part 5 because the ability to assert second- or third-party beneficiary status is already prohibited because many, if not all, of the regulatory agreements and subsidy contracts already include a clause disclaiming third-party beneficiary status to residents. This commenter suggested removing second- and third-party beneficiary status in part 5, and other changes in Part A of this notice, are just a continuation of HUD's ''old'' business approach and stated that HUD's clients are the families assisted through these programs and statutory and regulatory law has consistently included the identification of poor physical conditions and maintenance concerns as an area in which active resident participation is critical. This commenter stated that HUD continues to hamper residents' ability to be a partner to HUD and housing providers by making HUD's enforcement actions opaque to residents, and by limiting residents' rights that they normally should have as direct beneficiaries of the contracts between HUD and its housing providers. This commenter noted the slow pace in which HUD often holds PHAs and owners accountable for gross and flagrant violations of housing condition standards, and that HUD should not be concerned about getting sued for failure to act because HUD is already being sued.

HUD Response: HUD declines to make revisions to § 5.713 in this final rule. This regulation acknowledges that covered programs have different mechanisms for addressing second- and third-party beneficiary status, as it can be covered in the Annual Contributions Contract (ACC), Housing Assistance Payments (HAP) agreement subsidy contracts, and regulatory agreements. The NSPIRE rule is not intended to override existing program requirements. Tenant participation and feedback is already included in many areas of these regulations.

Addition of Part 902, Subpart H and Part 985, Subpart D Regarding Small Rural PHAs

Question for Comment #21: Threshold for Troubled PHAs Under the Small Rural Assessment

HUD sought comment on the proper threshold for troubled PHAs under the small rural assessment. A commenter recommended that HUD assure that if a reduced score would result in action by

HUD that would affect a resident's occupancy, the action should not be taken until HUD has provided an alternative housing option to the tenant. Another commenter suggested that adding a second property below 70 percent creates a more accurate picture of whether an agency is troubled or not as it shows a pattern of struggling developments. Multiple commenters responded that without details of the scoring protocol, commenters could not provide informed input as to the threshold for designation a troubled agency regardless of size.

HUD Response: HUD acknowledges the impact reduced assessment scores may have on a resident and the need for alternative housing. Residents of HUD-assisted housing are protected by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) (URA) and other HUD requirements. A failing inspection or PHAS score would not displace residents, as PHAs are provided time to correct the deficiency. When a public housing property is approved for demolition or disposition under Section 18 of the 1937 Act (42 U.S.C. 1437p), residents must be offered comparable housing or provided a tenant protection voucher. As provided in the final rule at § 902.103, small rural PHAs shall be assessed and scored based only on the physical condition of their public housing properties, which will include all projects. Additional information about the scoring protocol will be provided in the Scoring notice.

Question for Comment #22: Indicators To Determine if the PHA is Failing To Fulfill Its Responsibilities, Small Rural PHA Assessment

HUD requested comment on the four indicators proposed to determine if the PHA is failing to fulfill its responsibilities for unit inspections under the HCV program and the method by which HUD is proposing to determine if the PHA has passed or failed the indicator.

Two commenters supported the proposed indicators. A commenter stated that a score of 70 or better to prevent being designated as troubled seemed lofty and suggested using the current level. This commenter expressed that the HQS system for Section 8 HCV has worked well since inception and any additional requirements added to those in place for owners will likely discourage participation.

A commenter responded that the threshold HUD proposed to determine if the PHA has passed or failed the indicator is overly stringent because provisions in HOTMA allow agencies to move families into Section 8 units before a unit inspection occurs if there was an inspection before like LIHTC or one that is as stringent as HQS and requiring 98 percent of all units to be inspected before a tenant moves into the unit defeats this flexibility. This commenter also expressed concern about the provision requiring 98 percent of units to be inspected every 3 years because if HUD provides the HCV program the flexibility to have risk-based assessments every 2 to 5 years, then this acts as a disincentive for agencies to benefit from 5-year inspection time periods. This commenter recommended either reducing the 98 percent threshold for those provisions or including a caveat for units with non-HQS inspections before move-in to count toward the threshold and changing language to note that 98 percent of units are inspected in the time period they should be inspected, as specified by HUD criteria.

A commenter proposed the following Indicators: (1) Failing to recognize hazards with potentially extreme or severe outcomes; (2) Failing to evaluate and prioritize the hazards; (3) Failing to recommend adequate housing measures to address hazards; (4) Failing to develop a comprehensive, integrated, and prescriptive scope of work that can be effectively used by subcontractors installing the measures.

A commenter responded that it is difficult to comment on the indicators without knowing how deficiencies will be rated or scored.

HUD Response: HUD appreciates comments on the Small Rural PHA Assessment program for SEMAP indicators and PHAS scoring. The NSPIRE standards, as proposed, will include the list of ''life threatening'' conditions, which were proposed as severe health and safety deficiencies so that the NSPIRE regulations are consistent with HOTMA. With this final rule, the NSPIRE standards are the applicable housing quality standards for the HCV and PBV programs, and these define the deficiencies. HCV and PBV housing inspections will still be on a pass/fail rating system and not scored. The Standards notice affirmed the elective allowance under HOTMA to have residents move into units with only non-life-threatening conditions is retained, and the proposed time frame of risk-based inspections every 2 to 5 years does not apply to the HCV and PBV programs. Section 5.705(c)(4) and (5) reference existing regulations for the timing of inspections. Section 985.203(c)(2) accounts for the PHA initial inspection option for non-life threatening deficiencies or alternative inspections. Alternative inspections will be accepted by HUD if they meet the NSPIRE standards for health and safety.

HUD acknowledges the comment about a score of 70 or better to prevent being designated as Troubled for public housing, which is referencing the score of 60 or less used as the Troubled standard for other PHAs. HUD declines to revise § 902.105(a) to 60 at this time. Small Rural PHAs will be assessed for physical conditions only and will no longer be scored under the financial, management and Capital Fund indicators of 24 CFR part 902. Removing this administrative burden of managing performance of other indicators will offer Small Rural PHAs more time to focus on improving the physical conditions of their properties. A score of 70 or better should be easily attainable for all HCV programs. For SEMAP, the indicators in part 985 are provided as pass/fail. HUD retained the language that a PHA that failed any of the four indicators under § 985.201 will be designated as troubled, as these indicators measure compliance with the program regulations, are required activities, and rarely missed. The final rule also retains indicator levels at 98 percent to be consistent with the SEMAP ratings for PHAs that are not small rural. Achieving 98 percent for these indicators is the norm for PHAs regardless of size. To provide more flexibility, under § 985.205(a)(i), HUD will consider budget authority utilization based on the most recent two calendar years prior to the assessment.

HUD generally appreciates the proposal to revise the indicators to be more focused on hazards, but did not include these revisions for small rural PHAs to remain consistent with the SEMAP regulations for other PHAs, which are not proposed for revision with this rule. HUD will consider these comments for future revisions to the SEMAP regulations for all PHAs.

With respect to the suggestion to create an integrated scope of work (SOW) that could be used by subcontractors, HUD does not prescribe the methods by which the PHA resolves issues identified during the inspection. It is the PHA's responsibility to repair the deficiencies by either using its maintenance staff, external vendors or contracts, or other means. Any identified life-threatening deficiencies are required to be mitigated within 24 hours. Regarding how deficiencies will be rated or scored, the NSPIRE Standards notice will provide the standards and the pass/fail rating already in place for HCV and PBV programs. Individual HCV and PBV properties will not be scored under NSPIRE, per § 5.711(a).

Question for Comment #23: Criteria To Determine if the PHA is a High Performer or a Standard Performer, Small Rural PHA Assessment Under SEMAP

HUD asked for comment on the criteria for determining if a PHA is a high performer or a standard performer. Commenters supported the current scoring system. A commenter supported recognizing the challenging environment in which small rural HAs operate HCV programs by predominantly focusing the ratings on the functions under the control of the PHA.

Commenters noted that there is a small margin for error for small PHAs, which have up to 550 combined Public Housing and HCV units, and suggested that the scoring percentage should be widened, with two commenters suggesting moving from 98 percent to 90 percent, and one of these commenters suggesting this move for small HCV programs (250 or fewer units). A commenter noted that small agencies may have difficulty achieving high performer status if it is predominately based on funding utilization and pointed out that voucher program utilization can fluctuate because of housing availability and fair market rent (FMR) fluctuations, and that this can be especially true in rural areas where there is often a lack of decent, affordable rental housing available. A commenter noted this is unfair and contrary to Congress' deregulatory goals. A commenter urged HUD that Housing availability and FMR fluctuations, which are outside of the control of PHAs, should not be held against an agency. This commenter also noted that special-purpose vouchers, like HUD–VASH can also be challenging to meet utilization thresholds—especially in rural areas and recommended excluding special-purpose vouchers for the utilization rate requirement. Another commenter suggested there should be more differentiation on point scoring between the High Performer status and Troubled status.

Commenters also advised that without understanding the property inspection scoring protocol, it is hard to evaluate the Public Housing Assessment System.

HUD Response: For small rural agencies, Public Housing, HCV and PBV properties will be inspected using the NSPIRE Standards. The proposed indicators for Small Rural SEMAP are retained in the final rule to remain consistent with the SEMAP program for other PHAs. However, Small Rural PHAs will undergo a SEMAP assessment only every three years as provided in § 985.207, and indicators will be evaluated only on a pass/fail basis. Individual properties will not be scored under NSPIRE.

Other Small Rural Comments

A commenter expressed concern that updating the small rural PHA list every three years may add undue uncertainty to PHAs that qualify as small rural as there is a chance their status may change depending on factors outside of their control such as population growth or changes to regulations at the CFPB. This commenter recommended that HUD allow for agencies determined to be small rural to be grandfathered into the small rural definition, unless there is significant and substantial change to the agency, to provide additional consistency to small rural agencies so that they do not have to worry about their inspection protocol potentially changing every three years. Alternatively, this commenter suggested at least allowing an agency to be grandfathered in for one additional 3-year period after falling outside of the definition of ''small rural'' to ensure the agency would have ample time update their inspection process and prepare for the new inspection protocol.

HUD Response: HUD appreciates the commenter's concern regarding the definition of small rural PHAs and the timeframe for updates to the list of every three years. HUD does not expect that the list will change from year to year given the relatively stable indicators provided in statute and § 902.101, but HUD did not have discretion on this definition as it is statutory. All PHAs will be provided time before the final rule is effective, and small rural PHAs will have an additional 120 days after the rule is effective for HUD to designate small rural status per § 902.101(b).

Insufficient Information To Provide Meaningful Opportunity To Comment

Several commenters stated that they were unable to provide meaningful comments on the proposed rule because information had not been released. Commenters stated that they lacked key information about: NSPIRE Standards; NSPIRE scoring methodologies; Criteria to qualify for longer risk-assessment inspection periods; Electronic data collection of self-inspections; List of deficiencies including severe health and safety deficiencies and which of those deficiencies are life-threating and which are not; Deficiencies and methodologies to use for scoring and ranking HUD housing; Factors for HCV unit pass/fail; Specific minimum project and unit deficiencies for multiple programs, including HOME and homeownership; Minimum property standards deficiencies; Submission of PHA certifications for small rural PHAs; Calculation for determining excess HAP reserve for small rural PHAs; the criteria required for PHAs to qualify for a longer inspection cycle; and flexible protocols to accommodate the unique circumstances of each program and housing type.

A commenter urged HUD to provide detail about whether REAC will begin to provide the necessary information regarding deferred maintenance as required by investors who provide liquidity to the market.

A commenter noted that they are unable to consider HUD's HOTMA rulemaking and the NSPIRE rulemaking for lack of information about the new NSPIRE inspection model.

A commenter noted that they lacked key information about the status of electronic submission, the result of reducing inspectable areas, how the new deficiencies improved inspector objectivity, and how inspection results compare to past inspections.

Because of the lack of information available, commenters requested extension. Commenters suggested HUD extend the demonstration period until scoring methodologies can be incorporated into the Standards notice so reviewers can weigh all factors before commenting. Commenters suggested that the demonstration has not been able to provide as much information due to the COVID–19 pandemic.

HUD Response: HUD appreciates this feedback. The NSPIRE Standards were proposed on June 17, 2022, and the NSPIRE Scoring notice was proposed on March 28, 2023, for public comment. HUD will consider additional comment before making these requirements final, and NSPIRE inspections will not begin until after HUD publishes final NSPIRE Standards and Scoring notices. HUD does not have details regarding deferred maintenance as required by investors who provide liquidity to the market, as that is outside the scope of this rulemaking. Information about the status of electronic submission will be provided in a notice to implement the new self-inspection requirements in § 5.707. Information on inspectable areas and deficiencies will be in the NSPIRE Standards notice. Information on improved inspector objectivity is discussed above in this preamble. Information on how NSPIRE inspection results compare to past inspections performed under UPCS is not yet available. Additional notices and rules under HOTMA since the NSPIRE proposed rule and notices were published. HUD will consider comments on Standards and Scoring before they are final and effective for HUD housing.

Environmental Justice Issues

Two commenters asked, pursuant to the January 20, 2021, Regulatory Freeze Pending Review memorandum from Ronald A. Klain, Assistant to President Biden and White House Chief of Staff, (''Klain memo'') which was published in the **Federal Register** on January 28, 2021,[17] for an extension until such time as there can be further consideration of environmental justice issues and the impact of the outdoor environment on the residents who live in HUD-assisted housing. These commenters noted that statutes and implementing regulations have largely failed to address the common environmental risks present in the outdoor environment surrounding HUD-assisted housing, unless an environmental review has been triggered under the National Environmental Policy Act. 42 U.S.C. 4321 et. seq. (1969). This commenter noted that on February 21, 2021, HUD's Office of Inspector General (HUD OIG) issued a report, *Contaminated Sites Pose Potential Health Risks to Residents at HUD funded properties,* in which HUD OIG found that HUD's current approach to identifying and addressing contaminated sites has resulted in federally-assisted housing residents experiencing prolonged exposure to toxic contamination, including dangerously high level of lead and proximity to Superfund sites that continue to present significant risks to human health. This commenter noted that the proposed rule was silent on the issue of inspecting the outdoor environment at HUD-assisted sites, including inspecting adjacent soil or the proximity of the housing to Superfund sites.

HUD Response: HUD notes that the NSPIRE final rule is one rulemaking and one component of HUD's broader approach to addressing environmental justice, which involves other offices within HUD as well as coordination with other Federal agencies such as EPA. HUD does not view this proposed rule as requiring regulatory freeze. The regulations at § 5.703(c) include the building site, and § 5.703(e) affirms that the outside must be free of health and safety concerns. Additional information is in the NSPIRE Standards notice published on June 17, 2022, for public comment. HUD's regulations at 24 CFR parts 50 and 58 include a process for considering site contamination and are not within the scope of this rulemaking. Additional information about HUD's efforts with EPA on HUD-assisted sites and Superfund sites will be made public as part of that effort, and not within the context of the NSPIRE rulemaking. HUD will take the commenters' feedback into consideration and encourages additional public comment on subsequent NSPIRE Subordinate Notices and other HUD rulemaking or policymaking concerning environmental justice.

Other Comments

Resident Rights

Several commenters expressed that inspection information should be made available for comment to residents and their representatives. Such information noted by commenters included severe health and safety citations, notice before inspections, notice regarding submission of the property for DEC evaluation and inspection, certification and supporting evidence of repairs within 3 days of when a severe health and safety risk has been corrected, and notification of inspection.

Commenters requested that the information provided include a named HUD contact official with their contact information, include tenant organizations, be accessible, be posted in the owners' management office and bulletin boards in common areas, at no cost to residents, be in plain language, provide information about what is happening and why.

HUD Response: REAC inspection data is available online at *www.huduser.gov/portal/datasets/pis.html,* and NSPIRE inspection data will also be online once inspections commence. Residents will be provided notice before inspections in accordance with their leases, and PHAs and owners will make inspection information available per § 5.711(h). All information collected by HUD is available through FOIA, and residents can contact their local HUD office (see *https://www.hud.gov/local*) to seek more information or for complaints. Information related to enforcement referrals and actions is usually confidential until the matter is closed and exempted from FOIA. Because of the many ways residents are kept informed of the NSPIRE process, HUD does not agree that resident rights must be included the NSPIRE regulations.

HUD has sought public comment on tenant participation in the NSPIRE inspection process and will continue to explore ways to engage residents. Initially, this will include inspecting additional units recommended by residents or resident groups. Additional details regarding resident engagement in forthcoming subordinate notices published in the **Federal Register** and available for public comment.

Requests Due to the Coronavirus Pandemic

A commenter urged HUD to waive the shortened physical inspection notification timeframe (14 days) for assisted housing properties, as announced on February 22, 2019, through PIH Notice 2019–02 and return to the 30-to-60-day timeframe to ensure the maximum safety of residents, management staff, and inspectors.

A commenter noted that during the COVID–19 pandemic, personnel have had to meet difficult standards at risk to their own personal health, and some residents have been hesitant to allow facility personnel into their dwelling units for fear of infection, and therefore owners and managers have fallen behind on unit repairs that will take several months to catch up with. This commenter cautioned that NSPIRE's scoring methodology more heavily scrutinizes and penalizes in-unit deficiencies, which owners and managers need time to catch up on. This commenter therefore called for HUD to suspend REAC inspections in elderly facilities, specifically those inspections under the new NSPIRE standard, for a minimum of one year. This commenter also noted that many of the reports of poor assisted housing focused on certain pockets of the US, and many focused on the property portfolios of specific owners/management agents. This commenter urged HUD not to punish other regions and properties.

Commenters urged HUD to learn from the pandemic and expand electronic communication and remote listening sessions to gather stakeholder feedback video remote inspections to HUD Multifamily properties, utilize properties' existing software mechanisms to check work orders and proof of annual self-inspections, and examine how ventilation and other health retrofits are incorporated into physical condition standards for HUD-assisted housing.

HUD Response: Adjustment of inspection notification timeframes due to COVID–19 is an issue outside of this final rule. HUD can adjust certain requirements when there is a national emergency in effect. Inspection administration protocol will be outlined in subordinate notices that will be published in the **Federal Register** and available for public comment.

[17] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/* (86 FR 7424).

On June 1, 2021, the Secretary announced that REAC inspections would resume after a 15-month pause due to the COVID pandemic. While the NSPIRE Demonstration is underway, HUD continues to use UPCS to conduct inspections of record. Inspections under the NSPIRE Standards will not phase in until the Standards and Scoring notices are final, and the rule is effective. HUD takes the health and safety of residents and property staff very seriously and has strict protocols in place.

In response to the pandemic and in preparation for future concerns, HUD issued a notice on Remote Video Inspections, PIH Notice 2020–31. HUD is also developing new technology solutions to facilitate convenient transfer of information including inspection findings, photographic evidence and certification of completion of repairs. Regarding time for PHAs, owners and agents to inspect and update units after the pandemic, HUD resumed REAC inspections on June 1, 2021, and has not observed a significant reduction in scores. The timeline discussed earlier in this preamble, will give PHAs, owners, and agents additional time to prepare for the transition. PHAs are reminded that the requirement for self-inspections was in place before the NSPIRE regulation, and owners may commence self-inspections at any time.

HUD has considered the comments about retrofits for health and well-being in light of the pandemic and resident health and safety were a key consideration in developing the NSPIRE Standards.

Additional Suggestions

A commenter urged HUD to build robust oversight systems and consider accountability and feasibility. This commenter urged HUD to consider cost and time impacts of newly required technical/building upgrades; the breadth and scope of inspections, paired with the staffing capacity at HUD and at HUD-assisted communities; and the impact of inspections on residents' lives and private living spaces.

A commenter asked HUD to consider integrating or coordinating revisions with the Management and Occupancy Review (MOR) process so that these two monitoring tools are complementary.

A commenter suggested that PHAs and owners/agents should be incentivized or rewarded for maintaining a higher level of on-going maintenance of the property/units, as determined by REAC scoring and ranking of covered units.

One commenter noted that consistent with the notion of fairness to parties not responsible for adverse conditions, third party management companies should be rated based on the performance of their duties in the context of the resources provided, and that management companies with no identity-of-interest relationship to the owner should be able to note their performance in the context of resources made available to them by the ownership. The commenter further suggested while decent, safe and sanitary housing must be provided, administrative conclusions, sanctions and ''flags'' should be sensitive to the owner's performance based on the possible available funding and recapitalization alternatives where all funds were efficiently spent on operations.

A commenter cautioned that HUD should avoid setting new requirements for the sake of alignment where it lacks statutory authority.

A commenter applauded the alignment of inspections in projects with multiple HUD funding and/or subsidy sources and recommended the same alignment of inspections in circumstances involving funding sources outside of HUD, *e.g.,* State or Federal historic preservation funds.

HUD Response: HUD appreciates the additional suggestions on its oversight systems, and accountability and feasibility. The NSPIRE rule did not propose revisions to the Management and Occupancy Review (MOR) process, but HUD appreciates comments to streamline oversight processes. PHAs and owners/managers that have higher assessment scores will be rewarded with reduced inspection frequency under NSPIRE. High performing PHAs may receive additional funds under the Public Housing Capital Fund program. The comments on fairness to parties not responsible for adverse conditions and third-party management companies are noted but are outside the scope of the regulations. The NSPIRE Standards will include information on the deficiencies, and the NSPIRE Scoring notice will cover how properties will be scored, regardless of management type. With respect to the comments about statutory authority, HUD has ensured that this rulemaking is consistent with its authority as provided by Congress and the relevant statutes.

HOME/HTF

A commenter suggested that, because the Housing Trust Fund regulations were modeled on the HOME regulations, §§ 93.301(c)(3) and 93.301(e)(1)(i) should be modified to provide cross-references back to the regulations at § 5.703 that would, under the proposed rule, govern HOME, as well as a specific reference to NSPIRE.

HUD Response: HUD appreciates the comment and has made changes as appropriate in the final rule.

Inspector Issues

Comments Regarding Inspector Qualifications

Several commenters noted problems with inconsistent or subjective inspections that could not be effectively appealed. Commenters cautioned against punishing agencies due to growing pains associated with a new program. A commenter suggested dedicating substantial time and effort to training inspectors in NSPIRE before implementing the new inspection protocol; another recommended HUD itself train inspectors. A commenter recommended requiring inspector certification with availability of voluntary training with a link and phone number.

Several commenters suggested HUD require a level of training or qualification for inspectors. A commenter recommended at least basic standards such as the current Inspector Qualifications for REAC UPCS Inspector Certification Training candidates.[18]

A commenter noted that since 1970, State licensure of home inspectors has expanded and 36 States regulate home inspectors, requiring education, field training, and a number of supervised inspections.

A commenter recommended inspectors have two years of experience in the last four years as a full-time combination inspector or similar government-certified position, or two years of full-time experience as a licensed Home Inspector, or in States without licensing, two years within the last four years of full-time experience and documentation of passage of the National Home Inspector Examination. This commenter recommended inspectors be required to have completed a minimum of 250 physical commercial real estate or residential inspections as sole inspector. The commenter recommended FEMA inspections, termite inspections, appraisals, and site visits not be included. This commenter also recommended HUD require providing 25 inspections completed on an excel spreadsheet, inspectors be required to possess general computer skills, and inspectors be required to possess a high school education or equivalent.

[18] See: UPCS Inspection Certification Training, Page 2, (1) B. *https://www.hud.gov/sites/dfiles/PIH/documents/UPCSInspectorCertificationTraining.pdf*).

A commenter cautioned that inspectors not familiar with the property and local codes may not follow the HUD inspection standards and noted that the owner/agent may pay for pre-inspection by a third party.

A commenter stated that inspectors are corrupt and in league with property management teams, thereby ignoring clear maintenance issues, and that landlords ignore tenant complaints and seek to constructively evict complaining tenants.

HUD Response: HUD appreciates the comments regarding inspector qualifications, experience, and training. Inspections performed by REAC will continue to include contract-based inspectors for the Public Housing and Multifamily housing programs. In addition to revising the inspections standards and scoring, REAC will revise the contract model to include performance expectations and metrics and require that awarded firms have an internal quality assurance and training program. These requirements will supplement the technical assistance and oversight performed by HUD's Quality Assurance (QA) division. These enhancements will help ensure that inspectors are experienced at hire and will become proficient through training so they can consistently assess and score properties against the NSPIRE standards. Knowledge of local code requirements of the building are not necessary if the inspector is adhering to the NSPIRE standards, but this information could be assessed as part of self-inspections. REAC's goal is to ensure that contract inspectors will have experience in home inspections but will become proficient in the NSPIRE Standards through training and hands-on field work. Licensed and/or certified home inspectors will qualify for hire and complete training on the NSPIRE standards before performing inspections of records. HUD agrees that the model followed by State-licensed home inspectors is valuable and will consider that for the new contract requirements. The recommendations for minimum hours and inspections completed is also very helpful and a model REAC will consider in the contract design. Lastly, with the new system supporting inspection data and scoring, HUD QA staff will be better able to see and act on scoring anomalies, and perform enhanced monitoring.

HUD's expectations for inspector training and qualifications will be detailed in the Administrative notice issued with this rule so that PHAs and external firms can mirror their own programs on the REAC model. The NSPIRE Standards and system will be available in electronic format for public use before the requirements are effective.

With respect to the comment about perceived bias of housing inspectors, HUD's oversight of the physical inspection process and resolution should help curb anomalies and abuse. Residents can continue to report concerns to HUD offices at *hud.gov/local.* Residents of HUD-assisted properties are protected from retaliation by their lease and HUD regulations. Program terminations must be for cause, and residents in many programs have grievance rights available to review terminations in advance of eviction.

HUD is aware that properties may employ outside inspectors to review their property before a REAC inspection. This practice could be used to help satisfy the requirements of the self-inspection, where required, if the inspection follows the NSPIRE standards. While the NSPIRE regulations do not require a review for local codes, combining this with a regular inspection could reduce administrative burden on PHAs and owners.

Comments Regarding an Inspector Shortage

A commenter advised that its pool of inspectors certified to conduct a REAC inspection is so minimal that it is impossible for all lenders to complete their REAC inspection responsibilities within the current prescribed timeframes. This commenter therefore opposed the current rule that an inspection must be conducted within three months before the Ideal Future Date (IFD) and three months after the IFD.

A commenter recommended adopting a version of the GSEs' current certification standards and processes to not further shrink the pool of FHA inspectors and create further timing and cost issues.

A commenter recommended allowing servicing mortgagees (SMs) or their inspection contractors to set up a parallel program of inspector training including the ability to recruit candidates, submit them to HUD for approval and then facilitate their training until they are certified. This commenter noted that, since REAC is moving away from training inspectors, SMs need the ability to train inspectors to use to perform NSPIRE (and UPCS) inspections, and if REAC requires an associated Quality Control program developed like what it requires for HUD Contracted companies, SMs should be allowed to do so. This commenter suggested SMs can develop their QC program in a parallel fashion to assure inspector and inspection validity and reliability, and whatever privileges that are given to HUD Contractors working in the Public/Multi-Family side to recruit and train inspectors should be extended to the SM community.

A commenter noted that because of the alignment between programs, more new inspections may fall under HUD's consolidated inspection protocol than were covered previously and cautioned that HUD should be clear about how it will handle the additional inspections and who will be conducting them. Another commenter urged HUD to consider the impacts of additional inspections under REAC's umbrella, and to be clear about workload adjustments and capacities, noting that more new inspections may fall under HUD's consolidated inspection protocol than were covered previously.

HUD Response: HUD appreciates the comments with respect to inspector shortages, inspector management and administration. HUD's requirement that all REAC inspectors be certified through the current process helped contribute to the inspector shortage. HUD also agrees that a regulatory requirement that inspections be completed within three months before the anniversary (or Ideal Future Date (IFD)) and three months after the IFD in the same calendar year is restrictive and removed "calendar" from the regulation and added language to reflect the current process of allowing extensions for good cause. Additionally, HUD may need more time to meet this schedule in the first year of NSPIRE implementation, and so the final rule allows for up to six months in the initial year of NSPIRE implementation. With respect to comments about servicing mortgagees establishing training programs, at this time HUD is not planning to review or recognize other organizations' training programs. HUD's NSPIRE Standards, scoring and system will be publicly available, and HUD will also make its own training programs available. This will also help PHAs establish and manage their own inspector programs for the HCV and PBV programs. HUD has provided more details on inspector administration and oversight in the NSPIRE Administrative notice.

With respect to additional inspections and who will be conducting them, the NSPIRE rule aligns the different HUD assistance programs but does not change the organization responsible for performing the inspection. For example, PHAs will continue to inspect HCV and PBV units, and PJs will continue their normal inspection processes.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Pursuant to Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

HUD believes that this rule, by consolidating physical condition inspection standards into a streamlined format and utilizing improved technology and methods will aid all parties—PHAs, property owners, agents, and inspectors—in complying with HUD's physical condition standards creating a smaller burden while maintaining or increasing the effectiveness of HUD's physical condition requirements. The rule has been determined to be a ''significant regulatory action,'' as defined in section 3(f) of the Order, but not economically significant under section 3(f)(1) of the Order. The docket file is available for public inspection online at *www.regulations.gov.*

HUD prepared a Regulatory Impact Analysis (RIA) that addresses the costs and benefits of the final rule. HUD's RIA is part of the docket file for this rule at *http://www.regulations.gov.* HUD strongly encourages the public to view the docket file at *www.regulations.gov.*

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. There are 2,297 small PHAs all of which will be affected; however, the economic impact will not be significant.

The economic impact will not be significant because the rule does not change the substantive requirement that HUD program participants are required to maintain the physical condition of HUD housing. The rule also, in most cases, maintains the same level of review for compliance in the form of physical inspections. Regulatory relief would also be provided to small rural PHAs, which would only be subject to triennial inspections under PHAS and SEMAP. Accordingly, the undersigned certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available through the Federal eRulemaking Portal at *http://www.regulations.gov.* The FONSI is also available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule merely revises existing Federal standards in a way which would not increase or decrease compliance costs on State or local governments and therefore does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or Tribal governments, or on the private sector, within the meaning of the UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. Generally, the information collection requirements contained in this rule have already been approved by OMB under the Paperwork Reduction Act and assigned OMB control numbers, but these final regulations include additional requirements not previously considered. Given that, HUD will consolidate existing information collections into a new collection for the NSPIRE final rule prior to the effective date of the new requirements. The information collection requirements when approved will be assigned an OMB approval number and the public will be notified of this number.

Related collections that will be incorporated include 2502–0369 (Uniform Physical Standards and Physical Inspection Requirements), 2577–0241 (Exigent Health and Safety Deficiency Correction Certification), 2577–0257 (Public Housing Assessment System (PHAS) Appeals, Technical Reviews and Database Adjustments), 2577–0289 (National Standards for the Physical Inspection of Real Estate (NSPIRE)), 2577–0169 (HCV Program and Tribal HUD–VASH), 2577–0289. HUD estimates that the burden under 2502–0369 (Uniform Physical Standards and Physical Inspection Requirements) will be approximately the same as described in the proposed rule. The inspection time burden will slightly increase from the proposed rule's estimate because inspection sample may also include up to five units recommended by residents, which was not considered during the proposed rule. The Self-inspection burden will be substantially less than in the proposed rule, however, as HUD will only collect results for properties that score 60 and below, instead of all properties.

Additionally, in the proposed rule, HUD requested comment on how HUD could utilize tenant feedback to better achieve its goals of identifying poor performing properties. In the PRA package associated with this final rule, HUD is including an additional information collection for resident feedback. HUD will request that the property representative identify the resident council or tenant organization for the property. HUD will communicate with that resident group to ask about housing conditions and ask the group to identify additional units for HUD to inspect. HUD expects that it will add up to five resident-nominated units regularly scheduled inspections. HUD anticipates the burden of this additional collection will be minimal at about five minutes for the property representative per property and about thirty minutes for each resident group that chooses to respond.

The collection requirements will be amended to reflect the altered burden contained in this final rule.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, and Wages.

24 CFR Part 92

Administrative practice and procedure, Low and moderate income housing, Manufactured homes, Rent subsidies, and Reporting and recordkeeping requirements.

24 CFR Part 93

Administrative practice and procedure, Grant programs—housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, and Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, and Wages.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 574

Community facilities, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Low and moderate income housing, and Reporting and recordkeeping requirements.

24 CFR Part 576

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, and Reporting and recordkeeping requirements.

24 CFR Part 578

Community development, Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, and Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, and Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, and Rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, and Reporting and recordkeeping requirements.

24 CFR Part 902

Administrative practice and procedure, Public housing, and Reporting and recordkeeping requirements.

24 CFR Part 965

Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 982

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, and Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Low and moderate income housing, Rent subsidies, and Reporting and recordkeeping requirements.

24 CFR Part 985

Grant programs—housing and community development, Public housing, Rent subsidies, and Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD amends 24 CFR parts 5, 92, 93, 200, 570, 574, 576, 578, 882, 884, 886, 902, 965, 982, 983, and 985 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority for part 5 continues to read as follows:

Authority: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109–115, 119 Stat. 2936; Sec. 607, Pub. L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e *et seq.*); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.

■ 2. Effective July 1, 2023, revise subpart G to read as follows:

Subpart G—Physical Inspection of Real Estate

Subpart G—Physical Inspection of Real Estate

§ 5.701 Applicability.

(a) *Scope.* This subpart applies the national standards for the physical inspection of real estate standards to the following HUD programs:

(1) All Public Housing programs (programs for housing assisted under the U.S. Housing Act of 1937 other than section 8 of the Act);

(2) The Housing Choice Voucher program under section 8(o) of the U.S. Housing Act of 1937, part 982 of this title and the Project-Based Voucher program under section 8(o)(13) of the Act and the regulations at 24 CFR part 983 (referred to in this part as the HCV

and PBV programs, or HCV and PBV housing);

(3) All project-based Section 8 programs;

(4) Section 202 Supportive Housing for the Elderly (Capital Advances);

(5) Section 811 Supportive Housing for Persons with Disabilities (Capital Advances);

(6) Section 202 direct loan program for projects for the elderly and persons with disabilities as it existed before October 1, 1991 (including 202/8 projects and 202/162 projects); and

(7) Housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the following authorities:

(i) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);

(ii) Section 213 of the NHA (Cooperative Housing Insurance);

(iii) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(iv) Section 221(d)(3) of the NHA (Market Interest Rate (MIR) program);

(v) Section 221(d)(3) and (5) of the NHA (Below Market Interest Rate (BMIR) program);

(vi) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(vii) Section 231 of the NHA (Housing for Elderly Persons);

(viii) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Assisted Living Facilities, Board and Care Homes);

(ix) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

(x) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(xi) Section 241 of the NHA (Supplemental Loans for Multifamily Projects). (Where, however, the primary mortgage of a Section 241 property is insured or assisted by HUD under a program covered in this part, the coverage by two HUD programs does not trigger two inspections); and

(xii) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing program).

(b) *Conflicts.* The regulations in this subpart may be supplemented by the specific regulations for the HUD-assisted programs listed in paragraph (a) of this section. The program-specific regulations may address the frequency of inspections, who performs the inspections and whether alternative inspections are available given the statutory and regulatory framework for the program. When there is a conflict between the regulations of this subpart and the program-specific regulations, the program-specific regulations govern.

(c) *HUD housing.* For purposes of this subpart, the term ''HUD housing'' means the types of housing listed in paragraph (a) of this section.

§ 5.703 National standards for the condition of HUD housing.

(a) *General.* To ensure that all residents live in safe, habitable dwellings, the items and components located inside the building, outside the building, and within the units of HUD housing must be functionally adequate, operable, and free of health and safety hazards. The standards under this section apply to all HUD housing. HUD housing under the HCV, PBV, and Moderate Rehabilitation programs shall be subject to these standards only for:

(1) The subsidized unit itself; and

(2) Items and components within the primary and secondary means of egress from a unit's entry door(s) to the public way, those common features related to the residential use of the building (*e.g.,* the laundry room, community room, mail room), and the systems equipment that directly services the subsidized unit.

(b) *Inside.* Inside of HUD housing (or ''inside areas'') refers to the common areas and building systems that can be generally found within the building interior and are not inside a unit. Examples of ''inside'' common areas may include, basements, interior or attached garages, enclosed carports, restrooms, closets, utility rooms, mechanical rooms, community rooms, day care rooms, halls, corridors, stairs, shared kitchens, laundry rooms, offices, enclosed porches, enclosed patios, enclosed balconies, and trash collection areas. Examples of building systems include those components that provide domestic water such as pipes, electricity, elevators, emergency power, fire protection, HVAC, and sanitary services. The inside area must meet the following affirmative requirements:

(1) The inside area must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the property. The Secretary may establish additional standards through **Federal Register** notification;

(2) Except for housing subject to this subpart only through § 5.701(a)(6) or (7), or housing otherwise exempt from this requirement as provided elsewhere in this title, the inside area must meet or exceed the carbon monoxide detection standards set by the Secretary through **Federal Register** notification;

(3) For the inside area, any outlet installed within 6 feet of a water source must be ground-fault circuit interrupter (GFCI) protected;

(4) The inside area must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically;

(5) The inside area must have permanently mounted light fixtures in any kitchens and each bathroom; and

(6) The inside area may not contain unvented space heaters that burn gas, oil, or kerosene.

(c) *Outside.* Outside of HUD housing (or ''outside areas'') refers to the building site, building exterior components, and any building systems located outside of the building or unit. Examples of ''outside'' components may include fencing, retaining walls, grounds, lighting, mailboxes, project signs, parking lots, detached garage or carport, driveways, play areas and equipment, refuse disposal, roads, storm drainage, non-dwelling buildings, and walkways. Components found on the exterior of the building are also considered outside areas, and examples may include doors, attached porches, attached patios, balconies, car ports, fire escapes, foundations, lighting, roofs, walls, and windows. The outside area must meet the following affirmative requirements:

(1) For the outside area, outlets within 6 feet of a water source must be GFCI protected; and

(2) The outside area must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.

(d) *Units.* A unit (or ''dwelling unit'') of HUD housing refers to the interior components of an individual unit. Examples of components included in the interior of a unit may include the balcony, bathroom, call-for-aid (if applicable), carbon monoxide devices, ceiling, doors, electrical systems, enclosed patio, floors, HVAC (where individual units are provided), kitchen, lighting, outlets, smoke detectors, stairs, switches, walls, water heater, and windows. The unit must also meet the following affirmative requirements:

(1) The unit must have hot and cold running water in both the bathroom and kitchen, including an adequate source of safe drinking water in the bathroom and kitchen;

(2) The unit must include its own bathroom or sanitary facility that is in proper operating condition and usable in privacy. It must contain a sink, a bathtub or shower, and an interior flushable toilet;

(3) (i) The unit must include at least one battery-operated or hard-wired

smoke detector, in proper working condition, in the following locations:

(A) On each level of the unit;

(B) Inside each bedroom;

(C) Within 21 feet of any door to a bedroom measured along a path of travel; and

(D) Where a smoke detector installed outside a bedroom is separated from an adjacent living area by a door, a smoke detector must also be installed on the living area side of the door.

(ii) If the unit is occupied by any hearing-impaired person, the smoke detectors must have an alarm system designed for hearing-impaired persons;

(iii) The Secretary may establish additional standards through **Federal Register** notification;

(iv) Following the specifications of National Fire Protection Association Standard (NFPA) 72 satisfies the requirements of this paragraph (d)(3);

(4) The unit must have a living room and a kitchen area with a sink, cooking appliance, refrigerator, food preparation area, and food storage area;

(5) For units assisted under the HCV or PBV program, the unit must have at least one bedroom or living/sleeping room for each two persons;

(6) Except for units subject to this subpart only through § 5.701(a)(6) or (7), or housing otherwise exempt from this requirement as provided elsewhere in this title, the unit must meet or exceed the carbon monoxide detection standards set by HUD through **Federal Register** notification;

(7) The unit must have two working outlets or one working outlet and a permanent light within all habitable rooms;

(8) Outlets within 6 feet of a water source must be GFCI protected:

(9) For climate zones designated by the Secretary through notice, the unit must have a permanently installed heating source. No units may contain unvented space heaters that burn gas, oil, or kerosene;

(10) The unit must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically; and

(11) The unit must have a permanently mounted light fixture in the kitchen and each bathroom.

(e) *Health and safety concerns*—(1) *General.* The inside, outside and unit must be free of health and safety hazards that pose a danger to residents. Types of health and safety concerns include, but are not limited to carbon monoxide, electrical hazards, extreme temperature, flammable materials or other fire hazards, garbage and debris, handrail hazards, infestation, lead-based paint, mold, and structural soundness.

(2) *Lead-based paint.* HUD housing must comply with all requirements related to the evaluation and control of lead-based paint hazards and have available proper documentation of such (*see* 24 CFR part 35). The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and the applicable regulations at 24 CFR part 35 apply.

(f) *Compliance with State and local codes.* (1) The standards for the condition of HUD housing in this section do not supersede State and local housing codes (such as fire, mechanical, plumbing, carbon monoxide, property maintenance, or residential code requirements).

(2) All HUD housing other than units assisted under the HCV and PBV programs must comply with State or local housing codes in order to comply with this subpart.

(3) State and local code compliance is not part of the determination of whether a unit passes the standards for the condition of HUD housing under this section for the HCV and PBV programs (except in accordance with § 5.705(a)(3)).

(g) *Use of an alternative inspection or additional standard for HCV and PBV programs.* A PHA is not subject to the standards set by this section when the PHA is relying on an alternative inspection in accordance with 24 CFR 982.406. PHAs may also elect to establish additional requirements for quality, architecture, or design of PBV housing, and any such additional requirements must be specified in the Agreement to enter into a HAP Contract or HAP Contract as provided in 24 CFR part 983.

(h) *Special housing types in the HCV, PBV and Moderate Rehabilitation programs.* Part 982, subpart M, of this title identifies special housing types which require standards unique to special types of housing. Unless modified by program-specific regulations, NSPIRE Standards will apply for these special housing types.

§ 5.705 Inspection requirements.

(a) *Procedures*—(1) *General.* Any entity responsible for conducting an inspection of HUD housing to determine compliance with this subpart, must inspect and score such HUD housing in accordance with the standards and procedures for identifying safe, habitable housing set out by the Secretary and published in the **Federal Register** as described in § 5.711. The entity conducting the inspection shall identify each deficiency as ''Life Threatening'', ''Severe,'' ''Moderate'', or ''Low.''

(2) *Inspection scope.* The inspection requirement for HUD housing generally requires the inside, outside and unit to be inspected, in accordance with § 5.703. The inspection requirement for the tenant-based HCV program and the unit inspection for the PBV and Moderate Rehabilitation programs only applies to units occupied or to be occupied by HCV, PBV, and Moderate Rehabilitation participants, and common areas and exterior areas which either service or are associated with such units.

(3) *HCV and PBV variant inspection standards.* (i) HUD may approve inspection criteria variations for the following purposes:

(A) Variations which apply standards in local housing codes or other codes adopted by the PHA; or

(B) Variations because of local climatic or geographic conditions.

(ii) Acceptability criteria variations may only be approved by HUD pursuant to paragraph (a)(3)(i) of this section if such variations either:

(A) Meet or exceed the performance requirements; or

(B) Significantly expand affordable housing opportunities for families assisted under the program.

(iii) HUD will not approve any inspection criteria variation if HUD believes that such variation is likely to adversely affect the health or safety of participant families, or severely restrict housing choice.

(iv) Approved variations must be added to the Administrative Plan as described in 24 CFR 982.54(d)(21).

(b) *Entity conducting inspections.* HUD housing must be inspected by the appropriate entity as described in paragraph (b)(1) of this section, except as described in paragraph (b)(2) of this section.

(1) *General.* The owner, lender, contract administrator, or HUD is the entity responsible for performing inspections of HUD housing as provided in this title, or a regulatory agreement or contract. For properties with more than one HUD-insured loan, only the first mortgage lender is required to conduct the inspection. The second mortgage lender will be provided a copy of the physical inspection report by the first mortgage lender.

(2) *Exception.* Under the HCV and PBV programs, the Public Housing Agency is responsible for inspecting HUD housing under those programs, unless another entity is assigned the inspection by the program regulations governing the housing, regulatory agreements or contracts. A PHA-owned

unit receiving assistance under section 8(o) of the 1937 act must be inspected by an independent entity as specified in 24 CFR parts 982 and 983. Under the Moderate Rehabilitation program, the PHA is responsible for inspecting the HUD housing unless the PHA is managing units on which it is also administering the HAP Contract in accordance with 24 CFR 882.412, in which case HUD is responsible for the inspections in accordance with 24 CFR 882.516(d).

(c) *Timing of inspections*—(1) *Generally.* A property must be inspected before the property is approved for participation in any of the HUD housing programs under this part unless there is a program specific exception to this requirement. An entity responsible for conducting an inspection of HUD housing to determine compliance with this subpart must inspect such housing annually unless specified otherwise below. An inspection shall be conducted no earlier than 3 months before and no later than 3 months after the date marking the anniversary of the previous inspection, except that inspections due on or before July 1, 2024, shall be conducted no earlier than 6 months before and no later than 6 months after the date marking the anniversary of the previous inspection. HUD may approve requests by an owner or PHA for extensions of the deadline for an inspection for good cause as determined by HUD and HUD may extend inspection deadlines without owner request, as deemed necessary by the Secretary.

(2) *Extended inspection cycle.* HUD housing, except as specified below, shall be scored and ranked in accordance with the methodology provided through **Federal Register** notification.

(i) *Standard 1 performing property.* If a property receives a score of 90 points or higher on its physical condition inspection, the property will be designated a standard 1 performing property. Properties designated as standard 1 performing properties will be required to undergo a physical inspection once every three (3) years.

(ii) *Standard 2 performing property.* If a property receives a score of 80 points or higher but less than 90 on its physical condition inspection, the property will be designated a standard 2 performing property. Properties designated as standard 2 performing properties will be required to undergo a physical inspection once every two (2) years.

(iii) *Standard 3 performing property.* If a property receives a score of less than 80 points, the property will be designated a standard 3 performing property. Properties designated as standard 3 performing properties will continue to undergo an annual physical inspection as currently required under covered HUD programs.

(3) *Triennial cycle for small rural PHAs.* Small rural PHAs as defined in 24 CFR 902.101 shall be assessed in accordance with part 902, subpart H of this title.

(4) *Triennial cycle for small PHAs.* Small PHAs as defined in 24 CFR 902.13(a) shall be assessed in accordance with 24 CFR 902.13(a).

(5) *Housing choice vouchers.* PHAs must inspect units subject to part 982 of this title in accordance with the frequency described in 24 CFR 982.405.

(6) *Project based vouchers.* PHAs must inspect units subject to 24 CFR part 983 in accordance with the frequency described in 24 CFR 983.103.

(7) *FHA insured mortgages section 232 facilities.* HUD may exempt assisted-living facilities, board and care facilities, and intermediate care facilities from physical inspections under this part if HUD determines that the State or local government has a reliable and adequate inspection system in place, with the results of the inspection being readily and timely available to HUD. For any other section 232 facilities, the inspection will be conducted only when and if HUD determines, on the basis of information received, such as through a complaint, site inspection, or referral by a State agency, on a case-by-case basis, that inspection of a particular facility is needed to assure protection of the residents or the adequate preservation of the project.

(8) *Section 8 Moderate Rehabilitation program.* PHAs must inspect units subject to the Moderate Rehabilitation program under 24 CFR part 882 in accordance with the frequency described in 24 CFR 882.516.

(d) *Inspection costs.* The cost of an inspection shall be the responsibility of the entity responsible for the inspection as identified in paragraph (a) of this section, except that a reasonable fee may be required of the owner of a property for a reinspection if an owner notifies the entity responsible for the inspection that a repair has been made or the allotted time for repairs has elapsed and a reinspection reveals that any deficiency cited in the previous inspection that the owner is responsible for repairing was not corrected. No fee may be passed along to the household residing in the unit or units.

(e) *Access to property for inspection.* Nothing in this subpart shall restrict the right of HUD, or an entity contracted by HUD, to inspect a property. All owners and PHAs are required to provide HUD or its representative with full and free access to all HUD-assisted properties. All owners and PHAs are required to provide HUD or its representative with access to all units and appurtenances in order to permit physical inspections, monitoring reviews, and quality assurance reviews under this part. Access to the units shall be provided whether or not the resident is home or has installed additional locks for which the owner or PHA did not obtain keys. In the event that an owner or PHA fails to provide access as required by HUD or its representative, the owner or PHA shall be given a physical condition score of zero for the project or projects involved. A score of zero for an owner or PHA shall be used to calculate the physical condition indicator score and the overall assessment score for that owner or PHA.

(f) *Tenant involvement in inspections.* HUD will establish, through notice, a procedure for tenants to recommend to HUD particular units which HUD may choose to inspect either during or separate from its standard inspection. HUD will evaluate the condition of these units and issue a report on findings, but they will not be included in the official score unless they were randomly selected independent of the tenant's recommendation. The owner or PHA is required to correct any deficiency HUD identifies within the timeframes HUD has established for the identified deficiency.

§ 5.707 Uniform self-inspection requirement and report.

All PHAs and owners of HUD housing subject to an assistance contract, other than owners participating in the HCV, PBV, and Moderate Rehabilitation programs, are required to annually self-inspect their properties, including all units, to ensure the units are maintained in accordance with the standards in § 5.703. The owner or PHA must maintain the results of such self-inspections for three years and must provide the results to HUD upon request. This self-inspection is independent of other HUD inspections discussed in § 5.705. The owner or PHA may choose to conduct this inspection after a HUD inspection to satisfy this requirement and the post-report survey requirement at § 5.711(c)(2) simultaneously.

§ 5.709 Administrative process for defining and revising inspection criteria.

(a) *Inspection standards and scoring methodology.* The Secretary will publish in the **Federal Register**, following notice and the opportunity to comment, a standards notification with a list of deficiencies and the relative severity of these deficiencies to use for inspecting HUD housing. This **Federal Register** document will also include the factors for determining if an HCV, PBV, or Moderate Rehabilitation unit passes or fails the inspection. The Secretary will also publish in the **Federal Register**, following notice and opportunity to comment, a scoring notification containing the methodologies to use for scoring and ranking HUD housing. After considering the public comments received on these **Federal Register** documents, the Secretary will publish documents announcing the new inspections standards and scoring methodologies, and the date on which these notifications become effective.

(1) *Revisions.* The Secretary will issue a notification in the **Federal Register** published for at least 30 days of public comment making any revisions to the inspection and scoring procedures HUD deems necessary, at least once every three years, or three years after the most recent revision, whichever is later.

(2) *Emergency revisions.* The Secretary may publish a notification without 30 days of public comment in the case of an emergency to protect Federal financial resources or the health or safety of residents of HUD housing, after HUD makes a documented determination that such action is warranted due to:

(i) A Life-Threatening deficiency or Severe deficiency and other significant risks to safety as outlined in § 5.703;

(ii) A new safety concern due to changing construction technology; or

(iii) Other events as determined by the Secretary.

(b) [Reserved]

§ 5.711 Scoring, ranking criteria, and appeals.

(a) *Applicability.* Administrative process for scoring and ranking the physical condition of HUD housing properties under this section does not apply to the HCV, PBV or Moderate Rehabilitation programs. PHAs administering HCV and PBV programs will be assessed under the Section 8 Management Assessment Program (''SEMAP'') or the small rural PHA assessment in accordance with 24 CFR part 985, and PHAs administering the Moderate Rehabilitation programs are subject to HUD review in accordance with 24 CFR 882.517.

(b) *Scoring and ranking of HUD housing*—(1) *General.* HUD's Real Estate Assessment Center (REAC), or the appropriate entity either as described in § 5.705(b), or as identified in the regulator agreement or contract for the property as described in § 5.705(b)(1), will score and rank the physical condition of HUD housing properties in accordance with the procedures set out by the Secretary in § 5.709.

(2) *Public housing programs.* PHAs operating public housing will be scored and ranked under the Public Housing Assessment System (''PHAS'') outlined in part 902 of this title.

(c) *Inspection report requirements.* (1) *Life-Threatening deficiencies and Severe deficiencies.* Upon completion of an inspection, or at the end of each day on a multiple-day inspection, REAC, or the appropriate party as described in § 5.705(b), will provide the owner or PHA or owner's representative, a notice of any items classified as Life-Threatening or Severe deficiencies. All Life-Threatening items must be corrected within 24 hours of receipt of notice of these items, unless HUD approves a variation. All Severe items must be corrected within 24 hours of receipt of notice, unless indicated otherwise within the individual inspection standards published in the **Federal Register** with notice and the opportunity for comment, or HUD approves a variation. The owner or PHA or owner's representative must electronically certify and provide supporting evidence within 2 business days after the deadline to correct the Life-Threatening and Severe items that the items have been resolved or sufficiently corrected such that they no longer pose a severe health or safety risk to residents of the property, or that the hazard is blocked until permanent repairs can be completed. If permanent repair will take longer than the allowable time in the relevant standard for the deficiency, the owner or PHA must provide HUD a timeframe for completing permanent repairs for HUD approval.

(2) *Post-report inspection.* The owner or PHA must carefully review the inspection report and is responsible for conducting its own survey of the total property. Moderate deficiencies must be corrected within thirty days and Low deficiencies must be corrected within sixty days, unless indicated otherwise within the individual inspection standards published in the **Federal Register** with notice and the opportunity for comment or within such other reasonable time prescribed by a HUD notice to the owner or PHA. For properties that scored at or above 60, the survey may be limited to inspecting for deficiencies based on the inspecting entity's inspection findings. For properties that scored below 60, the owner or PHA must conduct a survey of the entire project, including all units, inside areas, and outside areas, for any deficiency, and must electronically submit a copy of the results of the survey to HUD.

(d) *Technical review of inspection results*—(1) *Timing.* A request for a technical review of inspection results must be submitted electronically and must be received by the inspecting entity no later than the 45th calendar day following the day the inspection report is provided to the owner or PHA.

(2) *Request for technical review.* The request must be accompanied by the owner's or PHA's relevant evidence that an objectively verifiable and material error occurred or adverse conditions beyond the owner or PHA's control occurred, which if corrected will result in a significant improvement in the overall score of the property. A technical review of the inspection results will not be conducted based on conditions that were corrected subsequent to the inspection. Upon receipt of this request from the owner or PHA, the REAC will review the inspection and the evidence. If the REAC review determines that an objectively verifiable and material error (or errors) or adverse condition(s) beyond the owner's or PHA's control has been documented and that it is likely to result in a significant improvement in the property's overall score, the REAC will take one or a combination of the following actions:

(i) Undertake a new inspection;

(ii) Correct the original inspection; or

(iii) Issue a new physical condition score.

(3) *Burden of proof that error or adverse conditions occurred rests with owner or PHA.* The burden of proof rests with the owner or PHA to demonstrate that an objectively verifiable and material error (or errors) or adverse conditions occurred in the REAC's inspection through submission of evidence, which if corrected will result in a significant improvement in the property's overall score. The REAC will apply a rebuttable presumption that the inspection was conducted accurately. To support its request for a technical review of the physical inspection results, the owner or PHA may submit photographic evidence, written material from an objective source with subject matter expertise that pertains to the item being reviewed such as a local fire marshal, building code official, registered architect, or professional engineer, or other similar evidence.

(4) *Basis for technical review.* An objectively verifiable material error must be present, or an adjustment to the score must be necessary, to allow for a

technical review of inspection results. The basis for a technical review must not be due to the fault of the owner or PHA and must exhibit specific characteristics and meet specific thresholds. The applicable types of material errors and bases for adjustment are as follows.

(i) *Building data error.* A building data error occurs if the inspector inspected the wrong building or a building that was not owned by the property, including common or site areas that were not a part of the property. Incorrect data due to the failure of an owner or PHA to ensure HUD's systems of records are updated cannot form the basis of a review. Incorrect building data that does not affect the score, such as the address and building name would not be considered material.

(ii) *Unit count error.* A unit count error occurs if the total number of units considered in scoring is incorrect due to the fault of HUD. Since scoring uses total units, REAC will examine instances where the participant can provide evidence that the total units used was incorrect and that the results were not representative of the condition of the property.

(iii) *A non-existent deficiency error.* A non-existent deficiency error occurs if the inspection records an observed deficiency that does not satisfy or does not meet a reasonable interpretation of the definition of that deficiency as defined by inspection procedures.

(iv) *Adjustments for factors not reflected or inappropriately reflected in physical condition score.* HUD may determine it is appropriate to review the results of a property's physical inspection if facts and circumstances affecting the owner's or PHA's property are not reflected in the inspection or are reflected inappropriately in the inspection. The circumstances addressed in this may include inconsistencies between local code requirements and the HUD physical inspection protocol; conditions that are permitted by local variance or license or which are preexisting physical features that do not conform to, or are inconsistent with, HUD's physical condition protocol; or the project or PHA having been scored for elements (*e.g.,* roads, sidewalks, mail boxes, resident-owned appliances, etc.) that it does not own and is not responsible for maintaining.

(v) *Adjustments for adverse conditions beyond the control of the owner or PHA.* HUD may determine that certain deficiencies that adversely and significantly affect the physical condition score of the project were caused by circumstances beyond the control of the owner or PHA. The correction of these conditions, however, remains the responsibility of the owner or PHA. The circumstances addressed by this paragraph may include, but are not limited to, damage caused by third parties (such as a private entity or public entity undertaking work near a Public Housing project that results in damage to the project) or natural disasters.

(vi) *Adjustments for modernization work in progress.* HUD may determine that occupied dwelling units or other areas of a property, which are subject to physical inspection, and which are undergoing modernization work, require an adjustment to the physical condition score. An occupied dwelling unit or other areas of an owner's or PHA's property undergoing modernization are subject to physical inspection; the unit(s) and other areas of the property are not exempt from physical inspection. All elements of the unit or of the other areas of the owner or PHA's project that are subject to inspection and are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject to HUD's physical inspection protocol without adjustment. For those elements of the unit or of the property that are undergoing modernization, deficiencies will be noted in accordance with HUD's physical inspection protocol, but the owner or PHA may request adjustment of the physical condition score as a result of current modernization or rehab work in progress.

(5) *Significant improvement.* Significant improvement in the project's overall score refers to an increase in a score for the owner or PHA such that the new score crosses an administratively significant threshold.

(6) *Reinspection.* If HUD determines that a reinspection is appropriate, it will arrange for a complete reinspection of the project(s) in question, not just the deficiencies previously identified. The reinspection will constitute the final inspection for the project, and HUD will issue a new inspection report (the final inspection report).

(e) *Independent HUD review.* Under certain circumstances, HUD may find it appropriate absent an owner or PHA request for technical review to review the results of an inspection which are anomalous or have an incorrect result due to facts and circumstances affecting the inspected property which are not reflected in the inspection or reflected inappropriately in the inspection.

(f) *Responsibility for the cost of a new inspection.* If a new inspection is undertaken by the inspecting party and the new inspection score results in a significant improvement in the property's overall score, then the entity responsible for the inspection shall bear the expense of the new inspection. If no significant improvement occurs, then the owner or PHA responsible for the property must bear the expense of the new inspection. The inspection cost of a new inspection, if paid by the owner or PHA, is not an eligible project operating expense. The new inspection score will be considered the final score.

(g) *Issuance of final score and publication of score.* (1) The score of the property is the final score if the owner or PHA files no request for technical review, as provided in paragraph (d) of this section, or for other adjustment of the physical condition score, as provided in paragraph (e) of this section. If the owner or PHA files a request for technical review or score adjustments in accordance with paragraphs (d), or there is a HUD review under paragraph (e) of this section, the final inspection score is the score issued by HUD after any adjustments are determined necessary and made by HUD at the conclusion of these processes.

(2) HUD will make public the final scores of the properties of the owners and PHAs through posting on HUD's internet site, or other appropriate means.

(h) *Responsibility to notify residents of inspection; and availability of documents to residents*—(1) *Notification to residents.* An owner or PHA must notify its residents of any planned inspections of their units or the housing development generally.

(2) *Availability of documents for review.* (i) Once a final score has been issued the owner or PHA must make the physical inspection report and all related documents available to residents during regular business hours upon reasonable request for review and copying. Related documents include the owner's or PHA's survey plan, plan of correction, certification, and related correspondence.

(ii) Once the owner's final inspection score is issued and published, the owner or PHA must make any additional information, such as the results of any reinspection or appeal requests, available for review and copying by its residents upon reasonable request during regular business hours.

(iii) The owner or PHA must maintain the documents related to the inspection of the property, as described in paragraphs (h)(2)(i) and (ii) of this section, for review by residents for a period of 60 days from the date HUD provides the inspection score for the property in which the residents reside.

(3) *Posting on the availability of materials.* The owner or PHA must post a notice to the residents in the owner's or PHA's management office and on any bulletin boards in all common areas on the date of submission to the owner of the inspection score for the property in which the resident resides that advises residents of the availability of the materials described in this section. The notice must be translated into other languages if necessary to provide meaningful access for limited English proficient (LEP) individuals. The notice should include, where applicable, the name, address, and telephone number of the HUD field office contact.

(4) Residents are encouraged to comment on this information provided by the owner or PHA and submit any comments directly to the applicable HUD field office or responsible entity. Should residents discover the owner or PHA provided HUD with a false certification during the review, they are encouraged to notify the applicable HUD field office where appropriate inquiry and action will be taken.

(i) *Administrative review of properties.* The file of a property that receives a score of 30 points or less, or two successive scores under 60, on its inspection will be subject to additional administrative review. Properties that receive two successive scores under 60 may be referred to HUD's Departmental Enforcement Center (DEC) for evaluation. Properties that receive a score of 30 points or less shall be automatically referred to the DEC for evaluation.

(1) *Notification to owner of submission of property file to the DEC.* Upon referral to the DEC, the Department will provide for notification to the PHA or owner that the file on the owner's property is being submitted to the DEC for evaluation. The notification will be provided at the time the REAC issues the inspection report to the owner or at such other time as a referral occurs.

(2) *Evaluation of the property.* During the DEC's evaluation period, the DEC will perform an analysis of the property, which may include input from tenants, HUD officials, elected officials, maintenance staff and others as may be appropriate. Although program offices will assist with the evaluation, the DEC will have primary responsibility for the conclusion of the evaluation of the property after taking into consideration the input of interested parties as described in this paragraph. The DEC's evaluation may include a site visit to the PHA's or owner's property.

(3) *Continuing responsibilities of HUD program offices and mortgagee.* During the period of DEC evaluation, HUD's program offices continue to be responsible for routine business, oversight, and monitoring. In addition, during this period of evaluation, the mortgagee, as applicable, shall continue to carry out its duties and responsibilities with respect to the mortgage.

(4) *Enforcement action.* Except as otherwise provided by statute, if, based on the DEC's evaluation and in consultation with HUD program offices, the DEC determines that enforcement actions are appropriate, it may take those actions for which the DEC has delegated authority and/or make recommendations to HUD program office with respect to resolving identified physical deficiencies and owner or PHA noncompliance.

(j) *No limitation on existing enforcement authority.* The administrative process provided in this section does not prohibit HUD from taking whatever action may be necessary (notwithstanding the commencement of this process), as authorized under existing statutes, regulations, contracts, grant agreements or other documents, to protect HUD's interests in HUD housing properties and to protect the residents of these properties.

§ 5.713 Second- and third-party rights.

Nothing in this subpart is intended to create any right of the family residing in HUD Housing or any party, other than HUD or a PHA, to require enforcement of the standards required by this subpart or to assert any claim against HUD or the PHA for damages, injunction, or other relief for alleged failure to enforce the standards.

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 3. The authority for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 1701x and 4568.

§ 92.2 [Amended]

■ 4. Effective October 1, 2023, amend § 92.2 by removing the definition of ''Uniform Physical Condition Standards (UPCS)''.

■ 5. Effective October 1, 2023, amend § 92.209 by revising paragraph (i) to read as follows:

§ 92.209 Tenant-based rental assistance: Eligible costs and requirements.

* * * * *

(i) *Housing standards.* Housing occupied by a family receiving tenant-based rental assistance under this section must meet the participating jurisdiction's property standards under § 92.251. The participating jurisdiction must inspect the housing initially and re-inspect it annually.

* * * * *

■ 6. Effective October 1, 2023, amend § 92.251 by:

■ a. Revising paragraphs (b)(1)(viii) and (c)(3);

■ b. Removing and reserving paragraph (d); and

■ c. Revising the paragraph (f) heading and paragraphs (f)(1) introductory text and (f)(1)(i).

The revisions read as follows:

§ 92.251 Property standards.

* * * * *

(b) * * *

(1) * * *

(viii) *HUD housing standards.* The standards of the participating jurisdiction must be such that, upon completion, the HOME-assisted project and units will be decent, safe, sanitary, and in good repair. This means that the HOME-assisted project and units will meet the standards in 24 CFR 5.703, except that the carbon monoxide detection requirements at 24 CFR 5.703(b)(2) and (d)(6) shall not apply. For all HOME-assisted projects and units, the requirements at 24 CFR 5.705 through 5.713 do not apply. At minimum, the participating jurisdiction's rehabilitation standards must require correction of the specific deficiencies published in the **Federal Register** for HOME-assisted projects and units. For SRO housing, 24 CFR 5.703(d) shall only apply to the extent that the SRO unit contains the room or facility referenced in 24 CFR 5.703(d).

* * * * *

(c) * * *

(3) Existing housing that is acquired for homeownership (*e.g.,* downpayment assistance) must be decent, safe, sanitary, and in good repair. The participating jurisdiction must establish standards to determine that the housing is decent, safe, sanitary, and in good repair. At minimum, the standards must provide that the housing meets all applicable State and local housing quality standards and code requirements and the housing does not contain the specific deficiencies established by HUD based on the applicable standards in 24 CFR 5.703 and published in the **Federal Register**

for HOME assisted projects and units. The participating jurisdiction must inspect the housing and document this compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet the standards of this paragraph (c)(3) or it cannot be acquired with HOME funds.

* * * * *

(f) *Ongoing property condition standards: Rental housing and housing occupied by tenants receiving HOME tenant-based rental assistance*—(1) *Ongoing property standards.* The participating jurisdiction must establish property standards for rental housing (including manufactured housing) that apply throughout the affordability period and for housing occupied by tenants receiving HOME tenant-based rental assistance. The standards must require that owners maintain the housing as decent, safe, sanitary, and in good repair. The participating jurisdiction's description of its property standards must be in sufficient detail to establish the basis for a uniform inspection of HOME rental projects and housing occupied by tenants receiving HOME tenant-based rental assistance. The participating jurisdiction's ongoing property standards must address each of the following:

(i) *Compliance with State and local codes, ordinances, and requirements.* The participating jurisdiction's standards must require the housing to meet all applicable State and local code requirements and ordinances. In the absence of existing applicable State or local code requirements and ordinances, at a minimum, the participating jurisdiction's ongoing property standards must provide that the property does not contain the specific deficiencies established by HUD based on the applicable standards in 24 CFR 5.703 and published in the **Federal Register** for rental housing (including manufactured housing) and housing occupied by tenants receiving HOME tenant-based rental assistance. The requirements in 24 CFR 5.705 through 5.713 do not apply to the participating jurisdiction's ongoing property standards.

* * * * *

■ 7. Effective October 1, 2023, amend § 92.504 by revising paragraphs (d)(1)(ii)(D) and (d)(1)(iii) to read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspections.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) Inspections must be based on a statistically valid sample of units appropriate for the size of the HOME-assisted project, as set forth by HUD through a document published in the **Federal Register**. For projects with one-to-four HOME-assisted units, a participating jurisdiction must inspect all of the HOME-assisted units and all inspectable areas for each building with HOME-assisted units.

(iii) *Annual inspections.* Tenant-based rental assistance (TBRA). All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the property standards of § 92.251. The participating jurisdiction must perform annual on-site inspections of rental housing occupied by tenants receiving HOME-assisted TBRA to determine compliance with these standards.

* * * * *

PART 93—HOUSING TRUST FUND

■ 8. The authority for part 93 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 4568.

■ 9. Effective October 1, 2023, amend § 93.301 by revising paragraphs (b)(1)(viii), (c)(3), (e)(1) introductory text, and (e)(1)(i) to read as follows:

§ 93.301 Property standards.

* * * * *

(b) * * *

(1) * * *

(viii) *Housing standards.* The standards of the grantee must be such that, upon completion, the HTF-assisted project and units will be decent, safe, sanitary, and in good repair. This means that the HTF-assisted project and units will meet the standards in 24 CFR 5.703, except that the carbon monoxide detection requirement at 24 CFR 5.703(b)(2) and (d)(6) shall not apply. For all HTF-assisted projects and units, the requirements at 24 CFR 5.705 through 5.713 do not apply. At minimum, the grantee's rehabilitation standards must require correction of the specific deficiencies published in the **Federal Register** for HTF-assisted projects and units. For SRO housing, the requirements at 24 CFR 5.703(d) shall only apply to the extent that the SRO unit contains the room or facility referenced in 24 CFR 5.703(d).

* * * * *

(c) * * *

(3) Existing housing that is acquired for homeownership (*e.g.,* down payment assistance) must be decent, safe, sanitary, and in good repair. The grantee must establish standards to determine that the housing is decent, safe, sanitary, and in good repair. At minimum, the standards must provide that the housing meets all applicable State and local standards and code requirements, and the housing does not contain the specific deficiencies established by HUD based on the applicable standards in 24 CFR 5.703 and published in the **Federal Register** for HTF-assisted projects and units. The grantee must inspect the housing and document compliance based upon an inspection that is conducted no earlier than 90 calendar days before the date of commitment of HTF assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet the standards of this paragraph or it cannot be assisted with HTF funds.

* * * * *

(e) * * *

(1) *Ongoing property standards.* The grantee must establish property standards for rental housing (including manufactured housing) that apply throughout the affordability period. The standards must require that owners maintain the housing as decent, safe, sanitary and in good repair. The grantee's description of its property standards must be in sufficient detail to establish the basis for a uniform inspection of HTF rental projects. The grantee's ongoing property standards must address each of the following:

(i) *Minimum Property Standards.* At a minimum, the grantee's ongoing property standards must provide that the property does not contain the specific deficiencies established by HUD based on the applicable standards in 24 CFR 5.703 and published in the **Federal Register** for rental housing (including manufactured housing). The requirements in 24 CFR 5.705 through 5.713 do not apply to the grantee's ongoing property standards.

* * * * *

■ 10. Effective October 1, 2023, amend § 93.404 by revising paragraph (d)(2)(v) to read as follows:

§ 93.404 Grantee responsibilities; written agreements; onsite inspections; financial oversight.

* * * * *

(d) * * *

(2) * * *

(v) Inspections must be based on a statistically valid sample of units appropriate for the size of the HTF-assisted project, as set forth by HUD through notification published in the **Federal Register**. For projects with one to four HTF-assisted units, the HTF grantee must inspect all of the HTF-assisted units and all inspectable areas for each building housing HTF-assisted units.

* * * * *

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 11. The authority for part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

■ 12. Effective October 1, 2023, revise § 200.850 to read as follows:

§ 200.850 Physical condition standards and physical inspection requirements.

The requirements in 24 CFR part 5, subpart G, are applicable to the multifamily properties assisted or insured that are listed in 24 CFR 5.701.

§§ 200.853, 200.855, and 200.857 [Removed and Reserved]

■ 13. Effective October 1, 2023, remove and reserve §§ 200.853, 200.855, and 200.857.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

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

Authority: 12 U.S.C. 1701x, 1701x–1; 42 U.S.C. 3535(d) and 5301–5320.

■ 15. Effective October 1, 2023, amend § 570.208 by revising paragraph (b)(1)(iv) to read as follows:

§ 570.208 Criteria for national objectives.

* * * * *

(b) * * *

(1) * * *

(iv) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each building rehabilitated is considered substandard under local definition before rehabilitation, and all deficiencies making a building substandard have been eliminated. At a minimum, the local definition for this purpose must be such that buildings that it would render substandard would also fail to meet the standards for the condition of HUD housing at 24 CFR 5.703.

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS, SUBPART D—USES OF GRANT FUNDS

■ 16. The authority for part 574 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701x–1; 42 U.S.C. 3535(d) and 5301–5320.

■ 17. Effective October 1, 2023, amend § 574.310 by revising paragraphs (b) introductory text and (b)(2) and adding paragraph (b)(3) to read as follows:

§ 574.310 General standards for eligible housing activities.

* * * * *

(b) * * *. The following standards apply for all housing for which HOPWA funds are used under § 574.300(b)(3), (4), (5), and (8).

* * * * *

(2) *HUD housing standards.* Except for such variations as are proposed by the grantee and approved by HUD, the housing must meet the standards for HUD housing in 24 CFR 5.703, except that:

(i) As applied to HOPWA, ''HUD housing'' in 24 CFR 5.703 means the units eligible persons occupy or will occupy, systems equipment that directly services those units, items and components within the primary and secondary means of egress from those units' doors to the public way, and common features related to the residential use of the building (*e.g.,* the laundry room, community room, mail room).

(ii) Housing that continues to meet the HOPWA housing quality standards that applied when the eligible person(s) moved into that housing shall not be required to meet new or different standards under 24 CFR 5.703.

(3) The requirements of 24 CFR 5.705 through 5.713 do not apply.

* * * * *

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

■ 18. The authority for 24 CFR part 576 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701x–1; 42 U.S.C. 11371 *et seq.,* 42 U.S.C. 3535(d).

Subpart E—Program Requirements

■ 19. Effective October 1, 2023, amend § 576.403 by revising paragraph (c) to read as follows:

§ 576.403 Shelter and housing standards.

* * * * *

(c) *Minimum standards for permanent housing.* When ESG funds are used for permanent housing under 24 CFR 576.105 or 576.106, the minimum standards in 24 CFR 5.703 apply, except that:

(1) *Definition of HUD housing.* For the purposes of ESG, ''HUD housing'' in 24 CFR 5.703 means the program participant's unit, systems equipment that directly services those units, items and components within the primary and secondary means of egress from those units' doors to the public way, and common features related to the program participant's use of the building (*e.g.,* the laundry room, community room, mail room).

(2) *Housing inspections.* For the first 30 days in which a program participant receives homelessness prevention assistance, the recipient or subrecipient may provide services under 24 CFR 576.105(b) to help the program participant remain in their unit without inspecting the unit to determine whether it meets the minimum standards identified in this paragraph (c), except that the recipient or subrecipient must still comply with the requirements under 24 CFR part 35. Before otherwise using ESG funds under 24 CFR 576.105 or 576.106 to help a program participant remain in or move into specific housing, however, the recipient or subrecipient must inspect that housing to confirm that it meets the requirements in this section. In addition, recipient or subrecipient must inspect the housing at least once every 12 months during the period of assistance to confirm the housing continues to meet the minimum standards in this paragraph (c).

(3) *Correction of deficiencies.* If an inspection reveals one or more deficiencies that prevent the housing from meeting the requirements in this section, ESG funds must not be used under 24 CFR 576.105 or 576.106 with respect to that housing unless the owner corrects the deficiencies within 30 days from the date of the initial inspection and the recipient or subrecipient verifies that all deficiencies have been corrected.

(4) *Rental arrears.* Housing for which rental arrears are paid is only subject to the requirements in this section, if a program participant is seeking to stay in that housing.

(5) *Additional standards.* The recipient may also add standards that exceed these minimum standards.

(6) *Other exemptions from 24 CFR part 5, subpart G.* The requirements in 24 CFR 5.703(b)(2) and (d)(6) and 5.705 through 5.713 do not apply.

PART 578—CONTINUUM OF CARE PROGRAM

■ 20. The authority for 24 CFR part 578 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701x–1; 42 U.S.C. 11381 *et seq.,* 42 U.S.C. 3535(d).

■ 21. Effective October 1, 2023, amend § 578.75 by revising paragraph (b) to read as follows:

§ 578.75 General operations.

* * * * *

(b) *Housing standards.* Housing leased with Continuum of Care program funds, or for which rental assistance payments are made with Continuum of Care program funds, must meet the applicable standards under 24 CFR 5.703, except that the carbon monoxide detection requirement at 24 CFR 5.703(b)(2) and (d)(6) shall not apply. For housing that is occupied by program participants receiving tenant-based rental assistance, 24 CFR part 35, subparts A, B, M, and R apply. For housing rehabilitated with funds under this part, the lead-based paint requirements in 24 CFR part 35, subparts A, B, J, and R apply. For housing that receives project-based or sponsor-based rental assistance, 24 CFR part 35, subparts A, B, H, and R apply. For residential property for which funds under this part are used for acquisition, leasing, services, or operating costs, 24 CFR part 35, subparts A, B, K, and R apply. Additionally, for tenant-based rental assistance, for leasing of individual units, and for sponsor based rental assistance where not all units in a structure are or will be assisted, the standards apply only to the unit itself, and to the means of ingress and egress from the unit to the public way and to the building's common areas.

(1) Before any assistance will be provided on behalf of a program participant, the recipient, or subrecipient, must physically inspect each unit to assure that the unit meets 24 CFR 5.703. Assistance will not be provided for units that fail to meet 24 CFR 5.703, unless the owner corrects any deficiencies within 30 days from the date of the initial inspection and the recipient or subrecipient verifies that all deficiencies have been corrected.

(2) Recipients or subrecipients must inspect all units at least annually during the grant period to ensure that the units continue to meet 24 CFR 5.703.

(3) The requirements in 24 CFR 5.705 through 5.713 do not apply.

* * * * *

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

■ 22. The authority for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 882.404 [Amended]

■ 23. Effective October 1, 2023, amend § 882.404 by removing paragraph (d).

■ 24. Effective October 1, 2023, amend § 882.516 by revising the section heading and paragraphs (b), (c), and (e) to read as follows:

§ 882.516 Maintenance, operation, and inspections.

* * * * *

(b) *Periodic inspection.* In addition to the inspections required prior to execution of the Contract, the PHA must inspect or cause to be inspected the contract units in accordance with the physical inspection requirements under 24 CFR part 5, subpart G, at least annually, and at such other times as may be necessary to assure that the Owner is meeting the obligations to maintain the units so they are compliant with 24 CFR part 5, subpart G, and to provide the agreed upon utilities and other services. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

(c) *Units with health and safety hazards.* If the PHA notifies the Owner that the unit(s) under Contract are not being maintained in compliance with the standards under 24 CFR part 5, subpart G, and the Owner fails to take corrective action (including corrective action with respect to the Family where the condition of the unit is the fault of the Family) within the time prescribed in the notice, the PHA may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments (even if the Family continues in occupancy) or termination of the Contract on the affected unit(s) and assistance to the Family in accordance with § 882.514(e).

* * * * *

(e) *Periodic reviews.* Periodic PHA audits must be conducted as required by HUD, in accordance with 2 CFR part 200, subpart F.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

■ 25. The authority for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

■ 26. Effective October 1, 2023, revise § 884.217 to read as follows:

§ 884.217 Maintenance, operation, and inspections.

(a) *Maintenance and operation.* The Owner shall maintain and operate the project consistent with 24 CFR part 5, subpart G, and shall provide all the services, maintenance, and utilities which the Owner agrees to provide under the Contract, subject to abatement of housing assistance payments or other applicable remedies if the Owner fails to meet these obligations.

(b) *Inspection prior to occupancy.* Prior to occupancy of any unit by a Family, the Owner and the Family shall inspect the unit. On forms prescribed by HUD, the Owner and Family shall certify, that they have inspected the unit and the owner shall certify that the unit is compliant with 24 CFR part 5, subpart G, and the criteria provided in the prescribed forms. Copies of these reports shall be kept on file by the Owner for at least 3 years, and may be required to be electronically submitted to HUD.

(c) *Periodic inspections.* HUD (or the PHA, as appropriate) will inspect or cause to be inspected the contract units and related facilities in accordance with the physical inspection requirements in 24 CFR part 5, subpart G, and at such other times (including prior to initial occupancy and renting of any unit) as HUD (or the PHA) may determine to be necessary to assure that the Owner is meeting the obligation to maintain the units in accordance with 24 CFR part 5, subpart G, and to provide the agreed upon utilities and other services.

(d) *Units with health and safety hazards.* If HUD (or the PHA, as appropriate) notifies the Owner that the Owner has failed to maintain a unit that in accordance with 24 CFR part 5, subpart G, and the Owner fails to take corrective action within the time prescribed by notice, HUD (or the PHA) may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments, even if the Family continues to occupy the unit. If, however, the Family wishes to be rehoused in another unit with Section 8 assistance and HUD (or the PHA) does not have other Section 8 funds for such purposes, HUD (or the PHA) may use the abated housing assistance payments for the purpose of rehousing the Family in another unit. Where this is done, the Owner shall be notified that the Owner will be entitled to resumption of housing assistance payments for the vacated unit if:

(1) The unit is restored to in accordance with 24 CFR part 5, subpart G;

(2) The Family is willing to and does move back to the restored dwelling unit; and

(3) A deduction is made for the expenses incurred by the Family for both moves.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

■ 27. The authority for part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

§ 886.113 [Amended]

■ 28. Effective October 1, 2023, amend § 886.113 by removing and reserving paragraphs (b) and (i).

■ 29. Effective October 1, 2023, revise § 886.123 to read as follows:

§ 886.123 Maintenance, operation, and inspections.

(a) *Maintenance and operation.* The Owner shall maintain and operate the project so as to provide housing that is compliant with 24 CFR part 5, subpart G, and the Owner shall provide all the services, maintenance, and utilities which the Owner agrees to provide under the Contract, subject to abatement of housing assistance payments or other applicable remedies if the Owner fails to meet these obligations.

(b) *Inspection prior to occupancy.* Prior to occupancy of any unit by a Family, the Owner and the Family shall inspect the unit. On forms prescribed by HUD, the Owner and Family shall certify that they have inspected the unit, and the owner shall certify that the unit is compliant with 24 CFR part 5, subpart G, and with the criteria provided in the prescribed forms. Copies of these reports shall be kept on file by the Owner for at least three years.

(c) *Periodic inspections.* HUD will inspect or cause to be inspected the contract units in accordance with the requirements in 24 CFR part 5, subpart G, and at such other times as may be necessary to assure that the owner is meeting contractual obligations.

(d) *Units not free of health and safety hazards.* If HUD notifies the Owner that the Owner has failed to maintain a unit that is compliant with the requirements in 24 CFR part 5, subpart G, and the Owner fails to take corrective action within the time prescribed by notice, HUD may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments, even if the Family continues to occupy the unit.

§ 886.307 [Amended].

■ 30. Effective October 1, 2023, amend § 886.307 by removing and reserving paragraphs (b), (i), and (m).

■ 31. Effective October 1, 2023, revise § 886.323 to read as follows:

§ 886.323 Maintenance, operation, and inspections.

(a) *Maintain housing free of health and safety hazards.* The Owner shall maintain and operate the project so as to be compliant with 24 CFR part 5, subpart G, and the Owner shall provide all the services, maintenance, and utilities which the Owner agrees to provide under the contract and the lease. Failure to do so shall be considered a material default under the contract and Regulatory Agreement, if any.

(b) *HUD inspection.* Prior to execution of the contract, HUD shall inspect (or cause to be inspected) each proposed contract unit and related facilities to ensure that they comply with the requirements at 24 CFR part 5, subpart G.

(c) *Owner and family inspection.* Prior to occupancy of any vacant unit by a Family, the Owner and the Family shall inspect the unit. The Owner shall certify that they have inspected the unit, and the owner shall certify that the unit is compliant with 24 CFR part 5, subpart G. Copies of these reports shall be kept on file by the owner for at least 3 years.

(d) *Periodic inspections.* HUD will inspect the project (or cause it to be inspected) in accordance with the requirements in 24 CFR part 5, subpart G, and at such other times as HUD may determine to be necessary to assure that the owner is meeting the Owner's obligation to maintain the units and the related facilities in accordance with 24 CFR part 5, subpart G, and to provide the agreed-upon utilities and other services.

(e) *Failure to maintain housing.* If HUD notifies the Owner that he/she has failed to maintain a unit that is compliant with 24 CFR part 5, subpart G, and the Owner fails to take corrective action within the time prescribed in the notice, HUD may exercise any of its rights or remedies under the Contract, or Regulatory Agreement, if any, including abatement of housing assistance payments (even if the Family continues to occupy the unit) and rescission of the sale. If the Family wishes to be rehoused in another unit, HUD shall provide assistance in finding such a unit for the Family.

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

■ 32. Effective July 1, 2023, the authority for part 902 is revised to read as follows:

Authority: 42 U.S.C. 1437d(j), 42 U.S.C. 3535(d), 1437z–10.

■ 33. Effective July 1, 2023, amend § 902.3 by:

■ a. Removing the definition of ''Criticality'';

■ b. Revising the definitions of ''Dictionary of Deficiency Definitions'', ''Inspectable areas (or area)'', and ''Inspectable item''; and

■ c. Removing the definitions of ''Item Weights and Criticality Levels document'', ''Normalized weights'', ''Score'', ''Severity'', ''Statistically valid sample'' and ''Subarea''.

The revisions read as follows:

§ 902.3 Definitions.

* * * * *

Dictionary of Deficiency Definitions means the documents published in the **Federal Register** that contain the inspection standards and scoring values pursuant to 24 CFR part 5, subpart G.

* * * * *

Inspectable areas (or *area)* mean any of the three major components of public housing that are inspected, which are: inside, outside, and unit.

Inspectable item means the individual parts, such as walls, kitchens, bathrooms, and other things, to be inspected in an inspectable area.

* * * * *

■ 34. Effective July 1, 2023, amend § 902.13 by revising paragraph (b)(2) to read as follows:

§ 902.13 Frequency of PHAS assessments.

* * * * *

(b) * * *

(2) The physical condition score for each project will determine the frequency of inspections of each project in accordance with the inspection cycle laid out in 24 CFR 5.705(c). The PHAS physical condition indicator score for an assessment period shall be calculated by taking the unit-weighted average of the most recent physical condition score for each project, except that, starting July 1, 2023, no new physical condition indicator will be issued for a PHA until every project under the PHA has been inspected on or after July 1, 2023.

* * * * *

§ 902.20 [Removed and Reserved]

■ 35. Effective July 1, 2023, remove and reserve § 902.20.

■ 36. Effective July 1, 2023, revise § 902.21 to read as follows:

§ 902.21 Physical condition standards for public housing.

Public housing must be maintained in a manner that meets the physical condition standards set forth in 24 CFR part 5, subpart G.

■ 37. Effective July 1, 2023, revise § 902.22 to read as follows:

§ 902.22 Inspection of PHA projects.

The PHA's score for the physical condition indicator is based on an independent inspection of a PHA's project(s) provided by HUD and using the requirements and timelines laid out in 24 CFR part 5, subpart G, to ensure projects meet acceptable basic housing conditions. Mixed-finance projects will be subject to the physical condition inspections.

§ 902.24 [Removed and Reserved]

■ 38. Effective July 1, 2023, remove and reserve § 902.24.

§ 902.26 [Removed and Reserved]

■ 39. Effective July 1, 2023, remove and reserve §§ 902.24, 902.26, and 902.68.

§ 902.68 [Removed and Reserved]

■ 40. Effective July 1, 2023, remove and reserve §§ 902.24, 902.26, and 902.68.

■ 41. Effective July 1, 2023, add subpart H to read as follows:

Subpart H—Assessment of Small Rural Public Housing Agencies

Sec.

Subpart H—Assessment of Small Rural Public Housing Agencies

§ 902.101 Definition of small rural PHAs.

(a) *Definition.* A PHA is a small rural PHA if it administers 550 or fewer combined public housing units and vouchers under section 8(o), and either:

(1) Has a primary administrative building as determined with a physical address in a rural area as described in 12 CFR 1026.35(b)(2)(iv)(A); or

(2) More than 50 percent of its combined public housing units and voucher units under section 8(o) are in rural areas as described in 12 CFR 1026.35(b)(2)(iv)(A).

(b) *Determination.* (1) HUD will make the initial determination of PHAs that qualify as small rural as defined in this section no later than October 30, 2023.

(2) HUD will determine if a PHA qualifies as a small rural PHA under paragraph (a) of this section every 3 years.

(c) *Appeals.* A PHA may challenge HUD's determination concerning whether the PHA qualifies as small rural PHA by presenting an objectively verifiable material error which resulted in the incorrect determination, or by presenting information showing that the status of the PHA has changed to justify a redetermination.

§ 902.103 Public housing assessment of small rural PHAs.

(a) *Small rural public housing assessment.* The public housing program of small rural PHAs as defined in § 902.101 shall be assessed and scored based only on the physical condition of their public housing properties in accordance with 24 CFR part 5, subpart G, except that properties that meet the definition specified in § 902.44(b) of physical condition and neighborhood environment shall receive one additional point for physical condition and neighborhood environment. Such agencies shall not be subject to PHAS except as noted below.

(b) *Triennial assessment.* Public housing programs operated by small rural PHAs will be assessed no more than once every three years, except that a small rural PHA shall be subject to annual inspection if it is designated by the Secretary as troubled as defined in § 902.105.

(c) *Initial public housing assessment.* (1) For PHAs subject to small PHA deregulation, the first assessment and inspections will be determined based on the PHA's next scheduled PHAS assessment (*e.g.,* a higher performing PHA would receive the first inspection 3 years after the most recent PHAS assessment).

(2) For PHAs not subject to small PHA deregulation, the first inspection is based on the PHA's overall weighted project physical condition indicator score (*e.g.,* a PHA with a physical condition indicator score of 90 or greater would receive the first inspection three years after most recent PHAS assessment).

§ 902.105 Troubled small rural PHAs.

(a) *Definition of troubled small rural PHA.* A small rural PHA will be determined to be troubled under the public housing program if the weighted average score of all property inspections is below 70 percent of the total available points, or if a small rural PHA has a weighted average score of between 70 and 80 percent of the total available points and has at least one property that receives fewer than 70 percent of the total available points.

(b) *Referral to the local field office.* Upon a PHA's designation as a troubled performer HUD must notify the PHA and shall refer the troubled performer PHA to the PHA's field office, or other designated office(s) at HUD, for remedial action, oversight, and monitoring. The actions to be taken by HUD and the PHA will include statutorily required actions, and such other actions as may be determined appropriate by HUD.

(c) *Corrective Action Agreement (CAA).* Within 30 days of notification of a PHA's designation as a troubled performer, HUD will initiate activities to negotiate and develop a CAA. A CAA is required for a troubled performer. The final CAA is a binding contractual agreement between HUD and a PHA. The scope of the CAA may vary depending upon the extent of the problems present in the PHA. The term of the CAA will not exceed one year and is subject to renewal at the discretion of HUD if HUD determines that the circumstances requiring the CAA still exist at the expiration of the term of the CAA based on the annual assessment frequency as included in § 902.103. It shall include, but not be limited to:

(1) Baseline data, which should be data without adjustments or weighting but may be the PHA's score identified as a deficiency;

(2) Performance targets for such periods specified by HUD (*e.g.,* annual, semiannual, quarterly, monthly), which may be the attainment of a higher score or the description of a goal to be achieved; however, safety, health, and environmental performance targets and deadlines otherwise specified by regulation, including the lead safety regulations at 24 CFR part 35, are not superseded by the CAA performance targets;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the CAA, including the identification of the party responsible for the completion of each task and for reporting progress;

(4) Technical assistance to the PHA provided or facilitated by HUD;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) The consequences of failing to meet the targets; and

(7) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA

shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas, and authority to make preliminary commitments of support, financial or otherwise.

(d) *PHA review of the CAA.* The PHA will have 10 days to review the CAA. During this 10-day period, the PHA shall resolve any claimed discrepancies in the CAA with HUD and discuss any recommended changes and target dates for improvement to be incorporated in the final CAA. Unless the time period is extended by HUD, the CAA is to be executed 30 days following issuance of the draft CAA.

(e) *Maximum recovery period.* Upon the expiration of the one-year period that started on the date on which the PHA receives initial notice of a troubled performer designation, the PHA shall improve its performance in order to no longer be considered troubled under the assessment.

(f) *Parties to the CAA.* A CAA shall be executed by:

(1) The PHA Board Chairperson (supported by a Board resolution), or a receiver (pursuant to a court-ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court-ordered receivership agreement, if applicable), or other AME-designated Chief Executive Officer; and

(3) The field office.

(g) *Involvement of resident leadership in the CAA.* HUD encourages the inclusion of the resident leadership in the execution of the CAA.

(h) *Failure to execute CAA or make substantial improvement under CAA.* If a troubled performer PHA fails or refuses to execute an CAA within the period provided in paragraph (d) of this section, or a troubled performer PHA operating under an executed CAA does not achieve a passing physical inspection score, as provided in paragraph (e) of this section, the field office shall refer the PHA to the Assistant Secretary to determine such remedial actions, consistent with the provisions of the ACC and other HUD regulations, including, but not limited to, remedies available for substantial default.

(i) *Continuation of services to residents.* To the extent feasible, while a PHA is in a troubled performer status, all services to residents will continue uninterrupted.

§ 902.107 Withholding, denying, and rescinding troubled designation.

(a) *Withholding designation.* In exceptional circumstances, even though a PHA has satisfied the requirements for high performer or non-troubled designations, HUD may conduct any review as it may determine necessary, and may deny or rescind incentives or high performer designation or non-troubled performer designation, in the case of a PHA that:

(1) Is operating under a special agreement with HUD (*e.g.,* a civil rights Conciliation or Voluntary Compliance Agreement);

(2) Is involved in litigation that bears directly upon the physical performance of a PHA;

(3) Is operating under a court order;

(4) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certifications, submitted in accordance with this part, are not supported by the facts, as evidenced by such sources as a HUD review, routine reports, an Office of Inspector General investigation/audit, an independent auditor's audit, or an investigation by any appropriate legal authority; or

(5) Demonstrates substantial noncompliance in one or more areas of a PHA's required compliance with applicable laws and regulations, including areas not assessed under the small rural assessment. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, nondiscrimination and fair housing laws and regulations, or the ACC. Substantial noncompliance casts doubt on the capacity of a PHA to preserve and protect its public housing projects and operate them consistent with Federal laws and regulations.

(b) *High performer and standard designations.* If a high performer designation is denied or rescinded, the PHA shall be designated either a non-troubled performer, or troubled performer, depending on the nature and seriousness of the matter or matters constituting the basis for HUD's action. If a non-troubled performer designation is denied or rescinded, the PHA shall be designated as a troubled performer.

(c) *Effect on score.* The denial or rescission of a designation of high performer or non-troubled performer shall not affect the PHA's numerical small rural assessment score, except where the denial or rescission is under paragraph (a)(4) of this section.

§ 902.109 Right to petition and appeal troubled designation.

(a) *Appeal of troubled performer designation and petition for removal of troubled performer designation.* A PHA may take any of the following actions:

(1) Appeal its troubled performer designation;

(2) Petition for removal of troubled performer designation; and

(3) Appeal any refusal of a petition to remove troubled performer designation.

(b) *Appeal of small rural Assessment score.* (1) If a PHA believes that an objectively verifiable and material error(s) exists in its small rural assessment score, which, if corrected, will result in a significant change in the PHA's score and its designation, the PHA may appeal its score in accordance with the procedures of paragraphs (c) through (e) of this section. A significant change in a score is a change that would cause the PHA's score to increase, resulting in a higher designation for the PHA (*i.e.,* from troubled performer to non-troubled performer, or from non-troubled to high performer).

(2) A PHA may not appeal its score or designation based on the subsequent correction of deficiencies identified as a result of a project's physical inspection.

(c) *Appeal and petition procedures.* (1) To appeal a troubled performer designation or petition for the removal of a troubled performer designation, a PHA must submit a request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center, which must be received by HUD no later than 30 days following the issuance of the score to the PHA.

(2) To appeal the denial of a petition to remove a troubled performer designation, a PHA must submit a written request to the Deputy Assistant Secretary of the Real Estate Assessment Center, which must be received by HUD no later than 30 days after HUD's decision to refuse to remove the PHA's troubled performer designation.

(3) An appeal of a troubled performer designation or an appeal of the denial of a petition for removal of a troubled performer designation must include the PHA's supporting documentation and reasons for the appeal or petition. An appeal of an assessment score must be accompanied by the PHA's evidence that a material error occurred. An appeal or petition submitted to HUD without supporting documentation will not be considered and will be returned to the PHA.

(d) *Denial, withholding, or rescission.* A PHA that disagrees with the basis for denial, withholding, or rescission of its designation under § 902.66 may make a written request for reinstatement within

30 days of notification by HUD of the denial or rescission of the designation to the Assistant Secretary, and the request shall include reasons for the reinstatement.

(e) *Consideration of petitions and appeals.* (1) Consideration of a petition or the appeal of a final overall assessment score, of a troubled performer designation, or of a petition to remove troubled performer designation. Upon receipt of such an appeal or a petition from a PHA, HUD will evaluate the appeal and its merits for purposes of determining whether a reassessment of the PHA is warranted. HUD will review the PHA's file and the evidence submitted by the PHA to determine whether an error occurred.

(2) Consideration of an appeal of refusal to remove a troubled performer designation. Upon receipt of an appeal of refusal to remove a troubled performer designation, HUD will evaluate the appeal and its merits for the purposes of determining whether a reassessment of the PHA is warranted. The HUD staff initially evaluating an appeal of refusal to remove a troubled performer designation will not be the same HUD staff who evaluated the PHA's petition to remove the troubled performer designation. The Assistant Secretary will render the final determination of such an appeal.

(f) *Notice and finality of decisions.* (1) If HUD determines that one or more objectively verifiable and material error has occurred, HUD will undertake a new inspection of the project, adjust the PHA's score, or perform another reexamination of information, as appropriate in light of the nature of the error that occurred. A new score will be issued and an appropriate performance designation made by HUD. HUD's decision on appeal of an assessment score, issuance of a troubled performer designation, or refusal to remove a troubled performer designation will be final agency action. No reconsideration will be given by HUD of such decisions.

(2) HUD will issue a written decision on all appeals and petitions made under this section.

§ 902.111 Sanctions for troubled small rural PHAs.

The sanctions for small rural PHAs with troubled public housing programs that remain troubled as required by § 902.108 will be the same as those sanctions for PHAs assessed under PHAS as described in § 902.83.

§ 902.113 Incentives for small rural PHAs high-performers.

(a) *High performer.* PHAs with a weighted average score for all inspections of at least 90 percent of all available points will be considered high performers and will be eligible for benefits as described in § 902.113(b) and § 905.400(l) of this chapter.

(b) *Incentives.* High performer small rural PHAs under the public housing program will be eligible for the same incentives as high performer PHAs under PHAS as described in § 902.71.

PART 965—PHA-OWNED OR LEASED PROJECTS—GENERAL PROVISIONS

■ 42. The authority for part 965 continues to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

Subpart I—[Removed and Reserved]

■ 43. Effective July 1, 2023, remove and reserve subpart I, consisting of §§ 965.800 and 965.805.

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 44. The authority for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

Subpart A—General Information

■ 45. Effective October 1, 2023, amend § 982.4 in paragraph (b) by revising the definition of "Housing quality standards (HQS)" to read as follows:

§ 982.4 Definitions.

* * * * *

(b) * * *

Housing quality standards (HQS). The minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for the HCV program or the HUD approved alternative standard for the PHA under 24 CFR 5.703(g).

* * * * *

Subpart H—Where Family Can Live and Move

■ 46. Effective October 1, 2023, amend § 982.352 by revising paragraph (b)(1)(iv)(A)(*3*) to read as follows:

§ 982.352 Eligible housing.

* * * * *

(b) * * *

(1) * * *

(iv) * * *

(A) * * *

(*3*) To inspect the unit for compliance with the HQS in accordance with §§ 982.305(a) and 982.405. The independent entity shall communicate the results of each such inspection to the family and the PHA.

* * * * *

Subpart I—Dwelling Unit: Housing Quality Standards, Subsidy Standards, Inspection and Maintenance

■ 47. Effective October 1, 2023, revise § 982.401 to read as follows:

§ 982.401 Housing quality standards.

As defined in § 982.4, housing quality standards (HQS) refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for housing assisted under the HCV program or a HUD approved alternative standard for the PHA under 24 CFR 5.703(g).

§ 982.402 [Amended]

■ 48. Effective October 1, 2023, amend § 982.402 in paragraph (b)(2) by removing "§ 982.401(d)" and adding in its place "§ 982.401".

■ 49. Effective October 1, 2023, amend § 982.405 by revising paragraph (a) to read as follows:

§ 982.405 PHA initial and periodic unit inspection.

(a)(1) *General requirements.* The PHA must inspect the unit leased to a family prior to the initial term of the lease, at least biennially during assisted occupancy, and at other times as needed, to determine if the unit meets the HQS. (*See* § 982.305(b)(2) concerning timing of initial inspection by the PHA.)

(2) *Small rural PHAs.* Instead of biennially, a small rural PHA as defined in § 902.101 of this chapter must inspect a unit during occupancy at least once every three years.

* * * * *

Subpart M—Special Housing Types

■ 50. Effective October 1, 2023, amend § 982.605 by revising paragraph (a) to read as follows:

§ 982.605 SRO: Housing quality standards.

(a) *HQS standards for SRO.* As defined in § 982.4, housing quality standards (HQS) refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for housing assisted under the HCV program or a HUD approved alternative standard for the PHA under 24 CFR 5.703(g). However, the standards in this section apply in place of standards related to sanitary facilities, food preparation and refuse disposal, and space and security. Since the SRO units will not house children, the standards at 24 CFR part 35, subparts A, B, H, and

R, applying to the PBC program, concerning lead-based paint, do not apply to SRO housing.

* * * * *

■ 51. Effective October 1, 2023, amend § 982.609 by revising paragraph (a) to read as follows:

§ 982.609 Congregate housing: Housing quality standards.

(a) *HQS standards for congregate housing.* As defined in § 982.4, housing quality standards (HQS) refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for housing assisted under the HCV program or a HUD approved alternative standard for the PHA under 24 CFR 5.703(g). However, the standards in this section apply in place of standards related to food preparation and refuse disposal. Congregate housing is not subject to the requirement that the dwelling unit must have a kitchen area.

* * * * *

■ 52. Effective October 1, 2023, amend § 982.614 by revising paragraphs (a) and (b)(1) to read as follows:

§ 982.614 Group home: Housing quality standards.

(a) *Compliance with HQS.* The PHA may not give approval to reside in a group home unless the unit, including the portion of the unit available for use by the assisted person under the lease, meets the housing quality standards. As defined in § 982.4, housing quality standards (HQS) refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for housing assisted under the HCV program or a HUD approved alternative standard for the PHA under 24 CFR 5.703(g).

(b) * * *

(1) The standards in this section apply in place of standards in 24 CFR 5.703 that relate to sanitary facilities, food preparation and refuse disposal, space and security, structure and materials, and site and neighborhood.

* * * * *

■ 53. Effective October 1, 2023, amend § 982.618 by revising paragraphs (b) and (c) to read as follows:

§ 982.618 Shared housing: Housing quality standards.

* * * * *

(b) *Applicable HQS standards.* As defined in § 982.4, housing quality standards (HQS) refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for housing assisted under the HCV program or a HUD approved alternative standard for the PHA under 24 CFR 5.703(g). However, the HQS standards in this section apply in place of standards related to space and security in 24 CFR 5.703.

(c) *Facilities available for family.* The facilities available for the use of an assisted family in shared housing under the family's lease must include (whether in the family's private space or in the common space) a living room, sanitary facilities in accordance with the standards set in 24 CFR 5.703, and food preparation and refuse disposal facilities in accordance with 24 CFR 5.703.

* * * * *

■ 54. Effective October 1, 2023, amend § 982.621 by revising the introductory text to read as follows:

§ 982.621 Manufactured home: Housing quality standards.

As defined in § 982.4, housing quality standards (HQS) refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for housing assisted under the HCV program or a HUD approved alternative standard for the PHA under 24 CFR 5.703(g). A manufactured home also must meet the following requirements:

* * * * *

■ 55. Effective October 1, 2023, amend § 982.628 by revising paragraph (a)(4) to read as follows:

§ 982.628 Homeownership option: Eligible units.

(a) * * *

(4) The unit satisfies the HQS (*see* 24 CFR 5.703 and § 982.631).

* * * * *

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

■ 56. The authority for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 983.2 [Amended]

■ 57. Effective October 1, 2023, amend § 983.2 in paragraph (c)(4) by removing "§ 982.401(j)" and adding in its place "§ 982.401".

■ 58. Effective October 1, 2023, amend § 983.3 in paragraph (b) by revising the definition of "Housing quality standards (HQS)" to read as follows:

§ 983.3 PBV definitions.

* * * * *

(b) * * *

Housing quality standards (HQS). The minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for the PBV program or the HUD approved alternative standard for the PHA under 24 CFR 5.703(g).

* * * * *

■ 59. Effective October 1, 2023, amend § 983.10 by revising paragraph (b)(2)(ii) to read as follows:

§ 983.10 Project-based certificate (PBC) program.

* * * * *

(b) * * *

(2) * * *

(ii) *Lead-based paint requirements.* The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R of this title, apply to the PBC program.

* * * * *

■ 60. Effective October 1, 2023, amend § 983.101 by revising paragraphs (a) through (c) to read as follows:

§ 983.101 Housing quality standards.

(a) *HQS applicability.* As defined in § 983.3, housing quality standards (HQS) refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703 of this title for housing assisted under the PBV program or a HUD approved alternative standard for the PHA under 24 CFR 5.703(g).

(b) *Requirements for special housing types.* For special housing types assisted under the PBV program, HQS applies to the PBV program except as specified in 24 CFR part 982, subpart M. Provisions contained within 24 CFR part 982 that are inapplicable to the PBV program pursuant to § 983.2 are also inapplicable to special housing types under the PBV program.

(c) *Lead-based paint requirements.* The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

* * * * *

■ 61. Effective October 1, 2023, amend § 983.103 by revising the paragraph (d) heading and adding paragraph (d)(4) to read as follows:

§ 983.103 Inspecting units.

* * * * *

(d) *Periodic inspections.* * * *

(4) Instead of at least biennially, a small rural PHA as defined in § 902.101 of this chapter must inspect the random sample of units in accordance with paragraph (d)(1) of this section at least once every three years.

* * * * *

PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP) AND SMALL RURAL PHA ASSESSMENTS

■ 62. Effective October 1, 2023, the authority citation for part 985 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 1437z–10, and 3535(d).

■ 63. Effective October 1, 2023, revise the heading of part 985 to read as set forth above.

■ 64. Effective October 1, 2023, amend § 985.1 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 985.1 Purpose and applicability.

* * * * *

(b) *Applicability.* This rule applies to PHA administration of the tenant-based Section 8 rental program (part 982 of this chapter), the project-based voucher program (part 983 of this chapter) to the extent that PBV family and unit data are reported and measured under the stated HUD verification method, and enrollment levels and contributions to escrow accounts for Section 8 participants under the family self-sufficiency program (FSS) (part 984 of this chapter).

(c) *Small rural PHA assessments.* Subpart D of this part covers the HCV and PBV assessment for a small rural PHA as defined in § 902.101 of this chapter. Section 985.3 and subparts B and C of this part do not apply to small rural PHAs.

■ 65. Effective October 1, 2023, add subpart D to read as follows:

Subpart D—Small Rural PHA Assessment

Sec.
985.201 Applicability.
985.203 Assessment indicators and HUD verification methods.
985.205 Determination of assessment rating.
985.207 Frequency of assessments.
985.209 Troubled small rural PHAs.
985.211 Small rural PHAs assessment records.

Subpart D—Small Rural PHA Assessment

§ 985.201 Applicability.

(a) This subpart applies to small rural PHAs as defined in § 902.101 of this chapter.

(b) Small rural PHAs shall be assessed and rated on the indicators and methodology of this subpart and shall not be subject to the SEMAP requirements.

§ 985.203 Assessment indicators and HUD verification methods.

(a) This section describes the performance indicators used to assess a PHA's designation as troubled resulting from the small rural PHA assessment. HUD will use the verification method identified for each indicator. The four indicators are determined on a pass or fail basis.

(b)(1) *Inspection standards.* This indicator shows whether the PHA applied the correct inspection standards to HCV and PBV unit inspections.

(2) *HUD verification method.* The PHA's assessment certification and on-site HUD review when applicable.

(3) *Rating.* The PHA passes the indicator if it applied the correct inspection standards for all unit HCV and PBV unit inspections conducted during the assessment period. If the PHA applied the incorrect inspection standards for any HCV or PBV unit inspection during the assessment period, the PHA fails the indicator.

(c)(1) *Initial unit inspections.* This indicator determines if the PHA conducted the initial HQS inspections within the required time period.

(2) *HUD verification method.* HUD systems show percent of newly leased units where the beginning date of the assistance contract is before the date the unit passed the initial unit inspection or, if the PHA employed the PHA initial inspection option for non-life-threatening deficiencies or alternative inspections, the timing requirements for the applicable PHA initial inspection option.

(3) *Rating.* The PHA passes the indicator if at least 98 percent of units placed under HAP contract during the assessment period passed the initial PHA HQS inspection within the required time period. If fewer than 98 percent of units placed under HAP contract during the assessment period passed the HQS inspection within the required time periods, the PHA fails the indicator.

(d)(1) *Frequency of HQS inspections.* This indicator shows, for units that have been under HAP contract for at least three years, whether the PHA re-inspected tenant-based units under HAP contract and the required sample of PBV units at least once during the three-year period from the last PHA inspection.

(2) *HUD verification method.* HUD systems show the percentage of units that have been under HAP contract for at least three years that have been re-inspected within the required three-year period from the last inspection.

(3) *Rating.* The PHA passes the indicator if at least 98 percent of the units that have been under HAP contract for at least three years have been re-inspected within the required three-year period from the last inspection. The PHA fails the indicator if fewer than 98 percent of these units have been re-inspected within the required three-year period.

(e)(1) *Unit condition enforcement.* This indicator shows whether, following the inspection of a unit under contract where the unit fails to meet the required standards, any cited life-threatening and non-life-threatening deficiencies are corrected within the required cure period in accordance with §§ 982.404 and 983.103 of this chapter. In addition, if HQS deficiencies are not corrected timely, the indicator shows whether the PHA stops (abates) housing assistance payments beginning no later than the first of the month following the specified correction period or terminates the HAP contract or, for family-caused defects, takes prompt and vigorous action to enforce the family obligations. (§ 982.404 of this chapter)

(2) *HUD verification method.* The PHA certification and on-site HUD review (if performed), and HUD system data.

(3) *Rating.* In order to pass the indicator, the applicable verification method, which may include sampling, determines that the PHA took corrective action within the required timeframes for at least 98 percent of inspections with identified life-threatening or other HQS deficiencies.

(f)(1) *PHA submission of certifications.* The PHA must submit its certifications for the applicable indicators within the designated timeframe required by HUD, and in the form and manner as required by HUD. HUD will issue instructions on the submission of PHA certifications by **Federal Register** notification, which will be subject to public comment.

(2) *Failure to submit.* Failure of the PHA to submit any certification in accordance with this paragraph will result in the PHA failing the indicator and being designated as troubled under the small rural PHA assessment.

§ 985.205 Determination of assessment rating.

(a) *High performer designation.* (1) A PHA is designated a high performer under the small rural PHA assessment if the PHA has passed all four indicators identified in § 985.203 and the PHA:

(i) Has utilized at least 98 percent of its HCV budget authority in the two most recent calendar years, or the percent of HCV units leased by renters or occupied by homeowners in the two most recent calendar years was at least 98 percent;

(ii) Did not end that calendar year with excess HAP reserves; and

(iii) Did not end that calendar year in a funding shortfall or receive shortfall prevention funding from HUD.

(2) HUD shall publish the calculation for determining excess HAP reserves in the **Federal Register**, and such calculation shall provide for public comment before becoming effective.

(b) *Standard performer designation.* A PHA that passed all four indicators but did not meet the funding utilization criteria for a high performer designation in paragraph (a) is designated as a standard performer.

(c) *Troubled PHA designation.* A PHA that failed any of the four indicators under § 985.201 is designated as a troubled PHA under the small rural PHA assessment.

§ 985.207 Frequency of assessments.

(a) *Frequency of small rural PHA assessments*—(1) *Initial assessment.* The initial small rural PHA assessment will be effective when the PHA's next SEMAP assessment would have been applied. For PHAs that qualify for SEMAP biennial review as a small PHA (less than 250 assisted units), the transition to the small rural PHA assessment will occur when the PHA's next biennial SEMAP assessment is required.

(2) *Triennial assessments.* HUD shall assess small rural PHAs no more than once every three years, except that a troubled small rural PHA shall be subject to an annual assessment in accordance with § 985.209.

(b) [Reserved]

§ 985.209 Troubled small rural PHAs.

(a) *Appeals*—(1) *HUD action.* HUD must review, consider, and provide a final written determination to a small rural PHA that appeals its designation as a troubled PHA.

(2) *Deciding HUD official.* The HUD decision on the PHA appeal shall be made by a HUD official who has not been involved in and is not subordinate to any person who has been involved in the original determination to designate the PHA as a troubled PHA under the small rural PHA assessment.

(b) *Corrective action agreement.* No later than 60 days after the date on which the PHA is designated a troubled PHA, the PHA and HUD will enter into a corrective action agreement (CAA) under which the PHA shall take actions to correct the deficiencies upon which the troubled PHA designation is based. The PHA must comply with HUD requirements for the submission of the CAA, including but not limited to the date by which the CAA must be submitted to HUD. The CAA must:

(1) Have a term of one year, and shall be renewable at the option of HUD;

(2) Specify goals to be achieved;

(3) Identify obstacles to goal achievement and ways to eliminate or avoid them;

(4) Identify resources that will be used or sought to achieve goals;

(5) Provide, where feasible, for technical assistance to assist the PHA in curing its deficiencies;

(6) Identify a PHA staff person with lead responsibility for completing each goal;

(7) Identify key tasks to reach each goal;

(8) Specify time frames for achievement of each goal, including intermediate time frames to complete each key task;

(9) Provide for regular evaluation of progress toward improvement;

(10) Provide for the reconsideration of the PHA's designation as a troubled PHA no less than annually, and provide for the termination of the CAA when HUD determines the PHA is no longer troubled;

(11) Provide that in the event of substantial noncompliance by the PHA under the CAA, HUD may (i) contract with another PHA or a private entity to administer the HCV program; and (ii) withhold funds otherwise distributable to the troubled PHA;

(12) Be signed by the PHA board of commissioners chairperson and by the PHA executive director. If the PHA is a unit of local government or a State, the CAA must be signed by the Section 8 program director and by the chief executive officer of the unit of government or his or her designee.

(c) *Monitoring.* The PHA and HUD must monitor the PHA's implementation of its CAA to ensure performance targets are met.

(d) *Annual small rural assessment.* A troubled PHA shall be subject to the small rural assessment on an annual basis.

(e) *Use of administrative fee reserve prohibited.* Any PHA designated as troubled may not use any part of the administrative fee reserve for other housing purposes (*see* § 982.155(b) of this chapter).

(f) *Upgrading poor performance rating.* HUD shall change a PHA's overall performance rating from troubled to standard or high performer if HUD determines that a change in the rating is warranted because of improved PHA performance and a standard or high designation on a subsequent small rural PHA assessment.

(g) *Default under the Annual Contributions Contract (ACC).* HUD may determine that a PHA's failure to correct identified deficiencies resulting from its small rural PHA assessment or to execute and implement a CAA as required by HUD constitutes a default under the ACC.

§ 985.211 Small rural PHA assessment records.

HUD shall maintain small rural PHA assessment files, including designations, notifications, appeals, corrective action agreements, and related correspondence for at least 3 years.

Adrianne Todman,

Deputy Secretary.

[FR Doc. 2023–09693 Filed 5–9–23; 8:45 am]

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Part IV

Department of Energy

10 CFR Part 431

Energy Conservation Program: Energy Conservation Standards for Automatic Commercial Ice Makers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2017–BT–STD–0022]

RIN 1904–AE47

Energy Conservation Program: Energy Conservation Standards for Automatic Commercial Ice Makers

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including automatic commercial ice makers. EPCA also requires the U.S. Department of Energy (DOE) to periodically determine whether more stringent standards would be technologically feasible and economically justified, and would result in significant energy savings. In this notice of proposed rulemaking (NOPR), DOE proposes to amend and establish energy conservation standards for automatic commercial ice makers and also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES:

Comments: DOE will accept comments, data, and information regarding this NOPR no later than July 10, 2023.

Meeting: DOE will hold a meeting via a webinar on Wednesday, June, 14, 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 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 June 12, 2023.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov* under docket number EERE–2017–BT–STD–0022. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–STD–0022, by any of the following methods:

(1) *Email: ACIM2017STD0022@ee.doe.gov.* Include the docket number EERE–2017–BT–STD–0022 in the subject line of the message.

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

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

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section 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-2017-BT-STD-0022.* 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:

Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0729. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Kristin Koernig, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–3595. Email: *Kristin.Koernig@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 C of EPCA,[2] established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311–6317) This includes automatic commercial ice maker (ACIM) equipment, the subject of this proposed 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. 6316(a); 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. 6316(a); 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 equipment 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. 6316(a); 42 U.S.C. 6295(m))

In accordance with these and other statutory provisions discussed in this document, DOE proposes to amend energy conservation standards for automatic commercial ice makers and to establish new energy conservation standards for covered equipment not yet subject to energy conservation standards. The proposed standards, which are expressed in the maximum allowable energy use as a function of the harvest rate of the given equipment, are shown in Table I.1 and Table I.2. These proposed standards, if adopted, would apply to all automatic commercial ice makers listed in Table I.1 and Table I.2 manufactured in, or imported into, the United States on or after the date that is (1) 3 years after the date on which the final amended standard is published or (2) if the Secretary determines, by rule, that 3 years is inadequate, not later than 5 years after the date on which the final amended standard is published. (42 U.S.C. 6313(d)(2)(B) and (3)(B))

DOE notes that the U.S. Environmental Protection Agency (EPA) proposed refrigerant restrictions pursuant to the American Innovation

[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 reflects the last statutory amendments that impact Parts A and A–1 of EPCA.

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

and Manufacturing Act (AIM Act) [3] affecting automatic commercial ice makers in a NOPR published on December 15, 2022 (December 2022 EPA NOPR). 87 FR 76738. The proposal would prohibit manufacture or import of such ice makers starting January 1, 2025, and would ban sale, distribution, purchase, receipt, or export of such ice makers starting January 1, 2026. *Id.* at 87 FR 76809. See section IV.A.5.a of this document for more details. DOE understands that it would be beneficial to ACIM equipment manufacturers to align the compliance date of any DOE amended or established standards as closely as possible with the refrigerant prohibition dates proposed by the December 2022 EPA NOPR. Therefore, DOE is proposing that the proposed standards, if adopted, would apply to all automatic commercial ice makers listed in Table I.1 and Table I.2 manufactured in, or imported into, the United States on or after the date that is 3 years after the date on which the final amended standard is published.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR BATCH AUTOMATIC COMMERCIAL ICE MAKERS

Equipment type	Type of cooling	Harvest rate (lb ice/24 hours)		Maximum energy use * (kWh/100 lb ice)	Maximum condenser water use ** (gal/100 lb ice)
Ice-Making Head	Water	>50 and <300		6.49–0.0055H	200–0.022H
Ice-Making Head	Water	≥300 and <785		5.41–0.00191H	200–0.022H
Ice-Making Head	Water	≥785 and <1,500		4.13–0.00028H	200–0.022H
Ice-Making Head	Water	≥1,500 and <2,500		4	200–0.022H
Ice-Making Head	Water	≥2,500 and <4,000		4	145
Ice-Making Head	Air	>50 and <300		9.4–0.01233H	NA
Ice-Making Head	Air	≥300 and <727		6.45–0.0025H	NA
Ice-Making Head	Air	≥727 and <1,500		5.09–0.00063H	NA
Ice-Making Head	Air	≥1,500 and <4,000		4.23	NA
Remote Condensing (but Not Remote Compressor)	Air	>50 and <988		7.83–0.00342H	NA
Remote Condensing (but Not Remote Compressor)	Air	≥988 and <4,000		4.45	NA
Remote Condensing and Remote Compressor	Air	>50 and <930		7.82–0.00342H	NA
Remote Condensing and Remote Compressor	Air	≥930 and <4,000		4.64	NA
Self-Contained	Water	>50 and <200		8.18–0.019H	191–0.0315H
Self-Contained	Water	≥200 and <2,500		4.38	191–0.0315H
Self-Contained	Water	≥2,500 and <4,000		4.38	112
Self-Contained	Air	≤50	Portable: ≤38	19.43–0.27613H	NA
			>38 and ≤50	8.94	NA
			Refrigerated Storage	29.8–0.37063H	NA
			Not Portable or Refrigerated Storage	21.08–0.19634H	NA
Self-Contained	Air	>50 and <134		13.61–0.0469H	NA
Self-Contained	Air	≥134 and <200		10.72–0.02533H	NA
Self-Contained	Air	≥200 and <4,000		5.65	NA

* H = harvest rate in pounds per 24 hours, indicating the water or energy use for a given harvest rate.
** Water use is for the condenser only and does not include potable water used to make ice.

TABLE I.2—PROPOSED ENERGY CONSERVATION STANDARDS FOR CONTINUOUS AUTOMATIC COMMERCIAL ICE MAKERS

Equipment type	Type of cooling	Harvest rate (lb ice/24 hours)		Maximum energy use * (kWh/100 lb ice)	Maximum condenser water use ** (gal/100 lb ice)
Ice-Making Head	Water	>50 and <801		6.24–0.00267H	180–0.0198H
Ice-Making Head	Water	≥801 and <1,500		4.1	180–0.0198H
Ice-Making Head	Water	≥1,500 and <2,500		4.34	180–0.0198H
Ice-Making Head	Water	≥2,500 and <4,000		4.34	130.5
Ice-Making Head	Air	>50 and <310		7.49–0.00629H	NA
Ice-Making Head	Air	≥310 and <820		6.53–0.0032H	NA
Ice-Making Head	Air	≥820 and <1,500		3.91	NA
Ice-Making Head	Air	≥1,500 and <4,000		4.67	NA
Remote Condensing (but Not Remote Compressor)	Air	>50 and <800		9.24–0.0058H	NA
Remote Condensing (but Not Remote Compressor)	Air	≥800 and <4,000		4.6	NA
Remote Condensing and Remote Compressor	Air	>50 and <800		9.42–0.0058H	NA
Remote Condensing and Remote Compressor	Air	≥800 and <4,000		4.78	NA
Self-Contained	Water	>50 and <900		6.5–0.00302H	153–0.0252H
Self-Contained	Water	≥900 and <2,500		3.78	153–0.0252H
Self-Contained	Water	≥2,500 and <4,000		3.78	90
Self-Contained	Air	≤50	Portable	22.99–0.27789H	NA
			Not Portable	24.51–0.29623H.	
Self-Contained	Air	>50 and <149		11.2–0.03H	NA
Self-Contained	Air	≥149 and <700		7.66–0.00624H	NA

[3] Under subsection (i) of the AIM Act, entitled "Technology Transitions," the EPA may by rule restrict the use of hydrofluorocarbons (HFCs) in sectors or subsectors where they are used. A person or entity may also petition EPA to promulgate such a rule. "H.R.133—116th Congress (2019–2020): Consolidated Appropriations Act, 2021." *Congress.gov,* Library of Congress, 27 December 2020, *www.congress.gov/bill/116thcongress/house-bill/133.*

TABLE I.2—PROPOSED ENERGY CONSERVATION STANDARDS FOR CONTINUOUS AUTOMATIC COMMERCIAL ICE MAKERS—Continued

Equipment type				
Self-Contained	Air	≥700 and <4,000	3.29	NA

* H = harvest rate in pounds per 24 hours, indicating the water or energy use for a given harvest rate.
** Water use is for the condenser only and does not include potable water used to make ice.

DOE requests comments on its proposal to require that the proposed standards, if adopted, would apply to all automatic commercial ice makers listed in Table I.1 and Table I.2 manufactured in, or imported into, the United States on or after the date that is 3 years after the date on which the final amended standard is published. More generally, DOE requests comment on whether it would be beneficial to ACIM equipment manufacturers to align the compliance date of any DOE amended or established standards as closely as possible with the refrigerant prohibition dates proposed by the December 2022 EPA NOPR.

A. Benefits and Costs to Consumers

Table I.3 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of automatic commercial ice makers, as measured by the average life-cycle cost (LCC) savings and the simple payback period (PBP).[4] The average LCC savings are positive for all equipment classes, and the PBP is less than the average lifetime of automatic commercial ice makers, which is estimated to be 8.5 years for high-capacity automatic commercial ice makers and 7.5 years for low-capacity ACIM equipment (B–SC–A (Portable ACIM) (≤38), B–SC–A (Refrigerated Storage ACIM), and B–SC–A (≤50). See section IV.F.7 of this document.

TABLE I.3—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF AUTOMATIC COMMERCIAL ICE MAKERS

Equipment class	Average LCC savings * (2022$)	Simple payback period (years)
B–IMH–W (≥300 and <785)	0	0.0
B–IMH–W (≥785 and <1,500)	0	0.0
B–IMH–A (≥300 and <727)	22	4.4
B–IMH–A (≥727 and <1,500)	232	3.4
B–RC(NRC)–A (≥988 and <4,000)	37	5.2
B–SC–A (Portable ACIM) (≤38)	1	3.8
B–SC–A (Refrigerated Storage ACIM)	3	2.1
B–SC–A (≤50)	8	5.7
B–SC–A (>50 and <134)	0	0.0
B–SC–A (≥200 and <4,000)	21	6.0
C–IMH–W (>50 and <801)	0	0.0
C–IMH–A (≥310 and <820)	3	4.8
C–RC&RC–A (≥800 and <4,000)	162	4.2
C–SC–A (>50 and <149)	7	5.3
C–SC–A (≥149 and <700)	2	5.7

B = batch; C = continuous.
IMH = ice making head; SC = self-contained; RC = remote condensing.
W = water type of cooling; A = air type of cooling.
Number in parentheses indicates harvest rate.
* The savings represent the average LCC for affected consumers.

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[5]

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the NOPR publication year through the end of the analysis period (2023–2056). Using a real discount rate of 9.2 percent, DOE estimates that the INPV for manufacturers of automatic commercial ice makers in the case without new or amended standards is $96.4 million. Under the proposed standards, the change in INPV is estimated to range from −14.4 percent to −12.0 percent, which is approximately −$13.9 million to −$11.5 million. To bring equipment into compliance with new and amended standards, it is estimated that the industry would incur total conversion costs of $15.9 million.

DOE's analysis of the impacts of the proposed standards on manufacturers is described in section IV.J of this document. The results of the manufacturer impact analysis (MIA) are presented in section V.B.2 of this document.

C. National Benefits and Costs

DOE's analyses indicate that the proposed energy conservation standards for automatic commercial ice makers would save a significant amount of

[4] 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.10 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).

[5] All monetary values in this document are expressed in 2022 dollars.

energy. Relative to the case without amended standards, the lifetime energy savings for automatic commercial ice makers purchased in the 30-year period that begins in the anticipated year of compliance with the amended standards (2027–2056) amount to 0.16 quadrillion British thermal units (Btu) or quads.[6] This represents a savings of 4 percent relative to the energy use of this equipment 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 automatic commercial ice makers ranges from $0.14 billion (at a 7-percent discount rate) to $0.38 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 automatic commercial ice makers purchased in 2027–2056.

In addition, the proposed standards for automatic commercial ice makers 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 5 million metric tons (Mt)[7] of carbon dioxide (CO_2), 2 thousand tons of sulfur dioxide (SO_2), 8 thousand tons of nitrogen oxides (NO_X), 36 thousand tons of methane (CH_4), 0.06 thousand tons of nitrous oxide (N_2O), and 0.015 tons of mercury (Hg).[8]

DOE estimates the value of climate benefits from a reduction in greenhouse gases (GHGs) 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 GHGs (SC–GHGs). DOE used interim SC–GHG values developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).[9] The derivation of these values is discussed in section IV.L of this document. For presentation purposes, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are estimated to be $0.24 billion. DOE does not have a single central SC–GHG point estimate, and DOE emphasizes the importance and value of considering the 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 $0.24 billion using a 7-percent discount rate, and $0.56 billion using a 3-percent discount rate.[10] DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits but will continue to assess the ability to monetize other effects, such as health benefits, from reductions in direct $PM_{2.5}$ emissions.

Table I.4 summarizes the monetized benefits and costs expected to result from the proposed standards for automatic commercial ice makers. 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.4—SUMMARY OF MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR AUTOMATIC COMMERCIAL ICE MAKERS (TSL 3)

	Billion $2022
3% discount rate	
Consumer Operating Cost Savings	0.88
Climate Benefits *	0.24
Health Benefits **	0.56
Total Benefits †	1.68
Consumer Incremental Product Costs ‡	0.51
Net Benefits	1.17
7% discount rate	
Consumer Operating Cost Savings	0.42
Climate Benefits * (3% discount rate)	0.24
Health Benefits **	0.24
Total Benefits †	0.89
Consumer Incremental Product Costs ‡	0.28
Net Benefits	0.61

Note: This table presents the costs and benefits associated with equipment shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056.

[6] 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.

[7] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[8] 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 affect air pollutant emissions.

[9] To monetize the benefits of reducing GHG emissions this analysis uses the interim 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''*). www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.*

[10] DOE estimates the economic value of these emissions reductions resulting from the considered TSLs for the purpose of complying with the requirements of Executive Order 12866.

* Climate benefits are calculated using four different estimates of the SC–CO_2, SC–CH_4, and 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 proposed rulemaking). 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; however, DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. To monetize the benefits of reducing GHG emissions, this analysis uses the interim 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.

** 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.

‡ Costs include incremental equipment costs as well as installation costs.

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are (1) the reduced consumer operating costs, minus (2) the increase in product purchase prices and installation costs, plus (3) the value of climate and health benefits of emission reductions, all annualized.[11]

The national operating cost savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered equipment and are measured for the lifetime of ACIM equipment 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 ACIM equipment shipped in 2027–2056. Total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with a 3-percent discount rate. Estimates of SC–GHG values are presented for all four discount rates in section IV.L of this document.

Table I.5 presents the total estimated monetized benefits and costs associated with the proposed standard, expressed in terms of annualized values. The results under the primary estimate are discussed in the following paragraphs.

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 $29 million per year in increased equipment costs, while the estimated annual benefits are $44 million in reduced equipment operating costs, $14 million in climate benefits, and $25 million in health benefits. In this case, the net benefit would amount to $53 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is $29 million per year in increased equipment costs, while the estimated annual benefits are $51 million in reduced operating costs, $14 million in climate benefits, and $32 million in health benefits. In this case, the net benefit would amount to $67 million per year.

TABLE I.5—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR AUTOMATIC COMMERCIAL ICE MAKERS

[TSL 3]

	Million 2022$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	51	50	52
Climate Benefits *	14	14	14
Health Benefits **	32	32	33
Total Benefits †	96	96	98
Consumer Incremental Product Costs ‡	29	31	29
Net Benefits	67	64	70
7% discount rate			
Consumer Operating Cost Savings	44	43	45
Climate Benefits * (3% discount rate)	14	14	14
Health Benefits **	25	25	26
Total Benefits †	83	82	84
Consumer Incremental Product Costs ‡	29	31	29

[11] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2022, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2030), and then discounted the present value from each year to 2022. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

TABLE I.5—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR AUTOMATIC COMMERCIAL ICE MAKERS—Continued

[TSL 3]

	Million 2022$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
Net Benefits	53	51	55

Note: This table presents the costs and benefits associated with automatic commercial ice makers shipped in 2027—2056. These results include benefits to consumers that accrue after 2056 from the equipment shipped in 2027–2056. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the *AEO2022* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.H.3 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC–GHG (see section IV.L of this proposed rulemaking). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown; however, DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. To monetize the benefits of reducing GHG emissions, this analysis uses the interim 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.

** 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.

‡ Costs include incremental equipment costs as well as installation costs.

DOE's analysis of the national impacts of the proposed standards is described in sections IV.H, IV.K and IV.L of this document.

D. Conclusion

DOE has tentatively concluded that the proposed energy conservation 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 equipment 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 automatic commercial ice makers is $29 million per year in increased equipment costs, while the estimated annual benefits are $44 million in reduced equipment operating costs, $14 million in climate benefits, and $25 million in health benefits. The net benefit amounts to $53 million per year.

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[12] For example, some covered products and equipment have substantial energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

As previously mentioned, the standards are projected to result in estimated national energy savings of 0.16 quads full-fuel-cycle (FFC), the equivalent of the primary annual energy use of 4.2 million homes. In addition, they are projected to reduce CO_2 emissions by 5 Mt. Based on these findings, DOE has tentatively determined the energy savings from the proposed standard levels are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B). A more detailed discussion of the basis for these tentative conclusions is contained in the remainder of this document and the accompanying technical support document (NOPR TSD).

DOE also considered more-stringent energy efficiency levels as potential standards and is still considering them in this proposed rulemaking. However, DOE has tentatively concluded that the potential burdens of the more-stringent energy efficiency levels would outweigh the projected benefits.

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

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 automatic commercial ice makers.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C of EPCA, added by Public Law 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes automatic commercial ice makers, the subject of this document. (42 U.S.C. 6311(1)(F)) EPCA prescribed initial standards for this equipment. (42 U.S.C. 6313(d)(1)) EPCA also authorizes DOE to establish new standards for automatic commercial ice makers not covered by the statutory standards. (42 U.S.C. 6313(d)(2)) Not later than January 1, 2015, with respect to the standards established under 42 U.S.C. 6313(d)(1), and, not later than 5 years after the date on which the standards take effect, with respect to the standards established under 42 U.S.C. 6313(d)(2), EPCA required DOE to issue a final rule to determine whether amending the applicable standards is technologically feasible and economically justified. (42 U.S.C. 6313(d)(3)(A)) And not later than 5 years after the effective date of any amended standards under 42 U.S.C. 6313(d)(3)(A) or the publication of a final rule determining that amending the standards is not technologically feasible or economically justified, DOE must issue a final rule to determine whether amending the standards established under 42 U.S.C. 6313(d)(1) or the amended standards, as applicable, is technologically feasible or economically justified. (42 U.S.C. 6313(d)(3)(B)) A final rule issued under 42 U.S.C. 6313(d)(2) or (3) must establish standards at the maximum level that is technologically feasible and economically justified, as provided in 42 U.S.C. 6295(o) and (p). (42 U.S.C. 6313(d)(4)) 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. 6316(a); 42 U.S.C. 6295(m)(1))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers. (42 U.S.C. 6316; 42 U.S.C. 6296)

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

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. 61316(a), 42 U.S.C. 6295(o)(3)(A), and 42 U.S.C. 6295(r)) Manufacturers of covered equipment must use the Federal test procedures as the basis for (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)) The DOE test procedures for automatic commercial ice makers appear at 10 CFR 431.134.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered equipment, including automatic commercial ice makers. Any new or amended standard for a covered equipment 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. 6316(a); 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. 6416(a), 42 U.S.C. 6295(o)(3))

Moreover, DOE may not prescribe a standard (1) for certain equipment, including automatic commercial ice makers, if no test procedure has been established for the equipment, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6316(a); 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. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

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

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

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

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

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

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

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

(42 U.S.C. 6316(a); 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 or equipment 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. 6316(a); 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. 6316(a); 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 equipment 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. 6316(a); 42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered equipment that has two or more subcategories. DOE must specify a different standard level for a type or class of equipment that has the same function or intended use, if DOE determines that equipment within such group (1) consume a different kind of energy from that consumed by other covered equipment within such type (or class), or (2) have a capacity or other performance-related feature that other equipment within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of equipment, 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. 6316(a); 42 U.S.C. 6295(q)(2))

B. Background

1. Current Standards

In a final rule published in the **Federal Register** on January 28, 2015, DOE prescribed the current energy conservation standards for automatic commercial ice makers manufactured on and after January 28, 2018 (January 2015 Final Rule). 80 FR 4645. These standards are set forth in DOE's regulations at 10 CFR 431.136(c) and (d) and are repeated in Table II.1 and Table II.2.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR BATCH AUTOMATIC COMMERCIAL ICE MAKERS

Equipment type	Condenser cooling	Harvest rate (lb ice/24 h)	Maximum energy use (kWh/100 lb ice)	Maximum condenser water use ** (gal/100 lb ice)
Ice-Making Head	Water	<300	6.88–0.0055H *	200–0.022H.
Ice-Making Head	Water	≥300 and <850	5.80–0.00191H	200–0.022H.
Ice-Making Head	Water	≥850 and <1,500	4.42–0.00028H	200–0.022H.
Ice-Making Head	Water	≥1,500 and <2,500	4	200–0.022H.
Ice-Making Head	Water	≥2,500 and <4,000	4	145.
Ice-Making Head	Air	<300	10–0.01233H	NA.
Ice-Making Head	Air	≥300 and <800	7.05–0.0025H	NA.
Ice-Making Head	Air	≥800 and <1,500	5.55–0.00063H	NA.
Ice-Making Head	Air	≥1,500 and <4,000	4.61	NA.
Remote Condensing (but Not Remote Compressor).	Air	<988	7.97–0.00342H	NA.
Remote Condensing (but Not Remote Compressor).	Air	≥988 and <4,000	4.59	NA.
Remote Condensing and Remote Compressor.	Air	<930	7.97–0.00342H	NA.
Remote Condensing and Remote Compressor.	Air	≥930 and <4,000	4.79	NA.
Self-Contained	Water	<200	9.5–0.019H	191–0.0315H.
Self-Contained	Water	≥200 and <2,500	5.7	191–0.0315H.
Self-Contained	Water	≥2,500 and <4,000	5.7	112.
Self-Contained	Air	<110	14.79–0.0469H	NA.
Self-Contained	Air	≥110 and <200	12.42–0.02533H	NA.
Self-Contained	Air	≥200 and <4,000	7.35	NA.

* H = harvest rate in pounds per 24 hours, indicating the water or energy use for a given harvest rate. Source: 42 U.S.C. 6313(d).
** Water use is for the condenser only and does not include potable water used to make ice.

TABLE II.2—FEDERAL ENERGY CONSERVATION STANDARDS FOR CONTINUOUS AUTOMATIC COMMERCIAL ICE MAKERS

Equipment type	Condenser cooling	Harvest rate (lb ice/24 h)	Maximum energy use (kWh/100 lb ice)	Maximum condenser water use (gal/100 lb ice)
Ice-Making Head	Water	<801	6.48–0.00267H	180–0.0198H.
Ice-Making Head	Water	≥801 and <2,500	4.34	180–0.0198H.
Ice-Making Head	Water	≥2,500 and <4,000	4.34	130.5.
Ice-Making Head	Air	<310	9.19–0.00629H	NA.
Ice-Making Head	Air	≥310 and <820	8.23–0.0032H	NA.
Ice-Making Head	Air	≥820 and <4,000	5.61	NA.
Remote Condensing (but Not Remote Compressor).	Air	<800	9.7–0.0058H	NA.
Remote Condensing (but Not Remote Compressor).	Air	≥800 and <4,000	5.06	NA.
Remote Condensing and Remote Compressor.	Air	<800	9.9–0.0058H	NA.
Remote Condensing and Remote Compressor.	Air	≥800 and <4,000	5.26	NA.
Self-Contained	Water	<900	7.6–0.00302H	153–0.0252H.
Self-Contained	Water	≥900 and <2,500	4.88	153–0.0252H.
Self-Contained	Water	≥2,500 and <4,000	4.88	90.
Self-Contained	Air	<200	14.22–0.03H	NA.
Self-Contained	Air	≥200 and <700	9.47–0.00624H	NA.
Self-Contained	Air	≥700 and <4,000	5.1	NA.

* H = harvest rate in pounds per 24 hours, indicating the water or energy use for a given harvest rate. Source: 42 U.S.C. 6313(d).
** Water use is for the condenser only and does not include potable water used to make ice.

2. History of Standards Rulemaking for Automatic Commercial Ice Makers

On September 29, 2020, DOE published a request for information (RFI) that identified various issues on which DOE sought comment to inform its determination of whether the energy conservation standards for automatic commercial ice makers need to be amended (September 2020 RFI). 85 FR 60923.

On March 25, 2022, DOE published a notice that announced the availability of the preliminary analysis (March 2022 Preliminary Analysis) it conducted for purposes of evaluating the need for amended energy conservation standards for automatic commercial ice makers. 87 FR 17025. In the March 2022 Preliminary Analysis, DOE sought comment on the analytical framework, models, and tools that DOE used to evaluate efficiency levels for automatic commercial ice makers, the results of preliminary analyses performed, and the potential energy conservation standard levels derived from these analyses, which DOE presented in the accompanying preliminary TSD (March 2022 Preliminary TSD).[13]

On May 5, 2022, DOE held a public webinar in which it presented the methods and analysis in the March 2022 Preliminary Analysis and solicited public comment.[14]

DOE received comments in response to the March 2022 Preliminary Analysis from the interested parties listed in Table II.3.

TABLE II.3—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS OR ORAL COMMENTS IN RESPONSE TO THE MARCH 2022 PRELIMINARY ANALYSIS

Commenter(s)	Reference in this NOPR	Reference number. in the docket	Commenter type
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	21	Trade Association.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, New York State Energy Research Development Authority, Northwest Energy Efficiency Alliance.	Joint Commenters	22	Efficiency Organization.
Association of Home Appliance Manufacturers *	AHAM	27	Trade Association.
Follett Products LLC **	Follett	23	Manufacturer.
GE Appliances, a Haier company	GEA	31	Manufacturer.
Hoshizaki America, Inc	Hoshizaki	20	Manufacturer.
North American Association of Food Equipment Manufacturers	NAFEM	19	Trade Association.
Pacific Gas and Electric; Southern California Edison; San Diego Gas & Electric.	CA IOUs	18	Utilities.
PEG, LLC	PEG	28	Consultant.
Scotsman Ice Systems	Scotsman	30	Manufacturer.
Welbilt, Inc	Welbilt	*** 25	Manufacturer.
Whirlpool Corporation	Whirlpool	26	Manufacturer.

* AHAM submitted a public comment and a separate comment, which AHAM requested be treated as Confidential Business Information.
** Follett requested that its response be treated as Confidential Business Information.
*** Document number 25 is the transcript of the webinar. Commenter did not submit written comments.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[15] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the May 5, 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.

C. Deviation From Process Rule

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''Process Rule''), DOE notes that it is deviating from the provision in the Process Rule regarding the pre-NOPR and NOPR stages for an energy conservation standards rulemaking. 10 CFR 431.4.

1. Framework Document

Section 6(a)(2) of the Process Rule states that if DOE determines it is appropriate to proceed with a rulemaking, the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking. While DOE published a preliminary analysis for this rulemaking (*see* 87 FR 17025), DOE did not publish a framework document in conjunction with the preliminary analysis. DOE notes, however, that chapter 2 of the preliminary technical support document that accompanied the preliminary analysis—entitled *Analytical Framework, Comments from Interested Parties, and DOE Responses*—describes the general analytical framework that DOE uses in evaluating and developing potential amended energy conservation standards.[16] As such, publication of a separate Framework Document would be largely redundant of previously published documents.

2. Public Comment Period

Section 6(f)(2) of the Process Rule specifies that the length of the public comment period for a NOPR will be not less than 75 calendar days. For this NOPR, DOE has opted instead to provide a 60-day comment period. DOE is opting to deviate from the 75-day comment period because stakeholders have already been afforded multiple opportunities to provide comments on

[13] 2022–03 Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Automatic Commercial Ice Makers. Available at *www.regulations.gov/document/EERE-2017-BT-STD-0022-0009.*

[14] Webinar transcript available at *www.regulations.gov/document/EERE-2017-BT-STD-0022-0025.*

[15] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for automatic commercial ice makers. (Docket No. EERE–2017–BT–STD–0022, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

[16] The preliminary technical support document is available at *www.regulations.gov/document/EERE-2017-BT-STD-0022-0009.*

this rulemaking. As noted previously, DOE requested comment on various issues pertaining to this standards rulemaking in the September 2020 RFI and provided stakeholders with a 75-day comment period. 85 FR 60923. DOE initially provided a 60-day comment period for stakeholders to provide input on the analyses presented in the March 2022 Preliminary Analysis. 87 FR 17025. DOE subsequently extended the March 2022 Preliminary Analysis comment period by 14 days. 87 FR 31964. The analytical assumptions and approaches used for the analyses conducted for this NOPR are similar to those used for the March 2022 Preliminary Analysis. Therefore, DOE believes a 60-day comment period is appropriate and will provide interested parties with a meaningful opportunity to comment on the proposed rule.

III. General Discussion

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

A. General Comments

This section summarizes general comments received from interested parties regarding rulemaking timing and process.

AHRI commented in concern over the flux in regulations and standards that apply to this industry that make technical analysis difficult and encouraged DOE to balance the holistic scope of change in the ACIM industry in the context of energy conservation, environmental conservation, environmental protection, and end-user safety. (AHRI, No. 21 at p. 6)

AHRI commented that it believes that current energy conservation standards are appropriate and more stringent standards are not necessary. (*Id.* at p. 3) AHRI does not believe it is appropriate to establish more stringent energy conservation standards based on the current efficiency level of ACIM equipment and the forecasted technology changes due to changing refrigerants, and AHRI believes the potential energy savings from a new standard would be negligible. (*Id.*)

Similarly, Hoshizaki commented that, based on the current efficiency level of ACIM equipment and forecasted technology changes due to changing refrigerants, it does not believe it is appropriate for DOE to establish energy conservation standards beyond the baseline, as the potential energy savings from a new standard are unlikely to exceed the 10 percent/0.3 quadrillion Btu threshold over baseline energy consumption needed to promulgate a rulemaking. (Hoshizaki, No. 20 at p. 2)

PEG commented that less is more when it comes to regulations and to let the competitive marketplace drive energy efficiency so that manufacturers can add value to their products by making them more efficient than competitor models. (PEG, No. 28 at p. 1)

B. Scope of Coverage

This NOPR covers the commercial equipment that meets the definition of automatic commercial ice makers. *See* 10 CFR 431.132.

''Automatic commercial ice maker'' is defined as a factory-made assembly (not necessarily shipped in one package) that (1) consists of a condensing unit and ice-making section operating as an integrated unit, with means for making and harvesting ice, and (2) may include means for storing ice, dispensing ice, or storing and dispensing ice. (*Id.*)

In the March 2022 Preliminary TSD, DOE considered potential new equipment classes for automatic commercial ice makers with harvest rates less than or equal to 50 lb ice/24 hr (low-capacity automatic commercial ice makers). See chapter 3 of the March 2022 Preliminary TSD. On November 1, 2022, DOE published a final rule that amended the ACIM definitions and test procedure at 10 CFR part 431.132 and 431.134, respectively (November 2022 Test Procedure Final Rule), which included definitions (*i.e.,* portable automatic commercial ice maker and refrigerated storage automatic commercial ice maker) and test requirements for low-capacity automatic commercial ice makers. 87 FR 65856. As a result, DOE is proposing in this document to establish energy conservation standards for ice makers with capacity of 50 lb ice/24 hr or less, including portable and refrigerated storage ice makers.

''Portable automatic commercial ice maker'' is defined as an automatic commercial ice maker that does not have a means to connect to a water supply line and has one or more reservoirs that are manually supplied with water. 10 CFR 431.132.

''Refrigerated storage automatic commercial ice maker'' is defined as an automatic commercial ice maker that has a refrigeration system that actively refrigerates the self-contained ice storage bin. (*Id.*)

See section IV.A.1 of this document for discussion of the equipment 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. 6314(a)) Manufacturers of covered equipment must use these test procedures to certify to DOE that their equipment complies with energy conservation standards and to quantify the efficiency of their equipment. DOE's current energy and condenser water conservation standards for automatic commercial ice makers are expressed in terms of the maximum allowable energy use and maximum allowable condenser water use (if applicable) as a function of the harvest rate of the given equipment. (*See* 10 CFR 431.134.)

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. 10 CFR 431.4; Section 7(b)(1) (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. 10 CFR 431.4; 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 automatic commercial ice makers, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR TSD.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt a new or amended standard for a type or class of covered equipment, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such equipment. (42 U.S.C. 6316(a); 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 automatic commercial ice makers, using the design parameters for the most efficient equipment available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C.1.b of this document 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 automatic commercial ice makers purchased in the 30-year period that begins in the year of compliance with the proposed standards (2027–2056).[17] The savings are measured over the entire lifetime of automatic commercial ice makers 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 automatic commercial ice makers. 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 equipment at the locations where they are used. For electricity, DOE reports national energy savings in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. DOE also calculates NES in terms of FFC energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[18] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.1 of this document.

2. Significance of Savings

To adopt any new or amended standards for a covered equipment, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(3)(B))

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[19] For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis, taking into account the significance of cumulative FFC national energy savings, the cumulative FFC emissions reductions, and the need to confront the global climate crisis, among other factors. DOE has initially determined the energy savings from the proposed standard levels are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

F. Economic Justification

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6316(a); 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 proposed 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 in this document. For consumers in the aggregate, DOE also calculates the national NPV 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 equipment 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. 6316(a); 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 the equipment (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC

[17] Each TSL is composed of specific efficiency levels for each equipment 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.

[18] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

[19] The numeric threshold for determining the significance of energy savings established in a final rule published on February 14, 2020 (85 FR 8626, 8670) was subsequently eliminated in a final rule published on December 13, 2021 (86 FR 70892).

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 equipment 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 equipment 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 equipment in the first year of compliance with new or amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. DOE'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. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.E of this document, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6316(a); 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 ACIM equipment under consideration in this proposed rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6316(a); 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. 6316(a); 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. 6316(a); 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.K of this document. DOE also estimated 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. 6316(a); 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

EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the equipment that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(iii)) DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the PBP for consumers. These analyses include, but are not limited to, the 3-year PBP contemplated under the rebuttable presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F.10 of this document.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to automatic commercial ice makers. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the energy conservation 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 NIA uses a second spreadsheet set that provides shipments projections and calculates NES and NPV of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (GRIM), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE website for this rulemaking: *www.regulations.gov/docket/EERE-2017-BT-STD-0022.* Additionally, DOE used output from the latest version of the Energy Information Administration (EIA) *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 equipment concerned, including the purpose of the equipment, the industry structure, manufacturers, market characteristics, and technologies used in the equipment. 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 equipment classes, (2) manufacturer trade groups, (3) market share, (4) inventory, and (5) technology options that could improve the energy efficiency of automatic commercial ice makers. 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. Equipment Classes

When evaluating and establishing energy conservation standards, DOE may establish separate standards for a group of covered equipment (*i.e.,* establish a separate equipment class) if DOE determines that separate standards are justified based on the type of energy used, or if DOE determines that an equipment's capacity or other performance-related feature justifies a different standard. (42 U.S.C. 6316(a); 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.*)

Automatic commercial ice makers are divided into equipment classes categorized by physical characteristics that affect commercial application, equipment utility, and equipment efficiency: (1) the ice-making process; (2) the configuration of the ice-making and refrigeration systems; (3) the type of condenser cooling fluid used; and (4) the harvest rate of the unit. The following list shows the key physical characteristics of ACIM equipment that DOE uses to distinguish equipment classes:

(1) Ice-making process: batch, continuous;

(2) Equipment configuration: ice-making head, remote condensing (but not remote compressor), remote condensing and remote compressor, self-contained;

(3) Condenser cooling fluid: air-cooled, water-cooled; and

(4) Capacity range.

DOE currently defines separate energy conservation standards for those equipment classes at 10 CFR 431.136, which are repeated in Table II.1 and Table II.2.

In response to the March 2022 Preliminary Analysis, Hoshizaki commented that it does not see any need to change any of the harvest rate ranges or combine any classes, considering that each class has its own distinctive performance and energy ranges. (Hoshizaki, No. 20 at p. 2)

DOE has tentatively determined to adjust certain capacity ranges, as presented in Table I.1 and Table I.2, based on this NOPR analysis, as a result of proposing appropriate energy use standards across the overall capacity range for a given type of equipment (*i.e.,* B–IMH–W, B–IMH–A, B–SC–A, C–SC–A). DOE reviewed the ACIM market and tentatively determined that the adjusted capacity ranges are representative of the energy use characteristics of each equipment type.

a. Low-Capacity Automatic Commercial Ice Makers

DOE has tentatively determined that additional equipment classes may be appropriate to address certain automatic commercial ice makers available on the market. Specifically, DOE is proposing energy conservation standards for low-capacity automatic commercial ice makers, which are not currently subject to energy conservation standards. DOE has tentatively determined that the low-capacity automatic commercial ice makers can all be categorized under the self-contained equipment configuration and air-cooled condenser cooling fluid designation. DOE has also tentatively determined that the low capacity of these automatic commercial ice makers would require different energy conservation standards as compared to those already in place for automatic commercial ice makers with higher capacities. Additionally, DOE has tentatively determined that the unique operation of refrigerated storage and portable automatic commercial ice makers would require separate equipment classes from other self-contained, air-cooled, low-capacity automatic commercial ice makers. Based on a review of the low-capacity ACIM market, DOE tentatively determined that batch automatic commercial ice makers models represent nearly the entire market and include both portable and refrigerated storage automatic commercial ice makers. However, DOE has identified a limited number of continuous low-capacity ACIM models available on the market similar to batch automatic commercial ice makers, except that DOE found no continuous refrigerated storage automatic commercial ice makers available on the market. Accordingly, DOE is proposing energy conservation standards for the proposed low-capacity ACIM equipment classes presented in Table IV.1.

TABLE IV.1—PROPOSED LOW-CAPACITY ACIM EQUIPMENT CLASSES

Process	Equipment type	Condenser cooling	Harvest rate (lb ice/24 h)	Designation
Batch	Self-Contained	Air	≤50	B–SC–A (≤50).
	Portable	Air	≤38	B–SC–A (Portable ACIM) (≤38).
		Air	>38 and ≤50	B–SC–A (Portable) (>38 and ≤50).
	Refrigerated Storage	Air	≤50	B–SC–A (Refrigerated Storage ACIM).

TABLE IV.1—PROPOSED LOW-CAPACITY ACIM EQUIPMENT CLASSES—Continued

Process	Equipment type	Condenser cooling	Harvest rate (lb ice/24 h)	Designation
Continuous	Self-Contained	Air	≤50	C–SC–A (≤50).
	Portable	Air	≤50	C–SC–A (Portable ACIM).

DOE received many comments in response to the March 2022 Preliminary Analysis regarding the potential equipment classes for low-capacity automatic commercial ice makers.

Scope of Coverage

AHAM commented that consumer stand-alone ice makers are not automatic commercial ice makers, and the term ''commercial'' in the ACIM category indicates an intent to cover commercial, not residential/consumer products. (AHAM, No. 27 at p. 3) AHAM added that automatic commercial ice makers are included in EPCA part A–1 for ''Certain Industrial Equipment'' not part A, which is for Consumer Products other than Automobiles. (*Id.*) AHAM noted that automatic commercial ice makers are ''covered equipment,'' which is defined by EPCA as ''The term 'covered equipment' means one of the following types of industrial equipment . . . automatic commercial ice makers.'' 42 U.S.C. 6311(1)(F), and therefore, automatic commercial ice makers are, by definition, industrial equipment. (*Id.*)

AHAM provided an example that commercial clothes washers are ''covered equipment,'' and that commercial and residential clothes washers share similar construction and are often both used by individual consumers, but these equipment classes are differentiated by EPCA. (*Id.*) AHAM stated that Congress intended to include only truly commercial ice makers under the scope of the ACIM definition and DOE should not include consumer stand-alone ice makers in the scope of this commercial equipment rulemaking. (*Id.*)

Similarly, Whirlpool stated that DOE should not include residential appliances, which are defined as ''consumer products,'' under any energy conservation standards and test procedures in 10 CFR part 431 and added that EPCA has delineated between consumer products regulated under 10 CFR part 430, and commercial and industrial products regulated under 10 CFR part 431. (Whirlpool, No. 26 at p. 2)

AHAM and Whirlpool both commented that stand-alone ice makers that are capable of making 50 pounds of ice per day or less more squarely fit under the definition of consumer product, according to the definition found in 10 CFR 430.2. (AHAM, No. 27 at p. 3; Whirlpool, No. 26 at p. 2)

AHRI commented that DOE has already created a residential and commercial product distinction for other types of refrigeration equipment (such as distinguishing household refrigerators and freezers and commercial refrigeration equipment), and that this distinction should also apply to ice makers. (AHRI, No. 21 at p. 7)

Hoshizaki commented that low-capacity models should be given their own category and separate section to review, similar to the division between domestic and commercial refrigerators. (Hoshizaki, No. 20 at p. 2)

The CA IOUs commented that although they prefer DOE not regulate residential ice making products under the ACIM rulemaking, the energy use of ice makers in residential freezers is certainly worthy of regulation and testing. (CA IOUs, No. 18 at p. 5) The CA IOUs commented that the current DOE regulatory approach of including a universal adder for ice makers without testing the energy use of the devices may lead to a lack of improvements in ice-making efficiency. (*Id.*) The CA IOUs recommended that, in a future refrigerator/freezer rulemaking conducted under DOE's consumer product authority, DOE include ice making and dispensing in the energy test cycle. (*Id.*)

AHRI commented that residential ice makers have much different operating and market characteristics from other commercial ice makers. (AHRI, No. 21 at p. 6) AHRI also noted that commercial ice makers operate in offices and large commercial establishments and produce 50–4,000 lb of ice, and that DOE's TSD should analyze commercial equipment and maintain those products in scope. (*Id.* at pp. 6–7) AHRI commented that DOE extending the scope beyond commercial equipment makes providing feedback challenging. (*Id.* at p. 8)

Whirlpool recommended that DOE separately define ''residential ice makers'' and exclude them from the scope of any amended ACIM standard. (Whirlpool, No. 26 at p. 4) In the alternative, Whirlpool also recommended that DOE could make an amendment to the definition of automatic commercial ice maker that clarifies it as ''any ice maker which is not a consumer product, per the definition in 10 CFR 430.2.'' (*Id.*)

AHAM commented that consumer ice makers should be distinguished from commercial ice makers and stated it is not appropriate under EPCA or DOE's regulations for DOE to include them in the scope of the ACIM rulemaking (including the test procedure and standards). (AHAM, No. 27 at p. 4)

AHAM stated that DOE makes its consumer/commercial product determination based on distinguishing design features or characteristics, whether the model operates in a manner that is significantly different from models of the same product type (*e.g.,* the energy use or energy-efficiency characteristics are significantly different), and the extent to which the product type can be used in a residential application. (*Id.* at pp. 3–5)

Joint Commenters supported the inclusion of low-capacity automatic commercial ice makers and evaluating potential standards for low-capacity automatic commercial ice makers, and Joint Commenters additionally supported the scope expansion in response to the December 2021 ACIM Test Procedure NOPR so that low-capacity ACIM efficiency and capacity are based on a standardized test procedure. (Joint Commenters, No. 22 at p. 1)

DOE Guidance

AHAM noted that DOE's prior guidance stated that ''consumer products and industrial equipment are mutually exclusive categories. An appliance model can only be considered commercial under the Act if it does not fit the definition of 'consumer product'.'' (*Id.* at p. 3) AHAM added that DOE stated that it made this determination without regard to how the model is in fact distributed, and instead looks to whether a product is the ''type'' of product sold for personal use or consumption by individuals. (*Id.*) AHAM stated that it is not consistent with EPCA or DOE's own regulations to regulate residential stand-alone ice makers as commercial equipment, and DOE must not include them as automatic commercial ice makers under the energy conservation standard or the applicable test procedure. (*Id.* at p. 5)

The CA IOUs commented to note that the question of the proper division between DOE's consumer and commercial authority is not a new one, even within the refrigeration context. (CA IOUs, No. 18 at pp. 5–6) The CA IOUs commented that in 2010, DOE issued guidance in response to confusion regarding the scope of newly adopted residential refrigerator regulations. (*Id.*) The CA IOUs commented that, at that time, DOE indicated that, under 42 U.S.C. 6291(1), it would make a determination if a product is ''of a type'' that could be sold to consumers, specifically noting that a dorm-style refrigerator a manufacturer marketed as a ''hotel mini-fridge'' would still be considered a residential product. (*Id.*) The CA IOUs stated that furthermore, DOE made clear that industrial/commercial and consumer/residential products must be mutually exclusive, as the statutory definition of ''industrial equipment'' specifies that such equipment ''is not a covered [consumer] product'' under 42 U.S.C. 6291(1). Thus, the CA IOUs concluded that a product defined as residential cannot also be commercial. (*Id.*)

Miscellaneous Refrigeration Products

AHAM commented that the Appliance Standards Rulemaking Advisory Committee (ASRAC) working group for the miscellaneous refrigeration products (MREF) declined to cover consumer stand-alone ice makers as part of that rulemaking due to large differences from other products in the MREF category and low shipments of low-capacity ice makers. (AHAM, No. 27 at p. 2) AHAM added that it is confusing how DOE could attempt to cover these products as consumer products in the MREF rulemaking and then, several years later, as commercial equipment in the ACIM rulemaking. (*Id.* at p. 3)

Likewise, Whirlpool commented that it supports and echoes the AHAM positions, particularly that DOE had concluded properly in the rulemaking for MREF to not include residential ice makers under the scope of DOE's energy conservation standards. (Whirlpool, No. 26 at p. 2) Whirlpool agreed with the ways in which AHAM described the differences between residential ice makers made by manufacturers like Whirlpool, and true commercial ice makers. (*Id.*)

Whirlpool commented that DOE had previously proposed the inclusion of these residential ice makers in the MREF Conservation Standards, indicating DOE's previous belief that these residential ice makers meet the definition of a consumer product and were under evaluation for possible standards under 10 CFR part 430. (*Id.* at p. 3)

End Users

AHAM commented that low-capacity automatic commercial ice makers are primarily used in residential applications, and, even if a business chooses to purchase a residential type product, that does not mean it is a commercial product, and added that low-capacity ice makers designed for consumers are not the same as lower capacity ice makers that are designed for businesses. (AHAM, No. 27 at p. 5) AHAM additionally stated one main reason low-capacity automatic commercial ice makers do not produce as much ice as the larger commercial products is because residential applications do not require the same amount of ice as commercial applications that must produce ice on a daily basis and throughout the day, as opposed to on an intermittent basis, likely not even daily for low-capacity automatic commercial ice makers. (*Id.*)

Similarly, Whirlpool commented that there are key differences between residential and commercial icemakers: the end-purchasers of the products, the usage of the products, and the design of the products. (Whirlpool, No. 26 at p. 3) Whirlpool commented that the end-purchasers of residential ice makers are consumers, whereas ice makers are purchased by businesses and business owners. (*Id.*)

Scotsman commented that ice makers with production capacities under 50 pounds per day should not be considered for inclusion in the automatic commercial ice machine category. (Scotsman, No. 30 at p. 2) Scotsman added that the application for low production ice makers is for residential, in-the-home installations, and those icemakers not designed or intended to support commercial foodservice, commercial business or retail operations. (*Id.* at pp. 2–3)

Portable Automatic Commercial Ice Makers

AHAM commented that portable ice makers are designed to fit on the countertop and are not plumbed into the water supply but rely on a reservoir, and are designed this way because they are meant to go in residential spaces or to be moved from space-to-space within a residence and are not intended to support a business. (AHAM, No. 27 at p. 4) AHAM added that a refillable reservoir is not a design feature that a commercial application would find practical or efficient because it would require constant re-filling throughout the day, particularly for the volume of ice required by the commercial user, whereas residential consumers, who use far less ice, are not bothered by the need to fill the reservoir. (*Id.*) AHAM commented that portable automatic commercial ice makers are designed for a residential application and designed to be able to move from room to room, avoiding the need for a complex, expensive installation because they are not plumbed into a water line. (*Id.* at p. 5) AHAM added that portable automatic commercial ice makers must be compact in size, light enough to move, and contain a water reservoir. (*Id.*) AHAM stated that the portable automatic commercial ice makers only allow small amounts of ice storage before turning the unit off. (*Id.*) AHAM added that portable automatic commercial ice makers are distinct from all other products DOE is considering under the scope of this proposed rulemaking. (*Id.* at pp. 5–6) AHAM concluded that it is more likely that residential consumers are purchasing a portable ice maker specifically for its portability and less complex and costly installation with the intent of using it only occasionally; thus these design differences make sense. (*Id.* at p. 4)

Safety Standards

In addition, AHAM commented there are different applicable safety standard requirements for consumer and commercial stand-alone ice-makers, but stated that commercial icemakers are covered by UL 60335–2–89, ''Particular Requirements for Commercial Refrigerating Appliances and Ice-Makers with an Incorporated or Remote Refrigerant Unit or Motor-Compressor,'' whereas residential ice makers are covered by UL 60335–2–24, ''Particular Requirements for Refrigerating Appliances, Ice-Cream Appliances, and Ice Makers.'' (*Id.* at. 6)

Sanitary Guidelines

AHAM commented that stand-alone ice makers designed for residential use do not need to meet commercial kitchen safety and sanitary guidelines (NSF certification/listing), which essentially prohibits the installation of residential ice makers in commercial spaces (*e.g.,* mopping the floor with certain chemicals in a commercial kitchen could damage a residential ice maker, whereas commercial ice makers are designed to be higher off the ground so that critical components are shielded from liquid intrusions). (*Id.* at p. 6)

Durability Requirements

AHAM stated that consumer stand-alone ice makers do not need to meet the same durability requirements of commercial ice makers because they are used less frequently. (*Id.* at p. 6)

Warranties

AHAM stated also that consumer stand-alone ice maker warranties may only be valid if the product is used in a residential application, adding that many warranties are void if used in a commercial kitchen. (*Id.* at p. 6)

Space Constraints

AHAM commented that undercounter ice makers are constrained by space (countertop height and cabinet depth), whereas commercial ice makers can be larger in height and depth. (*Id.* at p. 4) AHAM added that residential ice makers are designed this way because they are designed to fit in residential kitchens and other residential spaces, not in commercial spaces. (*Id.*)

GEA stated that there are significant and definite differences between residential and commercial ice makers, and those differences are reflected in GEA's residential ice makers. (GEA, No. 31 at p. 2) GEA's residential ice makers are space constrained, certified to different UL standards than commercial ice makers, sold through traditional residential sales channels, and their warranties limit use of the products to residential applications. (*Id.*) GEA's portable icemakers are designed to fit on a standard residential depth counter. (*Id.*)

Whirlpool agreed that residential ice makers are typically designed for undercounter installation or countertop placement, whereas commercial ice makers can be designed for a number of different commercial installation locations, not limited to undercounter or countertop placement. (Whirlpool, No. 26 at p. 3)

Ice Quality

AHAM commented that low-capacity ice makers make clear, cubed ice, and some make nugget ice depending on consumer choice, while commercial ice makers are designed for larger capacity and higher production rates with less focus on the quality or type of ice. (AHAM, No. 27 at p. 4)

Utilization Factor

GEA agreed with AHAM's comments that there are significant and definite differences between residential and commercial ice makers and noted that those differences are reflected in GEA's residential ice makers. (GEA, No. 31 at p. 2). GEA recommended that the intermittent usage for residential ice makers should be taken into account for the standards for these products and is yet a further reason why regulations for commercial equipment should not apply to residential products. (*Id.*)

Equipment Classes

AHAM stated that it opposes DOE's decision to include the low-capacity equipment classes (harvest rates 50 lb or less per day) to the extent that they include consumer/residential ice makers. (AHAM, No. 27 at p. 2) AHAM added that doing so conflicts with EPCA's distinction between consumer and commercial equipment and DOE's guidance on the distinction between consumer and commercial equipment. (*Id.,* p. 2)

AHRI commented that adding the proposed low-capacity ACIM equipment classes may not be appropriate, and AHRI does not believe it is helpful to categorize these types of ice makers in the same energy conservation standard as automatic commercial ice makers. (AHRI, No. 21 at p. 2)

The CA IOUs commented that DOE should perform a more in-depth evaluation of ice machines rated at/under 50 lb/day to further support the development of these new ACIM product classes. (CA IOUs, No. 18 at p. 1)

Testing

AHRI added that there is a lack of laboratory capacity due to a backlog caused by the COVID–19 pandemic, lack of an appropriately verified standard (ASHRAE 29), and a lack of expertise in testing low-capacity equipment. (AHRI, No 21 at p. 2) Hoshizaki commented that there are no known tests for low-capacity models. (Hoshizaki, No. 20 at p. 2) NAFEM commented that ASHRAE Standard 29–2009 provides for the testing of equipment with capacities from 50 to 4,000 lb/24 h, and, as it is unclear what test procedure would work for the low-capacity models, that further analysis and explanation of these must be made so that the applicability of the proposed test procedure can be evaluated. (NAFEM, No. 19 at p. 2)

Examples of Low-Capacity Automatic Commercial Ice Makers

Both AHRI and Hoshizaki commented to request examples of actual models on the market for ''Proposed Low-Capacity Automatic Commercial Ice Maker Equipment Classes'' B–SC–A Portable ACIM, B–SC–A Refrigerated Storage ACIM, and B–SC–A from Tables ES.2.37 and 3.2.2. (AHRI, No. 21 at p. 11; Hoshizaki, No. 20 at p. 5)

NAFEM commented that it requests that DOE provide examples of existing models available in the marketplace that DOE has determined would fall into the two new proposed categories, as it is important for other information in the March 2022 Preliminary TSD, such as test procedures and shipments. (NAFEM, No. 19 at p. 2)

DOE's Response

In response to these comments, DOE notes that, although DOE's current energy and condenser water use standards are limited explicitly to automatic commercial ice makers with capacities between 50 and 4,000 lb/24 h (*see* 10 CFR 431.136), the regulatory and statutory definitions of automatic commercial ice maker are not limited by harvest rate (*i.e.,* capacity). (*See* 10 CFR 431.132 and 42 U.S.C. 6311(19), respectively.) DOE has noted, and commenters have confirmed,[20] that ice makers with harvest rates less than or equal to 50 lb/24 h (*i.e.,* low-capacity automatic commercial ice makers) are available in the market and are used in a variety of settings.

EPCA defines ''covered equipment'' to include certain types of ''industrial equipment,'' including automatic commercial ice makers. (42 U.S.C. 6311(1)) EPCA defines ''industrial equipment'' to mean any article of equipment referred to in subparagraph (B)[21] of a type, including the ACIM type, (1) which in operation consumes, or is designed to consume, energy; (2) which, to any significant extent, is distributed in commerce for industrial or commercial use; and (3) which is not a ''covered product'' as defined in 42 U.S.C. 6291(a)(2), other than a component of a covered product with respect to which there is in effect a determination under 42 U.S.C. 6312(c); and this is without regard to whether such an article is in fact distributed in commerce for industrial or commercial use. (42 U.S.C. 6311(2))

As discussed, the regulatory and statutory definitions of automatic commercial ice makers are not limited by harvest rate (*see* 10 CFR 431.132 and 42 U.S.C. 6311(19), respectively) and automatic commercial ice makers are not a covered product as defined in 42 U.S.C. 6291–6292. And in the November 2022 Test Procedure Final Rule, DOE determined that low-capacity ACIMs are distributed in commerce for commercial

[20] See Joint Commenters, No. 22 at p. 1 and *www.regulations.gov/document/EERE-2017-BT-TP-0006-0014* at p. 8.

[21] Subparagraph (B) of 42 U.S.C. 6311(2) identifies the types of equipment under consideration and includes automatic commercial ice makers.

use. 87 FR 65856, 65681. Therefore, in this NOPR, DOE has tentatively determined that low-capacity automatic commercial ice makers are, to a significant extent, distributed in commerce for commercial use. DOE has reviewed the low-capacity ACIM market and found that manufacturers specifically market certain low-capacity automatic commercial ice makers for commercial use and/or using commercial air and water ambient rating conditions (*i.e.,* 90 °F air temperature and 70 °F water temperature, which are the same air and water ambient rating conditions used in DOE's test procedures for automatic commercial ice makers currently prescribed at 10 CFR 431.134),[22] and distributors sell low-capacity automatic commercial ice makers for commercial use, including automatic commercial ice makers from the proposed low-capacity ACIM equipment classes.[23] As such, notwithstanding that low-capacity automatic commercial ice makers may also be distributed in commerce for personal use or consumption by individuals, low-capacity automatic commercial ice makers meet the definition of ''industrial equipment'' and therefore are covered under the EPCA definition of ''covered equipment.''

DOE had previously considered test procedures for low-capacity automatic commercial ice makers in a test procedures NOPR for MREFs. 79 FR 74894 (Dec. 16, 2014). During the December 2014 MREF Test Procedure NOPR public meeting, True Manufacturing commented that there are very few differences between ice makers with harvest rates less than 50 lb/24 h and those with harvest rates greater than 50 lb/24 h. (Public Meeting Transcript, No. EERE–2013–BT–TP–0029–0014 at p. 31) In a supplemental notice of proposed determination regarding MREF coverage, DOE noted that a working group established to consider test procedures and standards for MREFs made two observations: (1) ice makers are fundamentally different from the other product categories considered as MREFs; and (2) ice makers are covered as commercial equipment and there is no clear differentiation between consumer and commercial ice makers. 81 FR 11454, 11456 (Mar. 4, 2016). In a 2016 final notice of proposed determination, DOE determined that ice makers were significantly different from the other product categories considered, and ice makers were not included in the scope of coverage or test procedure for MREFs. 81 FR 46767, 46773 (July 18, 2016).

To this end, DOE is proposing to establish equipment classes for specific low-capacity ACIM categories because they have different capacity, unique consumer utility features, and different inherent energy use than other categories of automatic commercial ice makers.

DOE is also proposing to establish energy conservation standards for low-capacity automatic commercial ice makers. DOE has tentatively determined that all low-capacity automatic commercial ice makers are self-contained and have air-cooled condensers. DOE has also tentatively determined that the low-capacity of these automatic commercial ice makers would require different energy conservation standards as compared to those already in place for automatic commercial ice makers with higher capacities. Additionally, DOE has initially determined that the unique operation of refrigerated storage and portable automatic commercial ice makers would require separate equipment classes from other self-contained, air-cooled low-capacity automatic commercial ice makers.

Based on a review of the low-capacity ACIM market, DOE observed that both batch and continuous designs are available in the market, although DOE found no evidence of continuous refrigerated storage automatic commercial ice makers.

DOE requests comments on its proposal to establish equipment classes and energy conservation standards for low-capacity ACIM categories.

Refrigerated Storage Automatic Commercial Ice Makers

Typical self-contained automatic commercial ice makers have an ice storage bin that is insulated but provides no active refrigeration. As a result, the ice melts slowly to balance the bin's thermal load, and the ice maker must periodically replenish the melted ice. Conversely, some self-contained low-capacity automatic commercial ice makers feature a refrigerated storage bin that prevents melting of the stored ice. Because of the different refrigeration system components, automatic commercial ice makers with a refrigerated storage bin (*i.e.,* refrigerated storage automatic commercial ice makers) have different energy use characteristics than automatic commercial ice makers without refrigerated storage. An example of a refrigerated storage automatic commercial ice maker is the Whynter UIM–155.[24]

In response to the March 2022 Preliminary Analysis, the CA IOUs recommended that DOE clarify the distinction between the refrigerated storage product class and residential freezers with built-in icemakers. (CA IOUs, No. 18 at p. 3) The CA IOUs commented that the new refrigerated storage class uses the same design for the ice freezing mechanism as residential freezers, and it has similar production capacities (*i.e.,* 3–6 lb/day). (*Id.* at p. 4) The CA IOUs recommended that DOE should provide a more precise definition to avoid unintentionally bringing within the scope of the ACIM rulemaking any residential freezers currently regulated by DOE under 10 CFR 430.32(a). (*Id.*) The CA IOUs also suggested that DOE consider including in the definition of refrigerated storage automatic commercial ice makers that these units do not provide any interior or door shelving storage (*i.e.,* they store only ice as the ice bin fills most of the interior volume). (*Id.* at p. 5)

The definition of ''Freezer'' at 10 CFR 430.2 includes a provision that excludes ''any refrigerated cabinet that consists solely of an automatic ice maker and an ice storage bin arranged so that operation of the automatic icemaker fills the bin to its capacity.''

Based on comments received in response to the March 2022 Preliminary Analysis, DOE is proposing to amend the definition to better differentiate refrigerated storage automatic commercial ice makers from freezers as follows:

''Refrigerated storage automatic commercial ice maker'' means an automatic commercial ice maker that has a refrigeration system that actively refrigerates the self-contained ice storage bin and for which there is no internal storage space other than the ice storage bin that holds the produced ice.

[22] See *www.scotsman-ice.com/service/Specs%20Sheets/2017/SIS-SS-CU0415_0117%20LR.pdf; www.hoshizaki.com/docs/color-specs/AM-50BAJ-(AD)DS.pdf; www.hoshizaki.com/docs/color-specs/IM-50BAA-Q.pdf; www.hoshizaki.com/docs/color-specs/C-80BAJ-(AD)DS.pdf; www.manitowocice.com/asset/?id=qsoqru&regions=us&prefLang=en; www.scotsman-ice.com/service/Specs%20Sheets/2018/SIS-SS-CU-CU50_0118%20LR.pdf;iom-stage.azurewebsites.net/getattachment/b06fdb7c-aaaa-4e5b-b5a6-b091e657a0d3/UCG060A-Spec-Sheet; and www.summitappliance.com/catalog/model/BIM44GCSS.*

[23] See *www.katom.com/cat/countertop-ice-makers.html?brand=Danby; www.katom.com/cat/undercounter-ice-makers.html?suggested_use=Commercial&production_range_lb%2Fday=1%20-%2099%20lbs; www.ckitchen.com/313767/ice-machine-with-bin.html?filter=type-of-cooling:air-cooled;4-hr-production:10-50lbs; www.webstaurantstore.com/13283/undercounter-ice-machines.html?filter=24-hour-ice-yield:38~102-pounds;* and *www.staples.com/ice+maker/directory_ice%2520maker.*

[24] See *www.whynter.com/product/uim-155/.*

DOE requests comments on its proposal to amend the definition of refrigerated storage automatic commercial ice maker.

2. Manufacturer Trade Groups

Whirlpool commented that the March 2022 Preliminary Analysis TSD did not appear to include analysis of residential ice makers. Specifically, Whirlpool noted that AHAM was not listed as an impacted manufacturer trade group, nor were Whirlpool or other residential ice maker manufacturers listed as potentially-impacted manufacturers in chapter 3 of the March 2022 Preliminary TSD. (Whirlpool, No. 26 at p. 3) AHAM suggested that the MIA should include manufacturers of residential products, and that DOE should include these manufacturers in its manufacturer interviews. (AHAM, No. 27 at p. 8)

For this NOPR, DOE updated its assessment of manufacturer trade groups to include AHAM and its list of low-capacity ACIM equipment original equipment manufacturers (OEMs) to include Whirlpool and other relevant manufacturers. To identify additional OEMs of low-capacity automatic commercial ice makers, DOE expanded the database used for the March 2022 Preliminary Analysis with publicly available data aggregated from web scraping retail websites. DOE reviewed this database and identified fifteen OEMs of low-capacity automatic commercial ice makers. See chapter 3 of the NOPR TSD for a list of OEMs by equipment category. In support of this NOPR, DOE's contractors reached out to a range of manufacturers and interviewed manufacturers specializing in both covered automatic commercial ice makers and low-capacity automatic commercial ice makers.

3. Market Share

AHRI commented that it does not appear that DOE performed its analysis of market share in Table 9.3.3 that aligns with the market participants in section 3.2.3.2, and that, as a result, AHRI cannot corroborate or refute the market share information because of the different scopes of equipment. (AHRI, No. 21 at p. 8)

DOE acknowledges that the analysis of ''major'' industry participants in section 3.2.3.2 of the March 2022 Preliminary TSD chapter 3 did not encompass low-capacity automatic commercial ice makers as it was based on model listings in DOE's Compliance Certification Database (CCD). For the NOPR, DOE conducted a more comprehensive review of available low-capacity automatic commercial ice makers using publicly available data (*e.g.,* data aggregated from web scraping retail websites) to estimate low-capacity manufacturer model counts. Furthermore, DOE asked manufacturers in confidential interviews about the ACIM equipment manufacturer landscape. See chapter 3 of the NOPR TSD for an updated review of manufacturers offering covered equipment and/or low-capacity ice makers.

4. Inventory

AHRI commented that Table 3.2.11 should be updated to show 2021 and 2022 inventory at an all-time low to improve the accuracy of the analysis compared to data based on 2019 levels. (AHRI, No. 21 at p. 2)

In the March 2022 Preliminary TSD, Table 3.2.11 showed the end-of-year inventory [25] for North American Industry Classification System (NAICS) code 333415 from 2010–2019, according to the U.S. Census Bureau's *Annual Survey of Manufactures* (*ASM*).[26] While the *ASM's* reported end-of-year inventory is not an explicit input to DOE's analysis of potential amended standards, DOE appreciates the comment and has updated the relevant data to include the most up-to-date information from *ASM.* See chapter 3 of the NOPR TSD for additional details.

5. Technology Options

In the preliminary market analysis and technology assessment, DOE identified 20 technology options that would be expected to improve the efficiency of automatic commercial ice makers, as measured by the DOE test procedure and shown in Table IV.2.

TABLE IV.2—TECHNOLOGY OPTIONS FOR AUTOMATIC COMMERCIAL ICE MAKERS IN THE MARCH 2022 PRELIMINARY TSD

Technology options	Batch ice makers	Continuous ice makers	Notes
Compressor:			
Improved compressor efficiency	X	X	
Alternative Refrigerants	X	X	
Part load operation	X	X	
Condenser:			
Increased surface area	X	X	
Enhanced fin surfaces	X	X	Air-cooled only.
Increased air flow	X	X	Air-cooled only.
Increased water flow	X	X	Water-cooled only.
Brazed plate condenser	X	X	Water-cooled only.
Microchannel condenser	X	X	Air-cooled only.
Fans and Motors:			
Higher efficiency condenser fans and fan motors	X	X	Air-cooled only.
Improved auger motor efficiency	....	X	
Improved pump motor efficiency	X	....	
Evaporator:			
Design options that reduce energy loss due to evaporator thermal cycling.	X	....	
Design options that reduce harvest meltage or reduce harvest time	X	....	
Larger evaporator surface area	X	X	
Insulation:			

[25] According to *ASM,* survey respondents report inventories owned by their establishment, ''at cost or market as of December 31 of the survey year using generally accepted accounting practices but before any valuation method adjustments.'' This would include finished goods, work-in-process, and materials, supplies, fuels, etc. Definitions and instructions for the *ASM* can be found online at *www2.census.gov/programs-surveys/asm/technical-documentation/questionnaire/2021/instructions/MA_10000_Instructions.pdf* (Accessed January 16, 2023).

[26] U.S. Census Bureau. *Annual Survey of Manufactures.* (2013–2021). Available at *www.census.gov/programs-surveys/asm.html* (last accessed February 1, 2023).

TABLE IV.2—TECHNOLOGY OPTIONS FOR AUTOMATIC COMMERCIAL ICE MAKERS IN THE MARCH 2022 PRELIMINARY TSD—Continued

Technology options	Batch ice makers	Continuous ice makers	Notes
Improved insulating material and/or thicker insulation around the evaporator compartment or sump.	X	X	
Refrigeration Line:			
Larger diameter suction line	X	X	Remote condensing units with remote compressor only.
Potable Water:			
Reduced potable water flow	X	....	
Drain water thermal exchange	X	....	
Expansion Valves:			
Higher Efficiency Expansion Valves	X	X	

DOE received several comments in response to the March 2022 Preliminary Analysis regarding the technology assessment.

a. Compressors

The CA IOUs commented that compressor energy efficiency ratios (EERs) and the make and model of the compressor are not listed in ice maker manufacturers' spec sheets, and that manufacturers test compressors according to AHRI 540, but there is no public database. (CA IOUs, No. 18 at p. 8). The CA IOUs commented that providing a range of EERs for compressors of all sizes will show the potential energy savings of different compressor options. (*Id.*)

AHAM added that efficiency is largely driven by the compressor, but not all compressors can be approved for hot gas bypass, which is the typical harvest approach for batch automatic commercial ice makers. (AHAM, No. 27 at p. 12) AHAM noted this means there are compressors specific to this application and the market is not large enough for compressor manufacturers to make new compressors periodically to improve efficiency, and that if DOE were to promulgate standards, compressor availability would be a significant concern. (*Id.*)

DOE considered the range of EERs for compressor sizes available for batch and continuous automatic commercial ice makers at each of the representative harvest rates. See chapter 5 of the NOPR TSD for additional details.

Alternative Refrigerants

AHAM commented that DOE's analysis includes alternative refrigerants as possible options, and AHRI noted that not all types of alternative refrigerants are viable options for ice makers. (*Id.* at p. 12) AHAM further noted that use of alternative refrigerants may further limit the space available to include a more efficient compressor. (*Id.*). AHAM added that even if the EPA approves alternative refrigerant for ice makers, it may not necessarily be a viable design option, as ice makers use a flooded evaporator and that limits refrigerant types. (*Id.*)

AHRI commented that many of the A2L refrigerants have a high temperature glide, which negatively impacts performance and energy consumption, and that as a result, the ability of the ACIM industry to respond and deliver products with A2L or natural refrigerants is constrained. (AHRI, No. 21 at p. 5)

The EPA proposed refrigerant restrictions pursuant to the AIM Act [27] affecting automatic commercial ice makers in the December 2022 EPA NOPR. 87 FR 76738. Specifically, EPA proposed prohibitions for three categories of automatic commercial ice machines (EPA's term for this equipment): (1) stand-alone, with refrigerant charge capacities of 500 grams or lower, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential (GWP) of 150 or greater; (2) stand-alone, with refrigerant charge capacities of more than 500 grams, when using or intended to use any of the following: R–404A, R–507, R–507A, R–428A, R–422C, R–434A, R–421B, R–408A, R–422A, R–407B, R–402A, R–422D, R–421A, R–125/R–290/R–134a/R–600a (55/1/42.5/1.5), R–422B, R–424A, R–402B, GHG–X5, R–417A, R–438A, R–410B, R–407A, R–410A, R–442A, R–417C, R–407F, R–437A, R–407C, RS–24 (2004 formulation), and HFC–134a; and (3) remote, when using or intended to use any of the following: R–404A, R–507, R–507A, R–428A, R–422C, R–434A, R–421B, R–408A, R–422A, R–407B, R–402A, R–422D, R–421A, R–125/R–290/R–134a/R–600a (55/1/42.5/1.5), R–422B, R–424A, R–402B, GHG–X5, R–417A, R–438A, and R–410B. *Id.* at 87 FR 76810–76811. The proposal would prohibit manufacture or import of such ice makers starting January 1, 2025, and would ban sale, distribution, purchase, receive, or export of such ice makers starting January 1, 2026. *Id.* at 87 FR 76809. DOE considered the use of alternative refrigerants that are not prohibited for automatic commercial ice makers in the December 2022 EPA NOPR. See section IV.C.1.a and chapter 5 of the NOPR TSD for additional details.

b. Microchannel Condensers

The CA IOUs commented that they recommend that DOE consider the impacts of microchannel condensers on refrigerant charge, because microchannel condensers allow for the reduction of the refrigerant charge compared to standard tube-and-fin condensers. (CA IOUs, No. 18 at p. 7) The CA IOUs commented that using microchannel condensers with R–290 refrigerant will allow larger machines to use this refrigerant and reduce their energy usage without requiring an increased charge limit. (*Id.*)

DOE considered the use of microchannel condensers on ACIM performance. See section IV.C.1.b and chapter 5 of the NOPR TSD for additional details.

DOE is retaining the technology options from the March 2022 Preliminary TSD for this NOPR. See chapter 3 of the NOPR TSD for additional details.

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:

[27] Under subsection (i) of the AIM Act, entitled ''Technology Transitions,'' the EPA may by rule restrict the use of HFCs in sectors or subsectors where they are used. A person or entity may also petition EPA to promulgate such a rule. ''H.R.133—116th Congress (2019–2020): Consolidated Appropriations Act, 2021.'' *Congress.gov*, Library of Congress, 27 December 2020, *www.congress.gov/bill/116thcongress/house-bill/133.*

(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 431.4; 10 CFR part 430, subpart C, appendix A, sections 6(c)(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 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.

DOE did not receive any comments in response to the March 2022 Preliminary Analysis specific to the screening analysis.

1. Screened-Out Technologies

DOE is retaining the screened-out technologies from the March 2022 Preliminary TSD for this NOPR (Table IV.3).

TABLE IV.3—SCREENED OUT TECHNOLOGY OPTIONS

Technology option	EPCA criterion (X = basis for screening out)				
	Technological feasibility	Practicability to manufacture, install, and service	Adverse impacts on utility or availability	Adverse impacts on health and safety	Unique-pathway proprietary technologies
Increased Condenser Air Flow	X		X		
Reduced Energy Loss Due to Evaporator Thermal Cycling					X
Larger Diameter Remote Suction Line			X		
Reduced Potable Water Use (<20 gal/100 lb ice)			X		

a. Increased Condenser Air Flow

Increased condenser air flow results in increased heat transfer and a reduced condensing temperature, which results in lower compressor power. However, increased air flow requires increased fan input power, offsetting some (or all) of the compressor power reduction. DOE expects that condenser fan motors in automatic commercial ice makers are generally sized to optimize performance of the refrigeration system, and improved efficiency due to increased air flow may not be technically feasible.

Additionally, increased fan sizes to allow for higher air flow rates generally require more space for the fan motor and fan assembly. DOE has observed that ACIM designs use the entirety of available cabinet space, and therefore any additional component size increases would likely require larger cabinet geometries. Because automatic commercial ice makers are typically used in locations prioritizing smaller equipment footprints (*e.g.,* commercial kitchens), larger cabinet sizes may adversely impact the availability of equipment with current sizes at a given harvest rate.

b. Reduced Energy Loss Due to Evaporator Thermal Cycling

During the rulemaking analysis for the January 2015 Final Rule (80 FR 4646), DOE determined that one technology used by commercially available ice makers to reduce thermal mass is proprietary. 80 FR 4646, 4674. The evaporators used by Hoshizaki America, Inc. contain proprietary elements that would make it difficult for others to replicate the design. Hence, DOE screened out this option because of its proprietary status. See chapter 4 of the January 2015 Final Rule TSD.[28] DOE has tentatively determined that the reduced thermal mass evaporator designs continue to contain proprietary elements, and therefore has continued to screen this technology option from further consideration in this NOPR.

[28] Available at *www.regulations.gov/docket/EERE-2010-BT-STD-0037.*

c. Larger Diameter Remote Suction Line

Increasing the suction line diameter could be considered to reduce suction line pressure drop for remote condenser equipment with remote compressors. However, the reduced suction vapor velocity associated with the approach could degrade oil return effectiveness. Remote ice maker line sets can be installed in the field so that suction line refrigerant runs up, down, or horizontally to the compressor; hence, they are conservatively sized to provide adequate oil return for a wide range of installation conditions. DOE has not considered an increase in suction line size because of reliability concerns associated with potential oil hold-up and compressor failure associated with larger-diameter line sets.

d. Reduced Potable Water Use (<20 gal/100 lb ice)

One purpose of water drained from batch ice makers is to remove dissolved solids that enter with the potable water supply. Selecting excessively low potable water levels can lead to insufficient removal of dissolved solids, resulting in increased maintenance costs associated with an increased need for descaling operations, and, after the ice maker has operated for a number of cycles, the scale build-up can reduce ice production and increase energy use. Additionally, insufficient drain water may adversely impact ice quality.

In the January 2015 Final Rule analysis, DOE considered decreases in potable water flow down to 20 gal/100 lb ice to ensure proper drainage of particulates from the sump, based on feedback from stakeholders. See chapter 5 of the January 2015 Final Rule analysis.[29] To ensure appropriate automatic commercial ice maker operation, DOE has screened out reductions in potable water use to levels below 20 gal/100 lb ice produced for batch ice makers.

2. Remaining Technologies

Through a review of each technology, DOE tentatively concludes that all of the other identified technologies listed in section IV.A.5 of this document met all five screening criteria to be examined further as design options in DOE's NOPR analysis. In summary, DOE did not screen out the following technology options:

TABLE IV.4—RETAINED DESIGN OPTIONS

Technology options	Batch ice makers	Continuous ice makers	Notes
Compressor:			
Improved compressor efficiency	X	X	
Alternative refrigerants	X	X	
Part load operation	X	X	
Condenser:			
Increased surface area	X	X	
Enhanced fin surfaces	X	X	Air-cooled only.
Brazed plate condenser	X	X	Water-cooled only.
Microchannel condenser	X	X	Air-cooled only.
Fans and Motors:			
Higher efficiency condenser fans and fan motors	X	X	Air-cooled only.
Improved auger motor efficiency		X	
Improved pump motor efficiency	X		
Evaporator:			
Design options that reduce harvest meltage or reduce harvest time	X		
Larger evaporator surface area	X	X	
Insulation:			
Improved insulating material and/or thicker insulation around the evaporator compartment or sump.	X	X	
Potable Water:			
Reduced potable water flow (as low as 20 gal/100 lb ice)	X		
Drain water thermal exchange	X		
Expansion Valves:			
Higher efficiency expansion valves	X	X	

DOE has initially determined that these technology options are technologically feasible because they are being used or have previously been used in commercially-available equipment or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety, unique-pathway proprietary technologies). For additional details, see chapter 4 of the NOPR TSD.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of automatic commercial ice makers. There are two elements to consider in the engineering analysis; the selection of efficiency levels (ELs) to analyze (*i.e.,* the efficiency analysis) and the determination of equipment cost at each efficiency level (*i.e.,* the cost analysis). In determining the performance of higher-efficiency equipment, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each equipment class, DOE estimates the baseline cost, as well as the incremental cost for the equipment 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 equipment (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

[29] Available at *www.regulations.gov/docket/EERE-2010-BT-STD-0037.*

the maximum efficiency level currently available on the market).

In this rulemaking, DOE relies on a design-option approach, supported with reverse engineering multiple analysis units. DOE generally relied on test data and reverse engineering to inform a range of design options used to reduce energy use. The design options were incrementally added to the baseline configuration and continued through the ''max-tech'' configuration (*i.e.,* implementing the ''best available'' combination of available design options).

DOE directly analyzed fifteen equipment classes, ten batch type and five continuous type, and has selected representative units for analysis in these classes. These equipment classes are listed in Table IV.5 and Table IV.6. Energy testing and reverse engineering were conducted on representative units in those equipment classes to develop cost-efficiency relationships for potential design options to reduce energy use. DOE has initially determined that the equipment classes selected are representative of the ACIM market. For those equipment classes not directly analyzed (*i.e.,* the secondary equipment classes), DOE represented the cost-efficiency relationship using the results for directly analyzed equipment classes with similar design characteristics (*e.g.,* the analysis of the continuous, remote condensing and remote compressor, ≥800 and <4,000 equipment class is also representative of the cost-efficiency characteristics of the continuous, remote condensing (but not remote compressor), ≥800 and <4,000 equipment class). *See* Table IV.7.

TABLE IV.5—BATCH EQUIPMENT CLASSES ANALYZED IN THIS NOPR

Equipment type	Condenser cooling type	Harvest rate (lb/24 hours)	Reverse engineering unit, directly analyzed equipment class
Ice-Making Head	Water	>50 and <300	
		≥300 and <785	✓
		≥785 and <1,500	✓
		≥1,500 and <2,500	
		≥2,500 and <4,000	
	Air	>50 and <300	
		≥300 and <727	✓
		≥727 and <1,500	✓
		≥1,500 and <4,000	
Remote Condensing (but not remote compressor)	Air	>50 and <988	
		≥988 and <4,000	✓
Remote Condensing and Remote Compressor	Air	>50 and <930	
		≥930 and <4,000	
Self-Contained	Water	>50 and <200	
		≥200 and <2,500	
		≥2,500 and <4,000	
	Air	Portable: ≤38	✓
		>38 and ≤50	
		Refrigerated Storage	✓
		≤50	✓
		>50 and <134	✓
		≥134 and <200	
		≥200 and <4,000	✓

TABLE IV.6—CONTINUOUS EQUIPMENT CLASSES ANALYZED IN THIS NOPR

Equipment type	Condenser cooling type	Harvest rate (lb/24 hours)	Reverse engineering unit, directly analyzed equipment class
Ice-Making Head	Water	>50 and <801	✓
		≥801 and <1,500	
		≥1,500 and <2,500	
		≥2,500 and <4,000	
	Air	>50 and <310	
		≥310 and <820	✓
		≥820 and <1,500	
		≥1,500 and <4,000	
Remote Condensing (but not remote compressor)	Air	>50 and <800	
		≥800 and <4,000	
Remote Condensing and Remote Compressor	Air	>50 and <800	
		≥800 and <4,000	✓
Self-Contained	Water	>50 and <900	
		≥900 and <2,500	
		≥2,500 and <4,000	
	Air	Portable	
		≤50	
		>50 and <149	✓
		≥149 and <700	✓
		≥700 and <4,000	

TABLE IV.7—MAP OF SECONDARY CLASSES TO THE ASSOCIATED DIRECTLY ANALYZED EQUIPMENT CLASS

Secondary equipment class	Associated directly analyzed equipment class
B–IMH–W (>50 and <300)	B–IMH–W (≥300 and <785).
B–IMH–W (≥1,500 and <2,500)	B–IMH–W (≥785 and <1,500).
B–IMH–W (≥2,500 and <4,000)	B–IMH–W (≥785 and <1,500).
B–IMH–A (>50 and <300)	B–IMH–A (≥300 and <727).
B–IMH–A (≥1,500 and <4,000)	B–IMH–A (≥727 and <1,500).
B–RC(NRC)–A (>50 and <988)	B–RC(NRC)–A (≥988 and <4,000).
B–RC&RC–A (>50 and <930)	B–RC(NRC)–A (≥988 and <4,000).
B–RC&RC–A (≥930 and <4,000)	B–RC(NRC)–A (≥988 and <4,000).
B–SC–A (Portable) (>38 and ≤50)	B–SC–A (Portable) (≤38).
B–SC–W (>50 and <200)	B–SC–A (>50 and <134).
B–SC–A (≥134 and <200)	B–SC–A (>50 and <134).
B–SC–W (≥200 and <2,500)	B–SC–A (≥200 and <4,000).
B–SC–W (≥2,500 and <4,000)	B–SC–A (≥200 and <4,000).
C–IMH–W (≥801 and <1,500)	C–IMH–W (>50 and <801).
C–IMH–W (≥1,500 and <2,500)	C–IMH–W (>50 and <801).
C–IMH–W (≥2,500 and <4,000)	C–IMH–W (>50 and <801).
C–IMH–A (>50 and <310)	C–IMH–A (≥310 and <820).
C–IMH–A (≥820 and <1,500)	C–IMH–A (≥310 and <820).
C–IMH–A (≥1,500 and <4,000)	C–IMH–A (≥310 and <820).
C–RC(NRC)–A (>50 and <800)	C–RC&RC–A (≥800 and <4,000).
C–RC(NRC)–A (≥800 and <4,000)	C–RC&RC–A (≥800 and <4,000).
C–RC&RC–A (>50 and <800)	C–RC&RC–A (≥800 and <4,000).
C–SC–W (>50 and <900)	C–SC–A (>50 and <149).
C–SC–W (≥900 and <2,500)	C–SC–A (≥149 and <700).
C–SC–W (≥2,500 and <4,000)	C–SC–A (≥149 and <700).
C–SC–A (≥700 and <4,000)	C–SC–A (≥149 and <700).

TABLE IV.7—MAP OF SECONDARY CLASSES TO THE ASSOCIATED DIRECTLY ANALYZED EQUIPMENT CLASS—Continued

Secondary equipment class	Associated directly analyzed equipment class
C–SC–A (Portable)	B–SC–A (Portable) (≤38).
C–SC–A (≤50)	C–SC–A (>50 and <149).

See chapter 5 of the NOPR TSD for additional detail on the different units analyzed.

a. Baseline Energy Use

For each equipment class, DOE generally selects a baseline model as a reference point for each class, and measures changes resulting from potential energy conservation standards against the baseline. The baseline model in each equipment class represents the characteristics of equipment typical of that class (*e.g.,* capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market.

For this NOPR, DOE considered the current standards for automatic commercial ice makers when developing the baseline energy use for each analyzed equipment class. In the case of equipment without current standards (*i.e.,* low-capacity ACIM equipment), DOE considered tested energy use of directly analyzed units in a given proposed equipment class to inform the development of baseline energy use.

In response to the March 2022 Preliminary Analysis, AHRI and Hoshizaki commented that DOE's analysis should take into consideration and incorporate refrigerants that can be used going forward, and DOE's analysis should be updated to include A1 refrigerants that can meet the 1,500 GWP requirement. (AHRI, No. 21 at p. 4; Hoshizaki, No. 20 at p. 3) AHRI and Hoshizaki also noted that R–290 is limited to 150 grams of charge, and this refrigerant is not practical for larger capacity ice makers so DOE should be mindful of what percentage of machines can use R–290 under the regulations and building codes currently in place. (AHRI, No. 21 at p. 4; Hoshizaki, No. 20 at p. 4)

AHAM commented additionally that DOE has not accounted for the European Union's F-Gas rule and Canadian regulatory developments on refrigerant. (AHAM, No. 27 at p. 12)

AHRI added that DOE must also consider the impact of EPA regulations on lower GWP refrigerants on the ACIM industry, which can have a negative impact on equipment performance, energy consumption, and cost. (AHRI, No. 21 at p. 4) AHRI added its members that have been testing the efficiency of alternative refrigerants and found these low GWP refrigerants can decrease ACIM equipment efficiency by 10 percent, depending on refrigerant and application. (*Id.*)

As recommended by stakeholders, DOE is considering the impact of the December 2022 EPA NOPR in this NOPR. The proposed date of the ban of manufacture or import of refrigerants prohibited in automatic commercial ice makers is at least 2 years earlier than the expected compliance date for any amended ACIM standards associated with the proposals in this document. Hence, the proposed refrigerant prohibitions listed in the December 2022 EPA NOPR are assumed to be enacted for the purpose of DOE's analysis in support of this NOPR. DOE acknowledges that the European Union and Canada have requirements that prohibit certain refrigerants but notes that the December 2022 EPA NOPR will require certain refrigerant prohibitions for automatic commercial ice makers in the United States.

Refrigerants not prohibited from use in automatic commercial ice makers in the December 2022 EPA NOPR are presumed to be permitted for use in automatic commercial ice makers. However, EPA has not yet listed all such potential refrigerants or use conditions as acceptable for use in automatic commercial ice makers.[30] For example, EPA currently lists R–290 as acceptable with use conditions for a refrigerant charge of up to 150 grams in automatic commercial ice makers with non-remote condensers, but DOE expects that EPA will increase the allowable charge to 500 grams to harmonize with the maximum charge quantity allowed by industry safety standards [31] and to be consistent with the December 2022 EPA NOPR (*i.e.,* prohibitions for stand-alone, or non-remote condensing, automatic commercial ice makers with refrigerant charge capacities of 500 grams or lower, when using or intended to use a regulated substance or a blend containing a regulated substance with a GWP of 150 or greater).

Based on feedback received during manufacturer interviews, public comments,[32] and certified ACIM models,[33] DOE understands that automatic commercial ice makers with harvest rates of up to 500 lb ice/24 h can be produced using an R–290 charge up to 150 grams. Based on feedback received during manufacturer interviews, DOE expects that non-remote condensing ACIM harvest rates of up to 1,500 lb ice/24 h are possible with an R–290 charge of up to 500 grams and that manufacturers will choose R–290 (or, for lower-capacity automatic commercial ice makers, R–600a [34]) in all ACIM models with harvest rates of up to 1,500 lb ice/24 h to comply with the December 2022 EPA NOPR.

DOE expects that the use of R–290 or R–600a generally will improve efficiency as compared with the refrigerants currently in use (*e.g.,* R–404A and R–134a), which are proposed to be prohibited by the December 2022 EPA NOPR, because R–290 and R–600a have higher refrigeration cycle efficiency than the current refrigerants. Thus, for automatic commercial ice makers with harvest rates of up to 1,500 lb ice/24 h with non-remote condensers, DOE expects that the December 2022 EPA NOPR will require redesign that will improve efficiency of these automatic commercial ice makers. Hence, DOE proposes to use baseline levels for automatic commercial ice makers with harvest rates of up to 1,500 lb ice/24 h with non-remote condensers, which reflect the design changes made by manufacturers in response to the

[30] See *www.epa.gov/snap/substitutes-commercial-ice-machines.*

[31] UL Standard 60335–2–89, Edition 2, published on October 27, 2021.

[32] See *www.energystar.gov/sites/default/files/Hoshizaki%20Comment.pdf.*

[33] See *www.energystar.gov/productfinder/product/certified-commercial-ice-machines/results?formId=650720-3-4334-05-6629642&scrollTo=460&search_text=&ice_type_filter=&equipment_type_filter=&brand_name_isopen=0&harvest_rate_lbs_ice_day_filter=&refrigerant_with_gwp_filter=Lower+impact+on+global+warming&markets_filter=United+States&zip_code_filter=&product_types=Select+a+Product+Category&sort_by=harvest_rate_lbs_ice_day&sort_direction=DESC&currentZipCode=23917&page_number=0&lastpage=0.*

[34] DOE expects that EPA will list R–600a as acceptable with use conditions, similar to R–290, for use in automatic commercial ice makers.

December 2022 EPA NOPR that incorporates refrigerant conversion to R–290 or R–600a to a design at the current baseline level using current refrigerants in this NOPR. The expected efficiency improvement associated with this refrigerant change varies by class and is presented in Table IV.8. DOE's analysis considers that these efficiency improvements, equipment costs, and manufacturer investments required to comply with the December 2022 EPA NOPR will be in effect prior to the time of compliance for the proposed amended DOE ACIM standards for analyzed automatic commercial ice makers with harvest rates of up to 1,500 lb ice/24 h with non-remote condensers.

EPA currently lists certain refrigerants as acceptable that are not prohibited by the December 2022 EPA NOPR for non-remote condensing automatic commercial ice makers with harvest rates above 1,500 lb ice/24 h and all remote condensing automatic commercial ice makers may use (*e.g.,* R–448A and R–449A). DOE expects that EPA will list as acceptable more viable refrigerants for non-remote condensing automatic commercial ice makers with harvest rates above 1,500 lb ice/24 h and all remote condensing automatic commercial ice makers.

DOE reviewed public information regarding refrigerants that are not prohibited by the December 2022 EPA NOPR for non-remote condensing automatic commercial ice makers with harvest rates above 1,500 lb ice/24 h and all remote condensing automatic commercial ice makers may use and found that energy use is comparable to current refrigerants.[35] For non-remote condensing automatic commercial ice makers with harvest rates above 1,500 lb ice/24 h and all remote condensing automatic commercial ice makers, DOE expects that the baseline level for the NOPR analysis is equal to the current DOE ACIM energy conservation standard level and that equipment costs and manufacturer investments required to comply with the December 2022 EPA NOPR will be in effect prior to the time of compliance for the proposed amended DOE ACIM standards.

TABLE IV.8—PROPOSED DECEMBER 2022 EPA NOPR R–290 OR R–600a ENERGY USE BASELINE

Directly analyzed equipment class	Representative harvest rate	Energy use reduction below DOE standard (%)
B–IMH–W (≥300 and <785)	461	8
B–IMH–W (≥785 and <1,500)	1,470	7
B–IMH–A (≥300 and <727)	351	4
B–IMH–A (≥727 and <1,500)	1,331	2
B–RC(NRC)–A (≥988 and <4,000)	1,508	0
B–SC–A (Portable ACIM) (≤38)	28	9
B–SC–A (Refrigerated Storage ACIM)	6	33
B–SC–A (≤50)	22	14
B–SC–A (>50 and <134)	105	12
B–SC–A (≥200 and <4,000)	227	13
C–IMH–W (>50 and <801)	760	5
C–IMH–A (≥310 and <820)	346	9
C–RC&RC–A (≥800 and <4,000)	1,100	0
C–SC–A (>50 and <149)	144	29
C–SC–A (≥149 and <700)	230	21

In response to the March 2022 Preliminary Analysis, the CA IOUs commented that they commend DOE for comparing compressor EERs and would like to see more of this comparison for large ice makers. (CA IOUs, No. 18 at p. 7) The CA IOUs noted that all size machines could benefit from upgraded compressor efficiencies. (*Id.* at p. 6) The CA IOUs commented that these upgraded components are widely available on the market, and that ice maker manufacturers can purchase them in high volume at a reduced price. (*Id.*) The CA IOUs stated that although R–290 compressors are currently limited to 5,000 Btu/h due to charge limits, DOE should perform EER range analysis for R–404A compressors over 5,000 Btu/h in order to provide complete data on compressor efficiency. (*Id.* at p. 8) The CA IOUs commented that this analysis will show the range of efficient and inefficient compressors available on the market for large ice machines rated at more than 500 lb/day. (*Id.*)

AHAM commented that even though efficiency is driven largely by the compressor, a higher efficiency compressor in and of itself does not necessarily drive a higher efficiency ice maker because the harvest cycle is driven by heat build-up within the system, so higher efficiency compressors that generate less heat can have a less efficient harvest cycle, leading to a lower overall efficiency for the ice maker. (AHAM, No. 27 at p. 12)

DOE considered compressors suitable for batch and continuous automatic commercial ice makers based on compressors currently available on the market. For directly analyzed classes that can use up to 500 grams of R–290 and for which there are no R–290 compressors currently available on the market at the compressor capacity required for the representative harvest rate, DOE used the R–404A compressor currently available on the market suitable for batch and continuous automatic commercial ice makers with the highest EER to inform the R–290 baseline in that equipment class.

In this NOPR, DOE used the equation from the March 2022 Preliminary Analysis to account for the reduced energy use improvements of higher efficiency compressors in batch automatic commercial ice makers because the harvest cycle limits the potential energy savings over a whole batch cycle because as batch automatic commercial ice makers typically use hot gas refrigerant to release the ice cubes from the evaporator during a harvest. See chapter 5 of the NOPR TSD for additional detail.

[35] See *www.ahrinet.org/analytics/research/ahri-low-gwp-alternative-refrigerants-evaluation-program?keyword=ice%20maker.*

In this NOPR, DOE did not consider additional compressor efficiency improvements beyond the baseline because DOE expects that the compressors currently available on the market for refrigerants used to comply with the December 2022 EPA NOPR represent the maximum compressor efficiency achievable for each respective equipment class.

The CA IOUs commented that the ice making mechanism for refrigerated storage ice makers is distinct from all commercial automatic commercial ice makers in that the ice is frozen by the air inside the refrigerated cavity rather than the ice making mechanism. (CA IOUs, No. 18 at p. 3) The CA IOUs added that this ice making mechanism, identified by DOE for refrigerated storage automatic commercial ice makers, is almost identical to the ice making mechanism in residential refrigerator/freezer combinations. (*Id.*) The CA IOUs stated that DOE should base allowable energy usage consumption of refrigerated storage ice makers on the assumption of 12.8 kWh/100 lb, as used in the residential refrigerator/freezer rulemaking, rather than the 44.7 kWh/100 lb that is assumed in the preliminary TSD. (*Id.* at p. 4) The CA IOUs commented that allowing such high energy consumption for this product category would leave substantial energy savings unrealized. (*Id.*) The CA IOUs recommended DOE select a higher efficiency level for the refrigerated storage product class. (*Id.* at p. 3)

As discussed in section IV.A.1.a of this document, refrigerated storage automatic commercial ice makers have different energy use characteristics than automatic commercial ice makers without refrigerated storage. For refrigerator-freezers and freezers, the energy use associated with maintaining the cold ice storage bin temperature is covered by the test procedure and energy conservation standard absent consideration of energy use for making ice. In contrast, for refrigerated storage automatic commercial ice makers, the energy use required to keep the interior at freezing temperature during active icemaking is included in the test procedure and thus must be included in the energy conservation standards. The baseline energy use of refrigerated storage automatic commercial ice makers was developed through test data conducted in support of this proposed rulemaking.

AHRI stated that DOE's assumption that energy use values scale to other more traditional ACIM equipment is likely not accurate and that DOE should explain how its analysis was performed for non-representative units. (AHRI, No. 21 at p. 9)

For those equipment classes not directly analyzed (*i.e.,* the secondary equipment classes), DOE represented the cost-efficiency relationship using the results for directly analyzed equipment classes with similar design characteristics (*e.g.,* the analysis of the C.RCRC.A.4000 equipment class is also representative of the cost-efficiency characteristics of the C.RCNRC.A.4000 equipment class).

AHAM commented that DOE should test and tear down an adequate number of residential low-capacity automatic commercial ice makers, noting that DOE only analyzed three low-capacity units and only tore down one. (AHAM, No. 27 at pp. 11–12) AHAM also commented that DOE's energy use analysis, design options, costs, and baseline and more efficient efficiency levels are likely inaccurate due to the limited testing. (*Id.* at p. 12) Additionally, AHAM commented that due to lack of testing of residential products, DOE's modeling does not account for the fact that the harvest cycle is not predictable and does not lead to predictable results. (*Id.* at pp. 12–13)

The CA IOUs commented that DOE could provide anonymous data on the low-capacity units it has tested and confirm the usage scenarios for the products to confirm they would have commercial applications. (CA IOUs, No. 18 at p. 3)

In support of this NOPR, DOE tested and tore down seven portable automatic commercial ice makers (five batch and two continuous), four refrigerated storage automatic commercial ice makers (all batch), and six low-capacity, self-contained, air-cooled automatic commercial ice makers (four batch and two continuous) that are representative of the low-capacity automatic commercial ice maker market.

DOE requests comments on its proposal to use baseline levels for automatic commercial ice makers based upon the design changes made by manufacturers in response to the December 2022 EPA NOPR.

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 given equipment.

After conducting the screening analysis described in section IV.B of this document and chapter 4 of the NOPR TSD, DOE considered the remaining design options in the engineering analysis to achieve higher efficiency levels. See chapter 5 of the NOPR TSD for additional detail on the design options.

Joint Commenters encouraged DOE to reconsider the max-tech levels for certain product classes where there are models listed in the CCD that are more efficient than the ''max-tech'' levels in the March 2022 Preliminary TSD. (Joint Commenters, No. 22 at pp. 1–2) Joint Commenters added that this discrepancy is particularly large for the high-capacity continuous, remote condensing and remote compressor, air-cooled equipment. (*Id.* at p. 1)

DOE reconsidered the max-tech levels for all directly analyzed equipment classes and updated its engineering analysis in this NOPR based on stakeholder and manufacturer feedback, test data, and market information.

AHAM commented that, in their understanding, the existing standards for automatic commercial ice makers drove changes to ice shape, style, clarity, and chewability. (AHAM, No. 27 at p. 12) AHAM noted that clear, cube ice is an important consumer feature that may make higher efficiencies more difficult to achieve. (*Id.*)

As discussed in section IV.B of this document and chapter 4 of the NOPR TSD, DOE considers the impacts on product utility as part of the screening analysis. 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, that technology will not be considered further. DOE did not receive any comments in response to the March 2022 Preliminary Analysis specific to the screening analysis. When developing the baseline energy use discussed in section IV.C.1.a of this document, DOE analyzed clear, standard-sized cube style batch automatic commercial ice makers and nugget style continuous automatic commercial ice makers. Therefore, the efficiency levels presented in this NOPR are based on these ice characteristics.

AHAM commented that residential products will be restricted in available technology options, especially larger compressors and evaporators, because they are constrained by space, whether they be undercounter or portable; whereas commercial ice makers are floor or countertop mounted and have the ability to increase the appliance height to accommodate larger evaporators. (*Id.* at p. 12)

In this NOPR, DOE did not consider design options that expanded the size or footprint of an automatic commercial ice maker because automatic commercial ice makers are typically used in locations prioritizing smaller equipment footprints (*e.g.,* commercial kitchens) and larger cabinet sizes may adversely impact the availability of equipment with current sizes at a given harvest rate. DOE only considered increases to the size of remote condensers but limited remote condenser growth to the largest remote condenser currently available on the market in each equipment class.

Joint Commenters encouraged DOE to include an efficiency level that incorporates microchannel condensers with increased surface area for air-cooled, non-remote condensing automatic commercial ice makers to fully capture the potential energy savings from this design option. (Joint Commenters, No. 22 at p. 2)

Joint Commenters also pointed out that in DOE's March 2022 Preliminary Analysis, DOE shows small energy savings from replacing a tube-and-fin condenser with a microchannel condenser for non-remote condensing product classes, and stated their concern that by implementing a compact microchannel condenser design in these classes, DOE is underestimating the potential energy savings associated with this design. (*Id.*)

Joint Commenters stated that it understood that DOE could increase heat exchange area with a microchannel condenser without increasing the overall condenser size relative to the original component for non-remote condensing product classes. (*Id.* at pp. 2–3)

Joint Commenters also commented that they encouraged DOE to capture the larger potential energy savings by assuming a microchannel condenser that has increased surface area relative to the tube-and-fin condenser, while being no larger in overall dimensions than the original component. (*Id.,* at p. 3)

When analyzing the potential energy use reduction of microchannel condensers in automatic commercial ice makers, DOE assumed that the face area of the condenser would remain the same but that the heat transfer would increase by 25 percent due to the greater surface area in microchannel condensers when compared to tube and fin condensers. See chapter 5 of the NOPR TSD for additional information.

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 equipment, the availability and timeliness of purchasing the equipment on the market. The cost approaches are summarized as follows:

• Physical teardowns: Under this approach, DOE physically dismantles a commercially available equipment, component-by-component, to develop a detailed bill of materials for the equipment.

• Catalog teardowns: In lieu of physically deconstructing equipment, 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 both physical teardowns and catalog teardowns as well as feedback from manufacturers during interviews. See chapter 5 of the NOPR TSD for additional details.

DOE received several comments in response to the March 2022 Preliminary Analysis regarding the Cost Analysis.

AHRI requested input from DOE on what sections of manufacturer production costs require additional data for DOE to complete its analysis so industry can provide cost feedback. (AHRI, No. 21 at p. 4)

AHAM commented that in examining costs associated with amended standards, DOE does account for inflation, but it has done so using typical inflation rates. (AHAM, No. 27 at p. 13) AHAM noted that DOE must recognize that current inflation rates are much higher than is typical, and that DOE should account for the recent inflation spike in its analysis, which is significant and will likely impact purchases of products and manufacturer costs for a fairly long period of time. (*Id.*)

NAFEM commented that as it understands the results of the Engineering Analysis presented in Section 5.6 of the March 2022 Preliminary TSD, the cost-efficiency curves were developed, at least in part, based on 2015 costs that were adjusted to 2020 dollars. (NAFEM, No. 19 at p. 3) NAFEM suggested that using actual costs in 2022 provides a more sound analysis and would reflect the current economic situation of rising inflation and part shortage that has affected part costs. (*Id.*)

Hoshizaki requested that the data be reviewed for 2022 market conditions, considering that the last review was for 2019, prior to the pandemic. (Hoshizaki, No. 20 at p. 2) Hoshizaki added that part shortages and staff shortages have reduced part and inventory availability. (*Id.*) Hoshizaki also commented that for parts costs, the May 5, 2022, public meeting revealed that DOE simply converted 2015 estimates to 2020 dollar values. (*Id.* at p. 3) Hoshizaki recommended that DOE should update these values to reflect recent cost increases and inflation, given that the last 2 years have seen huge spikes in part, raw material, labor, and shipping costs among other factors that have affected the industry. (*Id.*) Hoshizaki commented that the data in the TSD does not adequately reflect current price gaps for efficient parts at 2022 prices, including compressors, fan motors, pump motors, and gear motors. (*Id.*)

AHRI commented that DOE's methodology of updating 2015 cost estimates to 2020-dollar values fails to account for supply chain shortages and labor market disruptions stemming from the COVID–19 pandemic, which has caused the cost of parts to outpace the historically high rates of inflation. (AHRI, No. 21 at p. 3) AHRI recommended that DOE should update the cost values based on 2022 prices for design options, including compressors, fan motors, pump motors, and gear motors. (*Id.*)

DOE updated its cost assumptions in this NOPR based on feedback provided by manufacturers in response to the March 2022 Preliminary Analysis and during manufacturer interviews. See chapter 5 of the NOPR TSD for additional details.

Additionally, Hoshizaki commented that baseline selling prices for equipment in Tables 8.2.3 and 8.2.4 are drastically low prices for machines. (Hoshizaki, No. 20 at p. 3) Hoshizaki commented that DOE should clarify how it can estimate a baseline price of $2,562 for a continuous ACIM between 800 and 4,000 pounds of daily ice capacity or $2,007 for a batch ACIM between 800 and 1,500 pounds of daily ice capacity. (*Id.*)

AHRI commented that automatic commercial ice makers with harvest rates between 800 and 4,000 lb/day have a baseline price of $2,562 for continuous and $2,007 for batch in the March 2022 Preliminary Analysis, which is not representative of the market. (AHRI, No. 21 at p. 3)

DOE developed the baseline costs for representative units based on physical teardown information. DOE has updated its costs based on manufacturer feedback and based on 2022 prices for materials and components.

AHRI commented that the new equipment categories were cited by DOE as some of the lowest cost, and that increasing efficiency will require a disproportionate increase in cost or reduction in performance/features/capacity. (*Id.* at p. 9)

DOE directly analyzed three low-capacity automatic commercial ice maker classes and conducted testing and teardowns in each as discussed in section IV.C.1.a of this document. Therefore, DOE has tentatively determined that the low-capacity automatic commercial ice maker classes are representative of the market costs and efficiency levels.

Hoshizaki and NAFEM commented that the analysis in the March 2022 Preliminary Analysis shows only a minimal increase for changing from non-flammable refrigerant to flammable refrigerant, and that the analysis should consider increased cost for spark-resistant components, cost for agency testing to approve use of new refrigerants, and costs associated with changing production areas to accommodate flammable refrigerant safety requirements. (Hoshizaki, No. 20 at p. 3; NAFEM, No. 19 at p. 3) Hoshizaki added that it is happy to review with DOE the costs incurred when changing its refrigerator and freezer manufacturing lines for use with R–290, and that with more flammable refrigerant use soon for automatic commercial ice makers, a full analysis would be beneficial. (Hosizaki, No. 20 at p. 3)

PEG commented that additional testing and certification requirements only increase the cost of the equipment that must be passed on to the buyer increasing inflationary pressure already running rampant in our economy. (PEG, No. 28 at p. 1)

DOE included the costs for spark-proof components in the baseline costs in classes where R–290 or R–600a was included in the baseline. As discussed in section IV.C.1.a of this document, the equipment costs and manufacturer investments required to comply with the December 2022 EPA NOPR will be in effect prior to the time of compliance for the proposed amended DOE ACIM standards. See section V.B.2.e of this document for a discussion on how DOE incorporated the costs associated with retrofitting manufacturing facilities for flammable refrigerants.

The CA IOUs commented that top efficiency levels usually include integrating a drain water heat exchanger, which adds significant manufacturing costs. (CA IOUs, No. 18 at p. 6) Also, the CA IOUs acknowledged also the price volatility in the electronically commutated motor (ECM) market due to supply chain disruptions caused by the coronavirus pandemic, but stated that these are short-term fluctuations and should be ignored, given the long-term horizon of DOE's analysis. (*Id.*)

NAFEM requested information on how the cost information was obtained. (NAFEM, No. 19 at p. 3) NAFEM commented that it understands that commercially available ECM condenser fan motors can cost $150 to $200 more than permanent split capacitor (PSC) condenser fan motors. (*Id.*) NAFEM stated that this is an order of magnitude higher than the cost differential DOE shows on the table between these two design options. (*Id.*)

DOE updated its motor cost assumptions in this NOPR based on feedback provided by manufacturers in response to the March 2022 Preliminary Analysis and during manufacturer interviews. See chapter 5 of the NOPR TSD for additional details.

DOE seeks comment on the method for estimating manufacturing production costs.

3. Cost-Efficiency Results

The results of the engineering analysis are reported as cost-efficiency data (or ''curves'') in the form of energy use (in kWh/100 lb) versus manufacturer selling price (MSP) (in dollars). DOE generated cost-efficiency curves for the directly analyzed equipment classes based on overall ACIM MPCs. DOE generally ordered design options beyond the baseline based on cost-effectiveness. The methodology for developing the curves started with determining the energy use for baseline equipment and MPCs for this equipment. Above the baseline, DOE implemented design options using the ratio of cost to energy savings and implemented only one design option at each level. Design options were implemented until all available technologies were employed (*i.e.,* at a max-tech level). See TSD chapter 5 for additional details on the engineering analysis and complete cost-efficiency results.

In response to the March 2022 Preliminary Analysis, the CA IOUs commented that DOE's analysis shows the added manufacturing cost to implement the efficiency features considered in ELs 3–4 is relatively low, and that these improvements result in significant energy savings. (CA IOUs, No. 18 at p. 6) The CA IOUs commented also that for self-contained machines and ice-making heads under 700 lb/day, these features include upgrading from R404a to R290 refrigeration systems, which are proven to be 20 to 30 percent more efficient. (*Id.*) The CA IOUs stated that shaded pole motor (SPM) to PSC condenser fan motor upgrades are very cost effective for all machines, and for larger machines, PSC to ECM condenser fan motor upgrades are more cost effective. (*Id.*) The CA IOUs commented that SPM to PSC auger motor upgrades for water-cooled machines are very cost effective, and PSC to ECM auger motor upgrades are more cost effective for larger machines. (*Id.*) The CA IOUs added that ELs 3 and 4 for almost all categories are very cost-effective, and in some product classes, even higher ELs are highly cost-effective, leading to a net benefit for most consumers. (*Id.*) The CA IOUs concluded that they agree with DOE's analysis showing ELs 3–4 as very cost effective. (*Id.*)

4. Manufacturer Selling Price

To account for manufacturers' non-production costs and profit margin, DOE applies a multiplier (the manufacturer markup) to the MPC. The resulting MSP is the price at which the manufacturer distributes a unit into commerce. DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (SEC) 10–K reports [36] filed by publicly traded manufacturers whose combined product range includes automatic commercial ice makers. See section IV.J.2.d of this document or chapter 12 of the NOPR TSD for additional detail on the manufacturer markup.

In response to the March 2022 Preliminary Analysis, AHRI suggested that DOE reach out to manufacturers of the new low-capacity equipment to determine a more accurate manufacturer markup. (AHRI, No. 21 at p. 9) Scotsman commented also on the 1.25 manufacturer markup used in the March 2022 Preliminary Analysis. Scotsman stated that the manufacturer markup

[36] U.S. Securities and Exchange Commission, *Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.* Available at *www.sec.gov/edgar/search/* (last accessed December 15, 2022).

was not substantiated by current data and that estimates of past financial data was not reflective of the current economy and should not be used in the development of regulations. (Scotsman, No. 30 at p. 9)

DOE interviewed manufacturers accounting for approximately 69 percent of covered ACIM shipments and 57 percent of low-capacity shipments. Based on feedback from confidential interviews, in this NOPR DOE maintained the 1.25 industry average markup for all equipment classes, including the new proposed low-capacity equipment classes. DOE recognizes that this estimate may not represent an individual company's manufacturer markup. Industry feedback indicates that manufacturer markups vary based on a range of factors, including its marketed end-use (*i.e.,* residential versus commercial). However, as low-capacity classes are not delineated by end-use, DOE used market share weights to calculate the 1.25 industry average. See section IV.J.2.d of this document or chapter 12 of the NOPR TSD for additional details.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin.

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.[37]

For automatic commercial ice makers, the main parties in the distribution chain are manufacturers, wholesalers, and mechanical contractors.

[37] Because the projected price of standards-compliant equipment 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.

In response to the March 2022 Preliminary Analysis, AHRI commented that low-capacity equipment classes have different distribution channels and buying patterns compared to large capacity ACIM equipment, and that DOE should analyze these sets of consumers differently. (AHRI, No. 21 at p. 9)

DOE's mark-up analysis assumes a portion of the automatic commercial ice makers are purchased through wholesalers and a portion are purchased via mechanical contractors.

DOE relied on economic data from the U.S. Census Bureau to estimate average baseline and incremental markups.

DOE received no other comments related to markups in the distribution chain in response to the March 2022 Preliminary Analysis.

Chapter 6 of the NOPR TSD provides details on DOE's development of markups for automatic commercial ice makers.

E. Energy and Water Use Analysis

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

DOE received several comments in response to the March 2022 Preliminary Analysis regarding the Energy Use and Water Use Analysis.

1. Ice Storage

The Joint Commenters encouraged DOE to evaluate potential standards that include the energy use associated with ice storage. (Joint Commenters, No. 22 at p. 3) The Joint Commenters commented that the effectiveness of a storage bin at keeping ice cold has an indirect impact on the energy use of an automatic commercial ice maker. (*Id.*) The Joint Commenters stated that a bin that is well-insulated, meaning it has a relatively slow melt of the stored ice, will reduce the frequency of ice replacement cycles (*i.e.,* when the automatic commercial ice maker is actively using energy to make and harvest ice). (*Id.*)

In the November 2022 Test Procedure Final Rule, DOE determined that the measurement of active mode energy use, when an ice maker is actively producing ice, and the metric of energy use per 100 pounds of ice represent a repeatable and reproducible test method that is reasonably designed to produce test results which reflect energy use during a representative average use cycle. 87 FR 65856, 65888. Therefore, DOE did not amend its test procedures to account for standby or ice storage energy use. *Id.*

DOE determined that the contribution of any standby mode energy use to overall energy use can vary significantly depending on the specific installation and end use of the automatic commercial ice maker. *Id.* at 87 FR 65887. Because automatic commercial ice makers may be installed and operated in a range of end uses (*e.g.,* commercial kitchens, offices, schools, hospitals, hotels, and convenience stores), determining the performance based on the metric of energy use per 100 pounds of ice during an automatic ice makers active mode best reflects energy efficiency, energy use, or estimated annual operating cost of a given type of covered equipment during a representative average use cycle while not being unduly burdensome to conduct, consistent with 42 U.S.C. 6314(a)(2). *Id.* at 87 FR 65887–65888.

DOE also determined that IMHs and RCU ice makers are typically paired in the field with a storage bin chosen by the end user, rather than the manufacturer, which can result in IMHs and RCU ice makers paired with storage bins from a different manufacturer. *Id.* at 87 FR 65888. DOE acknowledged that self-contained ice makers contain a storage bin that is integral to the automatic commercial ice maker. *Id.* However, the energy use associated with ice storage of all automatic commercial ice makers, including self-contained ice makers, can vary significantly depending on the specific installation and end use of the automatic commercial ice maker. *Id.*

Consistent with the November 2022 Test Procedure Final Rule, DOE has not included ice storage as a design option in this analysis because the DOE test procedure at 10 CFR 431.134 measures the ACIM equipment energy use during the active mode. Therefore, the energy use analysis in this document did not account for an indirect energy use (or savings) from ice storage in this analysis.

2. Scaling

In the March 2022 Preliminary Analysis, DOE stated that, for non-representative equipment classes, DOE scaled the energy values from representative equipment classes (*see* Chapter 9 of the March 2022 Preliminary Analysis TSD). In response, Scotsman commented that energy use values cannot be scaled for low-capacity ACIM equipment, as design and construction of these products are not intended for the same applications as large capacity ACIM equipment. (Scotsman, No. 30 at p. 9)

DOE did not scale energy use for low-capacity ACIM equipment. DOE developed an engineering analysis for low-capacity ACIM equipment. The energy use analysis utilized harvest rates and efficiency level data from the engineering analysis.

3. Harvest Rate

In response to the March 2022 Preliminary Analysis, AHAM commented that, due to lack of testing of low-capacity equipment, DOE's modeling does not account for the fact that the harvest cycle is not predictable and does not lead to predictable results. (AHAM, No. 27 at pp. 12–13) In addition, Scotsman stated that the performance (harvest rate and efficiency) of automatic commercial ice makers varies with electrical, environmental, and ambient conditions. (Scotsman, No. 30 at p. 5)

DOE analyzed low-capacity units and determined the harvest rate in the engineering analysis. DOE's analysis within the engineering analysis utilizes the ACIM test procedure. The test procedure exists to standard testing variation related to electrical, environmental, and ambient conditions. Using the ACIM test procedure processes to develop the engineering analysis allows for a direct comparison of units. The energy and water use analysis incorporates a representative harvest cycle for low-capacity ice makers.

The automatic commercial ice maker test procedure addresses variability to ACIM performance and acceptable tolerances for testing ACIM equipment (10 CFR 431.134). For the energy use analysis, DOE relies on the harvest rate and efficiency developed as part of the Engineering Analysis (*see* section IV.C of this document).

4. Duty Cycle

In response to the March 2022 Preliminary Analysis, Scotsman stated that the annual energy usage analysis did not reflect the overall application of automatic commercial ice makers. Scotsman stated that utilization factors varied across the applications of automatic commercial ice makers. (Scotsman, No. 30, p. 5)

In the January 2015 Final Rule, DOE discussed a review of utilization factors for ACIM equipment including comments submitted by manufacturers and other organizations. In the January 2015 Finale Rule, DOE utilized a 42 percent capacity factor to estimate energy usage for the LCC and NIA models. 80 FR 4646, 4696. DOE notes that terms ''capacity factor'' in the January 2015 ACIM Final Rule, ''utilization factor'' in Scotsman's comment, and, ''duty cycle'' in this ''NOPR'' are all the same functions, just different terms.

GEA stated that low-capacity ACIM equipment, and particularly portable ACIM, have intermittent use at times. GEA suggested that the use should be factored into standards for this equipment. (GEA, No. 31, p. 2)

During the May 5, 2022, public meeting, Welbilt acknowledged the 42 percent utilization rate. Welbilt did not suggest that 42 percent was incorrect for large-capacity ACIM equipment. However, Welbilt stated that for low-capacity ACIM equipment, and specifically portable ACIM, a lower utilization rated is more appropriate. (Public Meeting Transcript, No. 25 at pp. 37–38)

Whirlpool commented that the energy savings potential of low-capacity ACIM equipment is greatly over-exaggerated and cited lower estimated daily ice usage for such products. (Whirlpool, No. 26 at p. 3)

AHRI commented that some of these low-capacity ACIM equipment may be considered ''residential,'' which would result in different operating and utilization characteristics. (AHRI, No. 21 at p. 2) AHRI added that residential equipment is not appropriately addressed in the March 2022 Preliminary TSD and has different consumer purchasing habits, as utilization rates would likely be an order of magnitude lower than commercial equipment, which affects the purchase behavior of consumers. (AHRI, No. 21 at p. 7) AHRI requested that DOE show how it obtained a utilization factor for residential equipment and consumer purchase behavior for this type of equipment. (*Id.*) AHRI commented that behaviors, use cases, and run time/duty cycle of low-capacity ACIM equipment may be different from larger ACIM equipment. (*Id.* at p. 9) Additionally, AHRI stated in a comment related to consumer subgroups, that low-capacity ACIM equipment (residential consumers) operate ACIM equipment oftentimes below 10 percent utilization in contrast to the 42 percent applicable to large-capacity ACIM equipment. (*Id.*)

DOE could not find published research on the duty cycle of low-capacity ACIM equipment. However, DOE's review of low-capacity ACIM equipment found most marketing literature claiming the equipment made ice frequently (less than 10 minutes). DOE inquired about duty cycle for low-capacity ACIM equipment as part of the MIA interview process. DOE received responses of 10–20 percent utilization for low-capacity ACIM equipment. Therefore, in this NOPR energy use analysis, DOE used a duty cycle of 14 percent for low-capacity ACIM equipment.

In the March 2022 Preliminary Analysis, DOE used a flat duty cycle (42 percent) for all equipment classes as well as efficiency levels in all building types. In the energy use analysis for this NOPR, DOE used a nominal value of 42 percent for duty cycle for large-capacity ACIM equipment and 14 percent for low-capacity ACIM equipment. However, DOE varied the duty cycle in the Monte Carlo analysis portion of the LCC analysis. Varying duty cycle as part of the Monte Carlo analysis varies the energy use of the automatic commercial ice makers.

5. Low-Capacity ACIM Equipment

In response to the March 2022 Preliminary Analysis, Whirlpool commented that the energy savings potential of low-capacity ACIM equipment is greatly over-exaggerated, citing lower estimated daily and annual ice usage compared to commercial ice makers and the low annual shipments of these products. (Whirlpool, No. 26 at pp. 3–4) Whirlpool stated that these are niche product in the U.S. market, and nowhere close to a majority of households own one of these appliances, and, therefore the national energy savings potential will be small from such a low number of annual shipments. (*Id.*)

DOE addresses national energy savings and shipments of low-capacity ACIM equipment in other sections of this document. DOE calculated the energy and water use of all ice makers (regardless of capacity) on the applicable harvest rate of the representative ice maker and the related energy use numbers of the baseline and efficiency levels.

6. Water Use

In response to the March 2022 Preliminary Analysis, AHAM noted that DOE did not plan to develop standards for potable water use for low-capacity ice makers. (AHAM, No. 27 at p. 13) AHAM agreed that DOE should not develop standards for potable water use, given that not only are the residential products used infrequently, but portable ice makers in particular are not plumbed in. (*Id.*) Moreover, AHAM noted that limits on potable water usage would negatively impact a product's ability to make clear, cube ice, which is a key consumer utility for many residential ice makers. (*Id.*)

Consistent with the March 2022 Preliminary Analysis, DOE does not plan to develop standards for potable water use for low-capacity makers in this NOPR. However, DOE does account for potable water use (where applicable) of the automatic commercial ice makers in this analysis.

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 automatic commercial ice makers. 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 equipment 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 automatic commercial ice makers in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

Inputs to the calculation of total installed cost include the cost of the equipment—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, equipment lifetimes, and discount rates. DOE created distributions of values for equipment 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 ACIM user samples. For this rulemaking, the Monte Carlo approach is implemented in MS Excel together with the Crystal Ball™ add-on.[38] The model calculated the LCC for equipment at each efficiency level for 10,000 consumers 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, equipment efficiency is chosen based on its probability. If the chosen equipment 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.

In the March 2022 Preliminary Analysis, DOE stated that the Monte Carlo 10,000 simulations have an assumption that consumers purchase equipment at least as efficient as the ones they would purchase in the absence of standards. DOE sought comment on this assumption.

In response to this request for comment, Scotsman stated that consumers are not significantly influenced by energy efficiency claims. Consumers select automatic commercial ice makers based on cost and ice production as a function of space, and reliability. (Scotsman, No.30 at p. 6)

DOE agrees that consumers select automatic commercial ice makers based on cost, ice production, and other parameters. Although Scotsman states that consumers are not significantly influenced by energy efficiency claims, neither Scotsman nor any other commenter disputed the assumption that consumers would purchase equipment at least as efficient as the ones they would purchase in the absence of standards. Therefore, DOE retained this buying strategy when DOE analyzed LCC and PBP of ACIM consumers.

DOE calculated the LCC and PBP for consumers of automatic commercial ice makers 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 automatic commercial ice makers manufactured 3 years after the date on which any new or amended standard is published. (42 U.S.C. 6313(d)(2)B)(i)) At this time, DOE estimates publication of a final rule in 2024. Therefore, for purposes of its analysis, DOE used 2027 as the first year of compliance with any amended standards for automatic commercial ice makers.

DOE requested comment in the March 2022 Preliminary Analysis regarding how DOE presents the average LCC savings, and the percent of consumers affected by a standard using no-new-standards-case and standards-case efficiency distributions. In response, Scotsman stated that the LCC savings estimates are not reflective of the current economic environment and are unsubstantiated by current data. (Scotsman, No. 30 at p. 7)

DOE agrees that the LCC and related savings do not directly reflect the current economic environment, but rather a mixture of current data and a purchase in the first year of compliance of a new or amended standard. Again, the LCC and PBP calculations are based on a purchase of the ACIM equipment in 2027, the estimated first year of compliance with any amended standards. The LCC and PBP calculations use current data (*i.e.,* equipment costs, energy costs, water costs, etc.) and determine the life-cycle costs of equipment purchased in 2027.

Table IV.9 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

[38] Crystal Ball™ is a commercially available software tool to facilitate the creation of these types of models by generating probability distributions and summarizing results within Excel, available at *www.oracle.com/technetwork/middleware/crystalball/overview/index.html* (last accessed January 15, 2023).

and PBP analyses, are contained in chapter 8 of the NOPR TSD and its appendices.

TABLE IV.9—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to project product costs.
Installation Costs	Baseline installation cost determined with data from RS Means. Assumed no change with efficiency level.
Annual Energy Use	The total annual energy use multiplied by the hours per year. Average number of hours based on field data. Variability: Based on the 2018 CBECS.
Energy and Water Prices	Electricity: Based on EIA's Form 861 data for 2021. Variability: Energy prices vary by state. Water: Based on 2021 American Water Works Association Water and Wastewater Rate survey data. Variability: Water prices vary by state.
Energy and Water Price Trends	Electricity: Based on *AEO2022* price projections. Variability: Regional energy price trends determined for 9 regions. Water: Based on 2021 American Water Works Association Water and Wastewater Rate survey data. Variability: Water price trends vary by state.
Repair and Maintenance Costs	May vary by efficiency level.
Product Lifetime	Average: 8.5 years except 7.5 years for low-capacity automatic commercial ice makers.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered equipment, or might be affected indirectly. Primary data source was Damodaran Online.
Compliance Date	2027.

* Not used for PBP calculation. References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPR TSD.

In response to the March 2022 Preliminary Analysis regarding equipment costs, AHRI commented that the costs included in DOE's assumptions do not reflect current market realities, as noted by AHRI's comments related to consumer purchases and lifetime modeling of low-capacity ACIM equipment. (AHRI, No. 21, p. 7)

DOE addresses low-capacity ACIM equipment lifetime and consumer purchases in the applicable sections in this document.

In the March 2022 Preliminary Analysis, DOE requested comment on the overall methodology and results of the LCC and PBP analyses (Executive Chapter of the March 2022 Preliminary Analysis TSD). In response to that request, Scotsman made five comments, which DOE responds to in turn.

First, Scotsman stated that the LCC and PBP analyses underestimate equipment cost increases associated with material, component, and labor costs in the current economic environment. (Scotsman, No. 30 at p. 7)

DOE acknowledges the comment from Scotsman but disagrees with the statement that the LCC and PBP analyses underestimate equipment cost increases associated with material, component, and labor costs because the LCC and PBP are from the consumer's perspective. Equipment costs are developed in the Engineering Analysis and not in either the LCC or PBP analyses.

Second, Scotsman stated that LCC and PBP analyses overestimate the total efficiency savings opportunity associated with the market size for automatic commercial ice makers. (*Id.*)

DOE acknowledges the comment from Scotsman but disagrees with the statement that the LCC and PBP analyses overestimate the total efficiency opportunity associated with the market size because the LCC and PBP are from the consumer's perspective. The LCC and PBP analyses utilize efficiency data from the engineering analysis. Further, the LCC and PBP do not factor in market size other than when calculating a weighted average output of LCC and PBP results.

Third, Scotsman stated that LCC and PBP analyses underestimate capital requirements to accommodate the technology options proposed. (*Id.*)

Again, DOE acknowledges the comment from Scotsman but disagrees with the statement that the LCC and PBP analyses underestimate capital requirements because the LCC and PBP analyses are from the consumer's perspective. Capital requirements would be addressed in the MIA, or potentially in the Engineering Analysis, and not in either the LCC or PBP analyses.

Fourth, Scotsman stated that LCC and PBP analyses underestimate warranty increases that accompany the launch of the proposed technology options. (*Id.*)

DOE acknowledges the comment from Scotsman but disagrees with the statement that the LCC and PBP analyses underestimate warranty increases that accompany the launch of the proposed technology option because the LCC and PBP analyses are from the consumer's perspective. DOE does not factor in the either the purchase of a warranty or the use of warranty in the LCC and PBP analyses. As this comment might relate to the expense of warranty supported by manufacturer, that expense would be addressed in the MIA and not in either the LCC or PBP analyses.

Finally, Scotsman stated that LCC and PBP analyses do not include accurate estimates for opportunity cost loss by developing and producing equipment without requested technology or features. (*Id.*)

DOE acknowledges the comment from Scotsman but disagrees with the statement that the LCC and PBP analyses do not include accurate estimates for opportunity loss for developing/producing equipment because the LCC and PBP analyses are from the consumer's perspective. Costs to develop or produce equipment are addressed in the MIA, or potentially in the Engineering Analysis, and not in either the LCC or PBP analyses.

1. Equipment Cost

To calculate consumer equipment 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 equipment and higher-efficiency equipment because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency equipment.

Automatic commercial ice makers are comprised of different components. DOE's research indicates future flat prices for most of the components. DOE included future price reductions for semiconductor and similar technologies. Semiconductor technology price learning applies to efficiency levels that include design options with ECMs (including condenser fan motor, pump motor, and auger motor). Price learning applies to a proportion of the ECM cost representing the semiconductor technology.

Some variable-speed compressors have price-learning. However, automatic commercial ice makers do not utilize variable-speed compressors. Therefore, DOE did not apply price learning to compressor components in ACIM equipment.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE used data from RS Means to estimate the baseline installation cost for automatic commercial ice makers. DOE found no evidence to suggest that installation costs would be affected by increased efficiency levels. In the March 2022 Preliminary Analysis, DOE used the same installation cost for the baseline and increased efficiency level equipment.

In response to this approach in the March 2022 Preliminary Analysis, Scotsman stated that including larger condensing options could negatively affect the installation cost by efficiency level. (Scotsman, No. 30 at p. 6) Scotsman explained that some components considered as a design option may prevent the new ACIM equipment from being installed in the current location/application. (*Id.*) Scotsman suggested that a building or installation modification may be necessary for larger products. (*Id.*) Further, Scotsman stated that some options for remote condensing applications may not be compatible with existing building rooftop structural designs. (*Id.*) Scotsman concluded by stating their concerns that these design options could negatively affect LCC or PBP. (*Id.*)

DOE's engineering analysis indicates that design options considered would not change either ACIM equipment size or weight significantly. See Engineering Analysis (section IV.C.1.b of this document) for additional discussion. Therefore, for this NOPR, DOE utilized the same installation costs for the baseline and the considered efficiency levels.

DOE received no other comments in response to the March 2022 Preliminary Analysis related to installation costs.

Therefore, in this NOPR, DOE used the same installation costs for the baseline and increased efficiency level equipment.

3. Annual Energy Consumption

For each sampled commercial building, DOE determined the energy consumption for automatic commercial ice makers at different efficiency levels using the approach described previously in section IV.E of this document.

4. Energy Prices

Because marginal electricity price more accurately captures the incremental savings associated with a change in energy use from higher efficiency, marginal electricity price provides a better representation of incremental change in consumer costs than average electricity prices. Therefore, DOE applied average electricity prices for the energy use of the equipment purchased in the no-new-standards case, and marginal electricity prices for the incremental change in energy use associated with the other efficiency levels considered.

DOE derived electricity prices from the EIA energy price data by sector, by state, by provider (EIA Form 861) for average electricity price data for the commercial and industrial sectors. DOE used projections of these electricity prices for commercial and industrial consumers to estimate future energy prices in the LCC and PBP analysis. EIA's *AEO2022* was used as the source of projections for future electricity prices.

For this NOPR analysis, DOE used *AE02022* which was current for the analysis phase. However, near the time of publication of the NOPR, EIA released *AEO2023.* DOE plans to shift to *AEO2023* in the final rule analysis. A preliminary review of the electricity prices in *AEO2023* indicates lower electricity prices than *AEO2022* in the reference case. Lower electricity prices could reduce the life-cycle savings and affect the related payback period calculations. DOE will update other variables and data sets in the final rule analysis in addition to the use of *AEO2023,* as well as incorporate feedback from commenters.

DOE developed 2021 commercial retail electricity prices for each state and the District of Columbia based on EIA Form 861. 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.[39] To estimate price trends after 2050, the 2041–2050 average was used for all years. DOE used EIA's 2018 Commercial Building Energy Consumption Survey (CBECS 2018) to determine the difference in commercial energy prices by building type. DOE applied the ratio of a specific building type's electricity prices to average commercial electricity prices in the LCC and PBP analysis.

DOE's methodology allows electricity prices to vary by sector, region, and building type. In the analysis, variability in electricity prices is chosen to be consistent with the way the consumer economic and energy use characteristics are defined in the LCC analysis.

DOE used a similar process to determine energy and water prices in the March 2022 Preliminary Analysis. DOE did not receive any comments related to determining energy prices in response to the March 2022 Preliminary Analysis.

See chapter 8 of the NOPR TSD for details on this analysis.

5. Water Prices

DOE obtained data on water and wastewater prices from the 2021 American Water Works Association (AWWA) surveys for this analysis.[40] For each state and the District of Columbia, DOE combined all individual utility observations within the state to develop one value for water and wastewater service. Because water and wastewater charges are frequently tied to the same metered commodity values, DOE combined the prices for water and wastewater into one total dollar per thousand gallons figure. This figure is referred to as the combined water price.

[39] EIA. Annual Energy Outlook 2022 with Projections to 2050. Washington, DC. Available at *www.eia.gov/forecasts/aeo/* (last accessed January 24, 2023).

[40] Available at *engage.awwa.org/PersonifyEbusiness/Store/Product-Details/productId/103665535.*

DOE used the consumer price index (CPI) data for water related consumption (1974–2021) in developing a real growth rate for combined water price forecasts.

This approach was similar to the one DOE used to determine water prices in the March 2022 Preliminary Analysis. However, DOE updated the underlying water price data between the March 2022 Preliminary Analysis and this NOPR. DOE did not receive any comments related to water prices in in response to the March 2022 Preliminary Analysis.

Chapter 8 of the NOPR TSD provides more detail about DOE's approach to developing water and wastewater prices.

6. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the equipment. Typically, small incremental increases in equipment efficiency entail no, or only minor, changes in repair and maintenance costs compared to baseline efficiency equipment.

In response to the March 2022 Preliminary Analysis seeking comment regarding repair and maintenance costs, AHRI commented that microchannel features are impossible to repair and would increase costs due to the need for replacement. AHRI also noted that portable repair is not feasible in many cases. (AHRI, No. 21 at p. 6)

DOE agrees that portable repair may be a challenge. DOE does not include repair costs in the LCC analysis for the portable low-capacity units. As a result of the lower repair rates for this equipment, DOE assumes a lower life for the portable low-capacity units.

In response to the March 2022 Preliminary Analysis, Scotsman stated that repair and maintenance costs and frequency would increase with alternative condensing options. (Scotsman, No. 30 at p. 6) Scotsman commented that increased fin configuration could result in an increase in cleaning to maintain performance. (*Id.*) Scotsman also stated that the higher cost compressors and motors would increase the acquisition cost of replacement parts. (*Id.*) Scotsman suggested that some of these design options would negatively affect LCC and PBP. (*Id.*)

DOE agrees that each of the design options could affect the LCC of the ACIM equipment. DOE used the cost of design option component and a 2.5 markup for replacement parts in the LCC analysis. The LCC and related PBP analyses reflected changes in servicing as a result of each of the design options considered.

7. Equipment Lifetime

In the January 2015 Final Rule, DOE used lifetime estimates of 8.5 years. 80 FR 4646, 4700–4701. For the March 2022 Preliminary Analysis, DOE used the same lifetime estimates of 8.5 years (*see* chapter 8 of the March 2022 Preliminary Analysis TSD). DOE had requested feedback on the value of 8.5 years in the September 2020 RFI. 85 FR 60922, 60925. In response to the September 2020 ACIM RFI, AHRI and Hoshizaki both agreed that 8.5 was appropriate lifetime for all ACIM equipment classes. (AHRI, No. 4 at p. 4; Hoshizaki, No. 7 at p. 3) In the March 2022 Preliminary Analysis, DOE included some additional new equipment classes than the 2015 ACIM final rule. DOE assumed a lifetime of 8.5 years for all of the equipment classes analyzed in the March 2022 Preliminary Analysis (*see* chapter 8 of the March 2022 Preliminary Analysis TSD).

In response to the March 2022 Preliminary Analysis, AHRI stated that low-capacity automatic commercial ice makers would have a shorter lifetime in residential applications/end uses. AHRI also referenced a lifetime of 7.5 years for portable ice makers that DOE assumed in the previous 2014 MREF Preliminary Analysis. (AHRI, No. 21, p. 7) DOE received no other comments related to equipment lifetime in response to either the September 2020 RFI or the March 2022 ACIM Preliminary Analysis.

In response to AHRI's comment related to other analyses, DOE reviewed the 2014 March MREF Preliminary Analysis. (Docket No. EERE–2011–BT–STD–0043, No. 24) In the 2014 March MREF Preliminary Analysis, DOE was unable to determine a definitive lifetime for low-capacity automatic ice makers because of the young age of the equipment on the market. (Docket No. EERE–2011–BT–STD–0043, No. 24 at pp. 8–14; 9–8) DOE subsequently modeled an estimate as well as used the life of residential compact freezers as a proxy for these types of ice makers. In the 2014 March MREF Preliminary Analysis, DOE used a lifetime of both 7.5 and 8.0 years for these ice makers. (EERE–2011–BT–STD–0043, No. 43, No. 24 at pp. 8–14; 9–8)

DOE conducted additional research into icemaker lifetime in response to AHRI. Many of the components of low- and high-capacity automatic commercial ice makers will be similar or the same. Therefore, lifetime should not significantly differ between low- and high-capacity units. However, regular maintenance plays a critical role in prolonging ACIM lifetime. DOE assumes that low-capacity ice makers may not be maintained with the same frequency as high-capacity ice makers. Therefore, this NOPR analysis retains the 8.5-year lifetime for automatic commercial ice makers with a capacity of 100 lb/day and greater and a 7.5-year lifetime for equipment for commercial ice makers with a capacity lower than 100 lb/day.

See chapter 8 of the NOPR TSD for further details on the development of equipment lifetime.

8. Discount Rates

The discount rate is the rate at which future expenditures are discounted to establish their present value. In the calculation of LCC, DOE determined the discount rate by estimating the cost of capital for purchasers of automatic commercial ice makers. Most purchasers use both debt and equity capital to fund investments. Therefore, for most purchasers, the discount rate is the weighted average cost of debt and equity financing, or the weighted average cost of capital (WACC), less the expected inflation.

To estimate the WACC of automatic commercial ice maker purchasers, DOE used a sample of nearly 1,200 companies grouped to be representative of operators of each of the commercial business types (health care, lodging, foodservice, retail, education, food sales, and offices) drawn from a database of 6,177 U.S. companies presented on the Damodaran Online Data Sets. This database includes most of the publicly-traded companies in the United States. The WACC approach for determining discount rates accounts for the current tax status of individual firms on an overall corporate basis. DOE did not evaluate the marginal effects of increased costs, and, thus, depreciation due to more expensive equipment, on the overall tax status.

DOE used the final sample of companies to represent purchasers of automatic commercial ice makers. For each company in the sample, DOE combined company-specific information from the Damodaran Online Data Sets, long-term returns on the Standard & Poor's 500 stock market index, nominal long-term Federal government bond rates, and long-term inflation to estimate a WACC for each firm in the sample.

For most educational buildings and a portion of the office buildings and cafeterias occupied and/or operated by public schools, universities, and State and local government agencies, DOE estimated the cost of capital based on a 40-year geometric mean of an index of long-term tax-exempt municipal bonds (≤20 years). Federal office space was assumed to use the Federal bond rate, derived as the 40-year geometric average of long-term (≤10 years) U.S. government securities.

DOE used the same approach to determine discount rates for the March 2022 Preliminary Analysis. DOE did not receive any comments related to discount rates in relation to the March 2022 Preliminary Analysis.

See chapter 8 of the NOPR TSD for further details on the development of consumer discount rates.

9. 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 equipment efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards).

To estimate the energy efficiency distribution of automatic commercial icemakers for 2027 (first year of the analysis period), DOE conducted general internet searches and examined manufacturer literature to understand the characteristics of the ice makers currently offered on the market. The estimated market shares for the no-new-standards case for automatic commercial ice makers are shown in Table IV.10. The efficiency level distribution values were developed by a review of the CCD.[41] DOE sorted the portion of equipment in CCD that corresponds with energy use values from the engineering analysis. For equipment classes not listed in CCD, DOE assumed an even distribution among the efficiency levels analyzed.

TABLE IV.10—EFFICIENCY LEVEL DISTRIBUTION WITHIN EACH EQUIPMENT CLASS IN NO-NEW-STANDARDS CASE FOR AUTOMATIC COMMERCIAL ICE MAKERS

Equipment class	EL 0 (%)	EL 1 (%)	EL 2 (%)	EL 3 (%)	EL 4 (%)	EL 5 (%)	EL 6 (%)	EL 7 (%)
B–IMH–W (≥300 and <785)	37	11	0	52	0	0	0	0
B–IMH–W (≥785 and <1,500)	66	21	0	13	0	0	0	0
B–IMH–A (≥300 and <727)	24	0	12	0	30	0	34	0
B–IMH–A (≥727 and <1,500)	84	1	10	0	3	0	1	0
B–RC(NRC)–A (≥988 and <4,000)	20	0	36	0	0	0	43	0
B–SC–A (Portable ACIM) (≤38)	67	11	11	11	0	0	0	0
B–SC–A (Refrigerated Storage ACIM)	82	6	6	6	0	0	0	0
B–SC–A (≤50)	30	10	10	10	10	10	10	10
B–SC–A (>50 and <134)	71	2	2	2	2	0	22	0
B–SC–A (≥200 and <4,000)	91	0	0	0	4	0	4	0
C–IMH–W (>50 and <801)	91	0	9	0	0	0	0	0
C–IMH–A (≥310 and <820)	40	2	18	5	0	35	0	0
C–RC&RC–A (≥800 and <4,000)	50	17	0	0	0	33	0	0
C–SC–A (>50 and <149)	92	0	0	0	0	8	0	0
C–SC–A (≥149 and <700)	71	0	18	0	0	10	0	0

The LCC Monte Carlo simulations draw from the efficiency distributions and randomly assign an efficiency to the automatic commercial ice makers purchased by each sample buildings in the no-new-standards case. The resulting percent shares within the sample match the market shares in the efficiency distributions.

The efficiency level distribution described here is the same approach used in the March 2022 Preliminary Analysis.

In response to the March 2022 Preliminary Analysis, Scotsman commented that manufacturers are implementing new refrigerants into refrigerant systems capable of making and harvesting ice as result of efforts by EPA related to HFC refrigerants. Scotsman stated that this change in refrigerants would create a dynamic efficiency distribution until 2036. (Scotsman, No. 30 at p. 8) AHRI and Hoshizaki commented that due to changing refrigerants required under existing EPA regulations, they do not believe that efficiency distributions will be fixed in the next several years. (AHRI, No. 21 at p. 8; Hoshizaki, No. 20 at p. 4) Both AHRI and Hoshizaki stated that different refrigerants offer different performance and efficiency changes that could affect how a particular company or equipment class achieves energy savings, and it is difficult for them to predict exactly how efficiency trends will change without completing additional ice maker performance testing and research because this industry is still early in its transition to alternative refrigerants. (*Id.*) AHRI noted also that market distributions for equipment are difficult to ascertain in light of the fact that A2Ls and A1s will take time to be approved by EPA. (AHRI, No. 21 at p. 5)

DOE agrees that manufacturers are shifting in the use of refrigerants and this shift directly affects the efficiency distributions. In this NOPR, DOE shifted the baseline in many of equipment classes to incorporate refrigerants. See engineering analysis (section IV.C of this document). As a result of the shift in engineering, DOE reformulated the efficiency distributions from the March 2022 Preliminary Analysis by utilizing the same process of sorting from CCD. In the March 2022 Preliminary Analysis, DOE's engineering included baseline and efficiency levels below the efficiency correlated with the use of refrigerant. In this NOPR, DOE rolled up all the distribution to this new refrigerant baseline. Distribution of equipment above this refrigerant baseline was relatively unchanged compared to the March 2022 Preliminary Analysis. However, DOE did reconstitute the steps between efficiency levels in this NOPR. As a result of the new energy use values associated with the ELs, the efficiency distribution was reformulated in this NOPR because of the revised engineering analysis in this NOPR.

AHRI commented that they are unable to accurately comment on the proposed low-capacity efficiency distributions without better understanding examples

[41] Department of Energy–Office of Energy Efficiency and Renewable Energy. *U.S. Department of Energy's Compliance Certification Database.* Available at *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A* (Ice Makers—Automatic Commercial).*

of equipment that would be covered in scope to compare and validate data from the other classes of previously regulated automatic commercial ice makers and provide accurate data to DOE. (AHRI, No. 21 at pp. 5–6)

In relation to a request about market share distributions by efficiency levels for each equipment class and representative units, Scotsman stated that ice makers with production capacities under 50 pounds per day (also known as low-capacity ACIM equipment in this NOPR) should not be considered. (Scotsman, No. 30 at p. 5)

DOE acknowledges the comment by Scotsman, but the comment does not relate to efficiency distributions methodology or values. DOE addresses this comment elsewhere in this NOPR (*see* section III.B of this document).

DOE did not receive any comments related to using CCD to determine efficiency level distributions in response to the March 2022 Preliminary Analysis.

See chapter 8 of the NOPR TSD for further information on the derivation of the efficiency distributions.

10. 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 equipment, compared to baseline equipment, through energy cost savings. Payback periods that exceed the life of the equipment 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 equipment 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 has one difference from the LCC analysis, in that the PBP calculation does not include repair costs because they do not necessarily take place in the first year of equipment operation.

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 equipment 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. 6316(a); 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.

G. Shipments Analysis

DOE uses projections of annual equipment shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[42] The shipments model takes an accounting approach, tracking market shares of each equipment class and the vintage of units in the stock. Stock accounting uses equipment shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service equipment stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

In response to the March 2022 Preliminary Analysis, AHRI stated that shipments of equipment will also be limited by refrigerant charge in all jurisdictions within the United States. (AHRI, No. 21 at p. 8)

DOE agrees that refrigerant use by manufacturers is changing (but not related to this rule) and that use may affect shipments. In this NOPR, DOE modeled a new efficiency distribution with a refrigerant change in the baseline for most equipment classes compared to the March 2022 Preliminary Analysis. However, DOE does not agree that the total shipment volume in the future will decrease as a result of the refrigerant changes that are occurring in the ACIM industry.

In response to the March 2022 Preliminary Analysis, NAFEM requested DOE provide further information about how the economic situation since 2020 has been incorporated into its assumptions and calculations. (NAFEM, No. 19 at p. 3) NAFEM stated that, as they understand the analysis presented in Section 9 of the March 2022 Preliminary TSD, historical information was used to develop future forecasting, and that the information does not take in account the lower shipment levels experienced in 2020 and 2021 and the continued supply chain issues that challenge part availability. (*Id.*)

DOE's analysis period starts in 2027. DOE projects that ACIM shipments will return to a similar pre-2020/2021 volume by 2027.

In addition, DOE received several comments in response to the March 2022 Preliminary Analysis regarding shipments projections of low-capacity ACIM equipment.

Scotsman stated that any total market shipment calculations should exclude low-capacity ACIM equipment. (Scotsman, No. 30 at p. 8) AHRI stated that domestic refrigerators with ice makers should not be considered part of the analysis. (AHRI, No. 21 at p. 8)

DOE disagrees with Scotsman's and AHRI's comments. DOE addressed the scope of coverage and low-capacity ACIM equipment previously in this NOPR (*see* section III.B of this document).

AHRI commented that new classes being the largest market share should drive DOE to perform a more complete analysis. (AHRI, No. 21 at p. 9) AHRI recommended that DOE pull in information from the AHAM to help update its analysis. (*Id.* at p. 8) AHAM and the CA IOUs commented that DOE's estimated shipment calculations (76.89 share) for low-capacity equipment was likely too high. (AHAM, No. 27 at p. 10; CA IOUs, No. 18 at pp. 1–3)

DOE's March 2022 Preliminary Analysis shipments model did not include a fixed percentage for low-capacity ACIM shipments. Shipments for major types of automatic commercial ice makers (*e.g.,* continuous, batch, low-capacity ACIM equipment) were developed from research and other analyses. Data gathered during the manufacturer impact analysis interviews contradict comments that low-capacity ACIM shipments in the March 2022 Preliminary Analysis were likely too high.

Whirlpool commented that the energy savings potential of low-capacity ACIM equipment (Whirlpool referred to them as residential ice makers) is greatly over-exaggerated due to the low annual shipments of these products. (Whirlpool, No. 26 at p. 3) Whirlpool stated these are niche products in the U.S. market, and nowhere close to a majority of households own one of these appliances, therefore the national energy savings potential will be small from such a low number of annual shipments. (*Id.* at pp. 3–4)

Shipments modeled in the March 2022 Preliminary Analysis for low-capacity ACIM equipment were based on previous DOE analysis. In response to the September 2020 RFI, DOE received a joint comment from ASAP, NRDC, and NEEA about low-capacity ACIM equipment. The Joint Commenters referenced the 2014 March

[42] 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.

MREF Preliminary Analysis TSD conducted by DOE. (*See* EERE–2011–BT–STD–0043) This analysis estimated a stock of 5.5 million low-capacity automatic commercial ice makers and estimated 800,000 units shipped in 2021. (Joint Commenters No. 5, pp. 4–5).

In response to the March 2022 Preliminary Analysis, NAFEM commented that DOE data received for shipments was not from manufacturers and overestimated the shipment totals for low-capacity ice makers. (NAFEM, No. 19 at p. 2) AHRI also commented that they understand that these shipment values came from the 2014 March MREF Preliminary Analysis TSD (EERE–2011–BT–STD–0043) that was refuted by data shared by AHAM. (AHRI, No. 21 at p. 8)

AHRI and Hoshizaki commented that DOE market data should be compared with the AHRI and AHAM market data and reviewed for accuracy. (AHRI, No. 21 at p. 8; Hoshizaki, No. 20 at p. 4) AHRI and Hoshizaki stated that portable ice makers are not sold by many ACIM manufacturers, so they are concerned that the analysis shows that category alone has higher shipments than all the other categories combined. (*Id.*)

AHAM commented that when compared to shipments for other core major appliances—the ''AHAM 6,'' which includes clothes washers, clothes dryers, dishwashers, refrigerators, freezers, and ranges and ovens—it is clear that residential stand-alone ice makers that make clear ice make up a tiny fraction of appliance shipments. (AHAM, No. 27 at p. 9) AHAM provided also a table demonstrating the proportion of AHAM residential ice maker shipments to the AHAM 6 shipments. (*Id.*)

Additionally, AHAM commented that the trends are different for shipments of residential ice makers as opposed to the AHAM 6. (AHAM, No. 27 at p. 10) AHAM stated that residential ice makers experienced a significantly higher reduction in shipments than the AHAM 6 from 2018–2020. (*Id.*)

Hoshizaki commented that, during the May 5, 2022, public meeting (*see* Public Meeting Transcript, No. 25), it was noted that the assumptions were from a comment in 2014 during an ASRAC meeting. (Hoshizaki, No. 20 at p. 3) Hoshizaki commented that they would like the opportunity to review the transcript from the webinar along with answers to questions asked during the webinar to give full analysis of this area. (*Id.*)

Whirlpool also agreed with the conclusion presented by AHAM that standards for low-capacity automatic commercial ice makers would likely not be justified anyway, even if such equipment was included in the scope of the ACIM rulemaking, due to very low annual shipments industry-wide. (Whirlpool, No. 26 at p. 2) AHAM commented that even including low-capacity ACIM equipment under the scope of the ACIM equipment category does not justify standards for these low-volume, infrequently and intermittently-used products. (AHAM, No. 27 at p. 2)

For this NOPR, DOE included data from manufacturer impact analysis interviews to refine the shipments model. Data gathered during the manufacturer impact analysis interviews contradict comments that low-capacity ACIM shipments in the March 2022 Preliminary Analysis were too voluminous. Per the data gathered in the manufacturer impact analysis interviews, low-capacity ACIM shipments represent a large portion of the shipments in the NOPR shipments projections.

Beyond the total volume of low-capacity ACIM equipment shipments, the CA IOUs commented that the distribution amount equipment classes within those shipments, that the shipments should not be evenly distributed across the three equipment classes. (CA IOUs, No. 18 at pp. 2–3)

DOE agrees that each of the low-capacity ACIM equipment classes should not be evenly distributed. In the shipments model for this NOPR, DOE modeled each of the low-capacity ACIM equipment classes at different distribution, with the portable ACIM equipment class quite larger than the other two equipment classes. DOE based this distribution on research, as well as data gathered during manufacturer impact analysis interviews.

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.[43] (''Consumer'' in this context refers to consumers of the equipment being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual equipment 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 automatic commercial ice makers 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 equipment 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 equipment 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 equipment 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.11 summarizes the inputs and methods DOE used for the NIA analysis for this NOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPR TSD for further details.

TABLE IV.11—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2027.

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

TABLE IV.11—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS—Continued

Inputs	Method
Efficiency Trends	No-new-standards case: Constant over time. Standards cases: Constant over time roll-up.
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.
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. Equipment 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.9 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 equipment classes for the year of anticipated compliance with an amended or new standard. To project the trend in efficiency absent amended standards for automatic commercial ice makers over the entire shipments projection period, DOE assumed the initial efficiency distribution would remain constant over the analysis period. 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.

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 equipment (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 equipment is sometimes associated with a direct rebound effect, which refers to an increase in utilization of the equipment due to the increase in efficiency. DOE did not find any data on the rebound effect specific to automatic commercial ice makers. Therefore, DOE did not include rebound effect in the NPV analysis.

DOE requests comments on its approach to monetizing the impact of the rebound effect.

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[44] 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.

In response to the March 2022 Preliminary Analysis, AHAM commented that the national energy savings are trivial according to DOE's analysis even using what AHAM believes are overestimated savings. (AHAM, No. 27 at p. 13) AHAM added that, per the March 2022 Preliminary Analysis, energy savings are below 0.5 quads for all equipment classes and range from 0.014–0.121 quads for the newly proposed low-capacity equipment classes at efficiency levels 1–5. (*Id.*) AHAM stated that these savings are not sufficient to justify the significant burden and cost that manufacturers would incur to meet and demonstrate compliance with the new standards or potential loss of consumer utility. (*Id.*)

DOE disagrees with AHAM that the savings are overestimated. This NOPR uses additional data and analyses to refine the national energy savings values and benefits to the nation presented in the March 2022 Preliminary Analysis. DOE addresses the significance and national benefits from these savings in section V in this document.

Whirlpool stated residential ice makers are a niche product in the U.S. market, and nowhere close to a majority of households own one of these appliances, and therefore the national energy savings potential will be small from such a low number of annual

[44] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009,* DOE/EIA–0581(2009), October 2009. Available at *www.eia.gov/outlooks/aeo/nems/overview/index.html* (last accessed January 17, 2023).

shipments. (Whirlpool, No. 26 at pp. 3–4)

DOE disagrees with Whirlpool's comment that the NES for low capacity automatic commercial ice makers would be small. As discussed in section IV.G of this document, DOE received low-capacity ACIM equipment shipment data during the manufacturer impact analysis interviews. The data received contradicts Whirlpool's comment that the low-capacity ACIM equipment shipments are ''a low number.'' The national energy savings presented in this NOPR for low-capacity ACIM equipment are based on the shipment volume DOE gathered as part of the MIA interviews.

The NIA in this document presents the national energy savings. Section V of this document discusses the results and conclusions using the national energy savings from the NIA.

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 sections IV.F.1 and IV.H.3 of this document, DOE analyzed ACIM price trends based on historical Producer Price Index (PPI) data. PPI data were deflated using implicit gross domestic product (GDP) deflators and found to be constant on average. Although prices for overall ACIM equipment were constant, DOE also developed component price trends for ECMs using historical PPI data for semiconductors and related devices. Efficiency levels that include ECMs have price learning applied to the semiconductor related portion of the MSP. DOE found that prices for semiconductors related components decreased by 5.88 percent annually. DOE's projection of price trends is described in chapter 8 of the NOPR TSD.

The energy cost savings are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average commercial energy price changes in the Reference case from *AEO2022,* which has an end year of 2050. To estimate price trends after 2050, the 2046–2050 average was used for all years. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *AEO2022* Reference case that have lower and higher economic growth. Those cases have lower and higher energy price trends compared to the Reference case.

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.[45] 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.

In the March 2022 Preliminary Analysis, DOE requested comments about scaling between representative and non-representative equipment classes. DOE requested comment on the approach of estimating energy use and cost of non-representative equipment classes (*see* Executive Summary of the March 2022 Preliminary Analysis TSD). In response, Scotsman stated that DOE's analysis includes low-capacity ACIM equipment, which should not be considered in this rulemaking. (Scotsman, No. 30 at p. 9)

DOE notes that this comment is not on the methodology of scaling between representative and non-representative units. DOE addresses the addition of low-capacity ACIM equipment to the scope of this proposed rulemaking earlier in this NOPR (*see* section III.B of this document).

Scotsman commented that energy use values cannot be scaled for low-capacity ACIM equipment from large capacity equipment. (Scotsman, No. 30 at p. 9)

DOE agrees that low-capacity ACIM equipment energy use (and thus energy savings) cannot be scaled from large capacity equipment. As stated earlier, DOE determined the energy use for low-capacity ACIM equipment based on the engineering analyses for those individual equipment classes. However, DOE does scale between batch and continuous low-capacity ACIM equipment classes.

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, such as different types of businesses that may be disproportionately affected. 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 two subgroups: (1) the lodging sector and (2) the foodservice sector. The analysis used subsets of the 2018 CBECS sample composed of consumers 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.

In the March 2022 Preliminary Analysis, DOE requested comment on the use of different consumer subgroups used in the analysis.

In response to the March 2022 Preliminary Analysis, AHRI commented that new equipment categories change the distribution channels and buying patterns compared to more traditional ACIM equipment, and that DOE should analyze these sets of consumers differently. (AHRI, No. 21 at p. 9) AHRI stated that behaviors and use cases of low-capacity (residential) consumers are different, and that equipment run time/duty cycle would differ greatly. (*Id.*) AHRI commented that residential ice makers may have a lower utilization than higher capacity ACIM equipment. (*Id.*) Therefore, AHRI stated that DOE's analysis should not assume that use of new categories is the same as currently regulated equipment. (*Id.*)

DOE agrees that each equipment class and efficiency level is unique and should be analyzed per the applicable aspects (*e.g.,* water, energy, maintenance) to that equipment class. As discussed in section IV.E of this

[45] 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 January 13, 2023.

document, DOE already analyzes the operational characteristics of low-capacity ACIM equipment differently than large-capacity ACIM equipment. The NIA is conducted the same for each equipment class.

Based on the data available to DOE, ACIM ownership in two building types represents over 30 percent of the market: foodservice and hotels. In general, the lower the cost of electricity and higher the cost of capital, the more likely it is that an entity would be disadvantaged by the requirement to purchase higher efficiency equipment. Chapter 8 of the NOPR TSD presents the electricity price by business type and discount rates by building types, respectively, while chapter 11 discusses these topics as they specifically relate to the subgroups.

Comparing the foodservice and lodging categories, the two sectors face similarly high energy prices. With foodservice facing a higher cost of capital, foodservice was selected for subgroup analysis because the higher cost of capital should lead foodservice customers to value first cost more and future electricity savings less than would be the case for food sales customers.

DOE estimated the impact on the identified consumer subgroups using the LCC spreadsheet model. The standard LCC and PBP analyses (described in section IV.G) include various types of businesses that use automatic commercial ice makers. For the consumer subgroup analysis, it was assumed that the subgroups analyzed do not have access to national purchasing accounts or to major capital markets, thereby making the discount rates higher for 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 automatic commercial ice makers 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 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. To capture the uncertainty relating to manufacturer pricing strategies following amended standards, the GRIM estimates a range of possible impacts under different manufacturer markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard's impact on manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and 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 ACIM equipment manufacturing industry based on the market and technology assessment, preliminary manufacturer interviews, and publicly-available information. This profile included an analysis of ACIM equipment 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 ACIM equipment manufacturing industry, including company filings of form 10–K from the SEC,[46] corporate annual reports, the U.S. Census Bureau's *ASM,*[47] the U.S. Census Bureau's *Economic Census,*[48] the U.S. Census Bureau's *Quarterly Survey of Plant Capacity Utilization,*[49] and reports from Dun & Bradstreet.[50]

In Phase 2 of the MIA, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of new or amended energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the compliance date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes.

In addition, during Phase 2, DOE developed interview guides to distribute to manufacturers of automatic commercial ice makers in order to develop other key GRIM inputs, including product and capital conversion costs, and to gather additional information on the anticipated effects of energy conservation standards on revenues, direct employment, capital assets, industry competitiveness, and subgroup impacts.

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with representative manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. See section IV.J.3 of this document for a description of the

[46] U.S. Securities and Exchange Commission. *Electronic Data Gathering, Analysis, and Retrieval system.* Available at *www.sec.gov/edgar/searchedgar/companysearch.html* (last accessed December 14, 2022).

[47] U.S. Census Bureau. *Annual Survey of Manufactures.* (2013–2022). Available at *www.census.gov/programs-surveys/asm.html* (last accessed February 1, 2023).

[48] U.S. Census Bureau. *Economic Census.* (2012 and 2017). Available at *www.census.gov/programs-surveys/economic-census.html* (last accessed February 1, 2023).

[49] U.S. Census Bureau. *Quarterly Survey of Plant Capacity Utilization.* (2010–2022). Available at *www.census.gov/programs-surveys/qpc/data/tables.html* (Last accessed December 14, 2022).

[50] Dun & Bradstreet Hoovers. Subscription login accessible at *app.dnbhoovers.com/*(last accessed December 14, 2022).

key issues raised by manufacturers during the interviews. As part of Phase 3, 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, niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified one subgroup for a separate impact analysis: small business manufacturers. The small business subgroup is discussed in section VI.B of this document, ''Review under the Regulatory Flexibility Act,'' and in chapter 12 of the NOPR TSD.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to amended standards that result in a higher or lower industry value. The GRIM uses a standard, annual discounted cash-flow analysis that incorporates manufacturer costs, manufacturer markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from a new or amended energy conservation standard. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2023 (the base year of the analysis) and continuing to 2056. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of automatic commercial ice makers, DOE used a real discount rate of 9.2 percent, which was derived from industry financials and then modified according to feedback received during manufacturer interviews.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the new or 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, results of the shipments analysis, and information gathered from industry stakeholders during the course of manufacturer interviews. The GRIM results are presented in section V.B.2 of this document. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the NOPR TSD.

a. Manufacturer Production Costs

Manufacturing more efficient equipment is typically more expensive than manufacturing baseline equipment due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of equipment can affect the revenues, gross margins, and cash flow of the industry. For a complete description of the MPCs, see section IV.C.3 of this document or 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 NOPR publication year) to 2056 (the end year of the analysis period). See section IV.G of this document or chapter 9 of the NOPR TSD for additional details.

c. Product and Capital Conversion Costs

New or amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and equipment designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each equipment 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 based its estimates of the product conversion costs that would be required to meet each efficiency level on information obtained from manufacturer interviews, the design pathways analyzed in the engineering analysis, market share estimates, and model count information. DOE assigned estimates for the total product development required for each design option based on the necessary engineering, technician, and marketing resources required to implement each design option for a basic model. DOE assumed changes to condenser design (*i.e.,* switching from tube and fin to microchannel or increasing the size of the condenser) would require more complex system redesigns as compared to implementing more efficient components (*e.g.,* implementing a PSC motor or an ECM).

To estimate industry product conversion costs, DOE multiplied the product development estimate at each efficiency level for each equipment class by the number of industry basic models that would require redesign. DOE used its CCD,[51] California Energy Commission's Modernized Appliance Efficiency Database System (MAEDbS),[52] AHRI's Directory of Certified Product Performance,[53] and EPA's ENERGY STAR Product Finder dataset [54] to identify ACIM models covered by this proposed rulemaking. To identify low-capacity automatic commercial ice makers, DOE expanded on the database used for the March 2022 Preliminary Analysis with publicly available data aggregated from web scraping retail websites. DOE used the efficiency distribution of the shipments analysis to estimate the model efficiency distribution. DOE also considered the estimated testing cost to test the DOE test procedure for low-capacity basic models as detailed in the November 2022 Test Procedure Final Rule. 87 FR 65856, 65894. Low-capacity ACIMs are not currently subject to DOE testing or energy conservation standards. Manufacturers will not be required to test low-capacity ACIMs until such time as the compliance date for any newly established energy conservation standards for such equipment. In the November 2022 Test Procedure Final Rule, DOE estimated that the amended test procedure has a per-test cost of

[51] U.S. Department of Energy's Compliance Certification Database is available at *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (last accessed November 28, 2022).

[52] California Energy Commission's Modernized Appliance Efficiency Database System is available at *cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx* (last accessed November 28, 2022).

[53] Air Conditioning, Heating, and Refrigeration Institute's Directory of Certified Product Performance is available at *www.ahridirectory.org/Search/SearchHome?ReturnUrl=%2f* Last accessed November 28, 2022).

[54] U.S. Environmental Protection Agency's ENERY STAR Product Finder dataset is available at *www.energystar.gov/productfinder/* (last accessed November 17, 2022).

$4,700, and that testing two basic models for certification purposes would have a total cost of $9,400. *Id.* at 65894.

DOE also estimated the capital conversion costs manufacturers would incur to comply with potential new or amended energy conservation standards using information from manufacturer interviews, the engineering analysis, the shipments analysis, and OEM counts. During interviews, manufacturers provided estimates and descriptions of the required tooling changes that would be necessary to upgrade basic models to implement the various design options. Based on these inputs, DOE assumed that most component changes, while requiring moderate product conversion costs, would not require changes to existing production lines and equipment, and therefore not require notable capital expenditures because one-for-one component swaps would not require changes to existing production equipment. However, based on feedback, DOE modeled higher tooling costs when manufacturers would have to implement new condenser designs. To estimate industry capital conversion costs, DOE scaled the estimated capital expenditures at each efficiency level for each equipment class by the number of OEMs without any compliant basic models.

In general, DOE assumes all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new standard. The conversion cost figures used in the GRIM can be found in section V.B.2 of this document. For additional information on the estimated capital and product conversion costs, see chapter 12 of the NOPR TSD.

d. Manufacturer Markup Scenarios

MSPs include direct manufacturing production costs (*i.e.,* labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied manufacturer markups to the MPCs estimated in the engineering analysis for each equipment class and efficiency level. Modifying these manufacturer markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of new or amended energy conservation standards: (1) a preservation of gross margin percentage scenario; and (2) a preservation of operating profit scenario. These scenarios lead to different manufacturer markup values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin percentage scenario, DOE applied a single uniform ''gross margin percentage'' markup 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. As manufacturer production costs increase with efficiency, this scenario implies that the per-unit dollar profit will increase. DOE assumed a gross margin percentage of 20 percent for all equipment classes.[55] Manufacturers tend to believe it is optimistic to assume that they would be able to maintain the same gross margin percentage as their production costs increase, particularly for minimally efficient products. Therefore, this scenario represents an upper bound of industry profitability under a new or amended energy conservation standard.

In the preservation of operating profit scenario, as the cost of production goes up under a standards case, manufacturers are generally required to reduce their manufacturer markups to a level that maintains no-new-standards case operating profit. DOE implemented this scenario in the GRIM by lowering the manufacturer markups at each TSL to yield approximately the same earnings before interest and taxes in the standards case as in the no-new-standards case in the year after the expected compliance date of the new or amended standards. The implicit assumption behind this scenario is that the industry can only maintain its operating profit in absolute dollars after the standard takes effect.

A comparison of industry financial impacts under the two scenarios is presented in section V.B.2.a of this document.

3. Manufacturer Interviews

DOE interviewed manufacturers representing approximately 69 percent of domestic covered ACIM shipments and 57 percent of the proposed expanded scope shipments. Participants included domestic-based and foreign-based OEMs as well as importers. Participants included manufacturers with a wide range of market shares and a variety of equipment class offerings.

In interviews, DOE asked manufacturers to describe their major concerns regarding potential more stringent energy conservation standards for automatic commercial ice makers. The following section highlights manufacturer concerns that helped inform the projected potential impacts of an amended standard on the industry. Manufacturer interviews are conducted under nondisclosure 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.

a. Refrigerant Regulation

Nearly all manufacturers expressed concerns about their ability to meet more stringent energy conservation standards and comply with refrigerant regulation limiting the use of HFC and high-GWP refrigerants. First, manufacturers expressed concern about the regulatory uncertainty surrounding the transition to low-GWP refrigerants. During interviews, manufacturers could only speculate on the likely direction and timeline of Federal ACIM equipment-specific refrigerant regulation. While manufacturers indicated that they had or were planning to transition a portion of their smaller-capacity automatic commercial ice makers to R–290 or R–600a, manufacturers were less certain about the paths forward for remote equipment classes and larger-capacity automatic commercial ice makers (*i.e.,* models that would exceed the current EPA R–290 charge limit of 150 grams). Most manufacturers indicated that they would transition more models to R–290 should EPA update the charge limit to 500 grams in alignment with industry safety standards. However, these manufacturers also indicated that they would wait for EPA approval prior to transitioning these larger-capacity models to R–290.

Second, manufacturers noted that there is technical uncertainty about the performance of alternative refrigerants and their impact on automatic commercial ice maker reliability and efficiency. Particularly for refrigerants other than R–290 and R–600a, manufacturers had limited data to assess the impacts on performance and efficiency. Some manufacturers tested refrigerants that caused an increase in energy consumption, indicating that additional development would be necessary just to get to the current DOE minimum efficiency standards. Furthermore, manufacturers noted that there were limited compressor options for certain alternative refrigerants.

[55] The gross margin percentage of 20 percent is based on a manufacturer markup of 1.25.

Third, manufacturers stated that transitioning automatic commercial ice makers to make use of alternative refrigerants, particularly flammable refrigerants (*e.g.,* R–290, R–600a), requires a significant amount of engineering resources and capital investment. Nearly all manufacturers expressed concern that they would have neither the time nor the resources to complete the dual development necessary to comply with stringent DOE energy conservation standards and EPA regulations over a short time period. Some manufacturers noted that spacing out the compliance dates for potential standards and refrigerant regulations would reduce the cumulative regulatory burden. For example, some manufacturers suggested that requiring a 5-year compliance period instead of a 3-year compliance period would allow manufacturers time to spread out the R&D and capital costs. Depending on when compliance would be required for EPA refrigerant regulation, other manufacturers suggested that aligning EPA and DOE compliance dates would avoid successive redesigns and reduce cumulative regulatory burden.

b. Scope Expansion

In interviews, some manufacturers were opposed to expanding the scope of coverage to include low-capacity ice makers. These manufacturers noted that many low-capacity ice makers are intended for residential use and have different utilization patterns, operating conditions, warranties, and durability requirements compared to covered automatic commercial ice makers. Manufacturers questioned the benefit of including low-capacity ice makers and covered automatic commercial ice makers under the same standards rulemaking given these differences. They asserted that including both low-capacity ice makers and covered automatic commercial ice makers in the NOPR analysis would make it challenging to interpret the results of the analysis and understand the implications for the residential and commercial market segments.

c. Supply Chain Concerns

Multiple manufacturers expressed concerns about the ongoing supply chain constraints related to sourcing a range of components, such as ECMs, compressors, and control boards and electronics. Manufacturers noted that limited component availability, increases in raw material prices, and escalating shipping and transportation costs all affect manufacturer production costs. In addition to higher production costs, these manufacturers stated that the evolving nature of these component shortages requires significant personnel resources to identify and qualify new suppliers, build prototypes, conduct testing, and update product literature. For many manufacturers these shortages have meant shifting resources away from typical product development. If these supply constraints continue through the end of the conversion period, industry could face capacity constraints.

4. Discussion of MIA Comments

In response to the March 2022 Preliminary Analysis, AHRI and Hoshizaki encouraged DOE to consider the various restrictions being placed on HFC refrigeration and the overall impact on automatic commercial ice makers to ensure that sufficient time is given for the industry to find solutions to the GWP and HFC restrictions. (AHRI, No. 21 at p. 5; Hoshizaki, No. 20 at p. 4) Specifically, AHRI and Hoshizaki discussed the EPA restrictions on the sale and production of HFC refrigerants and the potential for State regulations (*e.g.,* California Air Resources Board) limiting the use of high-GWP refrigerants in automatic commercial ice makers. (*Id.*) In addition, AHRI detailed international regulations, such as refrigerant restrictions in Europe and Canada, prohibiting the use of high-GWP refrigerants. (AHRI, No. 21 at p. 5) Hoshizaki noted that significant research, testing, and design time is being allocated to meet the refrigerant regulations, which places a large burden on ACIM manufacturers. (Hoshizaki, No. 20 at p. 4) AHRI suggested that DOE consider the costs required to retrofit manufacturing facilities to enable the use of flammable refrigerants, noting that the Montreal Protocol estimated costs of $250K to $500K to retrofit manufacturing facilities with explosion-proof equipment in 2014. (AHRI, No. 21 at p. 3) AHRI also commented that meeting the EPA's GWP requirements itself has a significant resource and cost impact to all ACIM companies. (*Id.* at p. 5) During the May 5, 2022, public meeting, Welbilt stated that using a flammable refrigerant requires changes to the construction of the equipment to meet agency approval as well as changes to the manufacturing facility to deal with flammable refrigerants. (Public Meeting Transcript, No. 25 at p. 34).

DOE understands that adapting product lines to meet the current and upcoming refrigerant regulations requires significant development and testing time. In particular, DOE understands that switching from non-flammable to flammable refrigerants (*e.g.,* R–290) requires time and investment to redesign ACIM models and upgrade production facilities to accommodate the additional structural and safety precautions required. As discussed in section IV.C.1 of this document, DOE expects ACIM manufacturers will transition most models to R–290 or R–600a to comply with anticipated refrigeration regulations, such as December 2022 EPA NOPR,[56] prior to the expected 2027 compliance date of potential energy conservation standards. Therefore, the engineering analysis assumes the use of R–290 or R–600a compressors as a baseline design option for most equipment classes. See section IV.C.1 of this document for additional information on refrigerant assumptions in the engineering analysis. DOE accounted for the costs associated with redesigning automatic commercial ice makers to make use of flammable refrigerants and upgrading production facilities to accommodate flammable refrigerants in the GRIM. DOE relied on manufacturer feedback in confidential interviews and a report prepared for EPA [57] to estimate the industry refrigerant transition costs. See section V.B.2.e of this document and chapter 12 of the NOPR TSD for additional discussion on cumulative regulatory burden.

In response to the March 2022 Preliminary Analysis, NAFEM and Hoshizaki commented that DOE should not consider amending energy consumption requirements of automatic commercial ice makers until there is clarity on the impact of EPA's regulations on the industry's existing automatic commercial ice makers. (NAFEM, No. 19 at p. 4; Hoshizaki, No. 20 at p. 5) NAFEM and Hoshizaki also commented that the phasedown of the production of HFC affects many parts of DOE's analysis, including efficiency, availability, and cost changes, especially into forecasting through 2024 and 2036. (*Id.*) NAFEM noted that the AIM Act is imposing restrictions on production of HFC in 2022 (and 2024), which is causing the costs of HFC to increase, and that it does not appear that DOE accounted for these cost increases in its analysis. (NAFEM, No. 19 at p. 4)

DOE notes that there are statutory requirements under EPCA to review standards for automatic commercial ice makers at least every 5 years after the

[56] The proposed rule was published on December 15, 2022. 87 FR 76738.

[57] *See* pp. 5–113 of the ''Global Non-CO2 Greenhouse Gas Emission Projections & Marginal Abatement Cost Analysis: Methodology Documentation'' (2019). *www.epa.gov/sites/default/files/2019-09/documents/nonco2_methodology_report.pdf.*

effective date of any amended standards. (42 U.S.C. 6313(d)(3)(B)) DOE understands that regulatory and technical uncertainty surrounding alternative refrigerants adds complexity to analyzing the potential impact of new or amended energy conservation standards. For this NOPR, DOE assumed EPA's proposed rule restricting the use of certain HFCs in automatic commercial ice makers would be adopted as proposed, with compliance required by January 1, 2025. *See* 87 FR 76738, 76773–76774. Based on manufacturer feedback in confidential interviews, DOE assumed self-contained classes and ice-making head classes with a harvest rate of up to 1,500 lb/day will make use of R–290 or R–600a. As discussed in section IV.C.1.a of this document, DOE proposes to use baseline efficiency levels for automatic commercial ice makers with harvest rates of up to 1,500 lb ice/24 h with non-remote condensers, which reflect the design changes made by manufacturers in response to the December 2022 EPA NOPR that incorporate refrigerant conversion to R–290 or R–600a to a design at the current baseline level using current refrigerants in this NOPR. For non-remote condensing automatic commercial ice makers with harvest rates above 1,500 lb ice/24 h and all remote condensing automatic commercial ice makers, DOE expects that the baseline level for the NOPR analysis is equal to the current DOE ACIM energy conservation standard level. In this NOPR, DOE did not consider additional compressor efficiency improvements beyond the baseline because DOE expects that the compressors currently available on the market for refrigerants used to comply with the December 2022 EPA NOPR represent the maximum compressor efficiency achievable for each respective equipment class. DOE only considered refrigerant costs for refrigerants not prohibited by the December 2022 EPA NOPR for automatic commercial ice makers.

In response to the March 2022 Preliminary Analysis, AHRI requested that DOE analyze the effects of separate efficiency requirements on batch and continuous ACIM manufacturers. (AHRI, No. 21 at p. 9)

DOE presents separate industry cash flow analysis results for analyzed batch and continuous equipment classes in chapter 12 of the NOPR TSD.

Whirlpool commented that energy conservation standards for low-capacity automatic commercial ice makers could force manufacturers to re-evaluate their manufacturing and product development decisions. (Whirlpool, No. 26 at p. 4) Whirlpool stated that it may not be cost-effective to make significant capital and product investments to redesign these products to meet energy conservation standards designed for commercial products. (*Id.*) Whirlpool noted that if energy conservation standards threaten their ability to make "clear ice," then there may be little benefit for households to purchase a separate undercounter ice maker, as the quality and type of the ice is a purchase factor for the consumers of these products, and absent those differentiating factors, consumers may choose to forgo this discretionary purchase. (*Id.*)

DOE used the GRIM, as described in section IV.J.2 of this document, to determine the quantitative impacts on the ACIM equipment industry as a whole. Additionally, DOE presented separate industry cash flow analysis results for the proposed low-capacity equipment classes in chapter 12 of the NOPR TSD. DOE acknowledges that impacts on individual manufacturers may vary from industry averages due to a wide range of company-specific factors including, but not limited to, differences in efficiency of current product offerings, production volumes, and legacy investments in manufacturing plants. DOE also acknowledges that standards necessitating significant investment relative to a company's ACIM equipment market share could force manufacturers to re-evaluate their manufacturing and development decisions. Regarding the reference to the energy conservation standards being designed for commercial products, DOE conducted product teardowns of representative units and analyzed the likely design paths to improve efficiency for fifteen directly analyzed equipment classes, including three proposed low-capacity equipment classes. Thus, the analysis of the proposed low-capacity equipment classes reflects representative units available on the market. See section IV.C of this document for additional details on the engineering analysis.

Regarding Whirlpool's concern about energy conservation standards potentially hindering their ability to make "clear ice," as discussed in section IV.B of this document and chapter 4 of the NOPR TSD, DOE considers the impacts on product utility as part of the screening analysis. If a technology is determined to have a significant adverse impact on the utility of the product to subgroups of consumers, or results 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. DOE did not receive any comments in response to the March 2022 Preliminary Analysis specific to the screening analysis. When developing the baseline energy use discussed in section IV.C.1.a of this document, DOE analyzed clear, standard-sized cube style batch automatic commercial ice makers and nugget style continuous automatic commercial ice makers. Therefore, the efficiency levels presented in this NOPR are based on these ice characteristics.

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 of the NOPR TSD. The analysis presented in this document 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 EPA.[58]

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

[58] Available at *www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf* (last accessed July 12, 2021).

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.

In response to the emissions impact analysis in the March 2022 Preliminary Analysis, AHRI commented that any analysis of emissions should be done in collaboration with refrigerant changes. (AHRI, No. 21 at p. 10)

DOE incorporated refrigerant changes into the engineering analysis. The emissions analysis in this NOPR accounts for baseline ACIM equipment and changes in efficiency levels analyzed in the engineering analysis, which includes changes related to refrigerant technology.

1. Air Quality Regulations Incorporated in DOE's Analysis

DOE's no-new-standards case for the electric power sector reflects the *AEO,* which incorporates the projected impacts of existing air quality regulations on emissions. *AEO2022* generally represents current legislation and environmental regulations, including recent government actions, that were in place at the time of preparation of *AEO2022,* including the emissions control programs discussed in the following paragraphs.[59]

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.[60] *AEO2022* incorporates implementation of CSAPR, including the update to the CSAPR ozone season program emission budgets and target dates issued in 2016. 81 FR 74504 (Oct. 26, 2016). Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by another regulated EGU.

However, beginning in 2016, SO_2 emissions began to fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS final rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions are being reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *I*n order to continue operating, coal power plants must have either flue gas desulfurization or dry sorbent injection systems installed. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Because of the emissions reductions under the MATS, it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity generation would generally reduce SO_2 emissions. DOE estimated SO_2 emissions reduction using emissions factors based on *AEO2022.*

CSAPR also established limits on NO_X emissions for numerous states in the eastern half of the United States. Energy conservation standards would have little effect on NO_X emissions in those states covered by CSAPR emissions limits if excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other EGUs. In such case, NO_X emissions would remain near the limit even if electricity generation goes down. A different case could possibly result, depending on the configuration of the power sector in the different regions and the need for allowances, such that NO_X emissions might not remain at the limit in the case of lower electricity demand. In this case, energy conservation standards might reduce NO_X emissions in covered states. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce NO_X emissions in states covered by CSAPR. Energy conservation standards would be expected to reduce NO_X emissions in the states not covered by CSAPR. DOE used *AEO2022* data to derive NO_X emissions factors for the group of states not covered by CSAPR.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would be expected to slightly reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO2022,* which incorporates the MATS.

L. Monetizing Emissions Impacts

As part of the development of this proposed rule, for the purpose of complying with the requirements of Executive Order 12866, DOE considered the estimated monetary benefits from the reduced emissions of CO_2, CH_4, N_2O, NO_X, and SO_2 that are expected to result from each of the TSLs considered. 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 equipment 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.

To monetize the benefits of reducing GHG emissions, this analysis uses the interim 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.

DOE requests comments 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 SC of each pollutant (*e.g.,* SC–CO_2). These estimates represent the monetary value of the net harm to society

[59] 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 December 1, 2022).

[60] 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).

associated with a marginal increase in emissions of these pollutants in a given year, or the benefit of avoiding that increase. These estimates are intended to include (but are not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.

DOE exercises its own judgment in presenting monetized climate benefits as recommended by applicable Executive Orders, and DOE would reach the same conclusion presented in this proposed rulemaking in the absence of the social cost of greenhouse gases. That is, the social costs of greenhouse gases, whether measured using the February 2021 interim estimates presented by the IWG or by another means, did not affect the rule ultimately proposed by DOE.

DOE estimated the global social benefits of CO_2, CH_4, and N_2O reductions using SC–GHG values that were based on the interim values presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990,* published in February 2021 by the IWG. The SC–GHGs is the monetary value of the net harm to society associated with a marginal increase in emissions in a given year, or the benefit of avoiding that increase. In principle, SC–GHGs includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC–GHGs therefore, reflects the societal value of reducing emissions of the gas in question by one metric ton. The SC–GHGs is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect CO_2, N_2O and CH_4 emissions. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees that the interim SC–GHG estimates represent the most appropriate estimate of the SC–GHG until revised estimates have been developed reflecting the latest, peer-reviewed science.

The SC–GHGs estimates presented here were developed over many years, using a transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. Specifically, in 2009, the IWG, 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 SC–CH_4 and 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.*[61] and underwent a standard double-blind peer review process prior to journal publication. In 2015, as part of the response to public comments received following 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).[62] 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 Executive Order 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 Executive Order 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

[61] 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.

[62] 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.

pathways, such as economic and political destabilization and global migration that can lead to adverse impacts on U.S. national security, public health, and humanitarian concerns. In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents. A wide range of scientific and economic experts have emphasized the issue of reciprocity as support for considering global damages of GHG emissions. If the United States does not consider impacts on other countries, it is difficult to convince other countries to consider the impacts of their emissions on the United States. The only way to achieve an efficient allocation of resources for emissions reduction on a global basis—and so benefit the United States 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 United States because they do not fully capture the regional interactions and spillovers previously discussed; 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,[63] 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 SC–GHG 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-

[63] Interagency Working Group on Social Cost of Carbon. *Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866.* 2010. United States Government. Available *www.epa.gov/sites/default/files/2016-12/documents/scc_tsd_2010.pdf* (Last accessed April 15, 2022.); 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); 2013. Available at: *www.federalregister.gov/documents/2013/11/26/2013-28242/technical-support-document-technical-update-of-the-social-cost-of-carbon-for-regulatory-impact* (last accessed April 15, 2022); Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Technical Support Document: Technical Update on the Social Cost of Carbon for Regulatory Impact Analysis-Under Executive Order 12866. August 2016 Available at *www.epa.gov/sites/default/files/2016-12/documents/sc_co2_tsd_august_2016.pdf* (last accessed January 18, 2022); Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide. August 2016 Available at *www.epa.gov/sites/default/files/2016-12/documents/addendum_to_sc-ghg_tsd_august_2016.pdf* (last accessed January 18, 2022.).

cost analyses: an average value resulting from the model runs for each of three discount rates (2.5 percent, 3 percent, and 5 percent), plus a fourth value, selected as the 95th percentile of estimates based on a 3-percent discount rate. The fourth value was included to provide information on potentially higher-than-expected economic impacts from climate change. As explained in the February 2021 SC–GHG TSD, and DOE agrees, this update reflects the immediate need to have an operational SC–GHG for use in regulatory benefit-cost analyses and other applications that was developed using a transparent process, peer-reviewed methodologies, and the science available at the time of that process. Those estimates were subject to public comment in the context of dozens of proposed rulemakings as well as in a dedicated public comment period in 2013.

There are a number of limitations and uncertainties associated with the SC–GHG estimates. First, the current scientific and economic understanding of discounting approaches suggests discount rates appropriate for intergenerational analysis in the context of climate change are likely to be less than 3 percent, and near 2 percent or lower.[64] 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 SC–GHG TSD, the IWG has recommended that, taken together, the limitations suggest 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.3.c 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 SC–GHG TSD. Table IV.12 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 the regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–CO_2 values, as recommended by the IWG.[65]

TABLE IV.12—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 2020$.[66] These estimates are based on methods, assumptions, and parameters identical to the 2020–2050 estimates published by the IWG. (which were based on EPA modeling).

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 2022$ using the implicit price deflator for GDP from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the 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 SC–GHG TSD. Table IV.13 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

[64] 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/.*

[65] For example, the February 2021 SC–GHG 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.

[66] See EPA, *Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis,* Washington, DC, December 2021. Available at: *nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1013ORN.pdf* (last accessed January 13, 2023).

used is presented in appendix 14A of the NOPR TSD. To capture the uncertainties involved in the 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 previously for the SC–CO_2.

TABLE IV.13—ANNUAL SC–CH_4 AND SC–N_2O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per metric ton]

Year	SC–CH_4				SC–N_2O			
	Discount rate and statistic				Discount rate and statistic			
	5% Average	3% Average	2.5% Average	3% 95th Percentile	5% Average	3% Average	2.5% Average	3% 95th Percentile
2020	670	1,500	2,000	3,900	5,800	18,000	27,000	48,000
2025	800	1,700	2,200	4,500	6,800	21,000	30,000	54,000
2030	940	2,000	2,500	5,200	7,800	23,000	33,000	60,000
2035	1,100	2,200	2,800	6,000	9,000	25,000	36,000	67,000
2040	1,300	2,500	3,100	6,700	10,000	28,000	39,000	74,000
2045	1,500	2,800	3,500	7,500	12,000	30,000	42,000	81,000
2050	1,700	3,100	3,800	8,200	13,000	33,000	45,000	88,000

DOE multiplied the CH_4 and N_2O emissions reduction estimated for each year by the SC–CH_4 and SC–N_2O estimates for that year in each of the cases. DOE adjusted the values to 2022$ using the implicit price deflator for GDP from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC–CH_4 and SC–N_2O estimates in each case.

2. Monetization of Other Emissions Impacts

For this 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.[67] 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 combined the EPA benefit per ton estimates with regional information on electricity consumption and emissions to define weighted-average national values for NO_X and SO_2 as a function of sector (see appendix 14B of the NOPR TSD).

DOE multiplied the site emissions reduction (in tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent, as appropriate.

M. Utility Impact Analysis

The utility impact analysis estimates the changes in installed electrical capacity and generation projected to result for each considered 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 equipment subject to standards. 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 equipment 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.[68] There are many reasons for

[67] *Estimating the Benefit per Ton of Reducing $PM_{2.5}$ Precursors from 21 Sectors.* Available at *www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors.*

[68] *See* U.S. Department of Commerce–Bureau of Economic Analysis. *Regional Multipliers: Regional Input-Output Modeling System (RIMS II) User's Guide.* U.S. Government Printing Office: Washington, DC. Available at *www.bea.gov/sites/*

Continued

these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this NOPR using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 (ImSET).[69] 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 acknowledges 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 overestimate actual job impacts over the long run for this proposed rule. Therefore, DOE used ImSET only to generate results for near-term timeframes (2027–2031), 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 automatic commercial ice makers. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for automatic commercial ice makers, 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 equipment 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 ACIM equipment. DOE developed TSLs that combine efficiency levels for each analyzed equipment class/category. Table V.1 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for automatic commercial ice makers. TSL 4 represents the max-tech energy efficiency for all equipment classes. TSL 3 is comprised of the maximum efficiency level with a positive LCC savings. TSL 2 represents efficiency levels with maximum LCC savings. TSL 1 represents EL 1 for all equipment classes that have positive LCC savings. 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—TRIAL STANDARD LEVELS FOR AUTOMATIC COMMERCIAL ICE MAKERS

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4
B–IMH–W (≥300 and <785)	EL 0	EL 0	EL 0	EL 3
B–IMH–W (≥785 and <1,500)	EL 0	EL 0	EL 0	EL 3
B–IMH–A (≥300 and <727)	EL 1	EL 2	EL 3	EL 6
B–IMH–A (≥727 and <1,500)	EL 1	EL 2	EL 4	EL 6
B–RC(NRC)–A (≥988 and <4,000)	EL 1	EL 1	EL 2	EL 6
B–SC–A (Portable ACIM) (≤38)	EL 1	EL 2	EL 2	EL 3
B–SC–A (Refrigerated Storage ACIM)	EL 1	EL 2	EL 2	EL 3
B–SC–A (≤50)	EL 1	EL 1	EL 1	EL 7
B–SC–A (>50 and <134)	EL 0	EL 0	EL 0	EL 6
B–SC–A (≥200 and <4,000)	EL 1	EL 2	EL 4	EL 6
C–IMH–W (>50 and <801)	EL 0	EL 0	EL 0	EL 2
C–IMH–A (≥310 and <820)	EL 1	EL 2	EL 3	EL 5
C–RC&RC–A (≥800 and <4,000)	EL 1	EL 2	EL 4	EL 5
C–SC–A (>50 and <149)	EL 1	EL 1	EL 1	EL 5
C–SC–A (≥149 and <700)	EL 1	EL 1	EL 2	EL 5

B = batch; C = continuous.
IMH = ice making head; SC = self-contained; RC = remote condensing.
W = water type of cooling; A = air type of cooling.
Number in parentheses indicates harvest rate.

Table V.2 presents the TSLs and the corresponding percent reduction below baseline per equipment class. The baseline values are presented in Table IV.8 and discussed in section IV.C.1.a of this document. TSL 4 represents the max-tech energy efficiency for all equipment classes. TSL 3 is comprised of the maximum efficiency level with a positive LCC savings. TSL 2 represents efficiency levels with maximum LCC savings. TSL 1 represents EL 1 for all

default/files/methodologies/RIMSII_User_Guide.pdf (last accessed January 17, 2023).

[69] 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.

equipment classes that have positive LCC savings. 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.2—TRIAL STANDARD LEVELS FOR AUTOMATIC COMMERCIAL ICE MAKERS

Equipment class	TSL 1 (%)	TSL 2 (%)	TSL 3 (%)	TSL 4 (%)
B–IMH–W (≥300 and <785)	0.0	0.0	0.0	4.7
B–IMH–W (≥785 and <1,500)	0.0	0.0	0.0	4.2
B–IMH–A (≥300 and <727)	2.8	3.8	6.1	10.3
B–IMH–A (≥727 and <1,500)	3.4	7.1	8.2	11.6
B–RC(NRC)–A (≥988 and <4,000)	2.7	2.7	3.1	7.0
B–SC–A (Portable ACIM) (≤38)	2.0	3.6	3.6	4.7
B–SC–A (Refrigerated Storage ACIM)	4.0	8.5	8.5	9.6
B–SC–A (≤50)	12.3	12.3	12.3	26.9
B–SC–A (>50 and <134)	0.0	0.0	0.0	11.3
B–SC–A (≥200 and <4,000)	4.8	10.1	11.8	15.6
C–IMH–W (>50 and <801)	0.0	0.0	0.0	9.6
C–IMH–A (≥310 and <820)	7.0	8.1	16.7	19.9
C–RC&RC–A (≥800 and <4,000)	3.5	7.5	9.1	11.0
C–SC–A (>50 and <149)	1.7	1.7	1.7	8.2
C–SC–A (≥149 and <700)	1.5	1.5	2.5	12.1

DOE constructed the TSLs for this NOPR to include efficiency levels representative of efficiency levels with similar characteristics (*i.e.,* using similar technologies and/or efficiencies, and having roughly comparable equipment availability). The use of representative efficiency levels provided for greater distinction between the TSLs. While representative efficiency levels were included in the TSLs, DOE considered all efficiency levels as part of its analysis.[70]

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on ACIM consumers by looking at the effects that potential new or amended standards at each TSL would have on the LCC and PBP analyses. 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 equipment affects consumers in two ways: (1) purchase prices increase and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* equipment 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 equipment lifetime and a discount rate. Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

Table V.3 through Table V.32 show the LCC and PBP results for the TSLs considered for each equipment class. In the first of each pair of tables, the simple payback is measured relative to the baseline equipment. In the second table, impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (2027). Because some consumers purchase equipment with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline equipment 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 equipment 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.

All equipment classes have negative LCC savings values at TSL 4. Negative average LCC savings imply that, on average, consumers experience an increase in LCC of the equipment as a consequence of buying equipment associated with that particular TSL. These results indicate the cost increments associated with the max-tech design option are high, and the increase in LCC (and corresponding decrease in LCC savings) indicates that this design option may result in negative consumer impacts. TSL 4 is associated with the max-tech level for all the equipment classes. For large-capacity batch ACIM equipment, ECM pump motors are the design option associated with max-tech efficiency levels. For low-capacity batch ACIM equipment, tube and fin microchannel condensers were typically the design option associated with the max-tech efficiency levels. For the large-capacity continuous ACIM equipment, ECM auger motors and drain water heat exchangers were the design options associated with max-tech efficiency levels.

The mean LCC savings associated with TSL 3 are all positive values for all equipment classes. The mean LCC savings at all lower TSL levels are also positive. The trend is generally an increase in LCC savings for TSL 1 and TSL 2, with LCC savings declining or remaining flat at TSL 3 and TSL 4. In seven cases, the highest LCC savings are at TSL 2: B–IMH–A (≥300 and <727), B–IMH–A (≥727 and <1,500), B–SC–A (Refrigerated Storage ACIM), B–SC–A (≥200 and <4,000), C–IMH–A (≥310 and <820), C–RC&RC–A (≥800 and <4,000), and C–SC–A (≥149 and <700). The drop-off in LCC savings at TSL 4 is generally associated with the relatively large cost for the max-tech design options, the savings for which frequently span the last two efficiency levels.

As described in section IV.H.2 of this document, DOE used a ''roll-up'' scenario in this rulemaking. Under the roll-up scenario, DOE assumes that the market shares of the efficiency levels (in the no-new-standards case) that do not meet the standard level under consideration would be ''rolled up'' into (meaning ''added to'') the market share of the efficiency level at the standard level under consideration, and the market shares of efficiency levels that

[70] 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 chapters 8 and 10 of the NOPR TSD.

are above the standard level under consideration would remain unaffected.

In the no-new-standards case scenario, consumers who buy the equipment at or above the TSL under consideration would be unaffected if the amended standard were to be set at that TSL. In the no-new-standards scenario, consumers who buy equipment below the TSL under consideration would be affected if the amended standard were to be set at that TSL. Among these affected consumers, some may benefit from a lower LCC of the equipment and some may incur net cost due to a higher LCC, depending on the inputs to the LCC analysis, such as electricity prices, discount rates, installation costs, and markups.

DOE's results indicate that consumers in five equipment classes either benefit or are unaffected by setting standards at TSLs 1, 2, or 3. A large percentage of consumers in batch equipment classes are unaffected by a standard set at TSL 1 given the equivalence to ENERGY STAR and the prevalence of ENERGY STAR-qualifying equipment in those classes. At the other end of the range, in almost all cases, 13 percent of the market would experience net costs at TSL 3. In all fifteen equipment classes modeled, 49 percent or more of consumers would experience a net cost at TSL 4.

The median PBP values for TSLs 1 through 3 are all less than 7 years, ranging from 1.3 to 6 years. PBP values for TSL 4 range from 6.4 years to over 64.7 years. C–SC–A (>50 and <149) exhibits the longest PBP for TSL 4 at 64.7 years.

TABLE V.3—AVERAGE LCC AND PBP RESULTS FOR B–IMH–W (≥300 AND <785)

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline						
1	0	$3,831.82	$2,199.10	$16,162.03	$19,993.84	0.0	0.0
2	0	3,831.82	2,199.10	16,162.03	19,993.84	0.0	0.0
3	0	3,831.82	2,199.10	16,162.03	19,993.84	0.0	0.0
4	3	4,264.38	2,181.61	16,040.73	20,305.10	24.7	8.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.4—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR B–IMH–W (≥300 AND <785)

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * ** (2022$)	Percent of consumers that experience net cost
1	0	$0.00	0
2	0	0.00	0
3	0	0.00	0
4	3	(307.99)	49

* Values in parentheses are negative numbers.
** The savings represent the average LCC for affected consumers.

TABLE V.5—AVERAGE LCC AND PBP RESULTS FOR B–IMH–W (≥785 AND <1,500)

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline						
1	0	$5,938.82	$6,613.37	$48,646.27	$54,585.09	0.0	8.5
2	0	5,938.82	6,613.37	48,646.27	54,585.09	0.0	8.5
3	0	5,938.82	6,613.37	48,646.27	54,585.09	0.0	8.5
4	3	6,474.88	6,572.28	48,361.24	54,836.12	13.1	8.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level.
The PBP is measured relative to the baseline equipment.

TABLE V.6—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR B–IMH–W (≥785 AND <1,500)

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * ** (2022$)	Percent of consumers that experience net cost
1	0	$0.00	0
2	0	0.00	0
3	0	0.00	0
4	3	(249.33)	82

* Values in parentheses are negative numbers.
** The savings represent the average LCC for affected consumers.

TABLE V.7—AVERAGE LCC AND PBP RESULTS FOR B–IMH–A (≥300 AND <727)

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline						
1	1	$3,453.72	$1,122.43	$8,095.75	$11,549.47	3.4	8.5
2	3	3,476.08	1,118.66	8,069.63	11,545.71	4.1	8.5
3	3	3,519.96	1,110.09	8,023.06	11,543.02	4.5	8.5
4	6	3,968.04	1,094.33	7,913.73	11,881.77	14.3	8.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.8—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR B–IMH–A (≥300 AND <727)

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * ** (2022$)	Percent of consumers that experience net cost
1	1	$25.63	4
2	2	29.18	6
3	3	21.54	16
4	6	(315.79)	66

* Values in parentheses are negative numbers.
** The savings represent the average LCC for affected consumers.

TABLE V.9—AVERAGE LCC AND PBP RESULTS FOR B–IMH–A (≥727 AND <1,500)

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline						
1	1	$5,792.95	$2,410.05	$17,282.76	$23,075.70	1.3	8.5
2	2	5,929.70	2,368.74	17,036.36	22,966.06	2.4	8.5
3	4	6,052.65	2,356.49	16,951.35	23,003.99	3.4	8.5
4	6	6,568.93	2,319.00	16,691.27	23,260.21	6.4	8.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.10—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR B–IMH–A (≥727 AND <1,500)

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * ** (2022$)	Percent of consumers that experience net cost
1	1	$194.60	0
2	2	300.78	3
3	4	232.02	18
4	6	(30.90)	64

* Values in parentheses are negative numbers.
** The savings represent the average LCC for affected consumers.

TABLE V.11—AVERAGE LCC AND PBP RESULTS FOR B–RC(NRC)–A (≥988 AND <4,000)

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline						
1	1	$8,103.70	$2,226.52	$15,820.28	$23,923.97	3.2	8.5
2	1	8,103.70	2,226.52	15,820.28	23,923.97	3.2	8.5
3	2	8,199.87	2,220.77	15,780.40	23,980.27	5.3	8.5
4	6	8,763.43	2,172.49	15,445.45	24,208.87	8.8	8.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.12—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR B–RC(NRC)–A (≥988 AND <4,000)

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * ** (2022$)	Percent of consumers that experience net cost
1	1	$93.15	3
2	1	93.15	3
3	2	36.86	10
4	6	(215.49)	51

* Values in parentheses are negative numbers.
** The savings represent the average LCC for affected consumers.

TABLE V.13—AVERAGE LCC AND PBP RESULTS FOR B–SC–A (PORTABLE ACIM) (≤38)

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline						
1	1	$627.32	$25.15	$335.51	$962.83	3.3	7.5
2	2	628.81	24.81	333.43	962.25	3.8	7.5
3	2	628.81	24.81	333.43	962.25	3.8	7.5
4	3	635.13	24.60	332.08	967.21	9.6	7.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.14—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR B–SC–A (PORTABLE ACIM) (≤38)

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * ** (2022$)	Percent of consumers that experience net cost
1	1	$0.81	8
2	2	1.29	12
3	2	1.29	12
4	3	(3.83)	84

* Values in parentheses are negative numbers.
** The savings represent the average LCC for affected consumers.

TABLE V.15—AVERAGE LCC AND PBP RESULTS FOR B–SC–A (REFRIGERATED STORAGE ACIM)

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline						
1	1	$715.23	$14.29	$265.51	$980.74	2.3	7.5
2	2	716.20	13.79	262.66	978.86	2.1	7.5
3	2	716.20	13.79	262.66	978.86	2.1	7.5
4	3	724.11	13.66	261.83	985.94	9.1	7.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.16—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR B–SC–A (REFRIGERATED STORAGE ACIM)

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* ** (2022$)	Percent of consumers that experience net cost
1	1	$1.46	0
2	2	3.25	0
3	2	3.25	0
4	3	(4.04)	86

* Values in parentheses are negative numbers.
** The savings represent the average LCC for affected consumers.

TABLE V.17—AVERAGE LCC AND PBP RESULTS FOR B–SC–A (>50)

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline						
1	1	$1,778.66	$28.15	$359.35	$2,138.01	5.7	7.5
2	1	1,778.66	28.15	359.35	2,138.01	5.7	7.5
3	1	1,778.66	28.15	359.35	2,138.01	5.7	7.5
4	7	2,303.16	24.49	350.67	2,653.83	43.7	7.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level.
The PBP is measured relative to the baseline equipment.

TABLE V.18—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR B–SC–A (>50)

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* ** (2022$)	Percent of consumers that experience net cost
1	1	$7.98	11
2	1	7.98	11
3	1	7.98	11
4	7	(474.08)	90

* Values in parentheses are negative numbers.
** The savings represent the average LCC for affected consumers.

TABLE V.19—AVERAGE LCC AND PBP RESULTS FOR B–SC–A (>50 AND <134)

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline						
1	0	$2,782.01	$556.84	$4,060.39	$6,842.40	0.0	8.5
2	0	2,782.01	556.84	4,060.39	6,842.40	0.0	8.5
3	0	2,782.01	556.84	4,060.39	6,842.40	0.0	8.5
4	6	3,360.35	538.81	3,955.76	7,316.11	31.2	8.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.20—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR B–SC–A (>50 AND <134)

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* ** (2022$)	Percent of consumers that experience net cost
1	0	$0.00	0
2	0	0.00	0
3	0	0.00	0
4	6	(470.21)	79

* Values in parentheses are negative numbers.
** The savings represent the average LCC for affected consumers.

TABLE V.21—AVERAGE LCC AND PBP RESULTS FOR B–SC–A (≥200 AND <4,000)

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline						
1	1	$3,821.53	$856.72	$6,173.38	$9,994.92	3.5	8.5
2	2	3,893.30	842.89	6,077.43	9,970.73	4.4	8.5
3	4	3,963.67	838.42	6,052.93	10,016.60	6.0	8.5
4	6	4,415.42	828.46	6,003.26	10,418.68	15.7	8.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.22—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR B–SC–A (≥200 AND <4,000)

TSL	Efficiency level	Life-cycle cost savings: Average LCC savings * ** (2022$)	Life-cycle cost savings: Percent of consumers that experience net cost
1	1	$42.62	5
2	2	66.71	15
3	4	20.81	46
4	6	(382.22)	95

* Values in parentheses are negative numbers.
** The savings represent the average LCC for affected consumers.

TABLE V.23—AVERAGE LCC AND PBP RESULTS FOR C–IMH–W (>50 AND <801)

TSL	Efficiency level	Average costs (2022$): Installed cost	First year's operating cost	Lifetime operating cost	LCC	Simple payback (years)	Average lifetime (years)
	Baseline						
1	0	$5,197.82	$2,990.50	$22,203.66	$27,401.48	0.0	8.5
2	0	5,197.82	2,990.50	22,203.66	27,401.48	0.0	8.5
3	0	5,197.82	2,990.50	22,203.66	27,401.48	0.0	8.5
4	2	6,412.21	2,935.30	22,177.17	28,589.38	22.0	8.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level.
The PBP is measured relative to the baseline equipment.

TABLE V.24—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR C–IMH–W (>50 AND <801)

TSL	Efficiency level	Life-cycle cost savings: Average LCC savings * ** (2022$)	Life-cycle cost savings: Percent of consumers that experience net cost
1	0	$0.00	0
2	0	0.00	0
3	0	0.00	0
4	2	(1,187.75)	91

* Values in parentheses are negative numbers.
** The savings represent the average LCC for affected consumers

TABLE V.25—AVERAGE LCC AND PBP RESULTS FOR C–IMH–A (≥310 AND <820)

TSL	Efficiency level	Average costs (2022$): Installed cost	First year's operating cost	Lifetime operating cost	LCC	Simple payback (years)	Average lifetime (years)
	Baseline						
1	1	$4,187.09	$911.97	$6,760.80	$10,947.88	1.4	8.5
2	2	4,210.42	907.41	6,729.18	10,939.60	1.9	8.5
3	3	4,473.01	872.86	6,566.55	11,039.57	4.8	8.5
4	5	5,281.18	859.80	6,708.18	11,989.36	14.1	8.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level.
The PBP is measured relative to the baseline equipment.

TABLE V.26—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR C–IMH–A (≥310 AND <820)

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * ** (2022$)	Percent of consumers that experience net cost
1	1	$144.89	0
2	2	146.94	1
3	3	2.86	37
4	5	(947.04)	65

* Values in parentheses are negative numbers.
** The savings represent the average LCC for affected consumers.

TABLE V.27—AVERAGE LCC AND PBP RESULTS FOR C–RC&RC–A (≥800 AND <4,000)

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline						
1	1	$9,473.02	$1,730.38	$12,298.17	$21,771.19	2.3	8.5
2	2	9,579.89	1,689.56	12,046.35	21,626.24	2.5	8.5
3	4	9,784.36	1,673.41	11,934.64	21,718.64	4.2	8.5
4	5	10,823.59	1,653.70	12,102.60	22,926.19	12.7	8.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.28—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR C–RC&RC–A (≥800 AND <4,000)

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * ** (2022$)	Percent of consumers that experience net cost
1	1	$146.04	1
2	2	254.38	3
3	4	161.99	20
4	5	(1,044.87)	66

* Values in parentheses are negative numbers.
** The savings represent the average LCC for affected consumers.

TABLE V.29—AVERAGE LCC AND PBP RESULTS FOR C–SC–A (>50 AND <149)

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline						
1	1	$3,074.63	$571.24	$4,296.49	$7,371.12	5.3	8.5
2	1	3,074.63	571.24	4,296.49	7,371.12	5.3	8.5
3	1	3,074.63	571.24	4,296.49	7,371.12	5.3	8.5
4	5	4,011.26	559.59	4,482.64	8,493.90	64.7	8.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.30—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR C–SC–A (>50 AND <149)

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings *** (2022$)	Percent of consumers that experience net cost
1	1	$5.18	29
2	1	5.18	29
3	1	5.18	29
4	5	(1,117.62)	93

* Values in parentheses are negative numbers.
** The savings represent the average LCC for affected consumers.

TABLE V.31—AVERAGE LCC AND PBP RESULTS FOR C–SC–A (≥149 AND <700)

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline						
1	1	$4,076.50	$674.99	$5,060.46	$9,136.96	4.0	8.5
2	1	4,076.50	674.99	5,060.46	9,136.96	4.0	8.5
3	2	4,098.55	672.28	5,048.18	9,146.74	5.7	8.5
4	5	5,180.53	647.29	5,185.51	10,366.04	35.4	8.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.32—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR C–SC–A (≥149 AND <700)

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings *** (2022$)	Percent of consumers that experience net cost
1	1	$11.49	8
2	1	11.49	8
3	2	1.67	42
4	5	(1,217.84)	90

* Values in parentheses are negative numbers.
** The savings represent the average LCC for affected consumers.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on two subgroups: (1) lodging and (2) foodservice buildings. Table V.33 through Table V.37 compare the average LCC savings and PBP at each efficiency level for the consumer subgroups with similar metrics for the entire consumer sample for ACIM equipment. In most cases, the average LCC savings and PBP for lodging and foodservice buildings at the considered efficiency levels are not substantially different from all the business sector values.

For the automatic commercial ice makers, DOE has not distinguished between subsectors of the foodservice industry. In other words, DOE has been treating it as one sector as opposed to modeling limited or full-service restaurants and other types of foodservice firms separately.

Foodservice was chosen as one representative subgroup because of the large percentage of the industry represented by family or locally owned restaurants. Likewise, lodging was chosen due to the large percentage of the industry represented by locally owned or franchisee-owned hotels. DOE carried out two LCC subgroup analyses, one each for foodservice and lodging, by using the LCC spreadsheet described in chapter 8 of this NOPR, but with certain modifications. The input for business type was fixed to the identified subgroup, which ensured that the discount rates and electricity price rates associated with only that subgroup were selected in the Monte Carlo simulations (see chapter 8 of the NOPR TSD). Another major change from the LCC analysis was an added assumption that the subgroups do not have access to national capital markets, which results in higher discount rates for the subgroups. The higher discount rates lead the subgroups to value more highly upfront equipment purchase costs relative to the future operating cost savings.

Table V.33 presents the comparison of mean LCC savings for the foodservice sector subgroup with the national average values (LCC savings results from chapter 8 of the NOPR TSD). For all TSLs in all equipment classes, the LCC savings for the small business subgroup are lower than the national average values. Table V.34 presents the percentage of consumers that experience net cost compared to national average values. DOE modeled all equipment classes in this analysis, although DOE believes it is likely that the very large equipment classes are not commonly used in foodservice establishments. Table V.35 presents the comparison of median PBPs for the foodservice sector subgroup with national median values (median PBPs from chapter 8 of the NOPR TSD). The PBP values are longer for the foodservice sector subgroup in all cases. This arises because the first-year operating cost savings—which are used for payback period—are slightly lower leading to a longer payback, but given their higher discount rates, these consumers value future savings less, leading to lower LCC savings.

Table V.36 presents the comparison of mean LCC savings for the lodging sector subgroup (hotels and casinos) with the national average values (LCC savings results from chapter 8 of the NOPR TSD). For lodging sector small business, LCC savings are lower across the board. The reason for this is that the energy price for lodging is slightly lower than the average of all commercial business types (97 percent of the average). This lower energy price combined with a higher discount rate reduces the nominal value of future operating and maintenance benefits as well as the present value of the benefits, thus resulting in lower LCC savings. Table V.37 presents the percentage of consumers that experience net cost of the lodging sector consumer subgroup compared to national average values.

Table V.38 presents the comparison of median PBPs for the lodging sector subgroup with national median values (median PBPs from chapter 8 of the NOPR TSD). The PBP values are slightly higher in the lodging subgroup in all instances. As noted above, the energy savings would be lower in nominal terms than a national average. Thus, the slightly lower median PBP appears to be a result of a narrower electricity saving results distribution that is close to but below the national average.

TABLE V.33—COMPARISON OF AVERAGE LCC SAVINGS FOR THE FOODSERVICE SECTOR SUBGROUP WITH THE NATIONAL AVERAGE VALUES

Equipment class	Category	Average LCC savings (2022$ * **)			
		TSL 1	TSL 2	TSL 3	TSL 4
B–IMH–W (≥300 and <785)	Foodservice Sector	$0.00	$0.00	$0.00	($310.25)
	All Business Types	0.00	0.00	0.00	(307.99)
B–IMH–W (≥785 and <1,500)	Foodservice Sector	0.00	0.00	0.00	(254.57)
	All Business Types	0.00	0.00	0.00	(249.33)
B–IMH–A (≥300 and <727)	Foodservice Sector	24.41	19.46	19.46	(318.89)
	All Business Types	25.63	29.18	21.54	(315.79)
B–IMH–A (≥727 and <1,500)	Foodservice Sector	190.01	291.43	222.05	(45.44)
	All Business Types	194.60	300.78	232.02	(30.90)
B–RC(NRC)–A (≥988 and <4,000)	Foodservice Sector	88.99	88.99	31.92	(223.54)
	All Business Types	93.15	93.15	36.86	(215.49)
B–SC–A (Portable ACIM) (≤38)	Foodservice Sector	0.77	1.22	1.22	(3.91)
	All Business Types	0.81	1.29	1.29	(3.83)
B–SC–A (Refrigerated Storage ACIM)	Foodservice Sector	1.42	3.15	3.15	(4.14)
	All Business Types	1.46	3.25	3.25	(4.04)
B–SC–A (≤50)	Foodservice Sector	7.19	7.19	7.19	(474.50)
	All Business Types	7.98	7.98	7.98	(474.08)
B–SC–A (>50 and <134)	Foodservice Sector	0.00	0.00	0.00	(472.22)
	All Business Types	0.00	0.00	0.00	(470.21)
B–SC–A (≥200 and <4,000)	Foodservice Sector	41.03	63.33	16.92	(387.02)
	All Business Types	42.62	66.71	20.81	(382.22)
C–IMH–W (>50 and <801)	Foodservice Sector	0.00	0.00	0.00	(1,191.35)
	All Business Types	0.00	0.00	0.00	(1,187.75)
C–IMH–A (≥310 and <820)	Foodservice Sector	141.26	142.85	(3.88)	(952.71)
	All Business Types	144.89	146.94	2.86	(947.04)
C–RC&RC–A (≥800 and <4,000)	Foodservice Sector	141.59	246.19	151.76	(1,054.67)
	All Business Types	146.04	254.38	161.99	(1,044.87)
C–SC–A (>50 and <149)	Foodservice Sector	4.77	4.77	4.77	(1,116.89)
	All Business Types	5.18	5.18	5.18	(1,117.62)
C–SC–A (≥149 and <700)	Foodservice Sector	11.00	11.00	0.90	(1,218.67)
	All Business Types	11.49	11.49	1.67	(1,217.84)

* Values in parentheses are negative numbers.
** The savings represent the average LCC for affected consumers.

TABLE V.34—PERCENTAGE OF CONSUMERS EXPERIENCING NET COST FOR THE FOODSERVICE SECTOR SUBGROUP

Equipment class	Category	Percentage net cost			
		TSL 1	TSL 2	TSL 3	TSL 4
B–IMH–W (≥300 and <785)	Foodservice Sector	0	0	0	49
	All Business Types	0	0	0	49
B–IMH–W (≥785 and <1,500)	Foodservice Sector	0	0	0	83
	All Business Types	0	0	0	82
B–IMH–A (≥300 and <727)	Foodservice Sector	4	16	16	66
	All Business Types	4	6	16	66
B–IMH–A (≥727 and <1,500)	Foodservice Sector	0	3	18	66
	All Business Types	0	3	18	64
B–RC(NRC)–A (≥988 and <4,000)	Foodservice Sector	3	3	10	51
	All Business Types	3	3	10	51

TABLE V.34—PERCENTAGE OF CONSUMERS EXPERIENCING NET COST FOR THE FOODSERVICE SECTOR SUBGROUP—Continued

Equipment class	Category	Percentage net cost			
		TSL 1	TSL 2	TSL 3	TSL 4
B–SC–A (Portable ACIM) (≤38)	Foodservice Sector	8	12	12	84
	All Business Types	8	12	12	84
B–SC–A (Refrigerated Storage ACIM)	Foodservice Sector	0	0	0	87
	All Business Types	0	0	0	86
B–SC–A (≤50)	Foodservice Sector	12	12	12	90
	All Business Types	11	11	11	90
B–SC–A (>50 and <134)	Foodservice Sector	0	0	0	79
	All Business Types	0	0	0	79
B–SC–A (≥200 and <4,000)	Foodservice Sector	6	16	48	95
	All Business Types	5	15	46	95
C–IMH–W (>50 and <801)	Foodservice Sector	0	0	0	91
	All Business Types	0	0	0	91
C–IMH–A (≥310 and <820)	Foodservice Sector	0	1	38	65
	All Business Types	0	1	37	65
C–RC&RC–A (≥800 and <4,000)	Foodservice Sector	1	3	21	66
	All Business Types	1	3	20	66
C–SC–A (>50 and <149)	Foodservice Sector	31	31	31	93
	All Business Types	29	29	29	93
C–SC–A (≥149 and <700)	Foodservice Sector	8	8	43	90
	All Business Types	8	8	42	90

TABLE V.35—COMPARISON OF MEDIAN PAYBACK PERIODS FOR THE FOODSERVICE SECTOR SUBGROUP WITH NATIONAL MEDIAN VALUES

Equipment class	Category	Median payback period (years*)			
		TSL 1	TSL 2	TSL 3	TSL 4
B–IMH–W (≥300 and <785)	Foodservice Sector	0.0	0.0	0.0	25.0
	All Business Types	0.0	0.0	0.0	24.7
B–IMH–W (≥785 and <1,500)	Foodservice Sector	0.0	0.0	0.0	13.2
	All Business Types	0.0	0.0	0.0	13.0
B–IMH–A (≥300 and <727)	Foodservice Sector	3.4	4.5	4.5	14.4
	All Business Types	3.4	4.1	4.5	14.3
B–IMH–A (≥727 and <1,500)	Foodservice Sector	1.3	2.4	3.4	6.5
	All Business Types	1.3	2.4	3.4	6.4
B–RC(NRC)–A (≥988 and <4,000)	Foodservice Sector	3.2	3.2	5.2	8.9
	All Business Types	3.2	3.2	5.2	8.8
B–SC–A (Portable ACIM) (≤38)	Foodservice Sector	3.3	3.9	3.9	9.7
	All Business Types	3.3	3.8	3.8	9.6
B–SC–A (Refrigerated Storage ACIM)	Foodservice Sector	2.3	2.1	2.1	9.2
	All Business Types	2.3	2.1	2.1	9.1
B–SC–A (≤50)	Foodservice Sector	5.7	5.7	5.7	43.9
	All Business Types	5.7	5.7	5.7	43.7
B–SC–A (>50 and <134)	Foodservice Sector	0.0	0.0	0.0	31.5
	All Business Types	0.0	0.0	0.0	31.2
B–SC–A (≥200 and <4,000)	Foodservice Sector	3.5	4.4	6.1	15.8
	All Business Types	3.5	4.4	6.0	15.7
C–IMH–W (>50 and <801)	Foodservice Sector	0.0	0.0	0.0	22.2
	All Business Types	0.0	0.0	0.0	22.0
C–IMH–A (≥310 and <820)	Foodservice Sector	1.4	1.9	4.9	14.3
	All Business Types	1.4	1.9	4.8	14.1
C–RC&RC–A (≥800 and <4,000)	Foodservice Sector	2.3	2.5	4.3	12.8
	All Business Types	2.3	2.5	4.2	12.7
C–SC–A (>50 and <149)	Foodservice Sector	5.3	5.3	5.3	65.3
	All Business Types	5.3	5.3	5.3	64.7
C–SC–A (≥149 and <700)	Foodservice Sector	4.0	4.0	5.7	35.7
	All Business Types	4.0	4.0	5.7	35.4

* Values in parentheses are negative numbers.

TABLE V.36—COMPARISON OF AVERAGE LCC SAVINGS FOR THE LODGING SECTOR SUBGROUP WITH THE NATIONAL AVERAGE VALUES

Equipment class	Category	Average LCC savings (2022$ * **)			
		TSL 1	TSL 2	TSL 3	TSL 4
B–IMH–W (≥300 and <785)	Lodging Sector	0.00	0.00	0.00	(310.79)
	All Business Types	0.00	0.00	0.00	(307.99)
B–IMH–W (≥785 and <1,500)	Lodging Sector	0.00	0.00	0.00	(255.39)
	All Business Types	0.00	0.00	0.00	(249.33)
B–IMH–A (≥300 and <727)	Lodging Sector	24.30	19.29	19.29	(319.25)
	All Business Types	25.63	29.18	21.54	(315.79)
B–IMH–A (≥727 and <1,500)	Lodging Sector	189.36	290.07	220.62	(47.47)
	All Business Types	194.60	300.78	232.02	(30.90)
B–RC(NRC)–A (≥988 and <4,000)	Lodging Sector	88.50	88.50	31.36	(224.66)
	All Business Types	93.15	93.15	36.86	(215.49)
B–SC–A (Portable ACIM) (≤38)	Lodging Sector	0.77	1.21	1.21	(3.93)
	All Business Types	0.81	1.29	1.29	(3.83)
B–SC–A (Refrigerated Storage ACIM)	Lodging Sector	1.41	3.14	3.14	(4.16)
	All Business Types	1.46	3.25	3.25	(4.04)
B–SC–A (≤50)	Lodging Sector	7.19	7.19	7.19	(474.54)
	All Business Types	7.98	7.98	7.98	(474.08)
B–SC–A (>50 and <134)	Lodging Sector	0.00	0.00	0.00	(472.54)
	All Business Types	0.00	0.00	0.00	(470.21)
B–SC–A (≥200 and <4,000)	Lodging Sector	40.81	62.87	16.39	(387.69)
	All Business Types	42.62	66.71	20.81	(382.22)
C–IMH–W (>50 and <801)	Lodging Sector	0.00	0.00	0.00	(1,192.25)
	All Business Types	0.00	0.00	0.00	(1,187.75)
C–IMH–A (≥310 and <820)	Lodging Sector	140.59	142.11	(5.05)	(953.91)
	All Business Types	144.89	146.94	2.86	(947.04)
C–RC&RC–A (≥800 and <4,000)	Lodging Sector	141.24	245.41	150.79	(1,056.10)
	All Business Types	146.04	254.38	161.99	(1,044.87)
C–SC–A (>50 and <149)	Lodging Sector	4.71	4.71	4.71	(1,117.03)
	All Business Types	5.18	5.18	5.18	(1,117.62)
C–SC–A (≥149 and <700)	Lodging Sector	10.93	10.93	0.79	(1,219.08)
	All Business Types	11.49	11.49	1.67	(1,217.84)

* Values in parentheses are negative numbers.
** The savings represent the average LCC for affected consumers.

TABLE V.37—PERCENTAGE OF CONSUMERS EXPERIENCING NET COST FOR THE LODGING SECTOR SUBGROUP

Equipment class	Category	Percentage net cost			
		TSL 1	TSL 2	TSL 3	TSL 4
B–IMH–W (≥300 and <785)	Lodging Sector	0	0	0	49
	All Business Types	0	0	0	49
B–IMH–W (≥785 and <1,500)	Lodging Sector	0	0	0	83
	All Business Types	0	0	0	82
B–IMH–A (≥300 and <727)	Lodging Sector	4	16	16	66
	All Business Types	4	6	16	66
B–IMH–A (≥727 and <1,500)	Lodging Sector	0	3	19	66
	All Business Types	0	3	18	64
B–RC(NRC)–A (≥988 and <4,000)	Lodging Sector	3	3	10	51
	All Business Types	3	3	10	51
B–SC–A (Portable ACIM) (≤38)	Lodging Sector	8	13	13	85
	All Business Types	8	12	12	84
B–SC–A (Refrigerated Storage ACIM)	Lodging Sector	0	0	0	87
	All Business Types	0	0	0	86
B–SC–A (≤50)	Lodging Sector	12	12	12	90
	All Business Types	11	11	11	90
B–SC–A (>50 and <134)	Lodging Sector	0	0	0	79
	All Business Types	0	0	0	79
B–SC–A (≥200 and <4,000)	Lodging Sector	6	16	48	95
	All Business Types	5	15	46	95
C–IMH–W (>50 and <801)	Lodging Sector	0	0	0	91
	All Business Types	0	0	0	91
C–IMH–A (≥310 and <820)	Lodging Sector	0	1	38	65
	All Business Types	0	1	37	65
C–RC&RC–A (≥800 and <4,000)	Lodging Sector	1	3	20	66
	All Business Types	1	3	20	66
C–SC–A (>50 and <149)	Lodging Sector	31	31	31	93
	All Business Types	29	29	29	93
C–SC–A (≥149 and <700)	Lodging Sector	8	8	43	90

TABLE V.37—PERCENTAGE OF CONSUMERS EXPERIENCING NET COST FOR THE LODGING SECTOR SUBGROUP—Continued

Equipment class	Category	Percentage net cost			
		TSL 1	TSL 2	TSL 3	TSL 4
	All Business Types	8	8	42	90

TABLE V.38—COMPARISON OF MEDIAN PAYBACK PERIODS FOR THE LODGING SECTOR SUBGROUP WITH NATIONAL MEDIAN VALUES

Equipment class	Category	Median payback period (years *)			
		TSL 1	TSL 2	TSL 3	TSL 4
B–IMH–W (≥300 and <785)	Lodging Sector	0.0	0.0	0.0	25.0
	All Business Types	0.0	0.0	0.0	24.7
B–IMH–W (≥785 and <1,500)	Lodging Sector	0.0	0.0	0.0	13.2
	All Business Types	0.0	0.0	0.0	13.0
B–IMH–A (≥300 and <727)	Lodging Sector	3.4	4.5	4.5	14.5
	All Business Types	3.4	4.1	4.5	14.3
B–IMH–A (≥727 and <1,500)	Lodging Sector	1.3	2.4	3.4	6.5
	All Business Types	1.3	2.4	3.4	6.4
B–RC(NRC)–A (≥988 and <4,000)	Lodging Sector	3.2	3.2	5.2	8.9
	All Business Types	3.2	3.2	5.2	8.8
B–SC–A (Portable ACIM) (≤38)	Lodging Sector	3.3	3.9	3.9	9.7
	All Business Types	3.3	3.8	3.8	9.6
B–SC–A (Refrigerated Storage ACIM)	Lodging Sector	2.3	2.1	2.1	9.2
	All Business Types	2.3	2.1	2.1	9.1
B–SC–A (≤50)	Lodging Sector	5.8	5.8	5.8	43.9
	All Business Types	5.7	5.7	5.7	43.7
B–SC–A (>50 and <134)	Lodging Sector	0.0	0.0	0.0	31.6
	All Business Types	0.0	0.0	0.0	31.2
B–SC–A (≥200 and <4,000)	Lodging Sector	3.5	4.4	6.1	15.8
	All Business Types	3.5	4.4	6.0	15.7
C–IMH–W (>50 and <801)	Lodging Sector	0.0	0.0	0.0	22.2
	All Business Types	0.0	0.0	0.0	22.0
C–IMH–A (≥310 and <820)	Lodging Sector	1.4	1.9	4.9	14.3
	All Business Types	1.4	1.9	4.8	14.1
C–RC&RC–A (≥800 and <4,000)	Lodging Sector	2.3	2.5	4.3	12.8
	All Business Types	2.3	2.5	4.2	12.7
C–SC–A (>50 and <149)	Lodging Sector	5.3	5.3	5.3	65.4
	All Business Types	5.3	5.3	5.3	64.7
C–SC–A (≥149 and <700)	Lodging Sector	4.1	4.1	5.8	35.8
	All Business Types	4.0	4.0	5.7	35.4

* Values in parentheses are negative numbers.

Chapter 11 of the NOPR TSD presents the complete LCC and PBP results for the subgroups.

c. Rebuttable Presumption Payback

As discussed in section III.F.2 of this document, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for equipment 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 ACIM equipment. In contrast, the PBPs presented in section V.B.1.a of this document were calculated using distributions that reflect the range of energy use in the field.

Table V.39 presents the rebuttable presumption payback periods for the considered TSLs for ACIM equipment. Although DOE examined the rebuttable presumption criterion, DOE also examined whether the standard levels considered in this 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.39—REBUTTABLE PRESUMPTION PAYBACK PERIODS

Equipment class	Median payback period (years *)			
	TSL 1	TSL 2	TSL 3	TSL 4
B–IMH–W (≥300 and <785)				24.7

TABLE V.39—REBUTTABLE PRESUMPTION PAYBACK PERIODS—Continued

Equipment class	Median payback period (years *)			
	TSL 1	TSL 2	TSL 3	TSL 4
B–IMH–W (≥785 and <1,500)	....	....	....	13.1
B–IMH–A (≥300 and <727)	3.4	4.5	4.5	14.3
B–IMH–A (≥727 and <1,500)	1.3	2.4	3.4	6.4
B–RC(NRC)–A (≥988 and <4,000)	3.2	3.2	5.2	8.8
B–SC–A (Portable ACIM) (≤38)	3.3	3.8	3.8	9.6
B–SC–A (Refrigerated Storage ACIM)	2.3	2.1	2.1	9.1
B–SC–A (≤50)	17.8	17.8	17.8	85.8
B–SC–A (>50 and <134)	....	....	....	31.2
B–SC–A (≥200 and <4,000)	3.5	4.4	6.0	15.7
C–IMH–W (>50 and <801)	....	....	....	22.0
C–IMH–A (≥310 and <820)	1.4	1.9	4.8	14.1
C–RC&RC–A (≥800 and <4,000)	2.3	2.5	4.2	12.7
C–SC–A (>50 and <149)	5.3	5.3	5.3	64.7
C–SC–A (≥149 and <700)	4.0	4.0	5.7	35.4

* Values in parentheses are negative numbers.

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of ACIM equipment. The following section describes the expected impacts on manufacturers at each considered TSL. 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 ACIM equipment, as well as the conversion costs that DOE estimates manufacturers of ACIM equipment would incur at each TSL.

The impact of potential new or amended energy conservation standards was analyzed under two scenarios: (1) the preservation of gross margin percentage; and (2) the preservation of operating profit, as discussed in section IV.J.2.d of this document. The preservation of gross margin percentages applies a ‘‘gross margin percentage’’ of 20 percent for all equipment classes across all efficiency levels.[71] This scenario assumes that a manufacturer's per-unit dollar profit would increase as MPCs increase in the standards cases and represents the upper-bound to industry profitability under potential new or amended energy conservation standards.

The preservation of operating profit scenario reflects manufacturers' concerns about their inability to maintain margins as MPCs increase to reach more stringent efficiency levels. In this scenario, while manufacturers make the necessary investments required to convert their facilities to produce compliant equipment, operating profit does not change in absolute dollars and decreases as a percentage of revenue. The preservation of operating profit scenario represents the lower (or more severe) bound to industry profitability under potential new or amended energy conservation standards.

Each of the modeled scenarios resulted in a unique set of cash flows and corresponding INPV for each TSL. 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). The ‘‘change in INPV’’ results refer to the difference in industry value between the no-new-standards case and standards case at each TSL. To provide perspective on the short-run cash flow impact, DOE includes a comparison of free cash flow between the no-new-standards case and the standards case at each TSL in the year before amended standards would take effect. This figure provides an understanding of the magnitude of the required conversion costs relative to the cash flow generated by the industry in the no-new-standards case.

Conversion costs are one-time investments for manufacturers to bring their manufacturing facilities and equipment designs into compliance with potential amended standards. As described in section IV.J.2.c of this document, conversion cost investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new standard. The conversion costs can have a significant impact on the short-term cash flow on the industry and generally result in lower free cash flow in the period between the publication of the final rule and the compliance date of potential new or amended standards. Conversion costs are independent of the manufacturer markup scenarios and are not presented as a range in this analysis.

TABLE V.40—MANUFACTURER IMPACT ANALYSIS RESULTS

	Unit	No-new-standards case	TSL 1	TSL 2	TSL 3	TSL 4
INPV	*2022$ Million*	96.4	90.8 to 91.5	88.5 to 89.8	82.5 to 84.9	53.4 to 71.8
Change in INPV	*%*	....	(5.8) to (5.1)	(8.2) to (6.8)	(14.4) to (12.0)	(44.6) to (25.5)
Free Cash Flow (2026)	*2022$ Million*	9.4	7.2	6.3	3.7	(2.4)
Change in Free Cash Flow (2026)	*%*	....	(23.5)	(32.8)	(60.9)	(125.4)
Product Conversion Costs	*2022$ Million*	....	4.4	6.5	11.0	20.5

[71] The gross margin percentage of 20 percent is based on manufacturer markups of 1.25.

TABLE V.40—MANUFACTURER IMPACT ANALYSIS RESULTS—Continued

	Unit	No-new-standards case	TSL 1	TSL 2	TSL 3	TSL 4
Capital Conversion Costs	*2022$ Million*	....	1.8	2.2	4.9	11.6
Total Conversion Costs	*2022$ Million*	....	6.2	8.7	15.9	32.1

* Parentheses denote negative (−) values.

The following cash flow discussion refers to the equipment classes as detailed in Table IV.5 and Table IV.6 in section IV.C of this document.

At TSL 1, the standard represents EL 1 for all equipment classes that have positive average LCC savings. The change in INPV is expected to range from −5.8 percent to −5.1 percent. At this level, free cash flow is estimated to decrease by 23.5 percent compared to the no-new-standards case value of $9.4 million in the year 2026, the year before the standards year. In 2026, approximately 61 percent of covered ACIM equipment shipments and 40 percent of low-capacity ACIM equipment shipments are expected to meet the efficiencies required at TSL 1.

The design options DOE analyzed for most equipment classes included condenser fan or pump motor efficiency improvements (*e.g.,* switching from a SPM to a PSC motor). The design options analyzed for B–SC–A (≤50) included implementing batch water fill. The design options analyzed for C–SC–A (>50 and <149) and C–SC–A (≥149 and <700) included implementing microchannel condensers. For equipment classes B–IMH–W (≥300 and <785), B–IMH–W (≥785 and <1,500), B–SC–A (>50 and <134), and C–IMH–W (>50 and <801), TSL 1 corresponds to EL 0. For the remaining equipment classes, TSL 1 corresponds to EL 1. Product conversion costs may be necessary for developing, qualifying, sourcing, and testing more efficient components. At this level, capital conversion costs are minimal because most manufacturers can achieve TSL 1 efficiencies with relatively minor component changes. DOE estimates product conversion costs of $4.4 million and capital conversion costs of $1.8 million. Conversion costs total $6.2 million.

At TSL 1, the shipment-weighted average MPC for all automatic commercial ice makers is expected to increase by 0.6 percent relative to the no-new-standards case shipment-weighted average MPC for all automatic commercial ice makers in 2027. In the preservation of gross margin percentage scenario, the minor increase in cashflow from the higher MSP is slightly outweighed by the $6.2 million in conversion costs, causing a small decrease in INPV at TSL 1 under this scenario. Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2027, the analyzed compliance year. This reduction in the manufacturer markup and the $6.2 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 1 under the preservation of operating profit scenario.

At TSL 2, the standard represents efficiency levels with maximum average LCC savings. The change in INPV is expected to range from −8.2 to −6.8 percent. At this level, free cash flow is estimated to decrease by 32.8 percent compared to the no-new-standards case value of $9.4 million in the year 2026, the year before the standards year. In 2026, approximately 58 percent of covered ACIM equipment shipments and 32 percent of low-capacity ACIM equipment shipments are expected to meet the efficiencies required at TSL 2.

The additional design options analyzed at TSL 2 are similar to the design options analyzed at TSL 1 (*i.e.,* more-efficient condenser fan and/or pump motors, microchannel condensers). For most equipment classes, the design options included implementing additional motor efficiency improvements as compared to TSL 1 (*e.g.,* switching from a PSC motor to an ECM). The design options analyzed for C–IMH–A (≥310 and <820) included implementing microchannel condensers. For equipment classes B–IMH–A (≥300 and <727), B–IMH–A (≥727 and <1,500), B–SC–A (Portable <38), B–SC–A (Refrigerated Storage), B–SC–A (≥200 and <4,000), C–IMH–A (≥310 and <820), and C–RC&RC–A (≥800 and <4,000), TSL 2 corresponds to EL 2. For the remaining equipment classes, the efficiencies required at TSL 2 are the same as TSL 1. At this level, product conversion costs may be necessary for developing, qualifying, sourcing, and testing higher efficiency components. At TSL 2, the majority of redesigns still rely on switching to higher efficiency motors, but a limited number of units are expected to require more complex system redesigns of the condenser. Capital conversion costs may be necessary for incremental updates in tooling. DOE estimates product conversion costs of $6.5 million and capital conversion costs of $2.2 million. Conversion costs total $8.7 million.

At TSL 2, the shipment-weighted average MPC for all automatic commercial ice makers is expected to increase by 1.3 percent relative to the no-new-standards case shipment-weighted average MPC for all automatic commercial ice makers in 2027. In the preservation of gross margin percentage scenario, the minor increase in cashflow from the higher MSP is outweighed by the $8.7 million in conversion costs, causing a decrease in INPV at TSL 2 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2027, the analyzed compliance year. This reduction in the manufacturer markup and the $8.7 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 2 under the preservation of operating profit scenario.

At TSL 3, the standard represents the maximum efficiency level with a positive average LCC savings. The change in INPV is expected to range from −14.4 to −12.0 percent. At this level, free cash flow is estimated to decrease by 60.9 percent compared to the no-new-standards case value of $9.4 million in the year 2026, the year before the standards year. In 2026, approximately 52 percent of covered ACIM equipment shipments and 32 percent of low-capacity ACIM equipment shipments are expected to meet the efficiencies required at TSL 3.

At TSL 3, DOE expects more widespread use of higher efficiency motors and microchannel condensers as compared to TSL 1 and TSL 2. For example, meeting the efficiencies required by TSL 3 would require some manufacturers to implement both higher efficiency fan motors (air-cooled only) and higher efficiency pump (batch only) or auger motors (continuous only). In addition, DOE expects the majority of equipment classes (air-cooled only) would need to incorporate microchannel condensers into their ACIM equipment designs. At TSL 3, the additional design options analyzed for B–IMH–A (≥727 and <1,500), B–RC(NRC)–A (≥988 and <4,000), B–SC–A (≥200 and <4,000), and C–RC&RC–A (≥800 and <4,000) included implementing microchannel condensers. The additional design options analyzed for C–RC&RC–A (≥800 and <4,000) also included an increase in condenser width. For equipment classes B–IMH–A (≥727 and <1,500), B–SC–A (≥200 and <4,000), and C–RC&RC–A (≥800 and <4,000) TSL 3 corresponds to EL 4. For B–RC(NRC)–A (≥988 and <4,000) and C–SC–A (≥149 and <700), TSL 3 corresponds to EL 2. For C–IMH–A (≥310 and <820), TSL 3 corresponds to EL 3. For the remaining equipment classes, the efficiencies required at TSL 3 are the same as TSL 2. Product conversion costs may be necessary for developing, qualifying, sourcing, and testing higher efficiency components. At TSL 3, some redesigns still rely on switching to higher efficiency components, but most automatic commercial ice makers are expected to require more complex system redesigns of the condenser. DOE estimates product conversion costs of $11.0 million and capital conversion costs of $4.9 million. Conversion costs total $15.9 million.

At TSL 3, the shipment-weighted average MPC for all automatic commercial ice makers is expected to increase by 2.2 percent relative to the no-new-standards case shipment-weighted average MPC for all automatic commercial ice makers in 2027. In the preservation of gross margin percentage scenario, the increase in cashflow from the higher MSP is outweighed by the $15.9 million in conversion costs, causing a decrease in INPV at TSL 3 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2027, the analyzed compliance year. This reduction in the manufacturer markup and the $15.9 million in conversion costs incurred by manufacturers cause a loss in INPV at TSL 3 under the preservation of operating profit scenario.

At TSL 4, the standard represents max-tech for all equipment classes. The change in INPV is expected to range from −44.6 to −25.5 percent. At this level, free cash flow is estimated to decrease by 125.4 percent compared to the no-new-standards case value of $9.4 million in the year 2026, the year before the standards year. In 2026, approximately 24 percent of covered ACIM equipment shipments and 10 percent of low-capacity ACIM equipment shipments are expected to meet the efficiencies required at TSL 4.

At max-tech levels, manufacturers would likely need to implement ECM condenser fan motors (air-cooled only), ECM pump motors (batch only), or ECM auger motors (continuous only) in all of their ACIM equipment designs. All analyzed air-cooled equipment classes would likely require the use of microchannel condensers to meet max-tech. The design options analyzed for all batch equipment classes included drain water heat exchangers. Additionally, DOE expects that manufacturers of B–RC(NRC)–A (≥988 and <4,000) would likely need to increase the size of the condenser. Product conversion costs may be necessary for developing, qualifying, sourcing, and testing more higher efficiency components. At TSL 4, most automatic commercial ice makers are expected to require more complex system redesigns of the condenser. Updating product lines to incorporate microchannel condensers would likely necessitate new tooling and additional design effort as manufacturers would need to obtain samples from suppliers, build pilot units, and conduct iterative testing for each basic model. Increasing the size of the condenser would likely require new tooling and fixtures and significant development time as larger condensers could require a bigger base and updated chassis design. DOE estimates product conversion costs of $20.5 million and capital conversion costs of $11.6 million. Conversion costs total $32.1 million.

At TSL 4, the large conversion costs result in a free cash flow dropping below zero in the years before the standards year. The negative free cash flow calculation indicates manufacturers may need to access cash reserves or outside capital to finance conversion efforts.

At TSL 4, the shipment-weighted average MPC for all automatic commercial ice makers is expected to increase by 18.2 percent relative to the no-new-standards case shipment-weighted average MPC for all automatic commercial ice makers in 2027. In the preservation of gross margin percentage scenario, the increase in cashflow from the higher MSP is outweighed by the $32.1 million in conversion costs, causing a large decrease in INPV at TSL 4 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2027, the analyzed compliance year. This reduction in the manufacturer markup and the $32.1 million in conversion costs incurred by manufacturers, cause a significant loss in INPV at TSL 4 under the preservation of operating profit scenario.

DOE seeks comments, information, and data on the capital conversion costs and product conversion costs estimated for each TSL.

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of amended energy conservation standards on direct employment in the ACIM equipment industry, DOE used the GRIM to estimate the domestic labor expenditures and number of direct employees in the no-new-standards case and in each of the standards cases during the analysis period. DOE calculated these values using statistical data from the 2021 *ASM*,[72] BLS employee compensation data,[73] results of the engineering analysis, and manufacturer interviews.

Labor expenditures related to product manufacturing depend on the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the total MPCs by the labor percentage of MPCs. The total labor expenditures in the GRIM were then converted to total production employment levels by dividing production labor expenditures by the average fully burdened wage multiplied by the average number of hours worked per year per production worker. To do this, DOE relied on the *ASM* inputs: Production Workers Annual Wages, Production Workers Annual Hours, Production Workers for Pay Period, and Number of Employees. DOE also relied on the BLS employee compensation data to determine the fully burdened wage ratio. The fully burdened wage ratio factors in paid leave, supplemental pay, insurance, retirement and savings, and legally required benefits.

Total production employees was then multiplied by the U.S. labor percentage to convert total production employment to total domestic production employment. The U.S. labor percentage represents the industry fraction of domestic manufacturing production capacity for the covered equipment.

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[72] U.S. Census Bureau, *Annual Survey of Manufactures.* ''Summary Statistics for Industry Groups and Industries in the U.S (2021).'' Available at *www.census.gov/data/tables/time-series/econ/asm/2018-2021-asm.html* (last accessed January 20, 2023).

[73] U.S. Bureau of Labor Statistics. *Employer Costs for Employee Compensation.* December 15, 2022. Available at *www.bls.gov/news.release/pdf/ecec.pdf* (last accessed January 20, 2023).

This value is derived from manufacturer interviews, product database analysis, DOE's shipments analysis, and publicly available information. DOE estimates that approximately 72 percent of currently covered automatic commercial ice makers and 8 percent of the proposed low-capacity automatic commercial ice makers are produced domestically.

The domestic production employees estimate covers production line workers, including line supervisors, who are directly involved in fabricating and assembling products within the OEM facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor.[74] DOE's estimates only account for production workers who manufacture the specific equipment covered by this proposed rule.

Non-production workers account for the remainder of the direct employment figure. The non-production employees category covers domestic workers who are not directly involved in the production process, such as sales, engineering, human resources, management, *etc.*[75] Using the number of domestic production workers calculated above, non-production domestic employees are extrapolated by multiplying the ratio of non-production workers in the industry compared to production employees. DOE assumes that this employee distribution ratio remains constant between the no-new-standards case and standards cases.

Using the GRIM, DOE estimates in the absence of new energy conservation standards there would be 549 domestic workers for automatic commercial ice makers in 2027. Table V.41 shows the range of the impacts of energy conservation standards on U.S. manufacturing employment in the ACIM equipment industry. The discussion below provides a qualitative evaluation of the range of potential impacts presented in the table.

TABLE V.41—DIRECT EMPLOYMENT IMPACTS FOR DOMESTIC ACIM EQUIPMENT MANUFACTURERS IN 2027 *

	No-new-standards case	Trial standard level			
		1	2	3	4
Direct Employment in 2027 (Production Workers + Non-Production Workers)	549	549	548	548	541
Potential Changes in Direct Employment in 2027 *		(403) to 0	(403) to (1)	(403) to (1)	(403) to (8)

* DOE presents a range of potential employment impacts. Numbers in parentheses indicate negative numbers.

The direct employment impacts shown in Table V.41 represent the potential domestic employment changes that could result following the compliance date for the automatic commercial ice makers in this proposal. The upper bound estimate corresponds to a potential change in the number of domestic workers that would result from amended energy conservation standards if manufacturers continue to produce the same scope of covered equipment within the United States after compliance takes effect.

To establish a conservative lower bound, DOE assumes all manufacturers would shift production to foreign countries with lower labor costs. At lower TSLs (*i.e.,* TSL 1 through TSL 3), DOE believes the likelihood of changes in production location due to amended standards are low due to the relatively minor production line updates required. However, at max-tech, as both the complexity and cost of production updates increases, manufacturers are more likely to revisit their production location decisions.

Additional detail on the analysis of direct employment can be found in chapter 12 of the NOPR TSD. Additionally, the employment impacts discussed in this section are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 16 of the NOPR TSD.

c. Impacts on Manufacturing Capacity

Manufacturers raised concerns about technical resource constraints due to overlapping regulations. When considering potential new and amended energy conservation standards in isolation, the majority of ACIM equipment manufacturers interviewed stated that energy conservation standards that do not change the fundamental assembly of the equipment would not significantly affect manufacturers' production capacities. However, nearly all manufacturers interviewed noted that they may face resource constraints should EPA finalize its proposals in the December 2022 EPA NOPR and DOE set more stringent standards that necessitate the redesign of the majority of basic models. These manufacturers stated that meeting EPA's proposed refrigerant regulation would take significant amounts of engineering time and capital investment.

Based on manufacturer feedback from confidential interviews and publicly available information, DOE expects the ACIM equipment industry would need to invest approximately $30 million over a two-year time period (2023–2024) to redesign models for alternative refrigerants and retrofit manufacturing facilities to accommodate flammable refrigerants in order to comply with EPA's proposal. Should amended standards require significant product development or capital investment, manufacturers stated that the 3-year period between the announcement of the final rule and the compliance date of the amended energy conservation standard might be insufficient to complete the dual development needed to meet both EPA and DOE regulations.

DOE seeks comment on whether manufacturers expect that manufacturing capacity constraints or engineering resource constraints would limit equipment availability to consumers in the timeframe of the new or amended standard compliance date (2027).

d. Impacts on Subgroups of Manufacturers

Small business, low volume, and niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. As discussed in section IV.J of this document, using average cost assumptions to develop an industry cash flow estimate is inadequate to assess differential impacts among manufacturer subgroups.

[74] U.S. Census Bureau, ''Definitions and Instructions for the Annual Survey of Manufactures, MA–10000.'' Available at: *www2.census.gov/programs-surveys/asm/technical-documentation/questionnaire/2021/instructions/MA_10000_Instructions.pdf* (last accessed January 25, 2023).

[75] *Id.*

For automatic commercial ice makers, DOE identified and evaluated the impact of amended energy conservation standards on one subgroup: small manufacturers. The SBA defines a ''small business'' as having 1,250 employees or less for NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing,'' which includes ice-making machinery manufacturing. Based on this definition, DOE identified one domestic OEM in the ACIM equipment industry that qualifies as a ''small business.''

For a discussion of the impacts on the small manufacturer subgroup, *see* the regulatory flexibility analysis in section VI.B of this document or chapter 12 of the NOPR TSD.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the equipment-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered 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.42—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING ACIM EQUIPMENT OEMS

Federal Energy Conservation Standard	Number of OEMs *	Number of OEMs affected from today's rule **	Approx. standards year	Industry conversion costs (millions $)	Industry conversion costs/product revenue *** (percent)
Consumer Clothes Dryers,† 87 FR 51734 (August 23, 2022)	15	1	2027	$149.7 (2020$)	1.8
Microwave Ovens,† 87 FR 52282 (August 24, 2022)	18	2	2026	$46.1 (2021$)	0.7
Consumer Conventional Cooking Products, 88 FR 6818,† (February 1, 2023)	34	3	2027	$183.4 (2021$)	1.2
Residential Clothes Washers, 88 FR 13520,† (March 3, 2023)	19	1	2027	$690.8 (2021$)	5.2
Refrigerators, Freezers, and Refrigerator-Freezers, 88 FR 12452,† (February 27, 2023)	49	4	2027	$1,323.6 (2021$)	3.8
Miscellaneous Refrigeration Products, 88 FR 19382,† (March 31, 2023)	38	2	2029	$126.9 (2021$)	3.1
Consumer Pool Heaters ‡	20	1	2028	$48.4 (2021$)	1.5

* This column presents the total number of OEMs identified in the energy conservation standard rule contributing to cumulative regulatory burden.

** This column presents the number of OEMs producing automatic commercial ice makers that are also listed as OEMs in the identified 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 final rule. The conversion period typically ranges from 3 to 5 years, depending on the energy conservation standard.

† These rulemakings are in the NOPR stage and all values are subject to change until finalized.

‡ At the time of issuance of this ACIM equipment proposed rule, this rulemaking has been issued and is pending publication in the **Federal Register**. Once published, the consumer pool heaters final rule will be available at: *www.regulations.gov/docket/EERE-2021-BT-STD-0020.*

Other Federal Regulations

The December 2022 EPA NOPR [76] rulemaking proposes to restrict the use of hydrofluorocarbons in specific sectors or subsectors, including use in automatic commercial ice makers. DOE is considering the impacts of change in refrigerants in its analysis. See section IV.C.1.a of this document for a full discussion. DOE understands that switching from non-flammable to flammable refrigerants (*e.g.,* R–290) requires time and investment to redesign ACIM equipment models and upgrade production facilities to accommodate the additional structural and safety precautions required. As discussed in section IV.C.1 of this document, DOE expects ACIM equipment manufacturers will transition most models to R–290 or R–600a to comply with anticipated refrigeration regulations, such as the December 2022 EPA NOPR, prior to the expected 2027 compliance date of any potential energy conservation standards. As discussed in section IV.C.1 of this document, DOE expects ACIM equipment manufacturers will transition most models [77] to R–290 or R–600a to comply with anticipated refrigeration regulations, such as the December 2022 EPA NOPR, prior to the expected 2027 compliance date of any potential energy conservation standards. Therefore, the engineering analysis assumes the use of R–290 or R–600a compressors as a baseline design option for most equipment classes. See section IV.C.1 of this document for additional information on refrigerant assumptions in the engineering analysis.

DOE accounted for the costs associated with redesigning automatic commercial ice makers to make use of flammable refrigerants and retrofitting production facilities to accommodate flammable refrigerants in the GRIM. DOE relied on manufacturer feedback in confidential interviews and a report

[76] The proposed rule was published on December 15, 2022. 87 FR 76738.

[77] Specifically, all models of automatic commercial ice makers with harvest rates of up to 1,500 lb ice/24 h with non-remote condensers.

prepared for EPA[78] to estimate the industry refrigerant transition costs. Based on feedback, DOE assumed that the transition to low-GWP refrigerants would require industry to invest approximately $8.8 million in R&D and $21.2 million in capital expenditures (*e.g.,* investments in new charging equipment, leak detection systems, *etc.*).

DOE requests comments on the magnitude of costs associated with transitioning ACIM equipment models and production facilities to accommodate low-GWP refrigerants, such as R–290, that would be incurred between the publication of this NOPR and the proposed compliance date of new and amended standards. Quantification and categorization of these costs, such as engineering efforts, testing lab time, certification costs, and capital investments (*e.g.,* new charging equipment), would enable DOE to refine its analysis.

DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of automatic commercial ice makers associated with multiple DOE standards or equipment-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 ACIM equipment, 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 equipment purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2027–2056). Table V.43 presents DOE's projections of the national energy savings for each TSL considered for ACIM equipment. The savings were calculated using the approach described in section IV.H of this document.

TABLE V.43—CUMULATIVE NATIONAL ENERGY SAVINGS FOR AUTOMATIC COMMERCIAL ICE MAKERS; 30 YEARS OF SHIPMENTS

[2027–2056]

	Trial standard level (quads)			
	1	2	3	4
B–IMH–W (≥300 and <785)	0.000	0.000	0.000	0.001
B–IMH–W (≥785 and <1,500)	0.000	0.000	0.000	0.007
B–IMH–A (≥300 and <727)	0.004	0.005	0.010	0.025
B–IMH–A (≥727 and <1,500)	0.028	0.059	0.069	0.102
B–RC(NRC)–A (≥988 and <4,000)	0.003	0.003	0.003	0.015
B–SC–A (Portable ACIM) (≤38)	0.003	0.006	0.006	0.008
B–SC–A (Refrigerated Storage ACIM)	0.000	0.001	0.001	0.001
B–SC–A (≤50)	0.003	0.003	0.003	0.011
B–SC–A (>50 and <134)	0.000	0.000	0.000	0.011
B–SC–A (≥200 and <4,000)	0.003	0.006	0.007	0.009
C–IMH–W (>50 and <801)	0.000	0.000	0.000	0.004
C–IMH–A (≥310 and <820)	0.007	0.008	0.020	0.025
C–RC&RC–A (≥800 and <4,000)	0.011	0.027	0.033	0.040
C–SC–A (<50 and <149)	0.001	0.001	0.001	0.004
C–SC–A (≥149 and <700)	0.001	0.001	0.001	0.008
Primary Energy	0.06	0.12	0.15	0.27
B–IMH–W (≥300 and <785)	0.000	0.000	0.000	0.001
B–IMH–W (≥785 and <1,500)	0.000	0.000	0.000	0.007
B–IMH–A (≥300 and <727)	0.004	0.005	0.010	0.026
B–IMH–A (≥727 and <1,500)	0.029	0.061	0.072	0.106
B–RC(NRC)–A (≥988 and <4,000)	0.003	0.003	0.003	0.015
B–SC–A (Portable ACIM) (≤38)	0.003	0.006	0.006	0.008
B–SC–A (Refrigerated Storage ACIM)	0.000	0.001	0.001	0.001
B–SC–A (≤50)	0.003	0.003	0.003	0.011
B–SC–A (>50 and <134)	0.000	0.000	0.000	0.011
B–SC–A (≥200 and <4,000)	0.003	0.006	0.007	0.009
C–IMH–W (>50 and <801)	0.000	0.000	0.000	0.004
C–IMH–A (≥310 and <820)	0.007	0.008	0.020	0.026
C–RC&RC–A (≥800 and <4,000)	0.011	0.028	0.034	0.042
C–SC–A (>50 and <149)	0.001	0.001	0.001	0.004
C–SC–A (≥149,149 and <700)	0.001	0.001	0.001	0.008
Total FFC Energy	0.07	0.12	0.16	0.28

[78] *See* pp. 5–113 of the ''Global Non-CO2 Greenhouse Gas Emission Projections & Marginal Abatement Cost Analysis: Methodology Documentation'' (2019). Available at *www.epa.gov/sites/default/files/2019-09/documents/nonco2_methodology_report.pdf.*

OMB Circular A–4 [79] 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 equipment 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.[80] The review timeframe established in EPCA is generally not synchronized with the equipment lifetime, equipment manufacturing cycles, or other factors specific to ACIM equipment. 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.44. The impacts are counted over the lifetime of ACIM equipment purchased in 2027–2036.

TABLE V.44—CUMULATIVE NATIONAL ENERGY SAVINGS FOR AUTOMATIC COMMERCIAL ICE MAKERS; 9 YEARS OF SHIPMENTS

[2027–2036]

	Trial standard level			
	1	2	3	4
	(quads)			
B–IMH–W (≥300 and <785)	0.000	0.000	0.000	0.000
B–IMH–W (≥785 and <1,500)	0.000	0.000	0.000	0.002
B–IMH–A (≥300 and <727)	0.001	0.001	0.003	0.007
B–IMH–A (≥727 and <1,500)	0.008	0.016	0.019	0.028
B–RC(NRC)–A (≥988 and <4,000)	0.001	0.001	0.001	0.004
B–SC–A (Portable ACIM) (≤38)	0.001	0.002	0.002	0.002
B–SC–A (Refrigerated Storage ACIM)	0.000	0.000	0.000	0.000
B–SC–A (≤50)	0.001	0.001	0.001	0.003
B–SC–A (>50 and <134)	0.000	0.000	0.000	0.003
B–SC–A (≥200 and <4,000)	0.001	0.002	0.002	0.002
C–IMH–W (>50 and <801)	0.000	0.000	0.000	0.001
C–IMH–A (≥310 and <820)	0.002	0.002	0.005	0.007
C–RC&RC–A (≥800 and <4,000)	0.003	0.007	0.009	0.011
C–SC–A (>50 and <149)	0.000	0.000	0.000	0.001
C–SC–A (≥149 and <700)	0.000	0.000	0.000	0.002
Total Primary Energy	0.02	0.03	0.04	0.07
B–IMH–W (≥300 and <785)	0.000	0.000	0.000	0.000
B–IMH–W (≥785 and <1,500)	0.000	0.000	0.000	0.002
B–IMH–A (≥300 and <727)	0.001	0.001	0.003	0.007
B–IMH–A (≥727 and <1,500)	0.008	0.017	0.020	0.029
B–RC(NRC)–A (≥988 and <4,000)	0.001	0.001	0.001	0.004
B–SC–A (Portable ACIM) (≤38)	0.001	0.002	0.002	0.002
B–SC–A (Refrigerated Storage ACIM)	0.000	0.000	0.000	0.000
B–SC–A (≤50)	0.001	0.001	0.001	0.003
B–SC–A (>50 and <134)	0.000	0.000	0.000	0.003
B–SC–A (≥200 and <4,000)	0.001	0.002	0.002	0.002
C–IMH–W (>50 and <801)	0.000	0.000	0.000	0.001
C–IMH–A (≥310 and <820)	0.002	0.002	0.006	0.007
C–RC&RC–A (≥800 and <4,000)	0.003	0.008	0.009	0.011
C–SC–A (>50 and <149)	0.000	0.000	0.000	0.001
C–SC–A (≥149 and <700)	0.000	0.000	0.000	0.002
Total FFC Energy	0.02	0.03	0.04	0.08

b. Significance of Water Savings

To estimate the water savings attributable to potential amended standards for ACIM equipment, DOE compared their water consumption under the no-new-standards case to their anticipated water consumption under each TSL. The savings are measured over the entire lifetime of equipment purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2027–2056). Table V.45 presents DOE's projections of the national energy savings for each TSL considered for ACIM equipment. The savings were calculated using the

[79] 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 January 13, 2023).

[80] 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.

approach described in section IV.H of this document.

TABLE V.45—CUMULATIVE NATIONAL WATER SAVINGS FOR AUTOMATIC COMMERCIAL ICE MAKERS; 30 YEARS OF SHIPMENTS

[2027–2056]

	Trial standard level			
	1	2	3	4
	(million gallons)			
Water savings	6,100	6,100	6,100	6,100

As stated previously, OMB Circular A–4 [81] 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 equipment 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.[82] 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.46. The impacts are counted over the lifetime of ACIM equipment purchased in 2027–2035.

TABLE V.46—CUMULATIVE NATIONAL WATER SAVINGS FOR AUTOMATIC COMMERCIAL ICE MAKERS; 9 YEARS OF SHIPMENTS

[2027–2035]

	Trial standard level			
	1	2	3	4
	(million gallons)			
Water savings	1,600	1,600	1,600	1,600

c. 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 automatic commercial ice makers. In accordance with OMB's guidelines on regulatory analysis,[83] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.47 shows the consumer NPV results with impacts counted over the lifetime of equipment purchased in 2027–2056.

TABLE V.47—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR AUTOMATIC COMMERCIAL ICE MAKERS; 30 YEARS OF SHIPMENTS

[2027–2056]

Discount rate	Trial standard level			
	1	2	3	4
	(billion 2022$)			
3 percent	0.26	0.47	0.38	(2.67)
7 percent	0.11	0.20	0.14	(1.55)

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.48. The impacts are counted over the lifetime of equipment purchased in 2027–2035. As mentioned previously, such results are presented for informational purposes only and are not indicative of any

[81] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Available at *www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* (last accessed December 27, 2022).

[82] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

[83] 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 January 13, 2023).

change in DOE's analytical methodology or decision criteria.

TABLE V.48—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR AUTOMATIC COMMERCIAL ICE MAKERS; 9 YEARS OF SHIPMENTS

[2027–2035]

Discount rate	Trial standard level			
	1	2	3	4
	(billion 2022$)			
3 percent	0.09	0.16	0.12	(1.12)
7 percent	0.05	0.09	0.06	(0.84)

The previous results reflect the use of a default trend to estimate the change in price for ACIM equipment over the analysis period (*see* section IV.F.1 of this document).

d. Indirect Impacts on Employment

It is estimated that amended energy conservation standards for automatic commercial ice makers would reduce energy expenditures for consumers of that equipment, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered. There are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2027–2032), where these uncertainties are reduced.

The results suggest that the proposed standards would be likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Equipment

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 the ACIM equipment under consideration in this rulemaking. Manufacturers of this equipment currently offer units that meet or exceed the proposed standards.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from new or amended standards. As discussed in section III.F.1.e of this document, the Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. To assist the Attorney General in making this determination, DOE has provided DOJ with copies of this NOPR and the accompanying TSD for review. DOE will consider DOJ's comments on the proposed rule in determining whether to proceed to a final rule. DOE will publish and respond to DOJ's comments in that document. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak load periods. Chapter 15 in the NOPR TSD presents the estimated impacts on electricity generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this proposed rulemaking.

Energy conservation resulting from potential energy conservation standards for automatic commercial ice makers is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V.49 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The emissions were calculated using the multipliers discussed in section IV.K in this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.49—CUMULATIVE EMISSIONS REDUCTION FOR AUTOMATIC COMMERCIAL ICE MAKERS SHIPPED IN 2027–2056

	Trial standard level			
	1	2	3	4
Power Sector Emissions				
CO_2 (*million metric tons*)	2.03	3.85	5.00	8.74
CH_4 (*thousand tons*)	0.16	0.30	0.39	0.69
N_2O (*thousand tons*)	0.02	0.04	0.05	0.10
NO_X (*thousand tons*)	1.03	1.96	2.54	4.44
SO_2 (*thousand tons*)	0.98	1.86	2.42	4.22

TABLE V.49—CUMULATIVE EMISSIONS REDUCTION FOR AUTOMATIC COMMERCIAL ICE MAKERS SHIPPED IN 2027–2056—Continued

	Trial standard level			
	1	2	3	4
Hg (*tons*)	0.006	0.012	0.015	0.027
Upstream Emissions				
CO_2 (*million metric tons*)	0.15	0.29	0.38	0.66
CH_4 (*thousand tons*)	14.56	27.63	35.91	62.73
N_2O (*thousand tons*)	0.00	0.00	0.00	0.00
NO_X (*thousand tons*)	2.33	4.43	5.76	10.05
SO_2 (*thousand tons*)	0.01	0.02	0.03	0.05
Hg (*tons*)	0.00002	0.00004	0.00006	0.00010
Total FFC Emissions				
CO_2 (*million metric tons*)	2.18	4.14	5.38	9.40
CH_4 (*thousand tons*)	14.72	27.93	36.30	63.42
N_2O (*thousand tons*)	0.02	0.04	0.06	0.10
NO_X (*thousand tons*)	3.36	6.39	8.30	14.50
SO_2 (*thousand tons*)	0.99	1.88	2.44	4.27
Hg (*tons*)	0.006	0.012	0.015	0.03

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 ACIM equipment. Section IV.L of this document discusses the SC–CO_2 values that DOE used in its analysis. Table V.50 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.50—PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR AUTOMATIC COMMERCIAL ICE MAKERS SHIPPED IN 2027–2056

TSL	SC–CO_2 case, discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	(million 2022$)			
1	22	95	147	287
2	42	179	279	545
3	55	233	362	708
4	96	407	633	1,237

As discussed in section IV.L.2, DOE estimated the climate benefits likely to result from the reduced emissions of CH_4 and N_2O that DOE estimated for each of the considered TSLs for ACIM equipment. Table V.51 presents the value of the CH_4 emissions reduction at each TSL, and Table V.52 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.51—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR AUTOMATIC COMMERCIAL ICE MAKERS SHIPPED IN 2027–2056

TSL	SC–CH_4 case, discount rate and statistics (million 2022$)			
	5% (average)	3% (average)	2.5% (average)	3% (95th percentile)
1	0.6	1.7	2.2	4.4
2	1.0	2.5	3.3	6.6
3	1.7	4.3	5.8	11.4
4	4.4	12.2	16.7	32.2

TABLE V.52—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR AUTOMATIC COMMERCIAL ICE MAKERS SHIPPED IN 2027–2056

TSL	SC–N_2O case, discount rate and statistics (million 2022$)			
	5% (average)	3% (average)	2.5% (average)	3% (95th percentile)
1	0.01	0.03	0.05	0.08
2	0.01	0.05	0.07	0.12
3	0.02	0.08	0.12	0.21
4	0.06	0.22	0.34	0.59

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 automatic commercial ice makers. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.53 presents the present value for NO_X emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates, and Table V.54 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.53—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR AUTOMATIC COMMERCIAL ICE MAKERS SHIPPED IN 2027–2056

TSL	3% discount rate (million 2022$)	7% discount rate (million 2022$)
1	162	68
2	308	129
3	400	168
4	699	294

TABLE V.54—PRESENT VALUE OF SO_2 EMISSIONS REDUCTION FOR AUTOMATIC COMMERCIAL ICE MAKERS SHIPPED IN 2027–2056

TSL	3% discount rate (million 2022$)	7% discount rate (million 2022$)
1	64	28
2	122	53
3	159	69
4	278	120

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. 6316(a); 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.55 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 proposed rulemaking. The consumer benefits are domestic U.S. monetary savings that occur as a result of purchasing the covered automatic commercial ice makers 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 automatic commercial ice makers shipped in 2027–2056.

TABLE V.55—CONSUMER NPV COMBINED WITH PRESENT VALUE OF CLIMATE BENEFITS AND HEALTH BENEFITS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Using 3% discount rate for Consumer NPV and Health Benefits (*billion 2022$*)				
5% Average SC–GHG case	0.51	0.94	0.99	(1.60)
3% Average SC–GHG case	0.58	1.08	1.17	(1.28)
2.5% Average SC–GHG case	0.63	1.18	1.30	(1.05)
3% 95th percentile SC–GHG case	0.78	1.45	1.66	(0.43)
Using 7% discount rate for Consumer NPV and Health Benefits (*billion 2022$*)				
5% Average SC–GHG case	0.23	0.42	0.43	(1.03)
3% Average SC–GHG case	0.30	0.56	0.61	(0.71)

TABLE V.55—CONSUMER NPV COMBINED WITH PRESENT VALUE OF CLIMATE BENEFITS AND HEALTH BENEFITS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4
2.5% Average SC–GHG case	0.36	0.66	0.74	(0.48)
3% 95th percentile SC–GHG case	0.50	0.93	1.10	0.14

C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered equipment 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. 6316(a); 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. 6316(a); 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. 6316(a); 42 U.S.C. 6295(o)(3)(B))

For this NOPR, DOE considered the impacts of amended standards for automatic commercial ice makers at each TSL, beginning with the max-tech level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, the 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.

1. Benefits and Burdens of TSLs Considered for Automatic Commercial Ice Maker Standards

Table V.56 and Table V.57 summarize the quantitative impacts estimated for each TSL for automatic commercial ice makers. The national impacts are measured over the lifetime of automatic commercial ice makers 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 FFC results. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V.56—SUMMARY OF ANALYTICAL RESULTS FOR AUTOMATIC COMMERCIAL ICE MAKER TSLs: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Cumulative FFC National Energy Savings				
Quads	0.06	0.12	0.16	0.28
Cumulative FFC Emissions Reduction				
CO_2 *(million metric tons)*	2	4	5	9
CH_4 (*thousand tons*)	15	28	36	63
N_2O (*thousand tons*)	0.02	0.04	0.06	0.10
NO_X (*thousand tons*)	3	6	8	14
SO_2 (*thousand tons*)	1	2	2	4
Hg (*tons*)	0.006	0.012	0.015	0.027
Present Value of Benefits and Costs (*3% discount rate, billion 2022$*)				
Consumer Operating Cost Savings	0.41	0.70	0.88	1.16
Climate Benefits *	0.10	0.18	0.24	0.42
Health Benefits **	0.23	0.43	0.56	0.98
Total Benefits †	0.73	1.32	1.68	2.56
Consumer Incremental Product Costs ‡	0.15	0.24	0.51	3.84
Consumer Net Benefits	0.26	0.47	0.38	(2.67)
Total Net Benefits	0.58	1.08	1.17	(1.28)
Present Value of Benefits and Costs (*7% discount rate, billion 2022$*)				
Consumer Operating Cost Savings	0.19	0.33	0.42	0.55
Climate Benefits *	0.10	0.18	0.24	0.42
Health Benefits **	0.10	0.18	0.24	0.41
Total Benefits †	0.38	0.70	0.89	1.38
Consumer Incremental Product Costs ‡	0.08	0.13	0.28	2.10
Consumer Net Benefits	0.11	0.20	0.14	(1.55)
Total Net Benefits	0.30	0.56	0.61	(0.71)

Note: This table presents the costs and benefits associated with automatic commercial ice makers shipped in 2027 – 2056. These results include benefits to consumers that accrue after 2057 from the equipment 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; however, DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. To monetize the benefits of reducing GHG emissions, this analysis uses the interim 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.

** 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.

‡ Costs include incremental equipment costs.

TABLE V.57—SUMMARY OF ANALYTICAL RESULTS FOR AUTOMATIC COMMERCIAL ICE MAKERS TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1 *	TSL 2 *	TSL 3 *	TSL 4 *
Manufacturer Impacts				
Industry NPV *(million 2022$)* (No-new-standards case INPV = 96.4)	90.8 to 91.5	88.5 to 89.8	82.5 to 84.9	53.4 to 71.8
Industry NPV *(% change)*	(5.8) to (5.1)	(8.2) to (6.8)	(14.4) to (12.0)	(44.6) to (25.5)
Consumer Average LCC Savings (*2022$*)				
B–IMH–W (≥300 and <785)	$0	$0	$0	($308)
B–IMH–W (≥785 and <1,500)	$0	$0	$0	($249)
B–IMH–A (≥300 and <727)	$26	$29	$22	($316)
B–IMH–A (≥727 and <1,500)	$195	$301	$232	($31)
B–RC(NRC)–A (≥988 and <4,000)	$93	$93	$37	($215)
B–SC–A (Portable ACIM) (≤38)	$1	$1	$1	($4)
B–SC–A (Refrigerated Storage ACIM)	$1	$3	$3	($4)
B–SC–A (≤50)	$8	$8	$8	($474)
B–SC–A (>50 and <134)	$0	$0	$0	($470)
B–SC–A (≥200 and <4,000)	$43	$67	$21	($382)
C–IMH–W (>50 and <801)	$0	$0	$0	($1,188)
C–IMH–A (≥310 and <820)	$145	$147	$3	($947)
C–RC&RC–A (≥800 and <4,000)	$146	$254	$162	($1,045)
C–SC–A (>50 and <149)	$5	$5	$5	($1,118)
C–SC–A (≥149 and <700)	$11	$11	$2	($1,218)
Shipment-Weighted Average *	$20	$28	$17	($215)
Consumer Simple PBP (*years*)				
B–IMH–W (≥300 and <785)	0.0	0.0	0.0	24.7
B–IMH–W (≥785 and <1,500)	0.0	0.0	0.0	13.0
B–IMH–A (≥300 and <727)	3.4	4.1	4.5	14.3
B–IMH–A (≥727 and <1,500)	1.3	2.4	3.4	6.4
B–RC(NRC)–A (≥988 and <4,000)	3.2	3.2	5.2	8.8
B–SC–A (Portable ACIM) (≤38)	3.3	3.8	3.8	9.6
B–SC–A (Refrigerated Storage ACIM)	2.3	2.1	2.1	9.1
B–SC–A (≤50)	5.7	5.7	5.7	43.7
B–SC–A (>50 and <134)	0.0	0.0	0.0	31.2
B–SC–A (≥200 and <4,000)	3.5	4.4	6.0	15.7
C–IMH–W (>50 and <801)	0.0	0.0	0.0	22.0
C–IMH–A (≥310 and <820)	1.4	1.9	4.8	14.1
C–RC&RC–A (≥800 and <4,000)	2.3	2.5	4.2	12.7
C–SC–A (>50 and <149)	5.3	5.3	5.3	64.7
C–SC–A (≥149 and <700)	4.0	4.0	5.7	35.4
Shipment-Weighted Average *	3.4	3.8	4.0	17.6
Percent of Consumers that Experience a Net Cost				
B–IMH–W (≥300 and <785)	0%	0%	0%	49%
B–IMH–W (≥785 and <1,500)	0%	0%	0%	82%
B–IMH–A (≥300 and <727)	4%	6%	16%	66%
B–IMH–A (≥727 and <1,500)	0%	3%	18%	64%
B–RC(NRC)–A (≥988 and <4,000)	3%	3%	10%	51%
B–SC–A (Portable ACIM) (≤38)	8%	12%	12%	84%
B–SC–A (Refrigerated Storage ACIM)	0%	0%	0%	86%
B–SC–A (≤50)	11%	11%	11%	90%
B–SC–A (>50 and <134)	0%	0%	0%	79%
B–SC–A (≥200 and <4,000)	5%	15%	46%	95%
C–IMH–W (>50 and <801)	0%	0%	0%	91%
C–IMH–A (≥310 and <820)	0%	1%	37%	65%
C–RC&RC–A (≥800 and <4,000)	1%	3%	20%	66%
C–SC–A (>50 and <149)	29%	29%	29%	93%

TABLE V.57—SUMMARY OF ANALYTICAL RESULTS FOR AUTOMATIC COMMERCIAL ICE MAKERS TSLS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1 *	TSL 2 *	TSL 3 *	TSL 4 *
C–SC–A (≥149 and <700)	8%	8%	42%	90%
Shipment-Weighted Average *	7%	10%	13%	82%

Parentheses indicate negative (−) values.
* Weighted by shares of each equipment class in total projected shipments in 2022.

DOE first considered TSL 4, which represents the max-tech efficiency levels. At this level, DOE expects that all equipment classes would require use of ECMs to power the pump (for batch models), condenser fans (for air-cooled models), and auger (for continuous models). Further, DOE expects that improved condensers (*e.g.,* microchannel) and/or larger condensers would be adopted for air-cooled models, potable water use would be reduced to 20 gal/100 lb ice for batch ice makers currently consuming more potable water, and that drain water heat exchangers would be used for batch models. TSL 4 would save an estimated 0.28 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be -$1.55 billion using a discount rate of 7 percent, and -$2.67 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 9 Mt of CO_2, 4 thousand tons of SO_2, 14 thousand tons of NO_X, 0.027 tons of Hg, 63 thousand tons of CH_4, and 0.10 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 4 is $0.42 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 4 is $0.41 billion using a 7-percent discount rate and $0.98 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 4 is −$0.71 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 4 is −$1.28 billion.

At TSL 4, the average LCC impact is a savings of −$215 for automatic commercial ice makers. The simple payback period is 17.6 years for automatic commercial ice makers. The fraction of consumers experiencing a net LCC cost is 82 percent for automatic commercial ice makers.

At TSL 4, the projected change in INPV ranges from a decrease of $43.0 million to a decrease of $24.6 million, which corresponds to decreases of 44.6 percent and 25.5 percent, respectively. DOE estimates that industry must invest $32.1 million to comply with standards set at TSL 4. In 2026, a year before the compliance year, DOE estimates that 14 percent of ACIM equipment shipments would meet the max-tech efficiencies required.

At max-tech levels, nearly all manufacturers would need to spend significant development time sourcing, qualifying, and testing high-efficiency motors to meet the efficiencies required across their ACIM equipment portfolio. TSL 4 would also necessitate more complex system redesigns of the condenser for air-cooled equipment classes (*i.e.,* implementing microchannel condensers and/or larger condensers). Updating product lines to incorporate microchannel condensers would likely necessitate new tooling and additional design effort as manufacturers would need to obtain samples from suppliers, build pilot units, and conduct iterative testing for each basic model requiring updates. Increasing the size of the condenser would likely require new tooling and fixtures and significant development time as larger condensers could require a bigger base and updated chassis design. It is unclear if most manufacturers would have the engineering capacity to complete the necessary redesigns within the 3-year compliance period. If manufacturers require more than 3 years to redesign all their covered ACIM equipment models, they will likely prioritize redesigns based on sales volume.

As a result, the Secretary tentatively concludes that, at TSL 4 for automatic commercial ice makers, the benefits of energy savings, 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 automatic commercial ice makers consumers (82 percent) would experience a net cost and the average LCC savings would be negative. The potential reduction in INPV could be as high as 44.6 percent. Due to the limited amount of engineering resources each manufacturer has, it is unclear if most manufacturers would be able to redesign all of their automatic commercial ice maker equipment offerings in the 3-year compliance period. Consequently, the Secretary has tentatively concluded that TSL 4 is not economically justified.

DOE then considered TSL 3, which represents the maximum efficiency level for each equipment class that has a positive LCC savings. At this level, DOE expects that ACIM models would require use of improved-efficiency motors, in many cases ECMs. Further, DOE expects that improved condensers (*e.g.,* microchannel) or larger condensers would be adopted for air-cooled models and that potable water use would be reduced to 20 gal/100 lb ice for batch ice makers currently consuming more water. TSL 3 would save an estimated 0.16 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $0.14 billion using a discount rate of 7 percent, and $0.38 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 5 Mt of CO_2, 2 thousand tons of SO_2, 8 thousand tons of NO_X, 0.015 tons of Hg, 36 thousand tons of CH_4, and 0.06 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 3 is $0.24 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 3 is $0.24 billion using a 7-percent discount rate and $0.56 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 $0.61 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 3 is $1.17 billion.

At TSL 3, the average LCC impact is a savings of $17 for automatic commercial ice makers. The simple payback period is 4.0 years. The fraction of consumers experiencing a net LCC cost is 13 percent for automatic commercial ice makers.

At TSL 3, the projected change in INPV ranges from a decrease of $13.9 million to a decrease of $11.5 million, which corresponds to decreases of 14.4 percent and 12.0 percent, respectively. DOE estimates that industry must invest $15.9 million to comply with standards set at TSL 3. In 2026, a year before the compliance year, DOE estimates that approximately 37 percent of ACIM equipment shipments would meet the efficiency levels analyzed at TSL 3.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that a standard set at TSL 3 for consumer automatic commercial ice makers would be economically justified. At this TSL, the average LCC savings for both batch automatic commercial ice makers and continuous automatic commercial ice makers consumers is positive. An estimated 13 percent of ACIM consumers experience a net cost. The FFC national energy savings are significant and the NPV of consumer benefits is positive using both a 3-percent and 7-percent discount rate. Notably, the benefits to consumers vastly outweigh the cost to manufacturers. At TSL 3, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent, is over 13 times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at TSL 3 are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing $0.24 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and $0.56 billion (using a 3-percent discount rate) or $0.24 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

Therefore, based on the previous considerations, DOE proposes to adopt the energy conservation standards for automatic commercial ice makers at TSL 3. The proposed amended energy conservation standards for automatic commercial ice makers, which are expressed as kWh/100 lb ice, are shown in Table V.58 and Table V.59.

TABLE V.58—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR BATCH AUTOMATIC COMMERCIAL ICE MAKERS

Equipment type	Type of cooling	Harvest rate (lb ice/24 hours)	Maximum energy use* (kWh/100 lb ice)	Maximum condenser water use** (gal/100 lb ice)
Ice-Making Head	Water	>50 and <300	6.49–0.0055H	200–0.022H.
Ice-Making Head	Water	≥300 and <785	5.41–0.00191H	200–0.022H.
Ice-Making Head	Water	≥785 and <1,500	4.13–0.00028H	200–0.022H.
Ice-Making Head	Water	≥1,500 and <2,500	4	200–0.022H.
Ice-Making Head	Water	≥2,500 and <4,000	4	145.
Ice-Making Head	Air	>50 and <300	9.4–0.01233H	NA.
Ice-Making Head	Air	≥300 and <727	6.45–0.0025H	NA.
Ice-Making Head	Air	≥727 and <1,500	5.09–0.00063H	NA.
Ice-Making Head	Air	≥1,500 and <4,000	4.23	NA.
Remote Condensing (but Not Remote Compressor)	Air	>50 and <988	7.83–0.00342H	NA.
Remote Condensing (but Not Remote Compressor)	Air	≥988 and <4,000	4.45	NA.
Remote Condensing and Remote Compressor	Air	>50 and <930	7.82–0.00342H	NA.
Remote Condensing and Remote Compressor	Air	≥930 and <4,000	4.64	NA.
Self-Contained	Water	>50 and <200	8.18–0.019H	191–0.0315H.
Self-Contained	Water	≥200 and <2,500	4.38	191–0.0315H.
Self-Contained	Water	≥2,500 and <4,000	4.38	112.
Self-Contained	Air	≤50 Portable: ≤38	19.43–0.27613H	NA.
		>38 and ≤50	8.94	NA.
		Refrigerated Storage	29.8–0.37063H	NA.
		Not Portable or Refrigerated Storage	21.08–0.19634H	NA.
Self-Contained	Air	>50 and <134	13.61–0.0469H	NA.
Self-Contained	Air	≥134 and <200	10.72–0.02533H	NA.
Self-Contained	Air	≥200 and <4,000	5.65	NA.

* H = harvest rate in pounds per 24 hours, indicating the water or energy use for a given harvest rate.
** Water use is for the condenser only and does not include potable water used to make ice.

TABLE V.59—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR CONTINUOUS AUTOMATIC COMMERCIAL ICE MAKERS

Equipment type	Type of cooling	Harvest rate (lb ice/24 hours)		Maximum energy use * (kWh/100 lb ice)	Maximum condenser water use ** (gal/100 lb ice)
Ice-Making Head	Water	>50 and <801		6.24–0.00267H	180–0.0198H.
Ice-Making Head	Water	≥801 and <1,500		4.1	180–0.0198H.
Ice-Making Head	Water	≥1,500 and <2,500		4.34	180–0.0198H.
Ice-Making Head	Water	≥2,500 and <4,000		4.34	130.5.
Ice-Making Head	Air	>50 and <310		7.49–0.00629H	NA.
Ice-Making Head	Air	≥310 and <820		6.53–0.0032H	NA.
Ice-Making Head	Air	≥820 and <1,500		3.91	NA.
Ice-Making Head	Air	≥1,500 and <4,000		4.67	NA.
Remote Condensing (but Not Remote Compressor)	Air	>50 and <800		9.24–0.0058H	NA.
Remote Condensing (but Not Remote Compressor)	Air	≥800 and <4,000		4.6	NA.
Remote Condensing and Remote Compressor	Air	>50 and <800		9.42–0.0058H	NA.
Remote Condensing and Remote Compressor	Air	≥800 and <4,000		4.78	NA.
Self-Contained	Water	>50 and <900		6.5–0.00302H	153–0.0252H.
Self-Contained	Water	≥900 and <2,500		3.78	153–0.0252H.
Self-Contained	Water	≥2,500 and <4,000		3.78	90.
Self-Contained	Air	≤50	Portable	22.99–0.27789H	NA.
			Not Portable	24.51–0.29623H.	
Self-Contained	Air	>50 and <149		11.2–0.03H	NA.
Self-Contained	Air	≥149 and <700		7.66–0.00624H	NA.
Self-Contained	Air	≥700 and <4,000		3.29	NA.

* H = harvest rate in pounds per 24 hours, indicating the water or energy use for a given harvest rate.
** Water use is for the condenser only and does not include potable water used to make ice.

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 2022$) of the benefits from operating equipment that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase costs), and (2) the annualized monetary value of the climate and health benefits from emission reductions.

Table V.60 shows the annualized values for automatic commercial ice makers under TSL 3, expressed in 2022$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the proposed standards for automatic commercial ice makers is $29 million per year in increased equipment costs, while the estimated annual benefits are $44 million from reduced equipment operating costs, $14 million from GHG reductions, and $25 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $53 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards for automatic commercial ice makers is $29 million per year in increased equipment costs, while the estimated annual benefits are $51 million in reduced operating costs, $14 million from GHG reductions, and $32 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $67 million per year.

TABLE V.60—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR AUTOMATIC COMMERCIAL ICE MAKERS

[TSL 3]

	Million 2022$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	51	50	52
Climate Benefits *	14	14	14
Health Benefits **	32	32	33
Total Benefits †	96	96	98
Consumer Incremental Product Costs ‡	29	31	29
Net Benefits	67	64	70
7% discount rate			
Consumer Operating Cost Savings	44	43	45
Climate Benefits *	14	14	14
Health Benefits **	25	25	26
Total Benefits †	83	82	84
Consumer Incremental Product Costs ‡	29	31	29
Net Benefits	53	51	55

Note: This table presents the costs and benefits associated with automatic commercial ice makers shipped in 2027–2056. These results include benefits to consumers that accrue after 2056 from the equipment shipped in 2027–2056. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the *AEO2022* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.H.3 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC–GHG (*see* section IV.L of this notice). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown; however, DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. To monetize the benefits of reducing GHG emissions, this analysis uses the interim 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.

** 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.

‡ Costs include incremental equipment costs as well as installation costs.

D. Reporting, Certification, and Sampling Plan

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For automatic commercial ice makers, the certification template reflects the general certification requirements specified at 10 CFR 429.12 and the product-specific requirements specified at 10 CFR 429.45. As discussed in section VI.C of this document, DOE is not proposing to amend the product-specific certification requirements for this equipment.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14904

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) and E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed 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 does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) 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 automatic commercial ice makers, the SBA has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. (*See* 13 CFR part 121.) The size standards are listed by NAICS code and industry description and are available at *www.sba.gov/document/support-table-size-standards.* Manufacturing of automatic commercial ice makers is classified under NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration 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.

1. Description of Reasons Why Action Is Being Considered

DOE is proposing new and amended energy conservation standards for automatic commercial ice makers. EPCA prescribed initial standards for this equipment. (42 U.S.C. 6313(d)(1)) EPCA also authorizes DOE to establish new standards for automatic commercial ice makers not covered by the statutory standards. (42 U.S.C. 6313(d)(2)) Not later than January 1, 2015, with respect to the standards established under 42 U.S.C. 6313(d)(1), and, with respect to the standards established under 42 U.S.C. 6313(d)(2), not later than 5 years after the date on which the standards take effect, EPCA required DOE to issue a final rule to determine whether amending the applicable standards is technologically feasible and economically justified. (42 U.S.C. 6313(d)(3)(A)) Not later than 5 years after the effective date of any amended standards under 42 U.S.C. 6313(d)(3)(A) or the publication of a final rule determining that amending the standards is not technologically feasible or economically justified, DOE must issue a final rule to determine whether amending the standards established under 42 U.S.C. 6313(d)(1) or the amended standards, as applicable, is technologically feasible or economically justified. (42 U.S.C. 6313(d)(3)(B)) This proposed rulemaking is in accordance with DOE's obligations under EPCA.

2. Objectives of, and Legal Basis for, Rule

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C of EPCA, added by Public Law 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes automatic commercial ice makers, the subject of this document. (42 U.S.C. 6311(1)(F)) Not later than 5 years after the effective date of any amended standards under 42 U.S.C. 6313(d)(3)(A) or the publication of a final rule determining that amending the standards is not technologically feasible or economically justified, DOE must issue a final rule to determine whether amending the standards established under 42 U.S.C. 6313(d)(1) or the amended standards, as applicable, is technologically feasible or economically justified. (42 U.S.C. 6313(d)(3)(B)) A final rule issued under 42 U.S.C. 6313(d)(2) or (3) must establish standards at the maximum level that is technologically feasible and economically justified, as provided in 42 U.S.C. 6295(o) and (p).

3. Description on Estimated Number of Small Entities Regulated

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. 68 FR 7990. DOE conducted a market survey to identify potential small manufacturers of automatic commercial ice makers. DOE began its assessment by reviewing DOE's CCD,[84] California Energy Commission's MAEDbS,[85] EPA's ENERGY STAR Product Finder dataset,[86] AHRI's Directory of Certified Product Performance,[87] individual company websites, and prior automatic commercial ice maker rulemakings to identify manufacturers of the covered equipment. To identify low-capacity automatic commercial ice makers, DOE expanded on the database used for the March 2022 Preliminary Analysis with publicly available data aggregated from web scraping retail websites. DOE then consulted publicly available data, such as manufacturer websites, manufacturer specifications and product literature, import/export logs (*e.g.,* bills of lading from Panjiva),[88] and basic model numbers, to identify original equipment manufacturers (OEMs) of automatic commercial ice makers. DOE further relied on public data and subscription-based market research tools (*e.g.,* Dun & Bradstreet reports)[89] to determine company, location, headcount, and annual revenue. DOE also asked industry representatives if they were aware of any small manufacturers during manufacturer interviews. DOE screened out companies that do not offer equipment covered by this rulemaking, do not meet the SBA's definition of a ''small business,'' or are foreign-owned and operated.

DOE initially identified twenty-three OEMs that sell automatic commercial ice makers in the United States. Of the twenty-three OEMs identified, DOE tentatively determined that only one company qualifies as a small business and is not foreign-owned and operated.

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[84] U.S. Department of Energy's Compliance Certification Database is available at *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (last accessed November 28, 2022).

[85] California Energy Commission's Modernized Appliance Efficiency Database System is available at *cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx* (last accessed November 28, 2022).

[86] U.S. Environmental Protection Agency's ENERGY STAR Product Finder dataset is available at *www.energystar.gov/productfinder/* (last accessed November 17, 2022).

[87] AHRI Directory of Certified Product Performance *www.ahridirectory.org/Search/SearchHome?ReturnUrl=%2f* (last accessed November 28, 2022).

[88] S&P Global. Panjiva Market Intelligence is available at *panjiva.com/import-export/United-States* (last accessed January 20, 2023).

[89] Dun &Bradstreet Hoovers subscription login is accessible at: *app.dnbhoovers.com/* (last accessed January 20, 2023).

4. Description and Estimate of Compliance Requirements Including Differences in Cost, if Any, for Different Groups of Small Entities

The small automatic commercial ice maker manufacturer does not currently certify any models of the covered equipment in DOE's CCD. DOE identified this small business through its review of the California Energy Commission's MAEDbS and EPA's ENERGY STAR dataset. The one small business has seven unique basic models in the MAEDbS and ENERGY STAR product databases. Of those seven models, six are C–RC&RC–A (≥800 and <4,000) and the remaining model is a C–IMH–A (≥310 and <820). All seven models meet the efficiency levels required by the proposed standard. Therefore, DOE does not expect that this manufacturer would incur notable conversion costs as a direct result of the proposed standards outlined in this NOPR.

DOE seeks comments, information, and data on the number of small businesses in the industry, the names of those small businesses, and their market shares by equipment class. DOE also requests comment on the potential impacts of the proposed standards on small manufacturers.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the proposed rule.

6. Significant Alternatives to the Rule

The discussion in the previous section analyzes impacts on small businesses that would result from the energy conservation standards in DOE's proposed rule as represented by TSL 3. In reviewing alternatives to the proposed rule, DOE examined energy conservation standards set at lower efficiency levels. Although TSL 1 and TSL 2 would reduce the impacts on small business manufacturers, those levels would come at the expense of a reduction in energy savings. TSL 1 achieves 63-percent-lower energy savings compared to the energy savings at TSL 3. TSL 2 achieves 25-percent-lower energy savings compared to the energy savings at TSL 3.

Based on the presented discussion, amending and establishing standards at TSL 3 balances the benefits of the energy savings at TSL 3 with the potential burdens placed on ACIM equipment manufacturers, including small business manufacturers. Accordingly, DOE does not propose one of the other TSLs considered in the analysis, or the other policy alternatives examined as part of the regulatory impact analysis and included in chapter 17 of the NOPR TSD.

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 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 automatic commercial ice makers.

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.

New certification data would be required for low-capacity automatic commercial ice makers were this NOPR to be finalized as proposed. However, DOE is not proposing new or amended certification or reporting requirements for automatic commercial ice makers in this NOPR. Instead, DOE may consider proposals to establish certification requirements and reporting for automatic commercial ice makers 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 equipment that is 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. (*See* 42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of 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.*

This rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar.15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct.7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which proposes new and amended energy conservation standards for automatic commercial ice makers, 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 prepared a report describing that peer review.[90] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. DOE is in the process of evaluating the resulting report.[91]

VII. Public Participation

A. Participation in the Webinar

The time and date of the webinar meeting is 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:*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.

1. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will provide 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 proposed rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the Docket section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

C. 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

[90] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at www.*energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0* (last accessed January 25, 2023).

[91] The report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.*

containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, *see* the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

D. 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 comments on its proposal to require that the proposed standards, if adopted, would apply to all automatic commercial ice makers listed in Table I.1 and Table I.2 manufactured in, or imported into, the United States on or after the date that is 3 years after the date on which the final amended standard is published. More generally, DOE requests comment on whether it would be beneficial to ACIM equipment manufacturers to align the compliance date of any DOE amended or established standards as closely as possible with the refrigerant prohibition dates proposed by the December 2022 EPA NOPR.

(2) DOE requests comments on its proposal to establish equipment classes and energy conservation standards for low-capacity ACIM categories.

(3) DOE requests comments on its proposal to amend the definition of refrigerated storage automatic commercial ice maker.

(4) DOE requests comments on its proposal to use baseline levels for automatic commercial ice makers based upon the design changes made by manufacturers in response to the December 2022 EPA NOPR.

(5) DOE seeks comment on the method for estimating manufacturing production costs.

(6) DOE requests comments on its approach to monetizing the impact of the rebound effect.

(7) DOE requests comments on how to address the climate benefits and other non-monetized effects of the proposal.

(8) DOE seeks comments, information, and data on the capital conversion costs and product conversion costs estimated for each TSL.

(9) DOE seeks comment on whether manufacturers expect that manufacturing capacity constraints or engineering resource constraints would limit equipment availability to consumers in the timeframe of the new or amended standard compliance date (2027).

(10) DOE requests comments on the magnitude of costs associated with transitioning ACIM equipment models and production facilities to accommodate low-GWP refrigerants, such as R–290, that would be incurred between the publication of this NOPR and the proposed compliance date of new and amended standards. Quantification and categorization of these costs, such as engineering efforts, testing lab time, certification costs, and capital investments (*e.g.,* new charging equipment), would enable DOE to refine its analysis.

(11) DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of automatic commercial ice makers associated with multiple DOE standards or equipment-specific regulatory actions of other Federal agencies.

(12) DOE seeks comments, information, and data on the number of small businesses in the industry, the names of those small businesses, and their market shares by equipment class. DOE also requests comment on the potential impacts of the proposed standards on small manufacturers.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this proposed 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.

List of Subjects in 10 CFR Part 431

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

Signing Authority

This document of the Department of Energy was signed on April 28, 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 May 2, 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 431 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

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

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

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

■ 2. Amend § 431.132 by revising the definition of ''Refrigerated storage automatic commercial ice maker'' to read as follows:

§ 431.132 Definitions concerning automatic commercial ice makers.

* * * * *

Refrigerated storage automatic commercial ice maker means an automatic commercial ice maker that has a refrigeration system that actively refrigerates the self-contained ice storage bin and for which there is no internal storage space other than the ice storage bin that holds the produced ice.

* * * * *

■ 3. Revise § 431.136 to read as follows:

§ 431.136 Energy conservation standards and their effective dates.

(a) All basic models of automatic commercial ice makers must be tested for performance using the applicable DOE test procedure in § 431.134, be compliant with the applicable standards set forth in paragraphs (b) through (c) of this section, and be certified to the Department of Energy under 10 CFR part 429 of this chapter.

(b) Each batch type automatic commercial ice maker with capacities between 50 and 4,000 pounds per 24-hour period manufactured on or after January 28, 2018 and before [*date 3 Years after date of publication of the final rule in the* **Federal Register**], shall meet the following standard levels:

Equipment type	Type of cooling	Harvest rate (lb ice/24 hours)	Maximum energy use kilowatt-hours (kWh/100 lb ice [1])	Maximum condenser water use (gal/100 lb ice [2])
Ice-Making Head	Water	<300	6.88–0.0055H	200–0.022H.
Ice-Making Head	Water	≥300 and <850	5.80–0.00191H	200–0.022H.
Ice-Making Head	Water	≥850 and <1,500	4.42–0.00028H	200–0.022H.
Ice-Making Head	Water	≥1,500 and <2,500	4.0	200–0.022H.
Ice-Making Head	Water	≥2,500 and <4,000	4.0	145.
Ice-Making Head	Air	<300	10–0.01233H	NA.
Ice-Making Head	Air	≥300 and <800	7.05–0.0025H	NA.
Ice-Making Head	Air	≥800 and <1,500	5.55–0.00063H	NA.
Ice-Making Head	Air	≥1500 and <4,000	4.61	NA.
Remote Condensing (but not remote compressor)	Air	<988	7.97–0.00342H	NA.
Remote Condensing (but not remote compressor)	Air	≥988 and <4,000	4.59	NA.
Remote Condensing and Remote Compressor	Air	<930	7.97–0.00342H	NA.
Remote Condensing and Remote Compressor	Air	≥930 and <4,000	4.79	NA.
Self-Contained	Water	<200	9.5–0.019H	191–0.0315H.
Self-Contained	Water	≥200 and <2,500	5.7	191–0.0315H.
Self-Contained	Water	≥2,500 and <4,000	5.7	112.
Self-Contained	Air	<110	14.79–0.0469H	NA.
Self-Contained	Air	≥110 and <200	12.42–0.02533H	NA.
Self-Contained	Air	≥200 and <4,000	7.35	NA.

[1] H = harvest rate in pounds per 24 hours, indicating the water or energy use for a given harvest rate. Source: 42 U.S.C. 6313(d).
[2] Water use is for the condenser only and does not include potable water used to make ice.

(c) Each continuous type automatic commercial ice maker with capacities between 50 and 4,000 pounds per 24-hour period manufactured on or after January 28, 2018 and before [*date 3 Years after date of publication of the final rule in the* **Federal Register**], shall meet the following standard levels:

Equipment type	Type of cooling	Harvest rate (lb ice/24 hours)	Maximum energy use (kWh/100 lb ice [1])	Maximum condenser water use (gal/100 lb ice [2])
Ice-Making Head	Water	<801	6.48–0.00267H	180–0.0198H.
Ice-Making Head	Water	≥801 and <2,500	4.34	180–0.0198H.
Ice-Making Head	Water	≥2,500 and <4,000	4.34	130.5.
Ice-Making Head	Air	<310	9.19–0.00629H	NA.
Ice-Making Head	Air	≥310 and <820	8.23–0.0032H	NA.
Ice-Making Head	Air	≥820 and <4,000	5.61	NA.
Remote Condensing (but not remote compressor)	Air	<800	9.7–0.0058H	NA.
Remote Condensing (but not remote compressor)	Air	≥800 and <4,000	5.06	NA.
Remote Condensing and Remote Compressor	Air	<800	9.9–0.0058H	NA.
		≥800 and <4,000	5.26	NA.
Self-Contained	Water	<900	7.6–0.00302H	153–0.0252H.
Self-Contained	Water	≥900 and <2,500	4.88	153–0.0252H.

Equipment type	Type of cooling	Harvest rate (lb ice/24 hours)	Maximum energy use (kWh/100 lb ice [1])	Maximum condenser water use (gal/100 lb ice [2])
Self-Contained	Water	≥2,500 and <4,000	4.88	90.
Self-Contained	Air	<200	14.22–0.03H	NA.
Self-Contained	Air	≥200 and <700	9.47–0.00624H	NA.
Self-Contained	Air	≥700 and <4,000	5.1	NA.

[1] H = harvest rate in pounds per 24 hours, indicating the water or energy use for a given harvest rate. Source: 42 U.S.C. 6313(d).
[2] Water use is for the condenser only and does not include potable water used to make ice.

(d) Each batch type automatic commercial ice maker with capacities up to 4,000 lb/24 h manufactured in, or imported into, the United States on or after [*date 3 Years after date of publication of the final rule in the* **Federal Register**], shall meet the following standard levels:

Equipment type	Type of cooling	Harvest rate (lb ice/24 hours)		Maximum energy use* (kWh/100 lb ice)	Maximum condenser water use** (gal/100 lb ice)
Ice-Making Head	Water	>50 and <300		6.49–0.0055H	200–0.022H.
Ice-Making Head	Water	≥300 and <785		5.41–0.00191H	200–0.022H.
Ice-Making Head	Water	≥785 and <1,500		4.13–0.00028H	200–0.022H.
Ice-Making Head	Water	≥1,500 and <2,500		4	200–0.022H.
Ice-Making Head	Water	≥2,500 and <4,000		4	145.
Ice-Making Head	Air	>50 and <300		9.4–0.01233H	NA.
Ice-Making Head	Air	≥300 and <727		6.45–0.0025H	NA.
Ice-Making Head	Air	≥727 and <1,500		5.09–0.00063H	NA.
Ice-Making Head	Air	≥1500 and <4,000		4.23	NA.
Remote Condensing (but Not Remote Compressor)	Air	>50 and <988		7.83–0.00342H	NA.
Remote Condensing (but Not Remote Compressor)	Air	≥988 and <4,000		4.45	NA.
Remote Condensing and Remote Compressor	Air	>50 and <930		7.82–0.00342H	NA.
Remote Condensing and Remote Compressor	Air	≥930 and <4,000		4.64	NA.
Self-Contained	Water	>50 and <200		8.18–0.019H	191–0.0315H.
Self-Contained	Water	≥200 and <2,500		4.38	191–0.0315H.
Self-Contained	Water	≥2,500 and <4,000		4.38	112.
Self-Contained	Air	≤50	Portable: ≤38	19.43–0.27613H	NA.
			>38 and ≤50	8.94	NA.
			Refrigerated Storage	29.8–0.37063H	NA.
			Not Portable or Refrigerated Storage	21.08–0.19634H	NA.
Self-Contained	Air	>50 and <134		13.61–0.0469H	NA
Self-Contained	Air	≥134 and <200		10.72–0.02533H	NA
Self-Contained	Air	≥200 and <4,000		5.65	NA

* H = harvest rate in pounds per 24 hours, indicating the condenser water or energy use for a given harvest rate.
** Water use is for the condenser only and does not include potable water used to make ice.

(e) Each continuous type automatic commercial ice maker with capacities up to 4,000 lb/24 h manufactured in, or imported into, the United States on or after [*date 3 Years after date of publication of the final rule in the* **Federal Register**], shall meet the following standard levels:

Equipment type	Type of cooling	Harvest rate (lb ice/24 hours)	Maximum energy use* (kWh/100 lb ice)	Maximum condenser water use** (gal/100 lb ice)
Ice-Making Head	Water	>50 and <801	6.24–0.00267H	180–0.0198H.

Equipment type					
Ice-Making Head	Water	≥801 and <1,500		4.1	180–0.0198H.
Ice-Making Head	Water	≥1,500 and <2,500		4.34	180–0.0198H.
Ice-Making Head	Water	≥2,500 and <4,000		4.34	130.5.
Ice-Making Head	Air	>50 and <310		7.49–0.00629H	NA.
Ice-Making Head	Air	≥310 and <820		6.53–0.0032H	NA.
Ice-Making Head	Air	≥820 and <1,500		3.91	NA.
Ice-Making Head	Air	≥1,500 and <4,000		4.67	NA.
Remote Condensing (but Not Remote Compressor)	Air	>50 and <800		9.24–0.0058H	NA.
Remote Condensing (but Not Remote Compressor)	Air	≥800 and <4,000		4.6	NA.
Remote Condensing and Remote Compressor	Air	>50 and <800		9.42–0.0058H	NA.
Remote Condensing and Remote Compressor	Air	≥800 and <4,000		4.78	NA.
Self-Contained	Water	>50 and <900		6.5–0.00302H	153–0.0252H.
Self-Contained	Water	≥900 and <2,500		3.78	153–0.0252H.
Self-Contained	Water	≥2,500 and <4,000		3.78	90.
Self-Contained	Air	≤50	Portable	22.99–0.27789H	NA.
			Not Portable	24.51–0.29623H.	
Self-Contained	Air	>50 and <149		11.2–0.03H	NA.
Self-Contained	Air	≥149 and <700		7.66–0.00624H	NA.
Self-Contained	Air	≥700 and <4,000		3.29	NA.

* H = harvest rate in pounds per 24 hours, indicating the condenser water or energy use for a given harvest rate.
** Water use is for the condenser only and does not include potable water used to make ice.

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Part V

Consumer Financial Protection Bureau

12 CFR Part 1026

Facilitating the LIBOR Transition Consistent With the LIBOR Act (Regulation Z); Interim Final Rule

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1026

[Docket No. CFPB–2023–0030]

RIN 3170–AB19

Facilitating the LIBOR Transition Consistent With the LIBOR Act (Regulation Z)

AGENCY: Consumer Financial Protection Bureau.

ACTION: Interim final rule with request for public comment.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing an interim final rule amending Regulation Z, which implements the Truth in Lending Act (TILA), to reflect the enactment of the Adjustable Interest Rate (LIBOR) Act (the LIBOR Act or Act) and its implementing regulation promulgated by the Board of Governors of the Federal Reserve System (Board). This interim final rule further addresses the planned cessation of most U.S. Dollar (USD) LIBOR tenors after June 30, 2023, by incorporating the Board-selected benchmark replacement for consumer loans into Regulation Z. This interim final rule conforms the terminology from the LIBOR Act and the Board's implementing regulation into relevant Regulation Z open-end and closed-end credit provisions and also addresses treatment of the 12-month USD LIBOR index and its replacement index, including permitting creditors to use alternative language in change-in-terms notice content requirements for situations where the 12-month tenor of the LIBOR index is being replaced consistent with the LIBOR Act. The CFPB requests public comment on this interim final rule.

DATES: This interim final rule is effective May 15, 2023. Comments must be received on or before June 12, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2023–0030 or RIN 3170–AB19, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2023-LIBOR-IFR@cfpb.gov.* Include Docket No. CFPB–2023–0030 or RIN 3170–AB19 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—LIBOR, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically.

Instructions: The CFPB encourages the early submission of comments. All submissions must include the document title and docket number. Please note the number of the topic on which you are commenting at the top of each response (you do not need to address all topics). In general, all comments received will be posted without change to *https://www.regulations.gov.*

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Krista Ayoub, Lanique Eubanks, Angela Fox, or Kristen Phinnessee, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Interim Final Rule

The CFPB is issuing this interim final rule amending Regulation Z, which implements TILA, for both open-end and closed-end credit to make changes consistent with the LIBOR Act and its implementing regulation issued by the Board and further address the planned cessation of LIBOR.[1] These changes amend and update the CFPB's Facilitating the LIBOR Transition (Regulation Z) final rule published in the **Federal Register** on December 8, 2021 (2021 LIBOR Transition Final Rule).[2] In general, the interim final rule makes several conforming terminology changes to align with the LIBOR Act and the Board's implementing regulation. In the 2021 LIBOR Transition Final Rule, the CFPB generally had provided examples of certain indices, including spread-adjusted Secured Overnight Financing Rate (SOFR)-based indices, that may meet the applicable Regulation Z standards (referred to hereafter as SOFR-based replacement indices) for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but it reserved judgment about whether to include references to a 1-year (or 12-month) USD LIBOR index and its SOFR-based replacement index. The CFPB is now also conforming Regulation Z with the LIBOR Act and the Board's implementing regulation by adding such references with respect to the SOFR-based replacement for the 12-month tenor of LIBOR. This interim final rule does not in any way alter or modify the Bureau's determination in the 2021 LIBOR Transition Final Rule in relation to the prime rate as a replacement index. As discussed in part VI, this interim final rule will take effect on May 15, 2023. The CFPB solicits comment on this interim final rule.

A. Open-End Credit

The CFPB is amending several open-end credit provisions in Regulation Z. First, the CFPB is changing the terminology used in the 2021 LIBOR Transition Final Rule to make it consistent with terminology in the LIBOR Act and the Board's implementing regulation. Specifically, as discussed in further detail below, the CFPB is replacing all references to the ''index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products'' with ''the Board-selected benchmark replacement for consumer loans'' and adding a new definition for that term in § 1026.2(a)(28). For this new definition and throughout this interim final rule, the CFPB is using the term 12-month tenor instead of the 1-year tenor with respect to the USD LIBOR index to align with the terminology used in the LIBOR Act and the Board's implementing regulation. These changes are set forth in § 1026.40(f)(3)(ii) and related comments for home equity lines of credit (HELOCs) and in § 1026.55(b)(7) and related comments for credit card accounts.

Second, the CFPB is revising the Official Interpretations to incorporate the Board-selected benchmark replacement for consumer loans to replace the 12-month LIBOR index, as prescribed by the LIBOR Act and the Board's implementing regulation, as an index that has historical fluctuations

[1] When amending the Official Interpretations, the Office of the Federal Register requires reprinting of certain sections being amended in their entirety rather than providing more targeted amendatory instructions. The sections of regulatory text and the Official Interpretations included in this document show the language of those sections. In addition, the Bureau is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes made in this interim final rule to the regulatory text and the Official Interpretations of Regulation Z. This redline can be found on the Bureau's website, at *https://www.consumerfinance.gov/compliance/compliance-resources/other-applicable-requirements/libor-index-transition/.* If any conflicts exist between the redline and the text of Regulation Z, its Official Interpretations, or this interim final rule, the documents published in the **Federal Register** are the controlling documents.

[2] 86 FR 69716 (Dec. 8, 2021).

that are substantially similar to those of the 12-month USD LIBOR index it is intended to replace. Consistent with the LIBOR Act and the Board's implementing regulation, the Bureau's prior determination of the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee (ARRC) is obsolete given that ''the Board-selected benchmark replacement for consumer loans'' to replace 1-month, 3-month, and 6-month USD LIBOR indices is the same as the corresponding spread-adjusted index based on SOFR recommended by the ARRC for consumer products. These changes are set forth in § 1026.40(f)(3)(ii) and related comments for HELOCs and in § 1026.55(b)(7) and related comments for credit card accounts.

Third, the CFPB is adding the Board-selected benchmark replacement for consumer loans that would replace the 12-month USD LIBOR index to the list of indices where a creditor is allowed to use an alternative method to disclose information about the periodic rate and annual percentage rate (APR) in change-in-terms notices for HELOCs and credit card accounts as a result of the replacement of the LIBOR index in certain circumstances. These changes are set forth in comment 9(c)(1)–4 for HELOCs and in comment 9(c)(2)(iv)–2.ii for credit card accounts.

Fourth, the CFPB is adding the Board-selected benchmark replacement for consumer loans that would replace the 12-month USD LIBOR index to the list of indices where a card issuer is allowed to use an alternative method for determining whether the card issuer can terminate its obligation under the credit card account rate reevaluation requirements where the rate applicable immediately prior to a rate increase was a variable rate calculated using a LIBOR index. The Bureau also deleted its prior determination in the Official Interpretations given that ''the Board-selected benchmark replacement for consumer loans'' to replace 1-month, 3-month, and 6-month USD LIBOR indices is the same as the corresponding spread-adjusted index based on SOFR recommended by the ARRC for consumer products. These changes are set forth in § 1026.59(f)(3) and comment 59(f)–4.

B. Closed-End Credit

The CFPB is also amending the closed-end credit provisions in Regulation Z. First, the CFPB is changing the terminology used in the CFPB's 2021 LIBOR Transition Final Rule to make it consistent with terminology in the LIBOR Act. Specifically, as discussed in further detail below, the CFPB is replacing the reference to the ''index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products'' with a reference to ''the Board-selected benchmark replacement for consumer loans.'' Second, the CFPB is revising an illustrative example in the Official Interpretations to incorporate the Board-selected benchmark replacement for consumer loans to replace the 12-month LIBOR index, as prescribed by the LIBOR Act, as an index that is comparable to the 12-month USD LIBOR index it is intended to replace for purposes of the closed-end refinancing provisions. These changes are set forth in comment 20(a)(3)–ii.B.

II. Background

A. Introduction—Consumer Products Using LIBOR

Introduced in the 1980s, LIBOR (originally an acronym for London Interbank Offered Rate) was intended to measure the average rate at which a bank could obtain unsecured funding in the London interbank market for a given period, in a given currency. In the United States, financial institutions have used LIBOR as a common benchmark rate for a variety of adjustable-rate consumer financial products, including mortgages, credit cards, HELOCs, reverse mortgages, and student loans. Typically, the consumer pays an interest rate that is calculated as the sum of a benchmark index and a margin. For example, a consumer may pay an interest rate equal to the 12-month USD LIBOR plus two percentage points.

LIBOR is set to expire on June 30, 2023. Financial institutions have been developing plans and procedures to transition from the use of LIBOR indices to replacement indices for products that are being newly issued and existing accounts that were originally benchmarked to a LIBOR index. In some markets, such as for HELOCs and credit cards, the vast majority of newly originated lines of credit are already based on indices other than a LIBOR index.

B. CFPB's 2021 LIBOR Transition Final Rule

On December 8, 2021, the CFPB issued the 2021 LIBOR Transition Final Rule generally to address the expected discontinuance of most U.S. Dollar (USD) tenors of LIBOR in June 2023.[3] The 2021 LIBOR Transition Final Rule, among other things, amended open-end and closed-end provisions of Regulation Z to provide examples of replacement indices to USD LIBOR tenors that meet certain Regulation Z standards.

For each of these open-end and closed-end provisions, while the CFPB generally provided examples of certain indices, including SOFR-based replacement indices for 1-month, 3-month, and 6-month tenors of USD LIBOR, the CFPB reserved judgment about whether to include a SOFR-based replacement index for the 1-year (now being referred to as 12-month in this interim final rule) USD LIBOR index until it obtained additional information. The CFPB stated that once it knew which SOFR-based index the ARRC would recommend to replace the 12-month USD LIBOR index for consumer products, the Bureau would consider determining whether the replacement index and replacement margin met the appropriate standards in Regulation Z and would then consider whether to codify that determination in a supplemental final rule, or otherwise announce that determination. Most provisions of the 2021 LIBOR Transition Final Rule were effective on April 1, 2022.[4]

C. The LIBOR Act

On March 15, 2022, Congress enacted the LIBOR Act as part of the Consolidated Appropriations Act, 2022.[5] Among other things, the LIBOR Act provides that the Board may identify a replacement index based on SOFR published by the Federal Reserve Bank of New York (or a successor administrator), including tenor spread adjustments, to replace the 1-month, 3-month, 6-month, and 12-month tenors of USD LIBOR for any LIBOR contracts that do not otherwise specify a replacement rate fallback provision or method for selecting a fallback rate.[6] The LIBOR Act (and the Board's subsequent final rule, discussed below) identify these replacement indices as the ''Board-selected benchmark replacement'' index.[7]

The LIBOR Act provides certain safe harbors for use of a Board-selected benchmark replacement for consumer loans, including stating that the Board-

[3] *Id.*

[4] October 1, 2023, is the effective date for an amendment that removes two ''Legacy'' post-consummation change-in-terms forms H–4(D)(2) and H–4(D)(4) in appendix H of part 1026 that still reference LIBOR, and prevents these two forms from being used to demonstrate compliance with part 1026.20.

[5] Public Law 117–103, div. U, 136 Stat. 825 (2022).

[6] LIBOR Act section 104, 136 Stat. 828.

[7] LIBOR Act section 103(6), 136 Stat. 826. *See also* 12 CFR 253.2 and 253.4.

selected benchmark replacements constitute replacement indices that have historical fluctuations that are substantially similar to those of LIBOR for purposes of TILA [8] and regulations promulgated under that statute.[9]

D. Board's 2022 LIBOR Act Final Rule

The Board issued a final rule to implement the LIBOR Act on December 16, 2022, effective February 27, 2023 (Board's 2022 LIBOR Act Final Rule).[10] Among other things, the Board's final rule established benchmark replacements for contracts governed by U.S. law that reference certain tenors of USD LIBOR, including those of 1-month, 3-month, 6-month,[11] and 12-month tenors, that do not have terms that provide for the use of a clearly defined and practicable replacement benchmark rate following the cessation of LIBOR.[12] The LIBOR Act, and the Board's implementing regulation, provide for certain adjustments in general for LIBOR contracts and more specifically for LIBOR contracts that are consumer loans. Consistent with LIBOR Act, the final rule identified each of those indices as a ''Board-selected benchmark replacement'' for consumer loans, thereby meeting the safe harbor criteria in the LIBOR Act.

The final rule provided that the Board-selected benchmark replacements for LIBOR contracts that are consumer loans using 1-month, 3-month, 6-month, or 12-month tenors of USD LIBOR during the one-year period beginning on the LIBOR replacement date shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus an amount that transitions linearly for each business day during that period from the difference between the relevant CME Term SOFR and the relevant LIBOR tenor determined as of the day immediately before the LIBOR replacement date to the applicable tenor spread adjustment identified in the final rule.[13] After expiration of that first-year period, the rule provided that the Board-selected benchmark replacements shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus the applicable tenor spread adjustment identified in the final rule.[14] Effectively, the Board-selected benchmark replacements for LIBOR contracts that are consumer loans as set forth in the Board's final rule are the indices based on SOFR recommended by the ARRC for consumer products for the 1-month, 3-month, 6-month and 12-month USD LIBOR tenors.[15]

III. Legal Authority

A. Section 1022 of the Dodd-Frank Act

The CFPB is issuing this interim final rule under Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) section 1022(b)(1) [16] and TILA section 105(a). Dodd-Frank Act section 1022(b)(1) authorizes the CFPB to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' [17] Section 1022(b)(1) of the Dodd-Frank Act also authorizes the CFPB to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' [18] Among other statutes, Title X of the Dodd-Frank Act and TILA are Federal consumer financial laws.[19] Accordingly, in issuing this interim final rule, the CFPB is exercising its authority under Dodd-Frank Act section 1022(b) to prescribe rules under TILA and Title X that carry out the purposes and objectives and prevent evasion of those laws.

B. The Truth in Lending Act

TILA section 105(a), as amended by the Dodd-Frank Act, directs the CFPB to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that, in the judgment of the CFPB, are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance.[20] Pursuant to TILA section 102(a), a purpose of TILA is to assure a meaningful disclosure of credit terms to enable the consumer to avoid the uninformed use of credit and compare more readily the various credit terms available to the consumer.

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. Dodd-Frank Act section 1100A clarified the CFPB's section 105(a) authority by amending that section to provide express authority to prescribe regulations that contain ''additional requirements'' that the CFPB finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. This amendment clarified the authority to exercise TILA section 105(a) authority to prescribe requirements beyond those specifically listed in the statute that meet the standards outlined in section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to TILA, except with respect to the provisions of TILA section 129 that apply to the high-cost mortgages referred to in TILA section 103(bb).[21]

For the reasons discussed in this document, the CFPB is amending Regulation Z with respect to certain provisions that impact the transition from LIBOR indices to other indices to carry out TILA's purposes, including such additional requirements, adjustments, and exceptions as, in the CFPB's judgment, are necessary and proper to carry out the purposes of TILA, prevent circumvention or evasion

[8] 15 U.S.C. 1601 *et seq.*

[9] Safe harbors provided by the LIBOR Act include, among other things, determination that use of the identified replacement indices constitute a reasonable, comparable, or analogous rate, index, or term for LIBOR, a replacement that is based on a methodology or information that is similar or comparable to LIBOR, and a replacement that has historical fluctuations that are substantially similar to those of LIBOR for purposes of TILA and its implementing regulations. *See* LIBOR Act section 105(a), 136 Stat. 830. Additionally, the safe harbors from the LIBOR Act provide that use of the identified replacement indices do not constitute, among other things, a breach of a LIBOR contract. *See* LIBOR Act section 105(b), 136 Stat. 830. Further, the LIBOR Act provides that creditors using the identified replacement indices under the specified conditions in the Act shall not be subject to any claim or cause of action in law or equity or request for equitable relief, or have liability for damages, arising out of the selection or use of the identified replacement index in the Act and the implementation of the identified changes in the Act. *See* LIBOR Act section 105(c), 136 Stat. 830.

[10] 88 FR 5204 (Jan. 26, 2023).

[11] While the Board uses ''one-, three-, and six-month'' to describe these tenors of USD LIBOR, for consistency with this interim final rule, this notice refers to those tenors as 1-month, 3-month, or 6-month tenors, respectively.

[12] 12 CFR 253.4(b)(2).

[13] 12 CFR 253.4(b)(2)(i)(B).

[14] 12 CFR 253.4(b)(2)(ii)(B).

[15] Alt. Reference Rates Comm., *ARRC Recommended Fallbacks for Implementation of its Hardwired Fallback Language* (Mar. 15, 2023), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2023/ARRC-statement-on-1-3-6-12-month-USD-LIBOR.pdf.*

[16] Public Law 111–203, section 1022(b)(1), 124 Stat. 1376, 1980 (2010).

[17] 12 U.S.C. 5512(b)(1).

[18] *Id.*

[19] Dodd-Frank Act section 1002(14), 123 Stat. 1957 (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12)(O), 123 Stat. 1957 (defining ''enumerated consumer laws'' to include TILA).

[20] 15 U.S.C. 1604(a).

[21] 15 U.S.C. 1602(bb).

thereof, or to facilitate compliance. In developing these aspects of this rule pursuant to its authority under TILA section 105(a), the CFPB has considered the purposes of TILA, including ensuring meaningful disclosures, facilitating consumers' ability to compare credit terms, and helping consumers avoid the uninformed use of credit, and the findings of TILA, including strengthening competition among financial institutions and promoting economic stabilization.

IV. Administrative Procedure Act

The Administrative Procedure Act (APA) does not require notice and opportunity for public comment if an agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[22] Similarly, publication of this interim final rule at least 30 days before its effective date is not required where the CFPB has identified good cause for a different effective date.[23]

The CFPB finds that prior notice and public comment are unnecessary given the specific nature of the changes contained in this interim final rule.

First, this interim final rule makes technical changes to conform the nomenclature of Regulation Z to the nomenclature of the LIBOR Act and the Board's implementing regulation. Most notably, this interim final rule substitutes the phrase ''the Board-selected benchmark replacement for consumer loans'' for the phrase ''spread-adjusted indices based on SOFR recommended by the ARRC for consumer products.'' As discussed in part II, in the context of consumer loans, the two phrases are synonymous. In light of the LIBOR Act and the Board's implementing regulation, there is minimal, if any, basis for substantive disagreement regarding this replacement of superseded nomenclature.

Second, this interim final rule acknowledges the determinations made by Congress in the LIBOR Act that the Board-selected benchmark replacements for consumer loans are comparable indices and, for purposes of Regulation Z, have ''historical fluctuations that are substantially similar'' to the LIBOR indices they replace.[24] The enactment of the LIBOR Act and the Board's implementing rule resolved the ambiguity that existed at the time the CFPB issued its 2021 LIBOR Transition Final Rule as to which, if any, SOFR-based replacement index for the 12-month (formerly called the 1-year) tenor would meet these standards. That is the issue that the CFPB needed to reserve judgment about at the time it issued its 2021 LIBOR Transition Final Rule because the ARRC had not yet recommended a SOFR-based replacement index for that tenor; thus, there was no such tenor for the CFPB to analyze at the time. In light of the LIBOR Act and the Board's implementing regulation, the applicable 1-month, 3-month, 6-month, and 12-month tenor of the Board-selected benchmark replacements for consumer loans meet the relevant standards; there is minimal, if any, basis for substantive disagreement on this issue.

Third, and closely related to the first three changes, this interim final rule removes prior Bureau determinations that were rendered obsolete by the LIBOR Act and the Board's implementing regulation. These determinations concerned the comparability of, and the substantial similarity of the historical fluctuations of, the spread-adjusted index based on SOFR recommended by the ARRC for consumer products compared to the LIBOR index it would replace. *See* comments 40(f)(3)(ii)(A)–2.ii, 40(f)(3)(ii)(B)–1.ii, 55(b)(7)(i)–1.ii., 55(b)(7)(ii)–1.ii, and 59(f)–4. But, as discussed above, the spread-adjusted indices based on SOFR recommended by the ARRC for consumer products are the same as ''the Board-selected benchmark replacement for consumer loans.'' In light of the LIBOR Act and the Board's implementing regulation, there is minimal, if any, basis for substantive disagreement on this issue.

Fourth, the CFPB's 2021 LIBOR Transition Proposed Rule already solicited comment on the substance of most of the provisions that are now amended by this interim final rule, making further notice and comment on them duplicative. Specifically, the proposed rule solicited comment on determining that the spread-adjusted index based on SOFR recommended by the ARRC for consumer products for 1-month, 3-month, 6-month, and 1-year or 12-month LIBOR would be comparable to, and have historical fluctuations that substantially similar to, the LIBOR index it would replace.[25] The CFPB's 2021 LIBOR Transition Final Rule, promulgated after notice and an opportunity for public comment, made such determinations with respect to the 1-month, 3-month, and 6-month tenors, but explained in the preamble that the Bureau was reserving judgment on making such determinations with respect to the 1-year or 12-month tenor, leaving those determinations open until the CFPB obtained further information.[26] The need for further information has since been obviated by the determinations made by Congress in the LIBOR Act discussed above.

The CFPB also finds good cause to waive the 30-day delay in effective date. The CFPB is cognizant of the need for these amendments to take effect quickly and thereby remove any confusion that may exist after the Board's regulations implementing the LIBOR Act became effective on February 27, 2023. In particular, making this interim final rule effective at least 45 days prior to the planned cessation of LIBOR on June 30, 2023, is necessary to ensure that consumers with credit card accounts currently using a LIBOR index can receive timely change-in-terms notices when their account is changed to the Board-selected benchmark replacement.

V. Section-by-Section Analysis

Section 1026.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(28) The Board-Selected Benchmark Replacement for Consumer Loans

This interim final rule adds ''the Board-selected benchmark replacement for consumer loans'' as a new defined term in § 1026.2(a)(28) to reference a specific replacement index for consumer products when LIBOR becomes unavailable. As discussed in part II above, the LIBOR Act and the Board's implementing regulation defined ''Board-selected benchmark replacement'' to mean a benchmark replacement identified by the Board that is based on SOFR, including any tenor spread adjustment by the Board.[27] The LIBOR Act, and the Board's implementing regulation, provide for certain adjustments in general for LIBOR contracts and more specifically for LIBOR contracts that are consumer loans. Accordingly, for purposes of promoting the informed use of consumer credit under Regulation Z, the CFPB is creating a new term that is specific to consumer loans. New § 1026.2(a)(28) defines ''the Board-selected benchmark replacement for consumer loans'' as the SOFR-based index selected by the Board, to replace, as applicable, the 1-month, 3-month, 6-month, or 12-month tenors of USD LIBOR and uses the term 12-month tenor instead of 1-year tenor to align with the terminology used in the LIBOR

[22] 5 U.S.C. 553(b)(B).

[23] 5 U.S.C. 553(d)(3).

[24] 12 U.S.C. 5804(a)(2), (3), (5).

[25] *See* 85 FR 36938, 36945–47, 36972, 36987, 36994 (June 18, 2020).

[26] *See* 86 FR 69716, 69723, 69730 (Dec. 8, 2021).

[27] LIBOR Act section 104(e), 136 Stat. 829 (codified at 12 U.S.C. 5803(e)); 12 CFR 253.4.

Act and the Board's implementing regulation. The definition references the LIBOR Act and the Board's implementing rule for additional clarity. The Board-selected benchmark replacements for consumer loans are tenors of the USD IBOR Cash Fallback index for consumer products, which uses the same methodology that the ARRC recommended for SOFR-based replacement indices for consumer products.[28] As such, these terms identify the same index, and the addition of the new defined term and cross-references to it throughout this interim final rule are merely for consistency with the Act and ease of reading. The CFPB solicits feedback on these changes of the interim final rule.

Section 1026.9 Subsequent Disclosure Requirements

9(c) Change in Terms

9(c)(1) Rules Affecting Home-Equity Plans

Section 1026.9(c)(1)(i) provides that for HELOCs subject to § 1026.40 whenever any term required to be disclosed in the account-opening disclosures under § 1026.6(a) is changed or the required minimum periodic payment is increased, the creditor must mail or deliver written notice of the change to each consumer who may be affected. The creditor must mail or deliver the notice at least 15 days prior to the effective date of the change. The 15-day timing requirement does not apply if the change has been agreed to by the consumer; the creditor must give the notice, however, before the effective date of the change.

A creditor is required to disclose in the change-in-terms notice any increased periodic rate or APR as calculated using the replacement index at the time the change-in-terms notice is provided. The periodic rate and APR are terms that are required to be disclosed in the account-opening disclosures under § 1026.6(a) and thus, a creditor must provide a change-in-terms notice disclosing the new periodic rate and APR calculated using the replacement index if the periodic rate or APR is increasing from the rate calculated using the LIBOR index at the time the change-in-terms notice is provided.[29]

Comment 9(c)(1)–4 provides that if: (1) a creditor is replacing a LIBOR index with the index based on ''SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index''; (2) ''the creditor is not changing the margin used to calculate the variable rate as a result of the replacement''; and (3) a periodic rate or the corresponding APR based on the replacement index is unknown to the creditor at the time the change-in-terms notice is provided because the SOFR index has not been published at the time the creditor provides the change-in-terms notice, but will be published by the time the replacement of the index takes effect on the account, then the creditor may comply with any requirement to disclose the amount of the new rate (as calculated using the new index), or a change in the periodic rate or the corresponding APR (as calculated using the replacement index), based on the best information reasonably available, clearly stating that the disclosure is an estimate. Comment 9(c)(1)–4 provides the example that, in this situation, the creditor may state that: (1) information about the rate is not yet available, but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index.

For the reasons discussed below, the CFPB is making several changes to comment 9(c)(1)–4. First, the CFPB is replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans'' to align terminology in the rule with the LIBOR Act and the Board's 2022 LIBOR Act Final Rule. As discussed in the section-by-section analysis for § 1026.2(a)(28), this interim final rule also defines the term ''the Board-selected benchmark replacement for consumer loans.'' Revised comment 9(c)(1)–4 includes a cross-reference to that definition. As discussed above, these terms identify the same index, and the change is merely for consistency with the Act and ease of reading.

Second, the CFPB is expanding comment 9(c)(1)–4 to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. As discussed in the Background section, in the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 12-month (formerly called the 1-year) USD LIBOR index in comment 9(c)(1)–4 until it obtained additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. By operation of the LIBOR Act, all tenors of the Board-selected benchmark replacement constitute a ''comparable index'' to, and have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace.[30] Thus, the CFPB is revising comment 9(c)(1)–4 to also apply to the replacement of the 12-month USD LIBOR index with the Board-selected benchmark replacement for consumer loans, facilitating compliance with the advance notice requirements for change-in-terms notices.

While section 104(f) of the LIBOR Act provides that nothing in the Act ''may be construed to alter or impair— . . . (5) any provision of Federal consumer financial law that—(A) requires creditors to notify borrowers regarding a change-in-terms,'' the CFPB is not relying on the LIBOR Act for authority to revise comment 9(c)(1)–4. However, in this unique circumstance, the CFPB has previously stated a need to permit creditors permission to provide estimates for change-in-terms notices, and interprets § 1026.5(c) to be consistent with revised comment 9(c)(1)–4 in doing so. Section 1026.5(c) provides, in relevant part, that if any information necessary for accurate disclosure is unknown to the creditor, it must make the disclosure based on the best information reasonably available and must state clearly that the disclosure is an estimate. Because of the unique circumstances of the LIBOR transition, the CFPB previously amended comment 9(c)(1)–4 to provide permit creditors the ability to provide estimates for disclosures previously excluded from § 1026.5(c). The revisions to comment 9(c)(1)–4 in this interim final rule are consistent with this reasoning. Thus, the revisions to comment 9(c)(1)–4 are consistent with revisions discussed below that provide

[28] *See* 88 FR 5204, 5211–15 (Jan. 26, 2023); *see also* Alt. Reference Rates Comm., *ARRC Recommended Fallbacks for Implementation of its Hardwired Fallback Language* (Mar. 15, 2023), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2023/ARRC-statement-on-1-3-6-12-month-USD-LIBOR.pdf.*

[29] *See* 12 CFR 1026.6(a)(1)(ii). Comment 6(a)(1)(ii)–3 provides that in disclosing the rate(s) in effect for a variable-rate plan at the time of the account-opening disclosures (as is required by § 1026.6(a)(1)(ii)), the creditor may use an insert showing the current rate; may give the rate as of a specified date and then update the disclosure from time to time, for example, each calendar month; or may disclose an estimated rate under § 1026.5(c).

[30] LIBOR Act section 105(a)(2), (3) and (5), 136 Stat. 830.

that if a creditor uses the Board-selected benchmark replacement for consumer loans to replace 12-month USD LIBOR and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the conditions in § 1026.40(f)(3)(ii)(A) and (B) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index.[31]

Under § 1026.9(c)(1)(i), the change-in-terms notice for HELOC accounts subject to § 1026.40 generally must be mailed or delivered at least 15 days prior to the effective date of the change. Also, the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR, like the 1-month, 3-month, and 6-month USD LIBOR replacement tenors, will not be published until Monday, July 3, 2023, which is the first weekday after Friday, June 30, 2023, when LIBOR is currently anticipated to sunset for these USD LIBOR tenors. The revisions to comment 9(c)(1)–4 are intended to facilitate compliance with the 15-day advance notice requirement for change-in-terms notices by allowing creditors in the situation described above to provide change-in-terms notices prior to the Board-selected benchmark replacement for consumer loans to replace 12-month USD LIBOR being published, so that creditors are not left without an index to use on the account after the Board-selected benchmark replacement for consumer loans to replace 12-month USD LIBOR is published, but before it becomes effective on the account.

As is the case for the Board-selected benchmark replacements for consumer loans for 1-month, 3-month, and 6-month USD LIBOR tenors, the Bureau has determined that the information described in revised comment 9(c)(1)–4 sufficiently notifies consumers of the estimated periodic rate and APR as calculated using the Board-selected benchmark replacement for consumer loans to replace 12-month USD LIBOR, even though the Board-selected benchmark replacement for consumer loans is not being published at the time the notice is sent, as long as the Board-selected benchmark replacement for consumer loans is published by the time the replacement of the index takes effect on the account. For example, in this situation, comment 9(c)(1)–4 provides that the creditor may state that: (1) information about the rate is not yet available, but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index. The CFPB solicits comment on these changes in the interim final rule.

9(c)(2) Rules Affecting Open-End (Not Home-Secured) Plans

9(c)(2)(iv) Disclosure Requirements

TILA section 127(i)(1), which was added by the Credit CARD Act of 2009,[32] provides that in the case of a credit card account under an open-end consumer credit plan, a creditor generally must provide written notice of an increase in an APR not later than 45 days prior to the effective date of the increase.[33] In addition, TILA section 127(i)(2) provides that in the case of a credit card account under an open-end consumer credit plan, a creditor must provide written notice of any significant change, as determined by a rule of the CFPB, in terms (other than APRs) of the cardholder agreement not later than 45 days prior to the effective date of the change.[34]

Section 1026.9(c)(2)(i)(A) provides that for open-end plans other than HELOCs subject to § 1026.40, a creditor generally must provide written notice of a ''significant change in account terms'' at least 45 days prior to the effective date of the change to each consumer who may be affected. Section 1026.9(c)(2)(ii) defines ''significant change in account terms'' to mean, in relevant part, a change in the terms required to be disclosed under § 1026.6(b)(1) and (2), an increase in the required minimum periodic payment, or a change to a term required to be disclosed under § 1026.6(b)(4). The index that is replacing the LIBOR index pursuant to § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) is a disclosure required under § 1026.6(b)(2)(i)(A) and (4)(ii)(B) and thus, is a term that meets the definition of a ''significant change in account terms.'' As a result, a creditor must provide a change-in-terms notice disclosing the index that is replacing the LIBOR index.

Section 1026.9(c)(2)(iv) provides the disclosure requirements for this written notice. Comment 9(c)(2)(iv)–2.i provides details about the general disclosure requirements if the creditor is changing the index use to calculate a variable rate. A creditor also is required to disclose in the change-in-terms notice any increased periodic rate or APR calculated using the replacement index at the time the change-in-terms notice is provided. The periodic rate and APR are terms that are required to be disclosed in the account-opening disclosures under § 1026.6(b) and thus, a creditor must provide a change-in-terms notice disclosing the new periodic rate and APR calculated using the replacement index if the periodic rate or APR is increasing from the rate calculated using the LIBOR index at the time the change-in-terms notice is provided.[35]

Comment 9(c)(2)(iv)–2.ii provides additional details on how a creditor may comply with the disclosure requirements under § 1026.9(c)(2)(iv) when the creditor is replacing a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products in certain circumstances. This comment provides that if: (1) a creditor is replacing a LIBOR index with the ''SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index''; (2) the creditor is not changing the margin used to calculate the variable rate as a result of the replacement; and (3) a periodic rate or the corresponding APR based on the replacement index is unknown to the creditor at the time the change-in-terms notice is provided because the SOFR index has not been published at the time the creditor provides the change-in-terms notice, but will be published by the time the replacement of the index takes effect on the account, then the creditor may comply with any requirement to disclose in the change-in-terms notice the amount of the periodic rate or APR (or changes in these amounts) as calculated using the replacement index based on the best information reasonably available, clearly stating that the disclosure is an estimate. Comment 9(c)(2)(iv)–2.ii provides the example that, in this situation, the creditor may state that: (1) information about the rate is not yet available, but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index.

[31] *See* comments 40(f)(3)(ii)(A)–3 and (B)–3; *see also* the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau making this determination.

[32] Public Law 111–24, 123 Stat. 1734 (2009).

[33] 15 U.S.C. 1637(i)(1).

[34] 15 U.S.C. 1637(i)(2).

[35] *See* 12 CFR 1026.6(b)(4)(i)(A). Section 1026.6(b)(4)(ii)(G) provides that for purposes of disclosing variable rates in the account-opening disclosures, a rate generally is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

For the reasons discussed below, the CFPB is making several changes to comment 9(c)(2)(iv)–2.ii. First, the CFPB is replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans'' to align terminology in the rule with the LIBOR Act and the Board's 2022 LIBOR Act Final Rule. As discussed in the section-by-section analysis for § 1026.2(a)(28), this interim final rule also defines the term ''the Board-selected benchmark replacement for consumer loans.'' Revised comment 9(c)(2)(iv)–2.ii includes a cross-reference to that definition. As discussed above, these terms identify the same index, and the change is merely for consistency with the Act and ease of reading.

Second, the CFPB is expanding comment 9(c)(2)(iv)–2.ii to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. As discussed in the Background section, in the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 12-month (formerly called the 1-year) USD LIBOR index in comment 9(c)(2)(iv)–2.ii until it obtained additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. By operation of the LIBOR Act, all tenors of the Board-selected benchmark replacements constitute a ''comparable index'' to, and have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace.[36] Thus, the CFPB is revising comment 9(c)(2)(iv)–2.ii to also apply to the replacement of the 12-month USD LIBOR index with the Board-selected benchmark replacement for consumer loans, facilitating compliance with the advance notice requirements for change-in-terms notices.

While section 104(f) of the LIBOR Act provides that nothing in the Act ''may be construed to alter or impair— . . . (5) any provision of Federal consumer financial law that—(A) requires creditors to notify borrowers regarding a change-in-terms,'' the CFPB is not relying on the LIBOR Act for authority to revise comment 9(c)(2)(iv)–2.ii. Instead, in this unique circumstance, the CFPB interprets § 1026.5(c) to be consistent with revised comment 9(c)(2)(iv)–2.ii. Section 1026.5(c) provides in relevant part, that if any information necessary for accurate disclosure is unknown to the creditor, it must make the disclosure based on the best information reasonably available and must state clearly that the disclosure is an estimate. Revised comment 9(c)(2)(iv)–2.ii also is consistent with revisions discussed below that provide that if a creditor uses the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the conditions in § 1026.55(b)(7)(i) and (ii) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index.[37]

As described above, under § 1026.9(c)(2), the change-in-terms notice for open-end credit that is not subject to § 1026.40 (including credit card accounts) generally must be mailed or delivered at least 45 days prior to the effective date of the change. Also, the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR index, like the 1-month, 3-month, and 6-month USD LIBOR replacement tenors, will not be published until Monday, July 3, 2023, which is the first weekday after Friday, June 30, 2023, when LIBOR is currently anticipated to sunset for these USD LIBOR tenors. This interim final rule provision is intended to facilitate compliance with the 45-day advance notice requirement for change-in-terms notices by allowing creditors in the situation described above to provide change-in-terms notices prior to the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR index being published, so that creditors are not left without an index to use on the account after the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR index is published, but before it becomes effective on the account.

As is the case for the Board-selected benchmark replacements for consumer loans for 1-month, 3-month, and 6-month USD LIBOR tenors, the Bureau has determined that the information described in revised comment 9(c)(2)(iv)–2.ii sufficiently notifies consumers of the estimated rate calculated using the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR index, even though the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR index is not being published at the time the notice is sent, as long as the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR index is published by the time the replacement of the index takes effect on the account. For example, in this situation, comment 9(c)(2)(iv)–2.ii provides that the creditor may state that: (1) information about the rate is not yet available, but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index. The CFPB solicits comment on these changes in the interim final rule.

Section 1026.20 Disclosure Requirements Regarding Post-Consummation Events 20(a) Refinancings

Section 1026.20 includes disclosure requirements regarding post-consummation events for closed-end credit. Section 1026.20(a) and its Official Interpretations define when a refinancing occurs for closed-end credit and provide that a refinancing is a new transaction requiring new disclosures to the consumer. Comment 20(a)–3.ii.B explains that a new transaction subject to new disclosures results if the creditor adds a variable-rate feature to the obligation, even if it is not accomplished by the cancellation of the old obligation and substitution of a new one. The comment also states that a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction to a comparable index, whether the change replaces the existing index or substitutes an index for one that no longer exists. The comment also includes an illustrative example which provides that a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 1-month, 3-month, or 6-month USD LIBOR index to the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index respectively because the

[36] LIBOR Act section 105(a)(2), (3) and (5), 136 Stat. 830.

[37] *See* comments 55(b)(7)(i)–2 and (ii)–3; *see also* the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau making this determination.

replacement index is a comparable index to the corresponding USD LIBOR index.[38] Comment 20(a)–3.iv provides examples of the types of factors that may need to be considered to determine whether a replacement index is comparable to a particular LIBOR index for closed-end transactions.

For the reasons discussed below, the CFPB is making several changes to comment 20(a)–3.ii.B. First, the CFPB is replacing references to the term spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the term ''the Board-selected benchmark replacement for consumer loans'' to align terminology in the rule with the LIBOR Act and the Board's 2022 LIBOR Act Final Rule. As discussed in the section-by-section analysis for § 1026.2(a)(28), this interim final rule also defines the term ''the Board-selected benchmark replacement for consumer loans.'' Revised comment 20(a)–3.ii.B includes a cross-reference to that definition. As discussed above, these terms identify the same index, and the change is merely for consistency with the Act and ease of reading.

Second, the CFPB is expanding language in the example set forth in comment 20(a)–3.ii.B to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. As discussed in the Background section, in the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 12-month (formerly called the 1-year) USD LIBOR index in comment 20(a)–3.ii.B until it obtained additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. By operation of the LIBOR Act, all tenors of the Board-selected benchmark replacements are considered to constitute a ''comparable index,'' and have ''historical fluctuations that are substantially similar to,'' the LIBOR tenors they replace.[39] As such, as with the existing examples in comment 20(a)–3.ii.B for the 1-month, 3-month, and 6-month USD LIBOR tenors, in this interim final rule the CFPB is extending the example to also apply to the replacement of the 12-month USD LIBOR index with the Board-selected benchmark replacement for consumer loans to facilitate the LIBOR transition. The example in revised comment 20(a)–3.ii.B provides a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 12-month USD LIBOR tenor to the applicable tenor of the Board-selected benchmark replacement.

Third, the CFPB is revising comment 20(a)–3.iv by adding an exception for the Board-selected benchmark replacements for consumer loans, as defined in new § 1026.2(a)(28). When using the Board-selected benchmark replacement for consumer loans, a creditor need not consider the types of factors used to determine whether a replacement index is comparable to a particular LIBOR tenor for closed-end credit. Because the Board's final rule, in implementing the LIBOR Act, has determined that the Board-selected benchmark replacements for consumer loans are indices that are comparable to their respective LIBOR tenors, and the Bureau has determined in this interim final rule that this index meets Regulation Z's ''comparable'' standard with respect to a particular LIBOR index, the factors need not be considered. While the CFPB had already applied the factors to the SOFR-based 1-month, 3-month, and 6-month LIBOR tenor replacement indices in its 2021 LIBOR Transition Final Rule, by operation of law, the factors now also need not be considered with respect to the Board-selected benchmark replacement for consumer loans for the 12-month LIBOR tenor in order for the index to satisfy Regulation Z's ''comparable'' standard. The CFPB solicits comments on these changes in the interim final rule.

Section 1026.40 Requirements for Home Equity Plans

40(f) Limitations on Home Equity Plans

40(f)(3)

40(f)(3)(ii)

TILA section 137(c)(1) provides that no open-end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling may contain a provision that permits a creditor to change unilaterally any term except in enumerated circumstances set forth in TILA section 137(c).[40] TILA section 137(c)(2)(A) provides that a creditor may change the index and margin applicable to extensions of credit under such a plan if the index used by the creditor is no longer available and the substitute index and margin will result in a substantially similar interest rate.[41] In implementing TILA section 137(c), § 1026.40(f)(3) prohibits a creditor from changing the terms of a HELOC subject to § 1026.40 except in enumerated circumstances set forth in § 1026.40(f)(3).

Section 1026.40(f)(3)(ii)(A) provides that a creditor may change the index and margin used under the HELOC plan if the original index is no longer available, the replacement index has historical fluctuations substantially similar to that of the original index, and the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the original index became unavailable. Section 1026.40(f)(3)(ii)(A) also provides if the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable. Section 1026.40(f)(3)(ii)(B) contains LIBOR-specific provisions that permit creditors for HELOC plans subject to § 1026.40 that use a LIBOR index for calculating variable rates to replace the LIBOR index and change the margins for calculating the variable rates on or after April 1, 2022, in certain circumstances. Comment 40(f)(3)(ii)–1 provides detail on the interaction among the unavailability provisions in § 1026.40(f)(3)(ii)(A), the LIBOR-specific provisions in § 1026.40(f)(3)(ii)(B), and the contractual provisions that apply to a HELOC plan.

As discussed in more detail below in this section-by-section analysis, this interim final rule makes a number of changes with respect to §§ 1026.40(f)(3)(ii), (f)(3)(ii)(A), (f)(3)(ii)(B), and related Official Interpretations. In general, it: (1) replaces references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new defined term ''the Board-selected benchmark replacement for consumer loans''; (2) replaces references to the 1-year USD LIBOR index with the 12-month USD LIBOR index; (3) expands the Official Interpretations to include a

[38] By ''corresponding USD LIBOR index,'' the Bureau meant the specific USD LIBOR index for which the ARRC recommended the replacement index as a replacement for consumer products. Thus, because the ARRC has recommended, for consumer products, a specific spread-adjusted 6-month term rate SOFR index for consumer products as a replacement for the 6-month USD LIBOR index, the 6-month USD LIBOR index would be the ''corresponding USD LIBOR index'' for that specific spread-adjusted 6-month term rate SOFR index for consumer products.

[39] LIBOR Act section 105(a)(2), (3) and (5), 136 Stat. 830.

[40] 15 U.S.C. 1647(c).

[41] 15 U.S.C. 1647(c)(2)(A).

replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule; (4) provides that the Board-selected benchmark replacements for consumer loans to replace 1-month, 3-month, 6-month, and 12-month USD LIBOR indices have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace; (5) provides if the creditor selects to use the Board-selected benchmark replacement for consumer loans, the creditor must use the index value of this index and the LIBOR index from a specified timeframe in determining whether the APR is substantially similar; (6) updates guidance on determining whether a replacement index has historical fluctuations that are substantially similar to those of certain USD LIBOR indices in relation to the Board-selected benchmark replacement for consumer loans; and (7) explains when a creditor that uses the Board-selected benchmark replacement for consumer loans satisfies the condition that the replacement index and margin would have resulted in an APR substantially similar to the rate in effect at the time LIBOR becomes unavailable or calculated using the LIBOR index.

Interaction among § 1026.40(f)(3)(ii)(A) and (B) and contractual provisions. Comment 40(f)(3)(ii)–1 provides that a creditor may use either the provision in § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B) to replace a LIBOR index used under a HELOC plan subject to § 1026.40 so long as the applicable conditions are met for the provision used.[42] It provides examples of when a creditor may use these provisions. Each of these examples assumes that the LIBOR index used under the plan becomes unavailable after June 30, 2023. Specifically, comment 40(f)(3)(ii)–1.i provides an example where a HELOC contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, comment 40(f)(3)(ii)–1.i explains that the creditor may use the unavailability provisions in § 1026.40(f)(3)(ii)(A) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Comment 40(f)(3)(ii)–1.i also explains that the LIBOR-specific provisions in § 1026.40(f)(3)(ii)(B) generally provide that a creditor may replace the LIBOR index if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception provided under comment 40(f)(3)(ii)–1.i is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

The CFPB is revising the example in comment 40(f)(3)(ii)–1.i by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans'' to align terminology in the rule with the LIBOR Act and the Board's 2022 LIBOR Act Final Rule. As discussed above, this interim final rule also defines the term ''the Board-selected benchmark replacement for consumer loans.'' It means the SOFR-based index selected by the Board for consumer loans, as set forth in the LIBOR Act and the Board's implementing regulation, to replace, as applicable, the 1-month, 3-month, 6-month, or 12-month tenors of USD LIBOR. Revised comment 40(f)(3)(ii)–1.ii includes a cross-reference to this definition. For this new definition and throughout this interim final rule, the CFPB is using the term 12-month tenor instead of 1-year tenor to align with the terminology used in the LIBOR Act and the Board's implementing regulation. The Board-selected benchmark replacement for consumer loans is the USD IBOR Cash Fallback index for consumer products, which uses the same methodology that the ARRC recommended for SOFR-based replacement indices for consumer products.[43] As such, these terms identify the same index, and the change is merely for consistency with the Act and ease of reading.

40(f)(3)(ii)(A)

Section 1026.40(f)(3)(ii)(A) provides that a creditor may change the index and margin used under the HELOC plan if the original index is no longer available, the replacement index has historical fluctuations substantially similar to that of the original index, and the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the original index became unavailable. Section 1026.40(f)(3)(ii)(A) also provides if the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable. Comment 40(f)(3)(ii)(A)–2 provides detail on determining whether a replacement index that is not newly established has historical fluctuations that are substantially similar to those of the LIBOR index used under the plan for purposes of § 1026.40(f)(3)(ii)(A). It provides that for purposes of replacing a LIBOR index used under a plan pursuant to § 1026.40(f)(3)(ii)(A), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

The Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. Comment

[42] For further details about these provisions, *see* the section-by-section analyses of § 1026.40(f)(3)(ii)(A) and (B), *infra.*

[43] *See* 88 FR 5204, 5211–15 (Jan. 26, 2023). *See also* Alt. Reference Rates Comm., S*ummary of the ARRC's Fallback Recommendations* (Oct. 6, 2021), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/spread-adjustments-narrative-oct-6-2021. See also* Alt. References Rates Comm., *ARRC Recommended Fallbacks for Implementation of its Hardwired Fallback Language* (Mar. 15, 2023), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2023/ARRC-statement-on-1-3-6-12-month-USD-LIBOR.pdf.*

40(f)(3)(ii)(A)–2.ii provides a determination by the Bureau that effective April 1, 2022, the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively.[44] It provides that the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that the SOFR-based spread-adjusted index for consumer products and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable in order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index.

The CFPB is making several changes to comments 40(f)(3)(ii)(A)–2, –2.i, and –2.ii. First, as discussed in more detail in the section-by-section analysis for § 1026.40(f)(3)(ii) above, and for the reasons discussed therein, the CFPB is revising comment 40(f)(3)(ii)(A)–2.ii by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.'' Revised comment 40(f)(3)(ii)(A)–2.ii includes a cross-reference to this definition. Based on these changes, revised comment 40(f)(3)(ii)(A)–2.ii provides that the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) requiring the Board-selected benchmark replacement for consumer loans and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable.

Second, the CFPB is expanding comment 40(f)(3)(ii)(A)–2.ii to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. Comment 40(f)(3)(ii)(A)–2.ii does not discuss the 12-month (formerly called 1-year) USD LIBOR.[45] In the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 1-year USD LIBOR index in comment 40(f)(3)(ii)(A)–2.ii until it obtained additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. Section 105(a)(5) of the LIBOR Act provides that, for purposes of TILA and its implementing regulations, a Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement with respect to a LIBOR contract constitutes a replacement that has historical fluctuations that are substantially similar to those of the LIBOR index that it is replacing. The Board's regulation provides that for a LIBOR contract that is a consumer loan, the benchmark replacement shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus the applicable amounts or tenor spread adjustment.[46] The CFPB is relying on the determination in the LIBOR Act and the Board's implementing regulation that the Board-selected benchmark replacement for consumer loans has historical fluctuations that are substantially similar to the USD LIBOR tenor that it is replacing. Thus, the CFPB is revising comment 40(f)(3)(ii)(A)–2.ii to also apply this determination of the historical fluctuations substantially similar standard to the replacement of the 12-month USD LIBOR index with the Board-selected benchmark replacement for consumer loans.

Third, based on the LIBOR Act and the Board's implementing regulation, the Bureau is removing its prior determination that became effective April 1, 2022, concerning the spread-adjusted indices based on SOFR recommended by the ARRC for consumer products. By operation of the LIBOR Act and the Board's implementing regulation, all tenors of the Board-selected benchmark replacements have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace.[47] Thus, revised comment 40(f)(3)(ii)(A)–2.ii provides that the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, and 12-month USD LIBOR indices has historical fluctuations that are substantially similar to USD LIBOR tenor they are replacing. The Bureau's prior determination is obsolete. The ''spread-adjusted indices based on SOFR recommended by the ARRC for consumer products'' are the same as ''the Board-selected benchmark replacement for consumer loans'' and the LIBOR Act determined that the latter has historical fluctuations that are substantially similar to the LIBOR tenors they replace. Removing this obsolete determination will avoid confusion.

Fourth, to facilitate compliance, this interim final rule revises comment 40(f)(3)(ii)(A)–2 by specifying that the Board-selected benchmark replacements for consumer loans is an exception to the general requirement providing that the historical fluctuations considered when replacing a LIBOR index used under a plan are the historical fluctuations up through the earlier of when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar. Accordingly, this interim final rule also revises comment 40(f)(3)(ii)(A)–2.ii to provide that no further determination is required that the Board-selected benchmark replacements for consumer loans meets the ''historical fluctuations are substantially similar'' standard. The changes to comment 40(f)(3)(ii)(A)–2 in relation to the Board-selected benchmark replacements for consumer loans do not alter or modify the Bureau's determination set forth in comment 40(f)(3)(ii)(A)–2.i in relation to the prime rate as the replacement index for the 1-month or 3-month USD LIBOR index, except to provide that no further determination is needed that the prime rate published in the Wall Street Journal meets this standard for these tenors. The CFPB solicits comments on these changes in the interim final rule.

Additional guidance on determining whether a replacement index has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. In the 2021 LIBOR Transition Final Rule, the CFPB noted that commenters on the proposed rule had asked for additional guidance on

[44] 86 FR 69716, 69743 & n.106 (Dec. 8, 2021) (acknowledging that while the spread-adjusted term SOFR rates have not always moved in tandem with LIBOR, the Bureau determined that: (1) the historical fluctuations of 6-month USD LIBOR are substantially similar to those of the 6-month spread-adjusted term SOFR rates; (2) the historical fluctuations of 3-month USD LIBOR are substantially similar to those of 3-month spread-adjusted term SOFR rates; and (3) the historical fluctuations of 1-month USD LIBOR are substantially similar to those of the 1-month spread-adjusted term SOFR rates).

[45] *See* 85 FR 36938, 36972, 36994 (June 18, 2020) (proposing comment 59(f)–4 and noting the Bureau's 2020 notice of proposed rulemaking proposed and solicited comment on allowing use of a specific replacement formula where the index change involved the 1-year tenor in addition to the 1-month, 3-month, and 6-month tenors).

[46] 12 CFR 253.4(b)(2)(i)(B) and (ii)(B).

[47] LIBOR Act section 105(a)(5), 136 Stat. 830.

how to determine whether a replacement index has historical fluctuations that are substantially similar to those of a particular LIBOR index, including requesting that the CFPB provide a principles-based standard for making such determinations. The CFPB did not set forth a principles-based standard at that time because these determinations are fact-specific, and they depend on the replacement index being considered and the LIBOR tenor being replaced. Instead, to facilitate compliance with Regulation Z, the CFPB added comment 40(f)(3)(ii)(A)–2.iii to provide a non-exhaustive list of factors to be considered in making these determinations. Specifically, comment 40(f)(3)(ii)(A)2.iii provides that the relevant factors to be considered depend on the replacement index being considered and the LIBOR index being replaced. Comment 40(f)(3)(ii)(A)–2.iii also provides that these determinations may need to consider certain aspects of the historical data itself for a particular replacement index. In the 2021 LIBOR Transition Final Rule, the CFPB considered the relevant factors in determining that: (1) Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR; and (2) the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively.

The CFPB is revising comment 40(f)(3)(ii)(A)–2.iii by adding an exception for the Board-selected benchmark replacements for consumer loans, as defined in new § 1026.2(a)(28). When using the Board-selected benchmark replacements for consumer loans, a creditor need not consider the types of factors used to determine whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index. Because the Board's final rule, in implementing the LIBOR Act, has determined that the Board-selected benchmark replacements for consumer loans are replacement indices that have historical fluctuations that are substantially similar to their respective LIBOR tenors, and the CFPB has determined in this interim final rule that this index meets the Regulation Z ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index, the factors need not be considered. While the CFPB had already applied the factors to the SOFR-based 1-month, 3-month, and 6-month LIBOR tenor replacement indices in its 2021 LIBOR Transition Final Rule, by operation of law, the factors need not be considered with respect to the Board-selected benchmark replacement for consumer loans for the 12-month LIBOR tenor in order for the index to satisfy Regulation Z's ''historical fluctuations are substantially similar'' standard. The CFPB solicits comments on these changes in the interim final rule.

Substantially similar rate when LIBOR becomes unavailable. Section 1026.40(f)(3)(ii)(A) provides that the replacement index and replacement margin must produce an APR substantially similar to the rate that was in effect based on the LIBOR index used under the plan when the LIBOR index became unavailable. Comment 40(f)(3)(ii)(A)–3 provides that, for comparing rates, a creditor generally must use the value of the replacement index and the LIBOR index on the day that the LIBOR index becomes unavailable. It provides that if the replacement index is not published on the day that the LIBOR index becomes unavailable, the creditor generally must use the previous calendar day that both indices are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception under comment 40(f)(3)(ii)(A)–3 is that, if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

Comment 40(f)(3)(ii)(A)–3 also states that for purposes of § 1026.40(f)(3)(ii)(A), if a creditor uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(A) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable.

The CFPB is making several changes to comment 40(f)(3)(ii)(A)–3. First, as discussed in more detail in the section-by-section analysis for § 1026.40(f)(3)(ii) above, and for the reasons discussed therein, the CFPB is revising comment 40(f)(3)(ii)(A)–3 by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.''

Second, the CFPB is expanding comment 40(f)(3)(ii)(A)–3 to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. Comment 40(f)(3)(ii)(A)–3 does not discuss the 12-month (formerly called 1-year) USD LIBOR. In the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 1-year USD LIBOR index in comment 40(f)(3)(ii)(A)–3 until it obtains additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. Sections 105(a)(2), (a)(3), and (a)(5) of the LIBOR Act provide that, for purposes of TILA and its implementing regulations, a Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement with respect to a LIBOR contract constitutes a ''comparable index'' and ''has historical fluctuations that are substantially similar'' to those of the USD LIBOR index they are replacing. The Board's regulation provides that for a LIBOR contract that is a consumer loan, the benchmark replacement shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus the applicable amounts or tenor spread adjustment.[48] The determination in the LIBOR Act and the Board's implementing regulation applies not only to the Board-selected benchmark replacement for consumer loans that is replacing the 1-month, 3-month, and 6-month USD LIBOR, but also to the Board-selected benchmark replacement for consumer loans that is replacing the 12-month tenor of LIBOR. Thus, the

[48] 12 CFR 253.4(b)(2)(i)(B) and (ii)(B).

CFPB is revising comment 40(f)(3)(ii)(A)–3 to provide that for purposes of § 1026.40(f)(3)(ii)(A), if a creditor uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(A) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. The CFPB solicits comment on these changes of the interim final rule.

40(f)(3)(ii)(B)

Section 1026.40(f)(3)(ii)(B) contains LIBOR-specific provisions that permit creditors for HELOC plans subject to § 1026.40 that use a LIBOR index for calculating variable rates to replace the LIBOR index and change the margins for calculating the variable rates on or after April 1, 2022, in certain circumstances. The CFPB explained in the 2021 LIBOR Transition Final Rule how as a practical matter, § 1026.40(f)(3)(ii)(B) allows creditors for HELOCs to provide the 15-day change-in-terms notices required under § 1026.9(c)(1) prior to the LIBOR indices becoming unavailable, and thus allows those creditors to avoid being left without a LIBOR index to use in calculating the variable rate before the replacement index and margin become effective. Also, § 1026.40(f)(3)(ii)(B) allows HELOC creditors to provide the change-in-terms notices, and replace the LIBOR index used under the plans, on accounts on a rolling basis, rather than having to provide the change-in-terms notices, and replace the LIBOR index, for all its accounts at the same time as the LIBOR index used under the plan becomes unavailable. The CFPB believes that this advance notice of the replacement index and any change in the margin is important to consumers to inform them of how variable rates will be determined going forward after the LIBOR index is replaced.

Section 1026.40(f)(3)(ii)(B) provides that if a variable rate on a HELOC subject to § 1026.40 is calculated using a LIBOR index, a creditor may replace the LIBOR index and change the margin for calculating the variable rate on or after April 1, 2022, as long as: (1) the historical fluctuations in the LIBOR index and replacement index were substantially similar; and (2) the replacement index value in effect on October 18, 2021, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Section 1026.40(f)(3)(ii)(B) also provides that if the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. As set forth in § 1026.40(f)(3)(ii)(B), the one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. Comment 40(f)(3)(ii)(B)–1 provides detail on determining whether a replacement index that is not newly established has historical fluctuations that are substantially similar to those of the LIBOR index used under the plan for purposes of § 1026.40(f)(3)(ii)(B). It provides that for purposes of replacing a LIBOR index used under a plan pursuant to § 1026.40(f)(3)(ii)(B), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination by the Bureau. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the creditor makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar.

The CFPB is making two changes to § 1026.40(f)(3)(ii)(B). As discussed in more detail in the section-by-section analysis for § 1026.40(f)(3)(ii) above, and for the reasons discussed therein, the CFPB is revising § 40(f)(3)(ii)(B) by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans'' and is using the term 12-month tenor instead of 1-year tenor with respect to the USD LIBOR index.

The Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. Comment 40(f)(3)(ii)(B)–1.ii provides a determination by the Bureau that, effective April 1, 2022, the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively. Comment 40(f)(3)(ii)(B)–1.ii also provides that in order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index, the creditor also must satisfy the condition in § 1026.40(f)(3)(ii)(B) that the SOFR-based spread-adjusted index for consumer products and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Because of the exception in § 1026.40(f)(3)(ii)(B), the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) with respect to revised comments 40(f)(3)(ii)(A)–2, –2.i, and –2.ii, the interim final rule makes similar changes to comments 40(f)(3)(ii)(B)–1, –1.i, and –1.ii. First, the CFPB is revising comments 40(f)(3)(ii)(B)–1.ii by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.'' Revised comment 40(f)(3)(ii)(B)–1.ii includes a cross-reference to this definition. Based on these changes, revised comment 40(f)(3)(ii)(B)–1.ii provides that the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) requiring the Board-selected benchmark replacement for consumer loans and replacement margin to produce an APR substantially similar to the rate calculated using the LIBOR index and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

Second, the CFPB is expanding comment 40(f)(3)(ii)(B)–1.ii to include a replacement index for the 12-month USD LIBOR not previously addressed in the 2021 LIBOR Transition Final Rule. Comment 40(f)(3)(ii)(B)–1.ii does not discuss the 12-month (formerly called 1-year) USD LIBOR.[49] In the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 1-year USD LIBOR index in comment 40(f)(3)(ii)(B)–1.ii. until it obtained additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. Section 105(a)(5) of the LIBOR Act provides that, for purposes of TILA and its implementing regulations, a Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement with respect to a LIBOR contract constitutes a replacement that has historical fluctuations that are substantially similar to those of the LIBOR index that it is replacing. The Board's regulation provides that for a LIBOR contract that is a consumer loan, the benchmark replacement shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus the applicable amounts or tenor spread adjustment.[50] The CFPB is relying on the determination in the LIBOR Act and the Board's implementing regulation that the Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to the USD LIBOR tenor they are replacing. Thus, the CFPB is revising comment 40(f)(3)(ii)(B)–1.ii to also apply this determination of the historical fluctuations substantially similar standard to the replacement of the 12-month USD LIBOR index with the Board-selected benchmark replacement for consumer loans.

Third, based on the LIBOR Act and the Board's implementing regulation, the Bureau is removing its prior determination that became effective April 1, 2022, concerning the spread-adjusted indices based on SOFR recommended by the ARRC for consumer products. By operation of the LIBOR Act and the Board's implementing regulation, all Board-selected benchmark replacements have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace.[51] Thus, revised comment 40(f)(3)(ii)(B)–1.ii provides that the Board-selected benchmark replacement for consumer loans to the replace 1-month, 3-month, 6-month, and 12-month USD LIBOR index has historical fluctuations that are substantially similar to USD LIBOR tenor they are replacing. The Bureau's prior determination is obsolete. The ''spread-adjusted indices based on SOFR recommended by the ARRC for consumer products'' are the same as ''the Board-selected benchmark replacement for consumer loans'' and the LIBOR Act determined that the latter has historical fluctuations that are substantially similar to the LIBOR tenors they replace. Removing this obsolete determination will avoid confusion.

Fourth, to facilitate compliance, this interim final rule revises comment 40(f)(3)(ii)(B)–1 by specifying that the Board-selected benchmark replacements for consumer loans are an exception to the general requirement providing that the historical fluctuations considered when replacing a LIBOR index under a plan are the historical fluctuations up through the relevant date set forth in comment 40(f)(3)(ii)(B)–1. Accordingly, this interim final rule also revises comment 40(f)(3)(ii)(B)–1.ii to provide that no further determination is required that the Board-selected benchmark replacement for consumer loans meets the ''historical fluctuations are substantially similar'' standard. The changes to comment 40(f)(3)(ii)(B)–1 in relation to the Board-selected benchmark replacements for consumer loans do not alter or modify the Bureau's determination set forth in comment 40(f)(3)(ii)(B)–1.i in relation to the prime rate as the replacement index for the 1-month or 3-month USD LIBOR index, except to provide that no further determination is needed that the prime rate published in the Wall Street Journal meets this standard for these tenors. The CFPB solicits comments on these changes of the interim final rule.

Additional guidance on determining whether a replacement index has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) with respect to revised comment 40(f)(3)(ii)(A)–2.iii, the interim final rule makes similar changes to comment 40(f)(3)(ii)(B)–1.iii, which provides a non-exhaustive list of factors to be considered in whether a replacement index meets the Regulation Z ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index.

The CFPB is making two changes to comment 40(f)(3)(ii)(B)–1.iii. First, the CFPB is making a technical correction in comment 40(f)(3)(ii)(B)–1.iii to change ''substantial'' to ''substantially'' when considering the relevant factors in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index. Second, similar to changes in revised comment 40(f)(3)(ii)(A)–2.iii above, the CFPB is revising comment 40(f)(3)(ii)(B)–1.iii by adding an exception for the Board-selected benchmark replacements for consumer loans, as defined in new § 1026.2(a)(28). When using the Board-selected benchmark replacements for consumer loans, a creditor need not consider the types of factors that have historical fluctuations substantially similar to those of a particular LIBOR index. Because the Board's final rule, in implementing the LIBOR Act, has determined that the Board-selected benchmark replacements for consumer loans are indices that have historical fluctuations that are substantially similar to their respective LIBOR tenors,

[49] *See* 85 FR 36938, 36972, 36994 (June 18, 2020) (proposing comment 59(f)–4 and noting the Bureau's 2020 notice of proposed rulemaking proposed and solicited comment on allowing use of a specific replacement formula where the index change involved the 1-year tenor in addition to the 1-month, 3-month, and 6-month tenors).

[50] 12 CFR 253.4(b)(2)(i)(B) and (ii)(B).

[51] LIBOR Act section 105(a)(5), 136 Stat. 830.

and the CFPB has determined in this interim final rule that this index meets the Regulation Z ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index, the factors need not be considered. While the CFPB had already applied the factors to the SOFR-based 1-month, 3-month, and 6-month LIBOR tenor replacement indices in its 2021 LIBOR Transition Final Rule, by operation of law, the factors need not be considered with respect to the Board-selected benchmark replacement for consumer loans for the 12-month LIBOR tenor in order for the index to satisfy Regulation Z's ''historical fluctuations are substantially similar'' standard. The CFPB solicits comments on these changes of the interim final rule.

Substantially similar rate. Pursuant to § 1026.40(f)(3)(ii)(B), if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

Comment 40(f)(3)(ii)(B)–3 also provides that for purposes of § 1026.40(f)(3)(ii)(B), if a creditor uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(B) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index.

For the same reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) above for revised comment 40(f)(3)(ii)(A)–3, the CFPB is making several changes to comment 40(f)(3)(ii)(B)–3. First, the CFPB is revising comment 40(f)(3)(ii)(B)–3 by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.''

Second, the CFPB is expanding comment 40(f)(3)(ii)(B)–3 to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. This interim final rule revises comment 40(f)(3)(ii)(B)–3 to provide that the APR based on the replacement index is substantially similar to the rate based on the LIBOR index for purposes of § 1026.40(f)(3)(ii)(B) if a creditor uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(B) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index. Thus, a creditor that uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month USD LIBOR index as the replacement index still must comply with the condition in § 1026.40(f)(3)(ii)(B) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index, but the creditor will be deemed to be in compliance with this condition if the creditor uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The CFPB solicits comments on these changes in the interim final rule.

Section 1026.55 Limitations on Increasing Annual Percentage Rates, Fees, and Charges

55(b) Exceptions

55(b)(7) Index Replacement and Margin Change Exception

TILA section 171(a), which was added by the Credit CARD Act, provides that in the case of a credit card account under an open-end consumer credit plan, no creditor may increase any APR, fee, or finance charge applicable to any outstanding balance, except as permitted under TILA section 171(b).[52] TILA section 171(b)(2) provides that the prohibition under TILA section 171(a) does not apply to an increase in a variable APR in accordance with a credit card agreement that provides for changes in the rate according to the operation of an index that is not under the control of the creditor and is available to the general public.[53] In implementing these provisions of TILA section 171, § 1026.55(a) prohibits a card issuer from increasing an APR or certain enumerated fees or charges set forth in § 1026.55(a) on a credit card account under an open-end (not home-secured) consumer credit plan, except as provided in § 1026.55(b).

Section 1026.55(b)(7) provides a card issuer may increase an APR pursuant to certain exceptions. Section 1026.55(b)(7)(i) discusses the exception for index replacement and margin changes and provides that a card issuer may increase an APR when the card issuer changes the index and margin used to determine the APR if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. Section 1026.55(b)(7)(i) also provides if the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable.

Section 1026.55(b)(7)(ii) contains LIBOR-specific provisions that permit card issuers for a credit card account under an open-end (not home-secured) consumer credit plan that uses a LIBOR index under the plan for calculating variable rates to replace the LIBOR index and change the margins for calculating the variable rates on or after April 1, 2022, in certain circumstances. Comment 55(b)(7)–1 addresses the interaction among the unavailability provisions in § 1026.55(b)(7)(i), the LIBOR-specific provisions in § 1026.55(b)(7)(ii), and the contractual provisions applicable to the credit card account.

As discussed in more detail below in this section-by-section analysis, this interim final rule makes a number of changes to §§ 1026.55(b)(7)(i) and (b)(7)(ii) and the Official Interpretations below. In general, it: (1) replaces references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new defined term ''the Board-selected benchmark replacement for consumer

[52] 15 U.S.C. 1666i–1(a).

[53] 15 U.S.C. 1666i–1(b)(2).

loans''; (2) replaces the reference to the 1-year USD LIBOR index with the 12-month USD LIBOR index; (3) expands the Official Interpretations to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule; (4) provides that the Board-selected benchmark replacements for consumer loans to replace 1-month, 3-month, 6-month, and 12-month USD LIBOR indices have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace; (5) provides if the creditor uses the Board-selected benchmark replacement for consumer loans, the creditor must use the index value of this index and the LIBOR index from a specified timeframe in determining whether the APR is substantially similar; and (6) explains when a card issuer that uses the Board-selected benchmark replacement for consumer loans satisfies the condition that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable or calculated using the LIBOR index.

Interaction among § 1026.55(b)(7)(i) and (ii) and contractual provisions. Comment 55(b)(7)–1 provides that a card issuer may use either the provision in § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) to replace a LIBOR index used under a credit card account under an open-end (not home-secured) consumer credit plan so long as the applicable conditions are met for the provision used. It provides examples illustrating when a card issuer may use these provisions. Each of these examples assumes that the LIBOR index used under the plan becomes unavailable after June 30, 2023. Specifically, comment 55(b)(7)–1.i provides an example where a contract for a credit card account under an open-end (not home-secured) consumer credit plan provides that a card issuer may not unilaterally replace an index under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, comment 55(b)(7)–1.i explains that the card issuer may use the unavailability provisions in § 1026.55(b)(7)(i) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Comment 55(b)(7)–1.i also explains that the LIBOR-specific provisions in § 1026.55(b)(7)(ii) provide that a card issuer may replace the LIBOR index if the replacement index value in effect on October 18, 2021, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception provided under comment 55(b)(7)–1.i is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3) with respect to revised comment 40(f)(3)(ii)–1.i, this interim final rule makes similar changes to comment 55(b)(7)–1.i. The CFPB is revising the example in comment 55(b)(7)–1.i by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans'' to align terminology with the LIBOR Act and the Board's 2022 LIBOR Act Final Rule.

55(b)(7)(i)

Section 1026.55(b)(7)(i) contains an exception to the general rule in § 1026.55(a) restricting rate increases for index replacement and margin changes. Section 1026.55(b)(7)(i) provides that a card issuer may increase an APR when the card issuer changes the index and margin used to determine the APR if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. Section 1026.55(b)(7)(i) also provides that if the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable. Comment 55(b)(7)(i)–1 provides that for purposes of replacing a LIBOR index used under a plan pursuant to § 1026.55(b)(7)(i), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

The Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. Comment 55(b)(7)(i)–1.ii provides a determination by the Bureau that effective April 1, 2022, the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively. It provides that the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that the SOFR-based spread-adjusted index for consumer products and replacement margin will produce an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable in order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index.

For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) with respect to revised comments 40(f)(3)(ii)(A)–2, –2.i, and –2.ii, the interim final rule makes similar changes to comments 55(b)(7)(i)–1, –1.i, and –1.ii. First, the CFPB is revising comment 55(b)(7)(i)–1.ii by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.'' Revised comment 55(b)(7)(i)–1.ii includes a cross-reference to this definition. Based on these changes, revised comment 55(b)(7)(i)–1.ii provides that the card issuer also must comply with the condition in § 1026.55(b)(7)(i) requiring the Board-selected benchmark replacement for consumer loans and replacement margin result would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. The substantially similar standard for the APR is discussed in further detail below in relation to comment 55(b)(7)(i)–2.

Second, the CFPB is expanding comment 55(b)(7)(i)–1.ii to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. Comment 55(b)(7)(i)–1.ii does not discuss the 12-month (formerly called 1-year) USD LIBOR.[54] In the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 1-year USD LIBOR index in comment 55(b)(7)(i)–1.ii until it obtained additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. Section 105(a)(5) of the LIBOR Act provides that, for purposes of TILA and its implementing regulations, a Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement with respect to a LIBOR contract constitutes a replacement that has historical fluctuations that are substantially similar to those of the LIBOR index that it is replacing. The Board's regulation provides that for a LIBOR contract that is a consumer loan, the benchmark replacement shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus the applicable amounts or tenor spread adjustment.[55] The CFPB is relying on the determination in the LIBOR Act and the Board's implementing regulation that the Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to the USD LIBOR tenor that it is replacing. Thus, the CFPB is revising comment 55(b)(7)(i)–1.ii to also apply this determination of the historical fluctuations substantially similar standard to the replacement of the 12-month USD LIBOR index with the Board-selected benchmark replacement for consumer loans.

Third, based on the LIBOR Act and the Board's implementing regulation, the Bureau is removing its prior determination, that became effective April 1, 2022, concerning the spread-adjusted indices based on SOFR recommended by the ARRC for consumer products. By operation of the LIBOR Act and the Board's implementing regulation, all tenors of the Board-selected benchmark replacements have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace.[56] Thus, revised comment 55(b)(7)(i)–1.ii provides that the Board-selected benchmark replacements for consumer loans to replace the 1-month, 3-month, 6-month, and 12-month USD LIBOR index has historical fluctuations that are substantially similar to USD LIBOR tenor they are replacing. The Bureau's prior determination is obsolete. The ''spread-adjusted indices based on SOFR recommended by the ARRC for consumer products'' are the same as ''the Board-selected benchmark replacement for consumer loans'' and the LIBOR Act determined that the latter has historical fluctuations that are substantially similar to the LIBOR tenors they replace. Removing this obsolete determination will avoid confusion.

Fourth, to facilitate compliance, this interim final rule revises comment 55(b)(7)(i)–1.ii by specifying that the Board-selected benchmark replacements for consumer loans are an exception to the requirement providing that the historical fluctuations considered when replacing a LIBOR index under a plan are the historical fluctuations up through the relevant date set forth in comment 55(b)(7)(i)–1.ii. Accordingly, this interim final rule also revises comment 55(b)(7)(i)–1.ii to provide that no further determination is required that the Board-selected benchmark replacements for consumer loans meets the ''historical fluctuations are substantially similar'' standard. The changes to comment 55(b)(7)(i)–1 in relation to the Board-selected benchmark replacements for consumer loans do not alter or modify the Bureau's determination set forth in comment 55(b)(7)(i)–1.i in relation to the prime rate as the replacement index for the 1-month or 3-month USD LIBOR index, except to provide that no further determination is needed that the prime rate published in the Wall Street Journal meets this standard for these tenors.

Additional guidance on determining whether a replacement index has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) with respect to revised comment 40(f)(3)(ii)(A)–2.iii, the interim final rule makes similar changes to comment 55(b)(7)(i)–1.iii, which provides a non-exhaustive list of factors to be considered in whether a replacement index meets the Regulation Z ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index.

The CFPB is making two changes to comment 55(b)(7)(i)–1.iii. First, the CFPB is making a technical correction in comment 55(b)(7)(i)–1.iii to change ''substantial'' to ''substantially'' when considering the relevant factors in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index. Second, similar to changes in revised comment 40(f)(3)(ii)(A)–2.iii above, the CFPB is revising comment 55(b)(7)(i)–1.iii by adding an exception for the Board-selected benchmark replacements for consumer loans, as defined in new § 1026.2(a)(28). When using the Board-selected benchmark replacements for consumer loans, a creditor need not consider the types of factors that have historical fluctuations substantially similar to those of a particular LIBOR index. Because the Board's final rule, in implementing the LIBOR Act, has determined that the Board-selected benchmark replacements for consumer loans are indices that have historical fluctuations that are substantially similar to their respective LIBOR tenors, and the CFPB has determined in this interim final rule that this index meets the Regulation Z ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index, the factors need not be considered. While the CFPB had already applied the factors to the SOFR-based 1-month, 3-month, and 6-month LIBOR tenor replacement indices in its 2021 LIBOR Transition Final Rule, by operation of law, the factors need not be considered with respect to the Board-selected benchmark replacement for consumer loans for the 12-month LIBOR tenor in order for the index to satisfy Regulation Z's ''historical fluctuations are substantially similar'' standard. The CFPB solicits comments on these changes of the interim final rule.

[54] *See* 85 FR 36938, 36972, 36994 (June 18, 2020) (proposing comment 59(f)–4 and noting the Bureau's 2020 notice of proposed rulemaking proposed and solicited comment on allowing use of a specific replacement formula where the index change involved the 1-year tenor in addition to the 1-month, 3-month, and 6-month tenors).

[55] 12 CFR 253.4(b)(2)(i)(B) and (ii)(B).

[56] LIBOR Act section 105(a)(5), 136 Stat. 830.

Substantially similar rate when LIBOR becomes unavailable. Section 1026.55(b)(7)(i) provides that the replacement index and replacement margin must produce an APR substantially similar to the rate that was in effect based on the LIBOR index used under the plan when the LIBOR index became unavailable. Comment 55(b)(7)(i)–2 provides that, for comparing rates, a card issuer generally must use the value of the replacement index and the LIBOR index on the day that the LIBOR index becomes unavailable. It provides that if the replacement index is not published on the day that the LIBOR index becomes unavailable, the card issuer generally must use the previous calendar day that both indices are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception under comment 55(b)(7)(i)–2 is that, if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

Comment 55(b)(7)(i)–2 also provides that for purposes of § 1026.55(b)(7)(i), if a card issuer uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(i) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index.

For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) with respect to revised comment 40(f)(3)(ii)(A)–3, the interim final rule makes similar changes to comment 55(b)(7)(i)–2. First, the CFPB is revising comment 55(b)(7)(i)–2 by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.''

Second, the CFPB is expanding comment 55(b)(7)(i)–2 to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. Comment 55(b)(7)(i)–2 does not discuss the 12-month (formerly called 1-year) USD LIBOR. In the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 1-year USD LIBOR index in comment 55(b)(7)(i)–2 until it obtains additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. Sections 105(a)(2), (a)(3), and (a)(5) of the LIBOR Act provide that, for purposes of TILA and its implementing regulations, a Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement with respect to a LIBOR contract constitutes a ''comparable index'' and ''has historical fluctuations that are substantially similar'' to those of the USD LIBOR index they are replacing. The Board's regulation provides that for a LIBOR contract that is a consumer loan, the benchmark replacement shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus the applicable amounts or tenor spread adjustment.[57] The determination in the LIBOR Act and the Board's implementing regulation applies not only to the Board-selected benchmark replacements for consumer loans that are replacing the 1-month, 3-month, and 6-month USD LIBOR, but also to the Board-selected benchmark replacement for consumer loans that is replacing the 12-month tenor of LIBOR. Thus, the CFPB is revising comment 55(b)(7)(i)–2 to provide that for purposes of § 1026.55(b)(7)(i), if a card issuer uses the Board-selected benchmark replacements for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(i) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. The CFPB solicits comment on these changes of the interim final rule.

55(b)(7)(ii)

Section 1026.55(b)(7)(ii) contains LIBOR-specific provisions that permit card issuers for a credit card account under an open-end (not home-secured) consumer credit plan that uses a LIBOR index under the plan for calculating variable rates to replace the LIBOR index and change the margins for calculating the variable rates on or after April 1, 2022, in certain circumstances. The CFPB explained in the 2021 LIBOR Transition Final Rule how, as a practical matter, § 1026.55(b)(7)(ii) allows card issuers to provide the 45-day change-in-terms notices required under § 1026.9(c)(2) prior to the LIBOR indices becoming unavailable, and thus allows those card issuers to avoid being left without a LIBOR index to use in calculating the variable rate before the replacement index and margin become effective. Also, § 1026.55(b)(7)(ii) allows card issuers to provide the change-in-terms notices, and replace the LIBOR index used under the plans, on accounts on a rolling basis, rather than having to provide the change-in-terms notices, and replace the LIBOR index, for all its accounts at the same time as the LIBOR index used under the plan becomes unavailable. The CFPB believes that this advance notice of the replacement index and any change in the margin is important to consumers to inform them of how variable rates will be determined going forward after the LIBOR index is replaced.

Section 1026.55(b)(7)(ii) provides that if a variable rate on a credit card account under an open-end (not home-secured) consumer credit plan is calculated using a LIBOR index, a card issuer may replace the LIBOR index and change the margin for calculating the variable rate on or after April 1, 2022, as long as: (1) the historical fluctuations in the LIBOR index and replacement index were substantially similar; and (2) the replacement index value in effect on October 18, 2021, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on

[57] 12 CFR 253.4(b)(2)(i)(B) and (ii)(B).

October 18, 2021, and the replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Section 1026.55(b)(7)(ii) also provides that if the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. As set forth in § 1026.55(b)(7)(ii), the one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. Comment 55(b)(7)(ii)–1 provides detail on determining whether a replacement index that is not newly established has historical fluctuations that are substantially similar to those of the LIBOR index used under the plan for purposes of § 1026.55(b)(7)(ii). It provides that for purposes of replacing a LIBOR index used under a plan pursuant to § 1026.55(b)(7)(ii), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination by the Bureau. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the card issuer makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar.

For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(B), the interim final rule is making two changes to § 1026.55(b)(7)(ii). First, the CFPB is revising § 1026.55(b)(7)(ii) by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.'' Second, the CFPB is using the term 12-month tenor instead of 1-year tenor with respect to the USD LIBOR index.

The Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. Comment 55(b)(7)(ii)–1.ii provides a determination by the Bureau that, effective April 1, 2022, the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively. The Bureau made this determination in case some card issuers choose to replace a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products. Comment 55(b)(7)(ii)–1.ii also provides that in order to use this SOFR-based spread-adjusted index recommended by the ARRC for consumer products discussed above as the replacement index for the applicable LIBOR index, the card issuer also must satisfy the condition in § 1026.55(b)(7)(ii) that the SOFR-based spread-adjusted index for consumer products and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Comment 55(b)(7)(ii)–1.ii provides that because of the exception in § 1026.55(b)(7)(ii), the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index recommended by the ARRC for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(B) with respect to revised comments 40(f)(3)(ii)(B)–1, –1.i, and –1.ii and discussed below, the interim final rule makes similar changes to comments 55(b)(7)(ii)–1, –1.i, and –1.ii. First, the CFPB is replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.'' Revised comment 55(b)(7)(ii)–1.ii includes a cross-reference to this definition. Based on these changes, revised comment 55(b)(7)(ii)–1.ii provides that the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) requiring the Board-selected benchmark replacement for consumer loans and replacement margin to produce an APR substantially similar to the rate calculated using the LIBOR index and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The substantially similar standard for this interim final rule is discussed in further detail below in relation to comment 55(b)(7)(ii)–3.

Second, the CFPB is expanding comment 55(b)(7)(ii)–1.ii to include a replacement index for the 12-month USD LIBOR not previously addressed in the 2021 LIBOR Transition Final Rule. Comment 55(b)(7)(ii)–1.ii does not discuss the 12-month (formerly called 1-year) USD LIBOR.[58] In the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 1-year USD LIBOR index in comment 55(b)(7)(ii)–1.ii until it obtained additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. Section 105(a)(5) of the LIBOR Act provides that, for purposes of TILA and its implementing regulations, a Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement with respect to a LIBOR contract constitutes a replacement that has historical fluctuations that are substantially similar to those of the LIBOR index that it is replacing. The Board's regulation provides that for a LIBOR contract that is a consumer loan, the benchmark replacement shall be the corresponding 1-month, 3-month, 6-

[58] *See* 85 FR 36938, 36972, 36994 (June 18, 2020) (proposing comment 59(f)–4 and noting the Bureau's 2020 notice of proposed rulemaking proposed and solicited comment on allowing use of a specific replacement formula where the index change involved the 1-year tenor in addition to the 1-month, 3-month, and 6-month tenors).

month, or 12-month CME Term SOFR plus the applicable amounts or tenor spread adjustment.[59] The CFPB is relying on the determination in the LIBOR Act and the Board's implementing regulation that the Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to the USD LIBOR tenor that they are replacing. Thus, the CFPB is revising comment 55(b)(7)(ii)–1.ii to also apply this determination of the historical fluctuations substantially similar standard to the replacement of the 12-month USD LIBOR index with the Board-selected benchmark replacement for consumer loans.

Third, based on the LIBOR Act and the Board's implementing regulation, the Bureau is removing its prior determination, that became effective April 1, 2022, concerning the spread-adjusted indices based on SOFR recommended by the ARRC for consumer products. By operation of the LIBOR Act and the Board's implementing regulation, all tenors of the Board-selected benchmark replacements have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace.[60] Thus, revised comment 55(b)(7)(ii)–1.ii provides that the Board-selected benchmark replacements for consumer loans to replace the 1-month, 3-month, 6-month, and 12-month USD LIBOR index has historical fluctuations that are substantially similar to USD LIBOR tenor they are replacing. The Bureau's prior determination is obsolete. The ''spread-adjusted indices based on SOFR recommended by the ARRC for consumer products'' are the same as ''the Board-selected benchmark replacement for consumer loans'' and the LIBOR Act determined that the latter has historical fluctuations that are substantially similar to the LIBOR tenors they replace. Removing this obsolete determination will avoid confusion.

Fourth, to facilitate compliance, this interim final rule revises comment 55(b)(7)(ii)–1 by specifying that the Board-selected benchmark replacements for consumer loans are an exception to the requirement providing that the historical fluctuations considered when replacing a LIBOR index under a plan are the historical fluctuations up through the relevant date set forth in comment 55(b)(7)(ii)–1.ii. Accordingly, this interim final rule also revises comment 55(b)(7)(ii)–1.ii to provide that no further determination is required to determine that the Board-selected benchmark replacements for consumer loans meet the ''historical fluctuations are substantially similar'' standard. The changes to comment 55(b)(7)(ii)–1 in relation to the Board-selected benchmark replacements for consumer loans do not alter or modify the Bureau's determination set forth in comment 55(b)(7)(ii)–1.i in relation to the prime rate as the replacement index for the 1-month or 3-month USD LIBOR index, except to provide that no further determination is needed that the prime rate published in the Wall Street Journal meets this standard for these tenors. The CFPB solicits comments on these changes of the interim final rule.

Additional guidance on determining whether a replacement index has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(B) with respect to revised comment 40(f)(3)(ii)(B)–1.iii, the interim final rule makes similar changes to comment 55(b)(7)(ii)–1.iii, which provides a non-exhaustive list of factors to be considered in whether a replacement index meets the Regulation Z ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index.

The CFPB is making two changes to comment 55(b)(7)(ii)–1.iii. First, the CFPB is making a technical correction in comment 55(b)(7)(ii)–1.iii to change ''substantial'' to ''substantially'' when considering the relevant factors in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index. Second, similar to changes in revised comment 40(f)(3)(ii)(B)–1.iii above, the CFPB is revising comment 55(b)(7)(ii)–1.iii by adding an exception for the Board-selected benchmark replacements for consumer loans, as defined in new § 1026.2(a)(28). When using the Board-selected benchmark replacement for consumers loans, a creditor need not consider the types of factors that have historical fluctuations substantially similar to those of a particular LIBOR index. Because the Board's final rule, in implementing the LIBOR Act, has determined that the Board-selected benchmark replacements for consumer loans are indices that have historical fluctuations that are substantially similar to their respective LIBOR tenors, and the CFPB has determined in this interim final rule that this index meets the Regulation Z ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index, the factors need not be considered. While the CFPB had already applied the factors to the SOFR-based 1-month, 3-month, and 6-month LIBOR tenor replacement indices in its 2021 LIBOR Transition Final Rule, by operation of law, the factors need not be considered with respect to the Board-selected benchmark replacement for consumer loans for the 12-month LIBOR tenor in order for the index to satisfy Regulation Z's ''historical fluctuations are substantially similar'' standard. The CFPB solicits comments on these changes of the interim final rule.

Substantially similar rate. Pursuant to § 1026.55(b)(7)(ii), if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

Comment 55(b)(7)(ii)–3 also provides for purposes of § 1026.55(b)(7)(ii), if a card issuer uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD index as the replacement index and uses as the replacement margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(ii) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index.

For the same reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(B) above for revised comment 40(f)(3)(ii)(B)–3, this interim final rule implements a number of changes to comment 55(b)(7)(ii)–3. First, the CFPB is revising comment 55(b)(7)(ii)–3 by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.''

Second, the CFPB is expanding comment 55(b)(7)(ii)–3 to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. This interim final rule revises comment 55(b)(7)(ii)–3 to provide that for purposes of

[59] 12 CFR 253.4(b)(2)(i)(B) and (ii)(B).

[60] LIBOR Act section 105(a)(5), 136 Stat. 830.

§ 1026.55(b)(7)(ii), if a card issuer uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(ii) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index. Thus, a card issuer that uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month USD LIBOR index as the replacement index still must comply with the condition in § 1026.55(b)(7)(ii) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index, but the card issuer will be deemed to be in compliance with this condition if the card issuer uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The CFPB solicits comments on these changes in the interim final rule.

Section 1026.59 Reevaluation of Rate Increases

59(f) Termination of the Obligation To Review Factors

59(f)(3)

TILA section 148, which was added by the Credit CARD Act of 2009,[61] provides that if a creditor increases the APR applicable to a credit card account under an open-end consumer credit plan, based on factors including the credit risk of the obligor, market conditions, or other factors, the creditor shall consider changes in such factors in subsequently determining whether to reduce the APR for such obligor.[62] Section 1026.59 implements this provision. The provisions in § 1026.59 generally apply to card issuers that increase an APR applicable to a credit card account, based on the credit risk of the consumer, market conditions, or other factors. For any rate increase imposed on or after January 1, 2009, card issuers generally are required to review the account no less frequently than once each six months and, if appropriate based on that review, reduce the APR.

Section 1026.59(f) provides that this obligation to review the rate increase ceases to apply if the card issuer reduces the APR to a rate equal to or less than the rate applicable immediately prior to the increase, or if the rate applicable immediately prior to the increase was a variable rate, to a rate determined by the same index and margin (previous formula) that applied prior to the increase. Once LIBOR is discontinued, it will not be possible for card issuers to use the ''same index.'' As discussed in the CFPB's 2021 LIBOR Transition Final Rule, because the discontinuation of LIBOR means that after discontinuation, the card issuer will not have a LIBOR index for use in the ''previous formula'' to determine the rate that applied prior to the increase, the existing methods to terminate the obligation to review would not apply.

Section 1026.59(f)(3) provides, effective April 1, 2022, a replacement formula that card issuers can use to terminate the obligation to review factors under § 1026.59(a) when the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index. Section 1026.59(f)(3) applies to situations in which a LIBOR index is used as the index in the ''previous formula'' (*i.e.,* the formula used to determine the rate at which the obligation to review factors ceases).[63] Under § 1026.59(f)(3), the replacement formula, which includes the replacement index on October 18, 2021, plus replacement margin, must equal the LIBOR index value on October 18, 2021, plus the margin used to calculate the rate immediately prior to the increase.[64] Section 1026.59(f)(3) also provides that a card issuer must satisfy the conditions set forth in § 1026.55(b)(7)(ii) for selecting a replacement index. Under § 1026.59(f)(3), if the replacement index is not published on October 18, 2021, the card issuer generally must use the values of the indices on the next calendar day for which both the LIBOR index and the replacement index are published as the index values to use to determine the replacement formula. The one exception in § 1026.59(f)(3) is that if the replacement index is the spread-adjusted index based on SOFR recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, as the index values to use to determine the replacement formula.

Additionally, comment 59(f)–4 provides methods for identifying the replacement index to be used in the formula by providing instructions for determining the relevant date through which the card issuer must determine that historical fluctuations between the indices are substantially similar. Comment 59(f)–4 provides that if the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination, but if the Bureau has not made such a determination, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the card issuer makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar. Comment 59(f)–4 states the Bureau's determination that the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR indices and that the spread-adjusted indices based on SOFR recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively.

For the reasons discussed below, and as discussed in the section-by-section analysis of § 1026.59(f)(3) and comment 59(f)–4 below, this interim final rule implements several revisions related to rate reevaluation provisions. First, as discussed in more detail in the section-by-section analysis for § 1026.55(b)(7) above, and for the reasons discussed therein, the CFPB is revising § 1026.59(f)(3) by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term

[61] Public Law 111–24, 123 Stat. 1734 (2009).

[62] 15 U.S.C. 1665c.

[63] Section 1026.59(f)(3) does not apply to rate increases that may result from the switch from a LIBOR index to another index under § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) as those potential rate increases will be excepted from the provisions of § 1026.59. Section 1026.59(f)(3) does, however, cover rate increases that were already subject to the provisions of § 1026.59 and that use a formula under § 1026.59(f) based on a LIBOR index to determine whether to terminate the review obligations under § 1026.59.

[64] For purposes of § 1026.59(f)(3) ''replacement index,'' as defined in comment 59(f)–4, refers to the index used in the replacement formula, which identifies the value for benchmark comparison to determine if the obligation to conduct rate reevaluations terminates.

''the Board-selected benchmark replacement for consumer loans'' to align terminology in the rule with the LIBOR Act and the Board's 2022 LIBOR Act Final Rule. As discussed in the section-by-section analysis for § 1026.2(a)(28), this interim final rule also defines the term ''the Board-selected benchmark replacement for consumer loans.'' Revised comment 59(f)–4 includes a cross-reference to that definition. As discussed above, these terms identify the same index, and the change is merely for consistency with the Act and ease of reading.

Second, the CFPB is expanding comment 59(f)–4 to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. Comment 59(f)–4 does not discuss the 12-month (formerly called 1-year) USD LIBOR.[65] In the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 1-year USD LIBOR index in comment 59(f)–4 until it obtained additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. Section 105(a)(5) of the LIBOR Act provides that, for purposes of TILA and its implementing regulations, a Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement with respect to a LIBOR contract constitutes a replacement that has historical fluctuations that are substantially similar to those of the LIBOR index that it is replacing. The Board's regulation provides that for a LIBOR contract that is a consumer loan, the benchmark replacement shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus the applicable amounts or tenor spread adjustment.[66] The CFPB is relying on the determination in the LIBOR Act and the Board's implementing regulation that the Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to the USD LIBOR tenor that they are replacing. While section 104(f) of the LIBOR Act provides that nothing in the Act ''may be construed to alter or impair— . . . (5) any provision of Federal consumer financial law that— (A) . . . govern the reevaluation of rate increases on credit card accounts under open-end (not home-secured) consumer credit plans,'' [67] the CFPB is not relying on the LIBOR Act for its authority to provide an alternative method for determining whether the card issuer can terminate its obligation under the credit card account rate reevaluation requirements where the rate applicable immediately prior to a rate increase was a variable rate calculated using a LIBOR index. Instead, the CFPB is revising § 1026.59(f)(3) and comment 59(f)–4 pursuant to its authority to implement TILA section 148, as discussed above.

Third, based on the LIBOR Act and the Board's implementing regulation, the Bureau is removing its prior determination, that became effective April 1, 2022, concerning the spread-adjusted indices based on SOFR recommended by the ARRC for consumer products. By operation of the LIBOR Act and the Board's implementing regulation, all tenors of the Board-selected benchmark replacements for consumer loans have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace.[68] Thus, the CFPB is revising comment 59(f)–4 to provide that the Board-selected benchmark replacements for consumer loans to replace the 1-month, 3-month, 6-month, and 12-month USD LIBOR index have historical fluctuations that are substantially similar to USD LIBOR tenor they are replacing. The Bureau's prior determination is obsolete. The ''spread-adjusted indices based on SOFR recommended by the ARRC for consumer products'' are the same as ''the Board-selected benchmark replacement for consumer loans'' and the LIBOR Act determined that the latter has historical fluctuations that are substantially similar to the LIBOR tenors they replace. Removing this obsolete determination will avoid confusion.

Fourth, to facilitate compliance, this interim final rule revises comment 59(f)–4 by specifying that the Board-selected benchmark replacements for consumer loans are an exception to the requirement providing that the historical fluctuations considered when replacing a LIBOR index under a plan are the historical fluctuations up through the relevant date as set forth in comment 59(f)–4. Accordingly, this interim final rule also revises comment 59(f)–4 to provide that no further determination is required that the Board-selected benchmark replacement for consumer loans meets the ''historical fluctuations are substantially similar'' standard. The changes to comment 59(f)–4 in relation to the Board-selected benchmark replacements for consumer loans do not alter or modify the Bureau's determination set forth in comment 59(f)–4 in relation to the prime rate as the replacement index for the 1-month or 3-month USD LIBOR index, except to provide that no further determination is needed that the prime rate published in the Wall Street Journal meets this standard for these tenors. The CFPB solicits comments on these changes in the interim final rule.

VI. Effective Date

The final rule will take effect on May 15, 2023, which should be approximately 45 days before the expected discontinuation of LIBOR.

VII. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

In developing the interim final rule, the CFPB has considered the interim final rule's potential benefits, costs, and impacts.[69] The CFPB requests comment on the analysis presented below as well as submissions of additional data that could inform the CFPB's analysis of the benefits, costs, and impacts. In developing the interim final rule, the CFPB has consulted with, or offered to consult with, the appropriate prudential regulators and other Federal agencies regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The CFPB is issuing an interim final rule amending Regulation Z, which implements TILA, to reflect the enactment of the LIBOR Act and its implementing regulation promulgated by the Board. This interim final rule further addresses the planned cessation of most USD LIBOR tenors after June 30, 2023, by incorporating the Board-

[65] *See* 85 FR 36938, 36972, 36994 (June 18, 2020) (proposing comment 59(f)–4 and noting the Bureau's 2020 notice of proposed rulemaking proposed and solicited comment on allowing use of a specific replacement formula where the index change involved the 1-year tenor in addition to the 1-month, 3-month, and 6-month tenors).

[66] 12 CFR 253.4(b)(2)(i)(B) and (ii)(B).

[67] LIBOR Act section 104(f), 136 Stat. 829.

[68] LIBOR Act section 105(a)(5), 136 Stat. 830.

[69] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products and services; the impact of proposed rules on insured depository institutions and insured credit unions with less than $10 billion in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. The applicability of section 1022(b)(2)(A) to this rulemaking is unclear, but the Bureau has performed the described analysis.

selected benchmark replacements for consumer loans into Regulation Z. This interim final rule conforms the terminology from the LIBOR Act and the Board's implementing regulation into relevant Regulation Z open-end and closed-end credit provisions and also addresses treatment of the 12-month USD LIBOR index and its replacement index, including permitting creditors to use alternative language in change-in-terms notice content requirements for situations where the 12-month tenor of the LIBOR index is being replaced consistent with the LIBOR Act.

The CFPB is making four categories of amendments to various provisions in Regulation Z to make changes consistent with the LIBOR Act to address the anticipated sunset of LIBOR.

First, (the ''terminology amendments'') the CFPB is changing the terminology used in the CFPB's 2021 LIBOR Transition Final Rule to make it consistent with terminology in the LIBOR Act. Specifically, for both-open and closed-end credit as discussed in further detail below, the CFPB is replacing all references to the ''index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products'' with references to the ''the Board-selected benchmark replacement for consumer loans'' and adding a new definition for that term in the Official Interpretations. The CFPB is also replacing all references to the ''1-year'' USD LIBOR with references to the ''12-month'' USD LIBOR.

Second, (''12-month historical fluctuations amendments'') for both open- and closed-end credit, the CFPB is revising the Official Interpretations to incorporate the Board-selected benchmark replacement for consumer loans to replace the 12-month LIBOR, as prescribed by the LIBOR Act, as an index that has historical fluctuations that are substantially similar to those of the 12-month USD LIBOR index it is intended to replace. The Bureau's prior determination that the spread-adjusted indices based on SOFR recommended by the ARRC to replace 1-month, 3-month, and 6-month USD LIBOR have historical fluctuations that are substantially similar to the indices they are intended to replace is obsolete, given that the Board-selected benchmark replacement for consumer loans to replace 1-month, 3-month, and 6-month USD LIBOR indices is the same as the corresponding spread-adjusted index based on SOFR recommended by the ARRC.

Third, (''12-month LIBOR notice requirements amendments'') the CFPB is adding the Board-selected benchmark replacement for consumer loans that would replace the 12-month USD LIBOR index to the list of indices where a creditor is allowed to use an alternative method to disclose information about the periodic rate and APR in change-in-terms notices for HELOCs and credit card accounts as a result of the replacement of the LIBOR index in certain circumstances.

Fourth, (''12-month LIBOR rate reevaluation amendments'') the CFPB is adding the Board-selected benchmark replacement for consumer loans that would replace the 12-month USD LIBOR index to the list of indices where a card issuer is allowed to use an alternative method for determining whether the card issuer can terminate its obligation under the credit card account rate reevaluation requirements where the rate applicable immediately prior to a rate increase was a variable rate calculated using a LIBOR index. The Bureau also deleted its prior determination in the Official Interpretations that the spread-adjusted indices based on SOFR recommended by the ARRC to replace 1-month, 3-month, and 6-month USD LIBOR have historical fluctuations that are substantially similar to the indices they are intended to replace, given that ''the Board-selected benchmark replacement for consumer loans'' to replace 1-month, 3-month, and 6-month USD LIBOR indices is the same as the corresponding spread-adjusted index based on SOFR recommended by the ARRC for consumer products.

B. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion below relies on information that the CFPB has obtained from industry, other regulatory agencies, and publicly available sources. The data are generally limited with which to quantify the potential costs, benefits, and impacts of the final provisions.

In light of these data limitations, the analysis below generally provides a qualitative discussion of the benefits, costs, and impacts of the final provisions. General economic principles and the CFPB's expertise in consumer financial markets, together with the limited data that are available, provide insight into these benefits, costs, and impacts.

C. Baseline for Analysis

In evaluating the potential benefits, costs, and impacts of the interim final rule, the CFPB takes as a baseline the current legal framework regarding the LIBOR transition. Therefore, the baseline for the analysis of the interim final rule includes the amendments to Regulation Z in the CFPB's 2021 LIBOR Transition Final Rule, the LIBOR Act, and the Board's implementing regulation as law.

When finalized, the rule will affect the market as described below as long as it is in effect. However, with or without the interim final rule, the transfer from LIBOR would be complete by June 30, 2023, when LIBOR is set to expire. Therefore, the analysis below of the benefits, costs, and impacts of the interim final rule applies mostly to the period between May 15, 2023 (when the interim final rule takes effect) and June 30, 2023 (when LIBOR is set to expire).

D. Potential Benefits and Costs of the Interim Final Rule to Consumers and Covered Persons

Reliable data on the indices credit products are linked to are not generally available, so the CFPB cannot estimate the dollar value of debt tied to LIBOR in the distinct credit markets that will be impacted by this interim final rule. However, the ARRC has estimated that in 2021 there was $1.3 trillion of mortgage debt and $100 billion of non-mortgage debt tied to LIBOR.[70]

1. ''Terminology Amendments''

For clarity, the CFPB is replacing references to the index based on ''SOFR recommended by the Alternative Reference Rates Committee for consumer products'' with references to the ''the Board-selected benchmark replacement for consumer loans.''

The CFPB believes that, even absent these amendments, nearly all creditors would likely correctly construe the term ''SOFR recommended by the Alternative References Rate Committee for consumer products'' to mean the ''the Board-selected benchmark replacement for consumer loans.'' Therefore, the CFPB believes that, in the vast majority of cases, the amendments will not change the indices creditors would switch to, the timing of those changes, or the disclosures they provide to consumers. Therefore, the amendments will impose very few costs on consumers or firms. The amendments will provide some benefits to firms and consumers by decreasing uncertainty.

2. ''12-Month Historical Fluctuations'' Amendments

For both open- and closed-end credit, the CFPB is including the Board-selected benchmark replacement for consumer loans to replace 12-month LIBOR, as prescribed by the LIBOR Act,

[70] Alt. Reference Rates Comm., *Progress Report: The Transition from U.S. Dollar LIBOR* (Mar. 2021), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/USD-LIBOR-transition-progress-report-mar-21.pdf.*

as an index that has historical fluctuations that are substantially similar to those of the 12-month USD LIBOR index it is intended to replace.

Under both the interim final rule and the baseline, the LIBOR Act and the Board's implementing regulation determine that the Board-selected benchmark replacement for consumer loans to replace 12-month LIBOR has historical fluctuations that are substantially similar to those of the 12-month USD LIBOR index it is intended to replace. Therefore, by operation of law, the amendments to Regulation Z by this interim final rule will not change whether the Board-selected benchmark replacement for consumer loans to replace 12-month LIBOR has historical fluctuations that are substantially similar to those of the 12-month USD LIBOR index it is intended to replace. Hence these amendments will impose very few costs on consumers or firms. The amendments will provide some benefits to firms and consumers by decreasing uncertainty.

3. ''12-Month LIBOR Notice Requirements'' Amendments

These amendments by the interim final rule will add the Board-selected benchmark replacement for consumer loans for 12-month USD LIBOR, in addition to those Board-selected benchmark replacements for consumer loans for 1-month, 3-month, and 6-month USD LIBOR, as another circumstance where creditors may follow comments 9(c)(1)–4 (for HELOCs) and 9(c)(2)(iv)–2.ii (for credit cards) for how to disclose information about the periodic rate and APR in a change-in-terms notice for HELOCs and credit cards, assuming the other conditions in the comment are met.

Without these amendments, it is not clear how creditors could provide required change-in-terms notices to switch consumers from the 12-month USD LIBOR index to the Board-selected benchmark replacement for consumer loans to replace 12-month USD LIBOR index, prior to the publication of the Board-selected benchmark replacement for consumer loans to replace 12-month USD LIBOR index. Therefore, it is not clear what creditors would do under the baseline absent these amendments.

Some creditors may be legally required to switch consumers to the Board-selected benchmark replacements for consumer loans. Presumably, they would still do so even absent these amendments, although they might face significant legal uncertainty and experience significant legal costs by doing so. They might face this legal uncertainty if they decide to send out the change-in-terms notice prior to the Board-selected benchmark replacements for consumer loans being published. Alternatively, if they decide not to send out the change-in-terms notice until after the Board-selected benchmark replacements for consumer loans are published, they might face legal uncertainty in how to calculate the rate after the LIBOR index is discontinued, but prior to the Board-selected benchmark replacements for consumer loans becoming effective on the account.

Other creditors could choose under the baseline to switch to the Board-selected benchmark replacements for consumer loans even if not required to do so. For these creditors, these amendments would decrease costs by providing additional clarity and certainty about the required change-in-terms notices. These amendments will likely also decrease litigation costs for these creditors after the transition from 12-month LIBOR to the Board-selected benchmark replacement for consumer loans.

Consumers with loans from these creditors would have their loans switched from 12-month LIBOR to the Board-selected benchmark replacement for consumer loans both under these amendments and under the baseline. The CFPB expects that, under these amendments and under the baseline, these consumers would receive similar change-in-terms notices with only minimal adjustments to the content of those notices. Hence, the CFPB estimates that these amendments will have no significant benefits, costs, or impacts for these consumers.

It is possible that there may be creditors that would switch to the Board-selected benchmark replacements for consumer loans under these amendments that might be deterred by existing change-in-terms notice requirements from switching consumers to the Board-selected benchmark replacement for consumer loans without this amendment. Therefore, without this amendment these creditors would choose different indices to replace LIBOR indices. Because these creditors would prefer to switch to the Board-selected benchmark replacement for consumer loans and this provision will allow them to do so, the CFPB expects that this provision would generate substantial benefits for these creditors. However, based on its market intelligence, the CFPB believes there to be very few such creditors, if any, as market participants have informed the CFPB that other factors will dominate the determination about which index to switch to. The CFPB expects that, based partly on a final rule promulgated by the U.S. Department of Housing and Urban Development (HUD),[71] most Home Equity Conversion Mortgages (HECMs) will transition to one of the Board-selected benchmark replacement for consumer loans under this interim final rule and under the baseline. The CFPB expects that most non-HECM HELOCS and credit cards will switch to the Prime rate under this interim final rule and under the baseline, because most HELOC creditors and credit card issuers prefer to have their portfolio based on a single index and they have portfolios that are already mostly linked to the Prime rate.

Under these amendments, consumers with loans from these creditors will have their loans switched to the Board-selected benchmark replacement for consumer loans. Under the baseline, consumers with loans from these creditors would have their loans switched to other indices. Therefore, after the transition, these consumers' APRs will be tied to the Board-selected benchmark replacement for consumer loans, while under the baseline they would be tied to other indices. Because these other replacement indices creditors would switch to are not identical to the Board-selected benchmark replacement for consumer loans, they will not move identically to the Board-selected benchmark replacement for consumer loans, so affected consumers' payments would be different under the provision than they would be under the baseline. On some dates in which indexed rates reset, some replacement indices may have increased relative to the Board-selected benchmark replacement for consumer loans. Consumers with these indices would then pay a cost due to this provision until the next rate reset. On some dates in which indexed rates reset, some replacement indices may have decreased relative to the Board-selected benchmark replacement for consumer loans. Consumers with these indices would then benefit from this provision until the next rate reset. Consumers vary in their constraints and preferences, the credit products they have, the dates those credit products reset, the replacement indices their creditors would choose, and the transition dates their creditors will choose. The benefits and costs that will accrue to consumers from this provision and that arise because of differences in index movements will vary across consumers and over time. However, the CFPB expects ex-ante for these benefits and costs to be small on average, because the rates creditors switch to must be

[71] *See* 88 FR 12822 (Mar. 1, 2023).

substantially similar to existing LIBOR-based rates generally using index values in effect on October 18, 2021, and because replacement indices that are not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index. As discussed above, the CFPB also expects for these benefits and costs to small because the CFPB believes there will likely be few, if any, loans that transition to different indices because of the interim final rule.

4. ''12-Month LIBOR Rate Reevaluation Amendments''

The CFPB is amending § 1026.59(f)(3) and comment 59(f)–4 to conform to the LIBOR Act and the Board's implementing regulation. Specifically, revised comment 59(f)–4 provides that the Board-selected benchmark replacements for consumer loans to replace 1-month, 3-month, 6-month, and 12-month USD LIBOR index have historical fluctuations that are substantially similar to those of the USD LIBOR tenors they are replacing. Section 105(a)(5) of the LIBOR Act provides that, for purposes of TILA and its implementing regulations, a Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement with respect to a LIBOR contract constitutes a replacement that has historical fluctuations that are substantially similar to those of the LIBOR index that it is replacing. The Board's regulation provides that for a LIBOR contract that is a consumer loan, the benchmark replacement shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus the applicable amounts or tenor spread adjustment. The CFPB is relying on the determination in the LIBOR Act and the Board's implementing regulation that the Board-selected benchmark replacement for consumer loans has historical fluctuations that are substantially similar to the USD LIBOR tenor that it is replacing.

The determination in the LIBOR Act and the Board's implementing regulation that the Board-selected benchmark replacement for consumer loans has historical fluctuations that are substantially similar to the USD LIBOR tenor that it is replacing applies not only to the Board-selected benchmark replacements for consumer loans that are replacing the 1-month, 3-month, and 6-month USD LIBOR, but also to the Board-selected benchmark replacement for consumer loans that is replacing the 12-month tenor of LIBOR. Accordingly, the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR tenor has historical fluctuations that are substantially similar to the 12-month USD LIBOR tenor for purposes of complying with § 1026.59(f)(3) and comment 59(f)–4. The Bureau also found that its prior determination in relation to the use of SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices is obsolete given that ''the Board-selected benchmark replacement for consumer loans'' to replace 1-month, 3-month, and 6-month USD LIBOR indices is the same as the corresponding spread-adjusted index based on SOFR recommended by the ARRC for consumer products to replace the 1-month, 3-month, and 6-month U.S. Dollar LIBOR indices.

The LIBOR Act and the Board's implementing regulation would be effective even under the baseline. By operation of the LIBOR Act, all tenors of the Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to the LIBOR tenors they replace. Therefore, even without these amendments, creditors would likely conclude that the Board-selected benchmark replacement for consumer loans has historical fluctuations that are substantially similar to 12-month USD LIBOR for purposes of § 1026.59(f)(3) and comment 59(f)–4. Therefore, the amendments will likely not impose any significant costs or benefits on consumers. The amendments will likely provide some benefits to creditors by reducing regulatory uncertainty and compliance burden.

E. Potential Specific Impacts of This Interim Final Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

The CFPB believes that the consideration of benefits and costs of covered persons presented above provides a largely accurate analysis of the impacts of the interim final rule on depository institutions and credit unions with $10 billion or less in total assets that issue credit products that are tied to LIBOR and are covered by these final provisions.

2. Impact of This Interim Final Rule on Consumer Access to Credit and on Consumers in Rural Areas

Because this interim final rule will affect only existing accounts that are tied to LIBOR and would generally not affect new loans, this interim final rule will not directly impact consumer access to credit. While this interim final rule will provide some benefits and costs to creditors and card issuers in connection to the transition away from LIBOR, it is unlikely to affect the costs of providing new credit and therefore the CFPB believes that any impact on creditors and card issuers from this interim final rule is not likely to have a significant impact on consumer access to credit.

Consumers in rural areas may experience benefits or costs from this interim final rule that are larger or smaller than the benefits and costs experienced by consumers in general if credit products in rural areas are more or less likely to be linked to LIBOR than credit products in other areas. The CFPB does not have any data or other information to understand whether this is the case. The CFPB requests comment regarding the impact of the amended provisions on consumers in rural areas and how those impacts may differ from those experienced by consumers generally.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not require an initial or final regulatory flexibility analysis in a rulemaking where a general notice of proposed rulemaking is not required.[72] As noted previously, the CFPB has determined that it is unnecessary to publish a general notice of proposed rulemaking for this interim final rule. As an additional basis, the CFPB's Director certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities, and so an initial or final regulatory flexibility analysis is also not required for that reason.[73] The rule will not impose significant costs on creditors, including small entities, for the reasons discussed in the section 1022(b) analysis.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[74] Federal agencies are generally required to seek the Office of Management and Budget's (OMB's) approval for information collection requirements prior to implementation. The collections of information related to Regulation Z have been previously reviewed and approved by OMB and assigned OMB Control number 3170–0015. Under the PRA, the CFPB may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond

[72] 5 U.S.C. 603(a), 604(a).

[73] 5 U.S.C. 605(b).

to an information collection unless the information collection displays a valid control number assigned by OMB.

The CFPB has determined that this interim final rule would not impose any new or revised information collection requirements (recordkeeping, reporting or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA.

The CFPB has a continuing interest in the public's opinions regarding this determination. At any time, comments regarding this determination may be sent to: Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, or by email to *CFPB_Public_PRA@cfpb.gov.*

XI. Congressional Review Act

Pursuant to the Congressional Review Act,[75] the CFPB 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 the rule's published effective date. The Office of Information and Regulatory Affairs has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2). As discussed in part IV, the CFPB finds that there is good cause for the rule to take effect without prior notice and comment. Accordingly, this rule may take effect at such time as the CFPB determines. 5 U.S.C. 808(2).

List of Subjects in 12 CFR Part 1026

Advertising, Banks, banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau revises Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart A—General

■ 2. Amend § 1026.2 by adding paragraph (a)(28) to read as follows:

[75] 5 U.S.C. 801 *et seq.*

§ 1026.2 Definitions and rules of construction

(a) * * *

(28) *The Board-selected benchmark replacement for consumer loans* means the SOFR-based index selected by the Board of Governors of the Federal Reserve System to replace, as applicable, the 1-month, 3-month, 6-month, or 12-month tenor of U.S. Dollar LIBOR, as set forth in the Board of Governors of the Federal Reserve System's regulation at 12 CFR part 253, which implements the Adjustable Interest Rate (LIBOR) Act, Public Law 117–103, division U.

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Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 3. Amend § 1026.40 by revising paragraph (f)(3)(ii)(B) to read as follows:

§ 1026.40 Requirements for home equity plans.

* * * * *

(f) * * *

(3) * * *

(ii) * * *

(B) If a variable rate on the plan is calculated using a LIBOR index, change the LIBOR index and the margin for calculating the variable rate on or after April 1, 2022, to a replacement index and a replacement margin, as long as historical fluctuations in the LIBOR index and replacement index were substantially similar, and as long as the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index.

* * * * *

Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

■ 4. Amend § 1026.55 by revising paragraph (b)(7)(ii) to read as follows:

§ 1026.55 Limitations on increasing annual percentage rates, fees, and charges.

* * * * *

(b) * * *

(7) * * *

(ii) If a variable rate on the plan is calculated using a LIBOR index, the card issuer changes the LIBOR index and the margin for calculating the variable rate on or after April 1, 2022, to a replacement index and a replacement margin, as long as historical fluctuations in the LIBOR index and replacement index were substantially similar, and as long as the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index.

* * * * *

■ 5. Amend § 1026.59 by revising paragraph (f)(3) to read as follows:

§ 1026.59 Reevaluation of rate increases.

* * * * *

(f) * * *

(3) Effective April 1, 2022, in the case where the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index, the card issuer reduces the annual percentage rate to a rate determined by a replacement formula that is derived from a replacement index value on October 18, 2021, plus replacement margin that is equal to the LIBOR index value on October 18, 2021, plus the margin used to calculate the rate immediately prior to the increase (previous formula). A card issuer must satisfy the conditions set forth in § 1026.55(b)(7)(ii) for selecting a replacement index. If the replacement index is not published on October 18, 2021, the card issuer generally must use the values of the indices on the next calendar day for which both the LIBOR index and the replacement index are published as the index values to use to determine the replacement formula. The one exception is that if the replacement index is the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, as the index values to use to determine the replacement formula.

* * * * *

■ 6. In Supplement I to part 1026:

■ a. Under *Section 1026.9—Subsequent Disclosure Requirements,* revise *9(c)(1) Rules Affecting Home-Equity Plans,* and *9(c)(2)(iv) Disclosure Requirements.*

■ b. Under *Section 1026.20—Disclosure Requirements Regarding Post-Consummation Events,* revise *20(a) Refinancings.*

■ c. Under *Section 1026.40—Requirements for Home-Equity Plans,* revise *Paragraph 40(f)(3)(ii), Paragraph 40(f)(3)(ii)(A),* and *Paragraph 40(f)(3)(ii)(B).*

■ d. Under *Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges,* revise *55(b)(7) Index replacement and margin change exception, Paragraph 55(b)(7)(i),* and *Paragraph 55(b)(7)(ii).*

■ e. Under *Section 1026.59—Reevaluation of Rate Increases,* revise *59(f) Termination of Obligation to Review Factors.*

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.9—Subsequent Disclosure Requirements

* * * * *

9(c)(1) Rules Affecting Home-Equity Plans

1. *Changes initially disclosed.* No notice of a change in terms need be given if the specific change is set forth initially, such as: rate increases under a properly disclosed variable rate plan, a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum. The rules in § 1026.40(f) relating to home-equity plans limit the ability of a creditor to change the terms of such plans.

2. *State law issues.* Examples of issues not addressed by § 1026.9(c) because they are controlled by state or other applicable law include:

i. The types of changes a creditor may make. (*But see* § 1026.40(f).)

ii. How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change either affects any of the terms required to be disclosed under § 1026.6(a) or increases the minimum payment, unless an exception under § 1026.9(c)(1)(ii) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 25-day grace period on purchases and the consumer will have fewer days during the billing cycle change.

4. *Changing index for calculating a variable rate from LIBOR to the Board-selected benchmark replacement for consumer loans in specified circumstances.* If a creditor is replacing a LIBOR index with the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the creditor is not changing the margin used to calculate the variable rate as a result of the replacement, and a periodic rate or the corresponding annual percentage rate based on the replacement index is unknown to the creditor at the time the change-in-terms notice is provided because the Board-selected benchmark replacement for consumer loans has not been published at the time the creditor provides the change-in-terms notice but will be published by the time the replacement of the index takes effect on the account, the creditor may comply with any requirement to disclose the amount of the new rate (as calculated using the new index), or a change in the periodic rate or the corresponding annual percentage rate (as calculated using the replacement index), based on the best information reasonably available, clearly stating that the disclosure is an estimate. For example, in this situation, the creditor may state that: (1) information about the rate is not yet available but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans.*

* * * * *

9(c)(2)(iv) Disclosure Requirements

1. *Changing margin for calculating a variable rate.* If a creditor is changing a margin used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new margin) in the table described in § 1026.9(c)(2)(iv), and include a reminder that the rate is a variable rate. For example, if a creditor is changing the margin for a variable rate that uses the prime rate as an index, the creditor must disclose in the table the new rate (as calculated using the new margin) and indicate that the rate varies with the market based on the prime rate.

2. *Changing index for calculating a variable rate.* i. *In general.* If a creditor is changing the index used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and how the rate is determined, as explained in § 1026.6(b)(2)(i)(A). For example, if a creditor is changing from using a LIBOR index to using a prime index in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on a prime index.

ii. *Changing index for calculating a variable rate from LIBOR to the Board-selected benchmark replacement for consumer loans in specified circumstances.* If a creditor is replacing a LIBOR index with the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the creditor is not changing the margin used to calculate the variable rate as a result of the replacement, and a periodic rate or the corresponding annual percentage rate based on the replacement index is unknown to the creditor at the time the change-in-terms notice is provided because the Board-selected benchmark replacement for consumer loans has not been published at the time the creditor provides the change-in-terms notice, but will be published by the time the replacement of the index takes effect on the account, the creditor may comply with any requirement to disclose the amount of the new rate (as calculated using the new index), or a change in the periodic rate or the corresponding annual percentage rate (as calculated using the replacement index), based on the best information reasonably available, clearly stating that the disclosure is an estimate. For example, in this situation, the creditor may state that: (1) information about the rate is not yet available but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans.*

3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor generally must provide a notice as otherwise required under § 1026.9(c) even if the variable rate at the time of the change is higher than the non-variable rate. However, a creditor is not required to provide a notice under § 1026.9(c) if the creditor provides the disclosures required by § 1026.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a variable rate to a lower nonvariable rate. Similarly, a creditor is not required to provide a notice under § 1026.9(c) when changing a variable rate to a lower non-variable rate in order to comply with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation. Finally, a creditor is not required to provide a notice under § 1026.9(c) when changing a variable rate to a lower non-variable rate in order to comply with § 1026.55(b)(4).

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor generally must provide a notice as otherwise required under § 1026.9(c) even if the non-variable rate is higher than the variable rate at the time of the change. However, a creditor is not required to provide a notice under § 1026.9(c) if the creditor provides the disclosures required by § 1026.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a non-variable rate to a lower variable rate. Similarly, a creditor is not required to provide a notice under § 1026.9(c) when changing a non-variable rate to a lower variable rate in order to comply with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation. Finally, a creditor is not required to provide a notice under § 1026.9(c) when changing a non-variable rate to a lower variable rate in order to comply with § 1026.55(b)(4). *See* comment 55(b)(2)–4 regarding the limitations in § 1026.55(b)(2) on changing the rate that applies to a protected balance from a non-variable rate to a variable rate.

5. *Changes in the penalty rate, the triggers for the penalty rate, or how long the penalty rate applies.* If a creditor is changing the amount of the penalty rate, the creditor must also redisclose the triggers for the penalty rate and the information about how long the penalty rate applies even if those terms are not changing. Likewise, if a creditor is changing the triggers for the penalty rate, the creditor must redisclose the amount of the penalty rate and information about how long the penalty rate applies. If a creditor is changing how long the penalty rate applies, the creditor must redisclose the amount of the penalty rate and the triggers for the penalty rate, even if they are not changing.

6. *Changes in fees.* If a creditor is changing part of how a fee that is disclosed in a tabular format under § 1026.6(b)(1) and (2) is determined, the creditor must redisclose all relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of ''Either $5 or 3% of the transaction amount, whichever is greater (Max: $100),'' and the creditor is only changing the minimum dollar amount from $5 to $10, the issuer must redisclose the other information related to how the fee is determined. For example, the creditor in this example would disclose the following: ''Either $10 or 3% of the transaction amount, whichever is greater (Max: $100).''

7. *Combining a notice described in § 1026.9(c)(2)(iv) with a notice described in § 1026.9(g)(3).* If a creditor is required to provide a notice described in § 1026.9(c)(2)(iv) and a notice described in § 1026.9(g)(3) to a consumer, the creditor may combine the two notices. This would occur if penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

8. *Content.* Sample G–20 contains an example of how to comply with the requirements in § 1026.9(c)(2)(iv) when a variable rate is being changed to a non-variable rate on a credit card account. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G–21 contains an example of how to comply with the requirements in § 1026.9(c)(2)(iv) when the late payment fee on a credit card account is being increased, and the returned payment fee is also being increased. The sample discloses the consumer's right to reject the changes in accordance with § 1026.9(h).

9. *Clear and conspicuous standard. See* comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under § 1026.9(c)(2)(iv)(A)(*1*).

10. *Terminology. See* § 1026.5(a)(2) for terminology requirements applicable to disclosures required under § 1026.9(c)(2)(iv)(A)(*1*).

11. *Reasons for increase.* i. *In general.* Section 1026.9(c)(2)(iv)(A)(8) requires card issuers to disclose the principal reason(s) for increasing an annual percentage rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan. The regulation does not mandate a minimum number of reasons that must be disclosed. However, the specific reasons disclosed under § 1026.9(c)(2)(iv)(A)(*8*) are required to relate to and accurately describe the principal factors actually considered by the card issuer in increasing the rate. A card issuer may describe the reasons for the increase in general terms. For example, the notice of a rate increase triggered by a decrease of 100 points in a consumer's credit score may state that the increase is due to ''a decline in your creditworthiness '' or ''a decline in your credit score.'' Similarly, a notice of a rate increase triggered by a 10% increase in the card issuer's cost of funds may be disclosed as ''a change in market conditions.'' In some circumstances, it may be appropriate for a card issuer to combine the disclosure of several reasons in one statement. However, § 1026.9(c)(2)(iv)(A)(*8*) requires that the notice specifically disclose any violation of the terms of the account on which the rate is being increased, such as a late payment or a returned payment, if such violation of the account terms is one of the four principal reasons for the rate increase.

ii. *Example.* Assume that a consumer made a late payment on the credit card account on which the rate increase is being imposed, made a late payment on a credit card account with another card issuer, and the consumer's credit score decreased, in part due to such late payments. The card issuer may disclose the reasons for the rate increase as a decline in the consumer's credit score and the consumer's late payment on the account subject to the increase. Because the late payment on the credit card account with the other issuer also likely contributed to the decline in the consumer's credit score, it is not required to be separately disclosed. However, the late payment on the credit card account on which the rate increase is being imposed must be specifically disclosed even if that late payment also contributed to the decline in the consumer's credit score.

* * * * *

Section 1026.20—Disclosure Requirements Regarding Post-Consummation Events

20(a) Refinancings

1. *Definition.* A refinancing is a new transaction requiring a complete new set of disclosures. Whether a refinancing has occurred is determined by reference to whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law. The refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer or on the consumer's behalf, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the prior one.

i. Changes in the terms of an existing obligation, such as the deferral of individual installments, will not constitute a refinancing unless accomplished by the cancellation of that obligation and the substitution of a new obligation.

ii. A substitution of agreements that meets the refinancing definition will require new disclosures, even if the substitution does not substantially alter the prior credit terms.

2. *Exceptions.* A transaction is subject to § 1026.20(a) only if it meets the general definition of a refinancing. Section 1026.20(a)(1) through (5) lists 5 events that are not treated as refinancings, even if they are accomplished by cancellation of the old obligation and substitution of a new one.

3. *Variable-rate.* i. If a variable-rate feature was properly disclosed under the regulation, a rate change in accord with those disclosures is not a refinancing. For example, no new disclosures are required when the variable-rate feature is invoked on a renewable balloon-payment mortgage that was previously disclosed as a variable-rate transaction.

ii. Even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the creditor either:

A. Increases the rate based on a variable-rate feature that was not previously disclosed; or

B. Adds a variable-rate feature to the obligation. A creditor does not add a variable-rate feature by changing the index of a variable-rate transaction to a comparable index, whether the change replaces the existing index or substitutes an index for one that no longer exists. For example, a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index to the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index respectively because the replacement index is a comparable index to the corresponding U.S. Dollar LIBOR index. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans. See* comment 20(a)–3.iv for factors to be used in determining whether a replacement index is comparable to a particular LIBOR index.

iii. If either of the events in paragraph 20(a)–3.ii.A or ii.B occurs in a transaction secured by a principal dwelling with a term longer than one year, the disclosures required under § 1026.19(b) also must be given at that time.

iv. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the relevant factors to be considered in determining whether a replacement index is comparable to a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.,* historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index could meet the ''comparable'' standard with respect to a particular LIBOR index using historical data or future expectations, include but are not limited to, whether: (1) the movements over time are comparable; (2) the consumers' payments using the replacement index compared to payments using the LIBOR index are comparable if there is sufficient data for this analysis; (3) the index levels are comparable; (4) the replacement index is publicly available; and (5) the replacement index is outside the control of the creditor. The Board-selected benchmark replacement for consumer loans is considered comparable with respect to the LIBOR tenor being replaced, and therefore, these factors need not be considered.

4. *Unearned finance charge.* In a transaction involving precomputed finance charges, the creditor must include in the finance charge on the refinanced obligation any unearned portion of the original finance charge that is not rebated to the consumer or credited against the underlying obligation. For example, in a transaction with an add-on finance charge, a creditor advances new money to a consumer in a fashion that extinguishes the original obligation and replaces it with a new one. The creditor neither refunds the unearned finance charge on the original obligation to the consumer nor credits it to the remaining balance on the old obligation. Under these circumstances, the unearned finance charge must be included in the finance charge on the new obligation and reflected in the annual percentage rate disclosed on refinancing. Accrued but unpaid finance charges are included in the amount financed in the new obligation.

5. *Coverage.* Section 1026.20(a) applies only to refinancings undertaken by the original creditor or a holder or servicer of the original obligation. A ''refinancing'' by any other person is a new transaction under the regulation, not a refinancing under this section.

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Section 1026.40—Requirements for Home-Equity Plans

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Paragraph 40(f)(3)(ii)

1. Replacing LIBOR. A creditor may use either the provision in § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B) to replace a LIBOR index used under a plan so long as the applicable conditions are met for the provision used. Neither provision, however, excuses the creditor from noncompliance with contractual provisions. The following examples illustrate when a creditor may use the provisions in § 1026.40(f)(3)(ii)(A) or (B) to replace the LIBOR index used under a plan.

i. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the creditor may use § 1026.40(f)(3)(ii)(A) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Section 1026.40(f)(3)(ii)(B) provides that a creditor may replace the LIBOR index if, among other conditions, the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans.* In this example, however, the creditor would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an annual percentage rate substantially similar to a rate that is in effect when the LIBOR index becomes unavailable.

ii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the creditor would be contractually prohibited from unilaterally replacing a LIBOR index used under the plan until it becomes unavailable. At that time, the creditor has the option of using § 1026.40(f)(3)(ii)(A) or (B) to replace the LIBOR index if the conditions of the applicable provision are met.

iii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a creditor may change the terms of the contract (including the index) as permitted by law. In this case, if the creditor replaces a LIBOR index under a plan on or after April 1, 2022, but does not wait until the LIBOR index becomes unavailable to do so, the creditor may only use § 1026.40(f)(3)(ii)(B) to replace the LIBOR index if the conditions of that provision are met. In this case, the creditor may not use § 1026.40(f)(3)(ii)(A). If the creditor waits until the LIBOR index used under the plan becomes unavailable to replace the LIBOR index, the creditor has the option of using § 1026.40(f)(3)(ii)(A) or (B) to replace the LIBOR index if the conditions of the applicable provision are met.

Paragraph 40(f)(3)(ii)(A)

1. *Substitution of index.* A creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable.

2. *Replacing LIBOR.* For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan. Except for the Board-selected benchmark replacement for consumer loans defined in § 1026.2(a)(28), the historical fluctuations considered are the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices, and no further determination is required. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that the prime rate and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. *See also* comment 40(f)(3)(ii)(A)–3.

ii. By operation of the Adjustable Interest Rate (LIBOR) Act, Public Law 117–103, division U, and the Board's implementing regulation, 12 CFR part 253, the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index has historical fluctuations substantially similar to those of the LIBOR index being replaced. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans.* As a result, the Board-selected benchmark replacement for consumer loans meets the ''historical fluctuations are substantially similar'' standard for the LIBOR index tenor it replaces, and no further determination is required. In order to use the Board-selected benchmark replacement for consumer loans as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that the Board-selected benchmark replacement for consumer loans and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. *See also* comment 40(f)(3)(ii)(A)–3.

iii. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the relevant factors to be considered in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.,* historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: (1) the movements over time are substantially similar; and (2) the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis. The Board-selected benchmark replacement for consumer loans is considered to meet the ''historical fluctuations are substantially similar'' standard with respect to the LIBOR tenor being replaced, and therefore, these factors need not be considered.

3. *Substantially similar rate when LIBOR becomes unavailable.* Under § 1026.40(f)(3)(ii)(A), the replacement index and replacement margin must produce an annual percentage rate substantially similar to the rate that was in effect based on the LIBOR index used under the plan when the LIBOR index became unavailable. For this comparison of the rates, a creditor generally must use the value of the replacement index and the LIBOR index on the day that LIBOR becomes unavailable. If the replacement index is not published on the day that the LIBOR index becomes unavailable, the creditor generally must use the previous calendar day that both indices are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of § 1026.40(f)(3)(ii)(A), if a creditor uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(A) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under a plan becomes unavailable on June 30, 2023, and on that day the LIBOR index value is 2%, the margin is 10%, and the annual percentage rate is 12%. Also, assume that a creditor has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on June 30, 2023. The creditor would satisfy the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12% on June 30, 2023.) Thus, if the creditor provides a change-in-terms notice under § 1026.9(c)(1) on July 1, 2023, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on July 17, 2023, the creditor satisfies the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable. This is true even if the prime index value changes after June 30, 2023, and the annual percentage rate calculated using the prime index value and 7% margin on July 17, 2022, is not substantially similar to the rate calculated using the LIBOR index value on June 30, 2023.

Paragraph 40(f)(3)(ii)(B)

1. *Replacing LIBOR.* For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the historical fluctuations considered are the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the

relevant date is the date indicated in that determination. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the creditor makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices, and no further determination is required. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) that the prime rate index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. *See also* comments 40(f)(3)(ii)(B)–2 and –3.

ii. By operation of the Adjustable Interest Rate (LIBOR) Act, Public Law 117–103, division U, and the Board's implementing regulation, 12 CFR part 253, the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index has historical fluctuations substantially similar to those of the LIBOR index being replaced. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans.* As a result, the Board-selected benchmark replacement for consumer loans meets the ''historical fluctuations are substantially similar'' standard for the LIBOR index it replaces, and no further determination is required. In order to use the Board-selected benchmark replacement for consumer loans as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) that the Board-selected benchmark replacement for consumer loans and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Because of the exception in § 1026.40(f)(3)(ii)(B), the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. *See also* comments 40(f)(3)(ii)(B)–2 and –3.

iii. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the relevant factors to be considered in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.,* historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: (1) the movements over time are substantially similar; and (2) the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis. The Board-selected benchmark replacement for consumer loans is considered to meet the ''historical fluctuations are substantially similar'' standard with respect to the LIBOR tenor being replaced, and therefore, these factors need not be considered.

2. *Using index values on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.* Under § 1026.40(f)(3)(ii)(B), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the creditor provides the change-in-terms notice disclosing the replacement index for the variable rate. The following example illustrates this comment.

i. Assume a variable rate used under the plan that is based on the 1-month U.S. Dollar LIBOR index and assume that LIBOR becomes unavailable after June 30, 2023. On October 18, 2021, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume on January 1, 2022, a creditor provides a change-in-terms notice under § 1026.9(c)(1) disclosing a new margin of 12% for the variable rate pursuant to a written agreement under § 1026.40(f)(3)(iii), and this change in the margin becomes effective on January 1, 2022, pursuant to § 1026.9(c)(1). Assume that there are no more changes in the margin that is used in calculating the variable rate prior to April 1, 2022, the date on which the creditor provides a change-in-terms notice under § 1026.9(c)(1), disclosing the replacement index and replacement margin for the variable rate that will be effective on April 17, 2022. In this case, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 12%. Assume that the creditor has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A replacement margin of 9% is permissible under § 1026.40(f)(3)(ii)(B) because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 14%, which is substantially similar to the 14% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan (which is 12%).

3. *Substantially similar rates using index values on October 18, 2021.* Under § 1026.40(f)(3)(ii)(B), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of § 1026.40(f)(3)(ii)(B), if a creditor uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(B) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate calculated using the LIBOR index. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under the plan has a value of 2% on October 18, 2021, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 10%, and the annual percentage rate based on that LIBOR index value and that margin is 12%. Also, assume that the creditor has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A creditor would satisfy the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, by selecting a 7%

replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12%.) Thus, if the creditor provides a change-in-terms notice under § 1026.9(c)(1) on April 1, 2022, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on April 17, 2022, the creditor satisfies the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This is true even if the prime index value or the LIBOR index value changes after October 18, 2021, and the annual percentage rate calculated using the prime index value and 7% margin on April 17, 2022, is not substantially similar to the rate calculated using the LIBOR index value on October 18, 2021, or substantially similar to the rate calculated using the LIBOR index value on April 17, 2022.

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Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges

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55(b)(7) Index Replacement and Margin Change Exception

1. *Replacing LIBOR.* A card issuer may use either the provision in § 1026.55(b)(7)(i) or (ii) to replace a LIBOR index used under the plan so long as the applicable conditions are met for the provision used. Neither provision, however, excuses the card issuer from noncompliance with contractual provisions. The following examples illustrate when a card issuer may use the provisions in § 1026.55(b)(7)(i) or (ii) to replace a LIBOR index on the plan.

i. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a card issuer may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. The card issuer may use § 1026.55(b)(7)(i) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Section 1026.55(b)(7)(ii) provides that a card issuer may replace the LIBOR index if, among other conditions, the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. In this example, however, the card issuer would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an annual percentage rate substantially similar to a rate that is in effect when the LIBOR index becomes unavailable.

ii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a card issuer may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the card issuer would be contractually prohibited from unilaterally replacing the LIBOR index used under the plan until it becomes unavailable. At that time, the card issuer has the option of using § 1026.55(b)(7)(i) or (ii) to replace the LIBOR index used under the plan if the conditions of the applicable provision are met.

iii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a card issuer may change the terms of the contract (including the index) as permitted by law. In this case, if the card issuer replaces the LIBOR index used under the plan on or after April 1, 2022, but does not wait until the LIBOR index becomes unavailable to do so, the card issuer may only use § 1026.55(b)(7)(ii) to replace the LIBOR index if the conditions of that provision are met. In that case, the card issuer may not use § 1026.55(b)(7)(i). If the card issuer waits until the LIBOR index used under the plan becomes unavailable to replace LIBOR, the card issuer has the option of using § 1026.55(b)(7)(i) or (ii) to replace the LIBOR index if the conditions of the applicable provisions are met.

Paragraph 55(b)(7)(i)

1. *Replacing LIBOR.* For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the historical fluctuations considered are the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices, and no further determination is required. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that the prime rate and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the LIBOR index became unavailable. *See also* comment 55(b)(7)(i)–2.

ii. By operation of the Adjustable Interest Rate (LIBOR) Act, Public Law 117–103, division U, codified at 12 U.S.C. 5803(e)(2), and the Board's implementing regulation, 12 CFR 253.4(b)(2), the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index has historical fluctuations substantially similar to those of the LIBOR index being replaced. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans.* As a result, the Board-selected benchmark replacement for consumer loans meets the ''historical fluctuations are substantially similar'' standard for the LIBOR index it replaces, and no further determination is required. In order to use the Board-selected benchmark replacement for consumer loans as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that the Board-selected benchmark replacement for consumer loans and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the LIBOR index became unavailable. *See also* comment 55(b)(7)(i)–2.

iii. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the relevant factors to be considered in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.,* historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: (1) the movements over time are substantially similar; and (2) the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis. The Board-selected benchmark replacement for consumer loans is considered to meet the ''historical fluctuations are substantially similar'' standard with respect to the LIBOR tenor being replaced, and therefore, these factors need not be considered.

2. *Substantially similar rate when LIBOR becomes unavailable.* Under § 1026.55(b)(7)(i), the replacement index and replacement margin must produce an annual percentage rate substantially similar to the rate that was in effect at the time the LIBOR index used under the plan became unavailable. For this comparison of the rates, a card issuer generally must use the value of the replacement index and the LIBOR index on the day that LIBOR becomes unavailable. If the replacement index is not published on the day that the LIBOR index becomes unavailable, the card issuer generally must use the previous calendar day that both indices are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of § 1026.55(b)(7)(i), if a card issuer uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(i) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under the plan becomes unavailable on June 30, 2023, and on that day the LIBOR value is 2%, the margin is 10%, and the annual percentage rate is 12%. Also, assume that a card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on June 30, 2023. The card issuer would satisfy the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12% on June 30, 2023.) Thus, if the card issuer provides a change-in-terms notice under § 1026.9(c)(2) on July 1, 2023, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on August 16, 2023, the card issuer satisfies the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable. This is true even if the prime index value changes after June 30, 2023, and the annual percentage rate calculated using the prime index value and 7% margin on August 16, 2023, is not substantially similar to the rate calculated using the LIBOR index value on June 30, 2023.

Paragraph 55(b)(7)(ii)

1. *Replacing LIBOR.* For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the historical fluctuations considered are the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the card issuer makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices, and no further determination is required. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the prime rate index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. *See also* comments 55(b)(7)(ii)–2 and –3.

ii. By operation of the Adjustable Interest Rate (LIBOR) Act, Public Law 117–103, division U and the Board's implementing regulation, 12 CFR part 253, the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index has historical fluctuations substantially similar to those of the LIBOR index being replaced. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans.* As a result, the Board-selected benchmark replacement for consumer loans meets the ''historical fluctuations are substantially similar'' standard for the LIBOR index it replaces, and no further determination is required. In order to use the Board-selected benchmark replacement for consumer loans as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the Board-selected benchmark replacement for consumers loans and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Because of the exception in § 1026.55(b)(7)(ii), the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. *See also* comments 55(b)(7)(ii)–2 and –3.

iii. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the relevant factors to be considered in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.,* historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: (1) the movements over time are substantially similar; and (2) the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis. The Board-selected benchmark replacement for consumer loans is considered to meet the ''historical fluctuations are substantially similar'' standard with respect to the LIBOR tenor being replaced, and therefore, these factors need not be considered.

2. *Using index values on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.* Under § 1026.55(b)(7)(ii), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the card issuer provides the change-in-terms notice disclosing the replacement index for the variable rate. The following examples illustrate how to determine the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

i. Assume a variable rate used under the plan that is based on the 1-month U.S. Dollar LIBOR index, and assume that LIBOR becomes unavailable after June 30, 2023. On October 18, 2021, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume that on November 16, 2021, pursuant to § 1026.55(b)(3), a card issuer provides a change-in-terms notice under § 1026.9(c)(2) disclosing a new margin of 12% for the variable rate that will apply to new transactions after November 30, 2021, and this change in the margin becomes effective on January 1, 2022. The margin for the variable rate applicable to the transactions that occurred on or prior to November 30, 2021, remains at 10%. Assume that there are no more changes in the margin used on the variable rate that applied to transactions that occurred after November 30, 2021, or to the margin used on the variable rate that applied to transactions that occurred on or prior to November 30, 2021, prior to when the card issuer provides a change-in-terms notice on April 1, 2022, disclosing the replacement index and replacement margins for both variable rates that will be effective on May 17, 2022. In this case, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred on or prior to November 30, 2021, is 10%. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred after November 30, 2021, is 12%. Assume that the card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A replacement margin of 7% is permissible under § 1026.55(b)(7)(ii) for transactions that occurred on or prior to November 30, 2021, because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 12%, which is substantially similar to the 12% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for that balance (which is 10%). A replacement margin of 9% is permissible under § 1026.55(b)(7)(ii) for transactions that occurred after November 30, 2021, because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 14%, which is substantially similar to the 14% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred after November 30, 2021, (which is 12%).

ii. Assume a variable rate used under the plan that is based on the 1-month U.S. Dollar LIBOR index, and assume that LIBOR becomes unavailable after June 30, 2023. On October 18, 2021, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume that on November 16, 2021, pursuant to § 1026.55(b)(4), a card issuer provides a penalty rate notice under § 1026.9(g) increasing the margin for the variable rate to 20% that will apply to both outstanding balances and new transactions effective January 1, 2022, because the consumer was more than 60 days late in making a minimum payment. Assume that there are no more changes in the margin used on the variable rate for either the outstanding balance or new transactions prior to April 1, 2022, the date on which the card issuer provides a change-in-terms notice under § 1026.9(c)(2) disclosing the replacement index and replacement margin for the variable rate that will be effective on May 17, 2022. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for the outstanding balance and new transactions is 12%. Assume that the card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A replacement margin of 17% is permissible under § 1026.55(b)(7)(ii) for the outstanding balance and new transactions because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 22%, which is substantially similar to the 22% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for the outstanding balance and new transactions (which is 20%).

3. *Substantially similar rate using index values on October 18, 2021.* Under § 1026.55(b)(7)(ii), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. A card issuer is not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of § 1026.55(b)(7)(ii), if a card issuer uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(ii) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate calculated using the LIBOR index. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under the plan has a value of 2% on October 18, 2021, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 10%, and the annual percentage rate based on that LIBOR index value and that margin is 12%. Also, assume that the card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A card issuer would satisfy the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12%.) Thus, if the card issuer provides a change-in-terms notice under § 1026.9(c)(2) on April 1, 2022, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on May 17, 2022, the card issuer satisfies the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This is true even if the prime index value or the LIBOR value change after October 18, 2021, and the annual percentage rate calculated using the prime index value and 7% margin on May 17, 2022, is not substantially similar to the rate calculated using the LIBOR index value on October 18, 2021, or substantially similar to the rate calculated using the LIBOR index value on May 17, 2022.

* * * * *

Section 1026.59—Reevaluation of Rate Increases

* * * * *

59(f) Termination of Obligation To Review Factors

1. *Revocation of temporary rates.* i. *In general.* If an annual percentage rate is increased due to revocation of a temporary rate, § 1026.59(a) requires that the card issuer periodically review the increased rate. In contrast, if the rate increase results from the expiration of a temporary rate previously disclosed in accordance with § 1026.9(c)(2)(v)(B), the review requirements in § 1026.59(a) do not apply. If a temporary rate is revoked such that the requirements of § 1026.59(a) apply, § 1026.59(f) permits an issuer to terminate the review of the rate increase if and when the applicable rate is the same as the rate that would have applied if the increase had not occurred.

ii. *Examples.* Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. The card issuer offers the consumer a 10% rate on purchases made between February 1, 2012, and August 1, 2013, and discloses pursuant to § 1026.9(c)(2)(v)(B) that on August 1, 2013, the rate on purchases will revert to the original 15% rate. The consumer makes a payment that is five days late in July 2012.

A. Upon providing 45 days' advance notice and to the extent permitted under § 1026.55, the card issuer increases the rate applicable to new purchases to 15%, effective on September 1, 2012. The card issuer must review that rate increase under § 1026.59(a) at least once each six months during the period from September 1, 2012, to August 1, 2013, unless and until the card issuer reduces the rate to 10%. The card issuer performs reviews of the rate increase on January 1, 2013, and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 15%. Beginning on August 1, 2013, the card issuer is not required to continue periodically reviewing the rate increase, because if the temporary rate had expired in accordance with its previously disclosed terms, the 15% rate would have applied to purchase balances as of August 1, 2013, even if the rate increase had not occurred on September 1, 2012.

B. Same facts as above except that the review conducted on July 1, 2013, indicates that a reduction to the original temporary rate of 10% is appropriate. Section 1026.59(a)(2)(i) requires that the rate be reduced no later than 45 days after completion of the review, or no later than August 15, 2013. Because the temporary rate would have expired prior to the date on which the rate decrease is required to take effect, the card issuer may, at its option, reduce the rate to 10% for any portion of the period from July 1, 2013, to August 1, 2013, or may continue to impose the 15% rate for that entire period. The card issuer is not required to conduct further reviews of the 15% rate on purchases.

C. Same facts as above except that on September 1, 2012, the card issuer increases the rate applicable to new purchases to the penalty rate on the consumer's account, which is 25%. The card issuer conducts reviews of the increased rate in accordance with § 1026.59 on January 1, 2013, and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 25%. The card issuer's obligation to review the rate increase continues to apply after August 1, 2013, because the 25% penalty rate exceeds the 15% rate that would have applied if the temporary rate expired in accordance with its previously disclosed terms. The card issuer's obligation to review the rate terminates if and when the annual percentage rate applicable to purchases is reduced to the 15% rate.

2. *Example—relationship to § 1026.59(a).* Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. Upon providing 45 days' advance notice and to the extent permitted under § 1026.55, the card issuer increases the rate applicable to new purchases to 18%, effective on September 1, 2012. The card issuer conducts reviews of the increased rate in accordance with § 1026.59 on January 1, 2013, and July 1, 2013, based on the factors described in § 1026.59(d)(1)(ii). Based on the January 1, 2013, review, the rate applicable to purchases remains at 18%. In the review conducted on July 1, 2013, the card issuer determines that, based on the relevant factors, the rate it would offer on a comparable new account would be 14%. Consistent with § 1026.59(f), § 1026.59(a) requires that the card issuer reduce the rate on the existing account to the 15% rate that was in effect prior to the September 1, 2012, rate increase.

3. *Transition from LIBOR.* i. *General.* Effective April 1, 2022, in the case where the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index, a card issuer may terminate the obligation to review if the card issuer reduces the annual percentage rate to a rate determined by a replacement formula that is derived from a replacement index value on October 18, 2021, plus replacement margin that is equal to the annual percentage rate of the LIBOR index value on October 18, 2021, plus the margin used to calculate the rate immediately prior to the increase (previous formula).

ii. *Examples.* A. Assume that on April 1, 2022, the previous formula is the 1-month U.S. Dollar LIBOR index plus a margin of 10% equal to a 12% annual percentage rate. In this case, the LIBOR index value is 2%. The card issuer selects the prime index published in the Wall Street Journal as the replacement index. The replacement formula used to derive the rate at which the card issuer may terminate its obligation to review factors must be set at a replacement index plus replacement margin that equals 12%. If the prime index is 4% on October 18, 2021, the replacement margin must be 8% in the replacement formula. The replacement formula for purposes of determining when the card issuer can terminate the obligation to review factors is the prime index plus 8%.

B. Assume that on April 1, 2022, the account was not subject to § 1026.59 and the annual percentage rate was the 1-month U.S. Dollar LIBOR index plus a margin of 10% equal to 12%. On May 1, 2022, the card issuer raises the annual percentage rate to the 1-month U.S. Dollar LIBOR index plus a margin of 12% equal to 14%. On June 1, 2022, the card issuer transitions the account from the LIBOR index in accordance with § 1026.55(b)(7)(ii). The card issuer selects the prime index published in the Wall Street Journal as the replacement index with a value on October 18, 2021, of 4%. The replacement formula used to derive the rate at which the card issuer may terminate its obligation to review factors must be set at the value of a replacement index on October 18, 2021, plus replacement margin that equals 12%. In this example, the replacement formula is the prime index plus 8%.

4. *Selecting a replacement index.* In selecting a replacement index for purposes of § 1026.59(f)(3), the card issuer must meet the conditions for selecting a replacement index that are described in § 1026.55(b)(7)(ii) and comment 55(b)(7)(ii)–1. For example, a card issuer may select a replacement index that is not newly established for purposes of § 1026.59(f)(3), so long as the replacement index has historical fluctuations that are substantially similar to those of the LIBOR index used in the previous formula. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the historical fluctuations considered are the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the card issuer makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices, and no further determination is required. By operation of the Adjustable Interest Rate (LIBOR) Act, Public Law 117–103, division U, codified at 12 U.S.C. 5803(e)(2), and the Board's implementing regulation, 12 CFR 253.4(b)(2), the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index has historical fluctuations substantially similar to those of the LIBOR index being replaced. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans.*

See also comment 55(b)(7)(ii)–1. As a result, the Board-selected benchmark replacement for consumer loans meets the ''historical fluctuations are substantially similar'' standard for the LIBOR index being replaced, and no further determination is required. Also, for purposes of § 1026.59(f)(3), a card issuer may select a replacement index that is newly established as described in § 1026.55(b)(7)(ii).

* * * * *

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2023–09129 Filed 5–10–23; 8:45 am]

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FEDERAL REGISTER

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Part VI

The President

Notice of May 10, 2023—Continuation of the National Emergency With Respect to Securing the Information and Communications Technology and Services Supply Chain

Notice of May 10, 2023—Continuation of the National Emergency With Respect to the Central African Republic

Federal Register

Vol. 88, No. 91

Thursday, May 11, 2023

Presidential Documents

Title 3—

The President

Notice of May 10, 2023

Continuation of the National Emergency With Respect to Securing the Information and Communications Technology and Services Supply Chain

On May 15, 2019, by Executive Order 13873, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the unrestricted acquisition and use of certain information and communications technology and services transactions.

The unrestricted acquisition or use in the United States of information and communications technology or services designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries augments the ability of these foreign adversaries to create and exploit vulnerabilities in information and communications technology or services, with potentially catastrophic effects. This threat continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared on May 15, 2019, must continue in effect beyond May 15, 2023. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13873 with respect to securing the information and communications technology and services supply chain.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
May 10, 2023.

[FR Doc. 2023–10314

Filed 5–10–23; 1:00 pm]

Billing code 3395–F3–P

Presidential Documents

Notice of May 10, 2023

Continuation of the National Emergency With Respect to the Central African Republic

On May 12, 2014, by Executive Order 13667, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to the Central African Republic, which has been marked by a breakdown of law and order; intersectarian tension; the pervasive, often forced recruitment and use of child soldiers; and widespread violence and atrocities, including those committed by Kremlin-linked and Yevgeniy Prigozhin-affiliated entities such as the Wagner Group, and which threatens the peace, security, or stability of the Central African Republic and neighboring states.

The situation in and in relation to the Central African Republic continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13667 on May 12, 2014, to deal with that threat must continue in effect beyond May 12, 2023. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared with respect to the Central African Republic.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,

May 10, 2023.

[FR Doc. 2023–10315

Filed 5–10–23; 1:00 pm]

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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